

Hearing 20: Coastal Environment

Questions from the Hearing Panel

As foreshadowed by paragraph 12 of Minute 1, having read the Section 42A Report (and the associated specialist report by Mr Bentley) for the above, the Hearing Panel members have a number of questions that they would appreciate being answered by the Section 42A Report author(s) in writing prior to the hearings commencing.

Paragraph or Plan reference	Question
8.2	<p>In several other chapters the s42A officers have made recommendations for non-notification or limited notification rules with respect to breaches that would have limited scale of effect and would not have wider implications necessitating full public processes.</p> <p>Are there any rules in the CE chapter that you could support non-notification clauses for?</p>
	<p><i>Many rules and rule requirements include discretionary and non-complying activity statuses under this Chapter. It would not be appropriate to have non-notification clauses attached to these provisions due to the unanticipated range of effects from these activities which may require public or limited notification.</i></p> <p><i>There could however be non-notification clauses for CE-REQ1-CE-REQ4 as these would generally apply to buildings and structures outside of areas of mapped natural character values (buildings and structures in mapped natural character values, unless public amenity or ancillary structures, require a resource consent as either a restricted discretionary or non-complying activity regardless of height/footprint).</i></p> <p><i>A non-notification clause is consistent with the approach taken for GRUZ in relation to building/structure height and footprint (GRUZ-REQ1 and 2). I note in the NFL Chapter, similar matters in VAL addressed through rule requirements also have non-notification clauses attached.</i></p> <p><i>As public amenity activities can be established in areas of mapped natural character subject to rule requirements, any non-notification clause added to the rule requirements should except this activity as there may be a level of public interest from effects on natural character values. Similarly, ancillary structures should also not be subject to a non-notification clause for appearance (CE-REQ4) as this may be impact on natural character values where again there may be a level of public interest.</i></p>
10.6	<p>Policy 13 of the NZCPS is:</p> <p>To preserve the natural character of the coastal environment and to protect <u>it from inappropriate subdivision, use, and development</u>:</p>

Paragraph or Plan reference	Question
	If we are to be consistent with that should Policy CE-P2 also include the words underlined above (which may be seen as a qualifier to outright protection)?
	<i>Yes I agree that this would be appropriate and consistent with the language of NZCPS Policy 13.</i>
-10.14.4	<p><i>The current wording of 1a references ‘enabling’ activities however enabling is a more permissive term than the rule framework allows for the upgrading or new establishment of important infrastructure, particularly in more sensitive areas of the coastal environment and I recommend it not be used in this context. This is also inconsistent with the word ‘avoid’ used in the NZCPS and the general understanding around the meaning of this word as determined by case law at the time of writing.</i></p> <p>The word ‘enabling’ is however still used in other CE policies as well as the the (new) Policy P9, is this appropriate for those policies?</p> <p>Associated to that, is (new) P9 too permissive in that it refers to scale of the activity and not the effects, i.e. <i>“Enable activities that have a public benefit and are small in scale”</i></p>
	<p><i>The use of the word ‘enable’ is generally implemented through the use of a ‘permitted’ or a ‘controlled’ activity status. In the CE Chapter the word ‘enable’ is used for the following activities where the effects are considered to be no more than minor, are consistent with the Objectives and the activities are permitted in the rules:</i></p> <ul style="list-style-type: none"> - <i>Limited earthworks outside of Te Waihora/Lake Ellesmere HNC which is qualified in CE-R5 as being related only to certain activities or small volumes.</i> - <i>Existing farming operations –allowance for earthworks associated with maintaining existing fence lines, tracks and roads (CE-R5).</i> - <i>Beneficial activities that restore and rehabilitate natural character (this is generally permitted by the rules).</i> - <i>Cultural activities such as the exercise of kaitiakitanga and mahinga kai (permitted through CE-R1).</i> <p><i>In terms of recommended CE-P9, an activity that has both public benefit and is small in scale is likely to have effects that are no more than minor. Parameters around the scale of the activity are set in CE-R3 in terms of height, footprint and appearance which will ensure that any building or structure is not unduly prominent.</i></p>
11.15	Will the rule contain a hyperlink to the definition of “Public Amenity” (to make it clear to readers that this term is defined and includes structures)?

Paragraph or Plan reference	Question
	<i>Yes – as notified there is a hyperlink in the rule to ‘public amenity’ which is defined as including land, building and structures used to provide amenity services to the public.</i>
11.33	<p><i>ESAI and NCCF state that it is important that provision is made for irrigation, water conveyance and rural production infrastructure installation in order to achieve environmental outcomes and directives for efficient water use and farming activity. Whilst irrigation would be classified as a network utility under this rule there may be other farming infrastructure consisting of pipes, cables and drains which are not classed as such. I consider that it is reasonable to permit earthworks for this type of activity particularly as the effects are likely to be minor and the activity is ancillary to the purpose of the underlying zoning which enables rural production. This is also consistent with my recommendations in the S42a report for Natural Features and Landscapes where a similar point was made by submitters.</i></p> <p>Can you please check if this advice is consistent with the s42A Report for Natural Character chapter (Hearing 13).</p>
	<p><i>The S42a report for Natural Character addresses a submission point by three submitters (Dairy Holdings Ltd, Craigmore Farming Services Ltd and Rakaia Irrigation Ltd) that sought an exemption from natural character setbacks from freshwater bodies for any earthworks associated with the installation, operation and maintenance of irrigation infrastructure. The recommendation in the report was to reject the relief sought as the cumulative effects of on-farm systems, such as an irrigation canals, water storage ponds or the recontouring of a riparian area to accommodate irrigation could erode natural character values.</i></p> <p><i>I agree that this could erode natural character values. However I do not believe my recommendations are inconsistent with this report. Notified rule CE-R5 already permits earthworks for the purpose of the maintenance and repair of existing fence lines, roads or tracks or the installation of underground network utilities and ancillary structures. The recommended change would enable underground infrastructure and drains that are already in-situ to be repaired and maintained and broadens permitting earthworks for the installation of underground infrastructure beyond network utilities. It would not however permit earthworks to install above ground infrastructure as described in the S42a report for Natural Character, which would likely be incompatible with natural character values.</i></p>
12.3	<p>Would you consider that there may still be areas of uncertainty as to how the amended rule works, as the words to be inserted could be said to apply <u>only to a property (entirely) located within the CE overlay</u> rather than to the <u>portion of the property located within the overlay</u>?</p> <p>(If necessary we could discuss this at the hearing and use a whiteboard to illustrate the effect of the rule).</p>
	<i>The rule could be clarified further to state that it is per property or part of the property. Generally speaking the underlying zone will be GRUZ. For properties over 1ha in size, this means a site coverage not exceeding 5%.</i>

Paragraph or Plan reference	Question
	<i>With the CE overlay applied, this will still need to be maintained across the whole site but, in addition, in that portion subject to the overlay further restrictions apply (300-500m² per 20ha subject to the CE overlay and a maximum of 2000m²).</i>