
OFFICER'S RESPONSE TO QUESTIONS FROM THE HEARINGS PANEL

DATE: 17 November 2022

HEARING: Subdivision and Public Access

HEARING DATE: 21 November 2022

PREPARED BY: Rachael Carruthers

Introduction

The purpose of this report is to provide a written response to the questions posed by the Hearings Panel on the respective section 42A report for the Subdivision, Public Access and Development Areas chapters.

Recommended amendments to Plan provisions are shown in a consolidated manner in **Appendix 1**.

Recommended amendments to whether submission points are accepted, accepted in part, or rejected, are shown in a consolidated manner in **Appendix 2**.

The amendments recommended in both appendices include amendments made in response to the questions from the Hearings Panel for Hearing 22 Residential Zones and discussed in the joint response from myself and Ms Jocelyn Lewes dated 17 November 2022.

Questions and Answers

Paragraph or Plan reference	Question from the Hearings Panel
Para 11.2 PA-O2	The s42A report uses the reference RMA S229 (c) <i>To enable public recreational use of the esplanade reserve or esplanade strip and adjacent sea, river or lake where the use is compatible with conservation values</i> to suggest natural character and indigenous biodiversity has primacy over activities that could adversely affect them. The inference is that natural character and indigenous biodiversity means conservation values and yet in paragraph 11.3 it gives as a reason to reject replacing 'conservation values' with 'natural character and indigenous biodiversity' as requested by DOC, to be inappropriate '....to restrict esplanades to just natural character values and indigenous biodiversity values...' The use of the words 'to just' implies that these features are either a subset of conservation values or not as encompassing as conservation values. Could the s42A please clarify this anomaly?
Officer response:	<i>S229 RMA sets out the three available purposes for esplanades:</i> An esplanade reserve or an esplanade strip has 1 or more of the following purposes: (a) to contribute to the protection of conservation values by, in particular,— (i) maintaining or enhancing the natural functioning of the adjacent sea, river, or lake; or

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	<p>(ii) maintaining or enhancing water quality; or</p> <p>(iii) maintaining or enhancing aquatic habitats; or</p> <p>(iv) protecting the natural values associated with the esplanade reserve or esplanade strip; or</p> <p>(v) mitigating natural hazards; or</p> <p>(b) to enable public access to or along any sea, river, or lake; or</p> <p>(c) to enable public recreational use of the esplanade reserve or esplanade strip and adjacent sea, river, or lake, where the use is compatible with conservation values.</p> <p><i>When I made the recommendation in the s42A report, it was on the basis that any natural hazard mitigation could be a reason for an esplanade, regardless of whether it contributed to indigenous biodiversity values or natural character values. On reflection, I consider that the amendment requested by DOC would better align with Council's jurisdiction and provide for greater consistency throughout the PDP, thereby creating certainty for Plan users.</i></p> <p><i>Outside the PA-O2, the phrase 'conservation value' is used in SUB-R24.21.a as a matter for discretion, and twice in the ECO-Overview. For consistency, I recommend equivalent amendments to these provisions, as shown in Appendix 1.</i></p> <p><i>Scope for these amendments is provided by submission point DPR-0427.058 DOC.</i></p>
Para 21.2 PA-MAT3	In the amendment proposed to PA-MAT3 "whether there is an acceptably low risk to public health and/or safety" is there any benefit or scope to change 'acceptably low' in this MAT (or in P1 where this term also figures), to 'unacceptably high' as this is the usual terminology where risk factors need to be taken into account?
*Officer response:	<p><i>I agree that the suggested wording would be more appropriate than that included in the s42A report, and that there is scope in the submissions to make the change. The recommended amendment is shown in Appendix 1.</i></p> <p><i>Scope for the amendment is provided by submission point DPR-0422.185 FFNC.</i></p>
Para 35 SUB-P2	Do you consider the word 'potential' to be certain enough for a policy that begins with the word 'Ensure'. Or do you consider the words 'make provision for' better ensures that safe and efficient access will be provided for during the creation of a subdivision?
Officer response:	<p><i>I agree that the suggested wording would be more appropriate than that included in the s42A report. The recommended amendment is shown in Appendix 1.</i></p> <p><i>Scope for the amendment is provided by submission point DPR-0422.194 FFNC</i></p>
Para 40.2 SUB-P7	SUB-P7 clause 3. Is Council capacity to pay for maintenance and improvements of reserves not already part of the consideration of clause 1 "Council's need for the land based on adopted provision and distribution standards" in any event?
*Officer response:	<i>I disagree. Clause 1 relates to whether a reserve of that type is required in that locality, given, for example, what is already provided in that locality. Clause 3 relates to whether Council has the financial capacity to maintain and improve the land.</i>
Para 41.3 SUB-P8	<p>Given the intent of the SUB-P8 is to 'provide for subdivision or boundary adjustments where there is no potential for further residential development', then in response to submissions, and to be consistent with the type of wording used in SUB-P4 and SUB-P9, would it be more appropriately worded:</p> <p>Provide for Manage the subdivision of sites with existing residential units, or boundary adjustments between sites with existing residential units, which do not comply with the minimum site area or residential density standards for the zone, only where to</p>

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	ensure that the subdivision does not create any potential for additional residential development.
<i>*Officer response:</i>	<p><i>I agree that the suggested wording would be more appropriate than that included in the s42A report. The amended wording would be more consistent with the type of wording used in SUB-P4 and SUB-P9, and would clarify the intent of the policy. The recommended amendment is shown in Appendix 1.</i></p> <p><i>Scope for the amendment is provided by submission points DPR-0370.054 Fonterra, DPR-0371.038 CIAL, DPR-0414.091 Kāinga Ora, and DPR-0453.056 Midland & Lyttelton Ports</i></p>
Para 53.2 SUB-R9	Is the relief sought by Kāinga Ora now essentially provided by Variation 1?
<i>*Officer response:</i>	<p><i>Yes, in part. Within the townships subject to Variation 1 (Lincoln, Prebbleton and Rolleston), the relief sought by Kāinga Ora is essentially provided by the Variation. This will be subject to a separate hearing, once all submissions and further submissions have been received and considered.</i></p> <p><i>SUB-R9 is still of relevance in other townships not subject to Variation 1.</i></p>
Para 54.3 SUB-R10	Non notification clauses. This additional statement could be read two ways. Presume it only refer to matters which meet SUB-R10 1 a, and b. and REQ6-11 not for a discretionary activity under SUB-R10.4 or a non-complying activity through R10.5 to be subject to the non-notification clause as it can be read that such are applications are arising from SUB-R10-1? Would the word <u>under</u> be preferable to <u>arising from</u> in the non-notification clause?
<i>*Officer response:</i>	<p><i>I assume that the question arises in relation to paragraph 54.4 (notification clauses), rather than 54.3 (status of the activity).</i></p> <p><i>The phrase used in the recommended amendment to SUB-R10 is consistent with that used throughout the rest of the PDP, including SUB-R1.3, SUB-R2.3, SUB-R3.3, SUB-R4.3, SUB-R5.3, SUB-R6.3, SUB-R7.3, and SUB-R8.3.</i></p> <p><i>Comprehensive development subdivision is under Rule SUB-R10, but an application only arises from SUB-R10.1 where it complies with SUB-R10.1.a. If that compliance is not achieved, then the application is still under SUB-R10 as a whole, but arises from SUB-R10.4, and SUB-R1.3 does not apply.</i></p> <p><i>If the Panel is of the opinion that the wording is insufficiently clear, then an amendment would be appropriate, but it would need to be consistent across the whole of the PDP.</i></p>