

Reclamations in the coastal marine area

**Recommendations in response to
submissions on the Proposed Regional Plan
for Northland - Section 42A hearing report**

Date: 3/07/2018

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Version: Final

Table of contents

Purpose and format of the report	3
Report author.....	4
About the Reclamations provisions	4
Overview of submissions	5
Rule C.1.6.3 - Reclamations for regionally significant infrastructure.....	5
Submissions	5
Analysis	5
Recommendation.....	6
Evaluation of recommended changes	7
Requests for reclamation policies	7
Submissions	7
Analysis	7
Recommendation:.....	9
Evaluation of recommended changes	9
Other matters.....	10
Appendix A - Response to other matters raised in submissions	11

Purpose and format of the report

1. This report provides the hearing panel the rationale for the recommended changes to the ‘Reclamations’ provisions in the Proposed Regional Plan for Northland (the Plan) in response to submissions. The recommended changes are set out in the document *Proposed Regional Plan for Northland – S42A recommended changes*.
2. The recommendations made in this report are my opinions and are not binding on the hearing panel. It should not be assumed that the hearing panel will reach the same conclusions.
3. My recommendations may change as a result of presentations and evidence provided to the hearing panel. It’s expected the hearing panel will ask authors to report any changes to their recommendations at the end of the hearing.
4. My recommendations focus on changes to the Plan provisions. If there is no recommendation, then it’s to be assumed that the recommendation is to retain the wording as notified.
5. Generally, the specific recommended changes to the provisions are *not* set out word-for-word in this report. The specific changes (including scope for changes) are shown in the document *Proposed Regional Plan for Northland – S42A recommended changes*.
6. This report is structured with a focus on the key matters for the ‘reclamations’ provisions raised in submissions. The key matters are:
 - Reclamations for regionally significant infrastructure
 - Requests for reclamation policy
7. Matters covered by submissions that fall outside the key matters are addressed in the “Other matters” section in less detail.
8. The approach of addressing matters raised in submissions (rather than addressing submissions and/or and submission points individually) is consistent with Clause 10 of Schedule 1 to the RMA.
9. This report should be read in conjunction with section 8.7 - *Reclamations* in the Section 32 report.

Report author

10. My name is Michael Day and I have overall responsibility for this report. I am the Resource Management Manager for the Northland Regional Council (regional council). For further details about my qualifications and experience, refer to the s42 report: *General approach*.
11. The following council staff and consultants have assisted me with the preparation of this report:
 - Stuart Savill, Consents Manager, Northland Regional Council
12. Although this is a council hearing, I have read the Code of Conduct for Expert Witnesses contained in the Practice Note issued by the Environment Court December 2014. I have complied with that Code when preparing this report and I agree to comply with it when giving oral presentations.

About the Reclamations provisions

13. The relevant provisions in the Proposed Regional Plan for *Reclamations* addressed in this report are:

Definition

- Reclamation

Rules

- C.1.6.1 Unlawful public road reclamation – controlled activity
- C.1.6.2 Unlawful reclamation – discretionary activity
- C.1.6.3 Reclamation for regionally significant infrastructure – discretionary activity
- C.1.6.4 Reclamation – discretionary activity
- C.1.6.5 Reclamation in areas with significant value – non-complying activity

14. This report addresses reclamations within the coastal marine area (activities restricted by section 12 of the RMA). It does not address reclamations within the bed of a river. These are covered in the *Wetlands and beds of lakes and rivers s42A* report.

Overview of submissions

15. A total of 17 submitters made submissions on the reclamations provisions, and these were broken up into 30 submission points. Additionally, 3 submitters requested that the plan is amended to include policies on reclamations.
16. The submitters can be grouped as:
 - Councils
 - Infrastructure providers
 - Tangata whenua
 - Environmental /conservation groups
 - Others

Rule C.1.6.3 - Reclamations for regionally significant infrastructure

Submissions

17. There were 9 submissions on rule C.1.6.3 *Reclamation for regionally significant infrastructure – discretionary activity*.
18. Five infrastructure providers (First Gas Ltd, NZTA, Northport Ltd, Transpower and Northpower) supported the rule and wish to see it retained as notified.
19. Far North District Council and Kaipara District Council requested the rule to also apply to local government infrastructure/core local infrastructure – not just regionally significant infrastructure.
20. Royal Forest and Bird Protection Society NZ and CEP Services Matauwhi Limited have requested additional clauses to the effect that these reclamations do not occur within significant/special areas. If they do then they need to be treated as non-complying activities.

Analysis

21. Regarding the relief sought by Far North District Council and Kaipara District Council, I consider that higher level regional policy (specifically the Regional Policy Statement for

Northland) has determined which activities are classified as 'regionally significant'. Specifically, policy 5.3.1 of the Regional Policy Statement for Northland (RPS) outlines that those activities in Appendix 3 of the RPS are recognised as being 'regionally significant'. Other policies in the RPS can be seen to 'assist' with navigating regionally significant infrastructure through the resource consent process.

22. I note that district council infrastructure or 'core local' infrastructure is not afforded special assistance/consideration through the RPS. As the potential for adverse effects arising from reclamations is often high and damage generally irreversible, I believe there needs to be compelling reasons why activities other than regionally significant infrastructure should be afforded potentially a more permissive activity status (discretionary activity rather than possibly non-complying). I am not convinced that in this instance, core local/district council infrastructure should be treated the same as infrastructure that has been deemed regionally significant.
23. With regards to the submissions from Royal Forest and Bird Protection Society NZ and CEP Services Matauwhi Limited, I accept that reclamations can have significant adverse effects, particularly in the coastal marine area. Policies 11, 13 and 15 of the New Zealand Coastal Policy Statement (NZCPS) are clear that adverse effects on these 'significant' areas need to be avoided.
24. Further, Policy 4.6.1 of the RPS requires that adverse effects on the characteristics and qualities which make these areas outstanding need to be avoided. I consider that it is unlikely a reclamation will be able to achieve this (within a significant ecological area, area of outstanding natural character or within an outstanding natural feature).
25. I therefore recommend amending rule C.1.6.3 by requiring the reclamation to not be located within a mapped significant ecological area, mapped outstanding natural character area or mapped outstanding natural feature. A reclamation within one of these areas would therefore fall to being a non-complying activity under rule C.1.6.5.

Recommendation

26. Amend rule C.1.6.3 as follows: Rule C.1.6.3 remains a discretionary activity provided the reclamation does not occur within a mapped significant ecological area, mapped area of outstanding natural character or mapped outstanding natural feature. If the reclamation is

proposed to occur within one of these locations, it would be assessed as a non-complying activity under rule C.1.6.5.

Evaluation of recommended changes

27. Section 32AA, RMA requires an evaluation of proposed changes to the Plan. The changes, while potentially more than minor in effect, are considered to be within the scope of the preferred management option as set out in Section 8.7 of the Section 32 report and therefore do not require further evaluation.

Requests for reclamation policies

Submissions

28. Three submitters requested that the regional plan include policies for reclamations.
29. Primrose B has requested that policy is included in the plan to provide guidance on assessing the appropriateness or otherwise of resource consent applications. Northport Ltd have requested that the plan is amended to include additional policy to provide guidance in the consideration of reclamations. Riverside Drive Marina have requested that the plan is amended to include policy guidance for the consideration of minor reclamations (where the effects are generally positive).

Analysis

30. As notified, the Proposed Regional Plan did not contain any policy guidance on reclamations. The main reason was because of the comprehensive and robust guidance provided by Policy 10 of the New Zealand Coastal Policy Statement (NZCPS). I consider that it is useful to set out this policy in full:

Policy 10 – Reclamation and de-reclamation

1. *Avoid reclamation of land in the coastal marine area, unless:*
 - a. *land outside the coastal marine area is not available for the proposed activity;*
 - b. *the activity which requires reclamation can only occur in or adjacent to the coastal marine area;*
 - c. *there are no practicable alternative methods of providing the activity; and*
 - d. *the reclamation will provide significant regional or national benefit.*

2. *Where a reclamation is considered to be a suitable use of the coastal marine area, in considering its form and design have particular regard to:*
 - a. *the potential effects on the site of climate change, including sea level rise, over no less than 100 years;*
 - b. *the shape of the reclamation and, where appropriate, whether the materials used are visually and aesthetically compatible with the adjoining coast;*
 - c. *the use of materials in the reclamation, including avoiding the use of contaminated materials that could significantly adversely affect water quality, aquatic ecosystems and indigenous biodiversity in the coastal marine area;*
 - d. *providing public access, including providing access to and along the coastal marine area at high tide where practicable, unless a restriction on public access is appropriate as provided for in Policy 19;*
 - e. *the ability to remedy or mitigate adverse effects on the coastal environment;*
 - f. *whether the proposed activity will affect cultural landscapes and sites of significance to tangata whenua; and*
 - g. *the ability to avoid consequential erosion and accretion, and other natural hazards.*
3. *In considering proposed reclamations, have particular regard to the extent to which the reclamation and intended purpose would provide for the efficient operation of infrastructure, including ports, airports, coastal roads, pipelines, electricity transmission, railways and ferry terminals, and of marinas and electricity generation.*
4. *De-reclamation of redundant reclaimed land is encouraged where it would:*
 - a. *restore the natural character and resources of the coastal marine area; and*
 - b. *provide for more public open space.*

31. Local authorities are required to amend their plans to give effect (my emphasis) to NZCPS provisions that affect their documents. In my opinion, the suite of rules in the Proposed Regional Plan for Northland implements (and therefore 'gives effect' to) Policy 10 of the NZCPS, and I remain of the view that there is no need for policy guidance in the Proposed Plan relating to the appropriateness of new reclamations (because of the directive nature of Policy 10, NZCPS).

32. However, after considering the submissions and relief sought by the submitters above, I am of the view that despite the robust guidance in the NZCPS, there remains a 'gap' with regards to policy guidance around unlawful reclamations as well as the potential benefits of reclamations when they are undertaken for certain purposes (discussed further below).

33. Policy 10 of the NZCPS focuses on new reclamations and specifically, determining if a new reclamation can be considered an appropriate use in the coastal marine area – 10(1) and then the form and design of reclamations – 10(2) and 10(3). There are a number of existing unlawful reclamations in Northland and while there are rules in the Proposed Plan to provide for these activities, there is no policy guidance. I therefore recommend the

insertion of policy guidance to assist with determining whether authorising unlawful reclamations is appropriate.

34. After considering the submission from Riverside Drive Marina, I am of the view that the Proposed Plan would benefit from a policy that recognises that there are circumstances where reclamations (generally minor) can lead to positive environmental effects. Examples include when a reclamation is to: maintain or repair an authorised reclamation, to carry out rehabilitation or remedial works and to create or enhance habitat for indigenous species where degraded areas of the coastal environment require restoration or rehabilitation.
35. I consider this will help to give effect to Policy 14 (c)(iii) of the New Zealand Coastal Policy Statement, which seeks to promote restoration or rehabilitation of the natural character of the coastal environment through creating or enhancing habitat for indigenous species where degraded areas of the coastal environment require restoration or rehabilitation.

Recommendation:

36. Include new reclamation policies for:
- Recognising the potential benefits of reclamations when they are undertaken for certain purposes.
 - The consideration of unlawful reclamations.

Evaluation of recommended changes

37. Section 32AA of the RMA requires an evaluation of any changes that have been made to, or a proposed for, the plan since the RMA s32 Evaluation Report was completed. I believe that the changes (new policies) are the most appropriate way to achieve the high-level objectives in the Reclamations Section 32 Evaluation Report for the Proposed Plan, as well as the recommended new 'use and development in the coastal marine area' objective to be included in section F of the plan. I also believe that the changes, while potentially more than minor in effect, are considered to be within the scope of the preferred management option as set out in Section 8.7 of the Section 32 report and therefore do not require any further evaluation. This is because the recommended policies do not change any of the rules within the plan (they are there to provide guidance when determining resource consent applications).

Other matters

38. Refer to Appendix A for the summary of submission points, analysis and recommendations made on the reclamations provisions not addressed in the key matters sections of this report.

Appendix A - Response to other matters raised in submissions

Note – this table does not include the summary of submission points, analysis and recommendations made on the reclamation provisions addressed in the key matters sections of the report.

Provision	Summary of main submission points	Discussion	Recommendation
Reclamation definition	Far North Holdings Ltd are seeking to amend the definition of reclamation to include sea walls or other similar retaining structures	I do not support the submitters requested relief as I do not consider that structures such as breakwaters, groynes or seawalls should be considered part of a reclamation. I do note that it is common for reclamations to include seawalls and other retaining type structures. It is common for consents to be 'bundled' so that applicants simultaneously apply for all activities – i.e. reclamation, dredging and placement of structures. Finally, the Proposed Regional Plans definition of 'reclamation' is based on the definition of 'reclaimed land' in section 29 of the Marine and Coastal Area Act 2011. This definition specifically excludes ' <i>structures such as breakwaters, moles, groynes or sea walls</i> '.	No change.
General submission – request for new rule	New Zealand Transport Agency are requesting a new 'discretionary activity' rule for declamations.	I do not consider there is a need for a stand-alone rule for declamations in the Proposed Plan. I consider that in reality, this activity (the returning of previously reclaimed land to coastal marine area) is going to happen very infrequently and if it does ever occur, it would be treated as a discretionary activity anyway. This is because section 87B of the RMA states that an application for resource consent for an activity must be treated as an application for a discretionary activity if Part 3 requires a consent to be obtained for the activity and there is no relevant rule in a plan/proposed plan. The activity of returning reclaimed land to coastal marine area would be caught by RMA s12 (1)	No change.

Provision	Summary of main submission points	Discussion	Recommendation
General submission – request for new rule and definition	<p>NZTA are requesting a new ‘controlled activity’ rule for minor reclamations: <i>Minor reclamation for the purpose of maintaining, repairing or upgrading a lawful reclamation directly associated with infrastructure (controlled activity)</i></p>	<p>restrictions on use of coastal marine area and would therefore be treated as a discretionary activity.</p> <p>I note that NZTA are also proposing a definition for ‘minor reclamation’.</p> <p><i>A reclamation created adjoining an existing reclamation as part of maintenance, repair or upgrading a reclamation’s seawall. Includes:</i></p> <ul style="list-style-type: none"> • <i>the “standing up” of a sloping seawall or bund to a more vertical form; and</i> • <i>the reconstruction of an existing vertical seawall.</i> <p>It is acknowledged that reclamations often include a seawall or associated hard protection structure on the coastal marine area ‘edge’ of the reclamation. It is however also noted that the definition of reclamation in the Proposed Regional Plan excludes structures such as seawalls. This aside, the repair and maintenance of hard protection structures is a permitted activity in the PRP.</p> <p>I consider that any new reclamation (however minor) should be able to be declined if the adverse environmental effects are more than minor. I therefore do not support a controlled activity rule for minor reclamations, nor do I support the proposed definition.</p>	No change.
C.1.6.1	<p>Royal Forest and Bird Protection Society NZ are requested the rule is amended to exclude unlawful reclamations where it is not consistent with Policy 11, 13 or 15 of the NZCPS, requesting that these are a discretionary activity.</p> <p>They are also requesting that where there are effects on a matter of national</p>	<p>I consider that the starting point for discussion here is to acknowledge that reclamations under this rule have already occurred (hence unlawful reclamation) and that locations that have been identified/mapped as being significant (under policies 11,13 and 15 of the NZ Coastal Policy Statement) have obviously been considered ‘significant’ even with the presence of the existing reclamation.</p> <p>I therefore do not consider there is a need for unlawful public road reclamations to be assessed as discretionary activities.</p>	No change.

Provision	Summary of main submission points	Discussion	Recommendation
	importance then public notification must occur.		
C.1.6.1	New Zealand Transport Agency are seeking to remove the method used to carry out the reclamation from matters of control and to replace with a matter of control which focuses on any remedial works necessary to mitigate adverse effects.	I agree with the submitter that there is no need to have a matter of control relating to the method used to carry out the activity as it has already occurred. I also agree with the submitter that it would be beneficial to include a matter of control relating to effects of any remedial works necessary to mitigate adverse effects.	Amend rule C.1.6.1 as outlined in <i>Proposed Regional Plan for Northland – S42A recommended changes</i>
C.1.6.2	Bay of Islands Maritime Park Inc are seeking the activity status is amended to non-complying.	I do not consider there is a need to amend the activity status of unlawful reclamations from discretionary to non-complying. I note that these are 'existing' reclamations and a discretionary activity still provides an opportunity for consent to be declined if adverse environmental effects are determined to be significant.	No change.
C.1.6.2	Royal Forest and Bird Protection Society NZ are advocating for activities which are not consistent with Policy 11,13 and 15 of the NZCPS to be remediated or removed.	I note that these are 'existing' (albeit unlawful) reclamations and a discretionary activity still provides an opportunity for consent to be declined (and council to seek enforcement action under s355B of the RMA) if adverse environmental effects are determined to be significant. Conversely, consent can be granted with conditions to remediate existing adverse environmental effects.	No change.
C.1.6.4	Heritage NZ are requesting an amendment to clause 5) to include mapped Historic Heritage 'Sites' (alongside Historic Heritage Areas).	I agree with the submitters request. Historic Heritage Sites are section 6 Matters of National Importance under the RMA and have the same status as Historic Heritage Areas. It appears these were inadvertently omitted from the list of mapped significant places and areas.	Amend rule C.1.6.4 as outlined in <i>Proposed Regional Plan for Northland – S42A recommended changes</i>
C.1.6.4	Bay of Islands Maritime Park Inc are requesting that the rule is amended to non-complying	The submitter has not provided reasons why this rule should be amended other than they cause major impacts. I continue to believe that outside of significant areas,	No change.

Provision	Summary of main submission points	Discussion	Recommendation
		discretionary activity status is still the most appropriate, noting that it clearly provides an opportunity for consent to be declined if adverse environmental effects are determined to be undue.	
C.1.6.4	Far North District Council have requested that the rule is amended to give 'local government infrastructure' the same status as regionally significant infrastructure.	Reclamations for regionally significant infrastructure (RSI) are discussed in the key issue section above. Policy 5.3.1 of the Regional Policy Statement for Northland (RPS) outlines that those activities in Appendix 3 of the RPS are recognised as being 'regionally significant'. Other RPS policies (such as Policy 5.3.3) can be seen to provide a 'leg up' to regionally significant infrastructure and assist with guiding it through the consenting process. District council infrastructure or 'core local' infrastructure is not afforded special assistance/consideration through the RPS. I therefore do not consider that in this instance, core local infrastructure should be treated the same as infrastructure that has been deemed to be 'regionally significant'.	No change.
C.1.6.4	Royal Forest and Bird Protection Society have requested the rule is amended to include an exclusion from this rule for reclamation in significant indigenous biodiversity areas and outstanding natural features/landscapes consistent with the RPS and Policies 11 and 15 of the NZCPS.	The rule already excludes mapped significant ecological areas and outstanding natural features from this rule. The Proposed Regional Plan has not mapped any outstanding natural landscapes in the coastal marine area. I therefore do not consider that the rule needs amending.	No change.
C.1.6.4	CEP Services Matauwhi Limited have requested to add further special areas to the list of special areas that the rule does not apply to, including Areas of High Natural Character, Significant Bird Areas, Significant Marine Mammal Areas and any area which meets any of the	I do not support the inclusion of the recommended additional areas by the submitter. This is because high natural character areas are not treated the same as outstanding natural character areas (requirement to avoid significant adverse effects compared to avoid adverse effects). Another reason is the extent of the mapped significant bird areas and significant marine mammal areas	No change.

Provision	Summary of main submission points	Discussion	Recommendation
	criteria for significance listed in Appendix 5 of the RPS for Northland.	within the Proposed Regional Plan – these areas encapsulate the entire coastal marine area of Northland, which essentially means that any reclamation would be non-complying.	
C.1.6.5	Bay of Islands Maritime Park Inc are requesting the activity status is amended to 'prohibited'.	Whilst I agree with the submitter that reclamations generally cause irreversible impacts, I consider that prohibited activity status is not the most appropriate activity status as it does not allow for applications to be tested on their merits. I consider that a non-complying activity status is still a high bar to pass, especially when there is national policy direction to avoid adverse effects on significant areas (NZCPS Policy 11,13 and 15) and the limited situations when a reclamation may be appropriate (NZCPS, Policy 10).	No change.
C.1.6.5	Northport Ltd and New Zealand Transport Agency have requested the following relief: <i>'A reclamation that is not a discretionary activity under rule C.1.6.3 'Reclamation for regionally significant infrastructure or rule C.1.6.4 Reclamation - discretionary activity, is a non-complying activity.</i>	I agree with the submitters suggested relief and recommend that the rule is amended accordingly.	Amend rule C.1.6.5 as outlined in <i>Proposed Regional Plan for Northland – S42A recommended changes</i>
C.1.6.5	CEP Services Matauwhi Limited have requested to add further special areas to the list of special areas as per C.1.6.4 above.	See discussion in relation to rule C.1.6.4 above.	No change.
C.1.6.5	Far North, Whangarei and Kaipara District Councils are requesting that 'core local' infrastructure/'local government' infrastructure is treated the same as regionally significant infrastructure.	I have addressed this point in my response to Far North District Councils submission on rule C.1.6.4 above. My conclusions remain the same and I do not consider that in this instance they should be treated the same.	No change.

Provision	Summary of main submission points	Discussion	Recommendation
C.1.6.5	Royal Forest and Bird Protection Society have requested the rule is amended to ensure that the areas they are seeking to include in rule C.1.6.4 above are also a non-complying activity.	For the reasons set out in my response to Royal Forest and Birds submission on rule C.1.6.4 above, I do not recommend amending this rule.	No change.