



NZCPS 2010 Guidance note

Policy 10: Reclamation and de-reclamation

Contents

<i>Policy 10</i>	1
<i>Overview of the policy</i>	2
<i>Rationale</i>	3
<i>Related objectives, policies and provisions</i>	4
NZCPS 2010	4
Resource Management Act 1991.....	6
Other legislation.....	6
<i>Origins of the policy</i>	8
<i>Implementing the policy</i>	10
Regional policy statement and plan preparation.....	10
New reclamations	12
Regulatory decision-making.....	13
Form and design.....	15
Regional/national benefits and the efficient operation of infrastructure.....	17
De-reclamation of redundant reclaimed land.....	17
Vesting of interests in reclaimed land	17
Esplanade reserve or esplanade strip	18
<i>Resources</i>	19
Examples of plan provisions.....	19
Examples of regulatory decisions	19
Reports, websites and additional information	19
<i>Glossary of terms and definitions</i>	21
NZCPS 2010 glossary.....	21
Other definitions	22



Policy 10

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.

Overview of the policy

Policy 10 of the New Zealand Coastal Policy Statement 2010 (NZCPS 2010) seeks to avoid reclamation of land in the coastal marine area¹ unless specified criteria relating to need and significant benefit are met, including the extent to which it would allow infrastructure² to operate efficiently. Where a reclamation is considered to be a suitable use of the coastal marine area, decision-makers must have particular regard to a range of potential effects that may arise from the proposed reclamation's form and design.

The policy also encourages 'de-reclamation' of reclaimed land³ that is no longer needed, to assist restoration of the area's natural character and resources, and to provide for more public open space.

All readers of this policy guidance note should also refer to the NZCPS 2010 Implementation Guidance Introductory note⁴. The Introductory note contains general information and guidance that is important for implementing all of the objectives and policies in the NZCPS 2010.

¹ Refer to the glossary of terms for a definition of 'coastal marine area'.

² Refer to the glossary of terms for a definition of 'infrastructure'.

³ Refer to the glossary of terms for a definition of 'reclaimed land'.

⁴ <http://www.doc.govt.nz/nzcps-introductory-note>

Rationale

Reclamation of the foreshore and seabed has been used as a means of creating additional areas of dry land for a variety of purposes, including port development, farming, water dependent activities (e.g. marinas, wharves), shorefront development for industrial and residential purposes, road and rail route alignments, and to dispose of dredging spoil and surplus fill.

Reclamations can have both positive and negative effects. Possible benefits that may result from reclamations include improvements in public access to the coastal marine area (e.g. with wharves and marinas) and benefits to the economic well-being of people and communities, or by increasing the amount of land suitable for activities that need to be located on the coast or in that particular area. However, reclamation physically buries the seabed or foreshore and alters natural shorelines; it can have adverse effects on natural coastal processes, habitat and ecosystems, natural character, amenity values, and sites of significance to Māori.

Historically, some reclamations have buried valuable coastal habitats, such as estuarine areas and rocky foreshores, even though a coastal location was not necessary for the intended purpose (such as general industrial land, car-parking or rubbish landfill).

Coastal space is a limited resource. However, some coastal uses require additional dry land. There are some circumstances where reclamation of land in the coastal marine area may be appropriate; in each case decisions about their design and location need to be made carefully. Direction is therefore needed on the assessment of proposals for new reclamations.

De-reclamation (the return of reclaimed land to foreshore or seabed) can be used to restore the coastal marine area.

Related objectives, policies and provisions

This section covers the links (in terms of reclamations and de-reclamations) between the various provisions of the NZCPS 2010, the Resource Management Act 1991 (RMA), and other legislation.

NZCPS 2010

Implementing Policy 10 of the NZCPS 2010 requires careful consideration of all NZCPS 2010 objectives and policies. Objective 6 and Policies 6, 7, 9, 14, 18 and 19 of the NZCPS 2010 are particularly relevant to planning and decision-making regarding reclamations and de-reclamations. These links are considered below:

Key related objectives and policies	Other related objectives	Other related policies
Objective 6 Policies 6, 7, 9, 14, 18 and 19	Objectives 1, 2 and 4	Policies 3, 11, 13, 15, 16, 17, 21, 22 and 25

Objective 6

Objective 6 seeks to enable people and communities to provide for their social, economic and cultural well-being, and their health and safety, through subdivision, use and development. It recognises that, functionally, some uses and developments can only be located on the coast or in the coastal marine area; and that some uses and developments which depend upon the use of natural and physical resources in the coastal environment are important to the social, economic and cultural well-being of people and communities.

Objective 6 emphasises the need for coastal decision-making to consider the environmental limits and appropriate place and form of activities located within the coastal environment.

Policy 10 relates directly to Objective 6, as it seeks to avoid reclamation of land in the coastal marine area unless specified criteria relating to need and significant benefit are met.

Policy 6: Activities in the coastal environment

Policy 6 identifies that the provision of infrastructure, and the supply and transport of energy, are activities important to the social, economic and cultural well-being of people and communities. Policy 10(3) requires decision-makers to have particular regard to the extent to which the reclamation and its 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.

Policy 6 also identifies the need to recognise the potential benefits of activities of national or regional importance or those that have a functional need to locate and operate in the coastal marine area. Consideration of Policy 6 and the matters in

Policy 10(1)(d) and (3) will be relevant where managing the nature and location of new and existing reclamations as well as the activities that occur on them.

Policy 6 requires that consideration be given to a number of potential adverse effects of development in the coastal environment, including impacts on visual amenity, public access, and indigenous biodiversity. These matters are also relevant to the assessment of new reclamations.

Policy 7: Strategic planning

Policy 7 directs that, in preparing regional policy statements and plans, local authorities consider where future development and other activities should be provided for in the coastal environment, and identify areas where particular activities and forms of subdivision, use and development are inappropriate. It also directs local authorities to identify where coastal resources or values are at risk from adverse cumulative effects, and to include provisions in plans to manage these effects.

Such provision for development and other activities could involve reclamation, or could involve alternative locations or methods rather than reclamation. Implementation of Policy 7 could assist in identifying where reclamation would be inappropriate.

Policy 9: Ports

Policy 9 identifies that a sustainable national transport system requires an efficient network of safe ports with efficient connections to other transport modes. Reclamations are often associated with port infrastructure.

Policy 14: Restoration of natural character

Policy 14 promotes the restoration or rehabilitation of natural character of the coastal environment by identifying where this might occur, including enabling provisions in statutory plans and through regulatory decision-making. Policy 10(4) encourages de-reclamation of redundant reclaimed land where it would restore the natural character and resources of the coastal marine area.

Policy 18: Public open space

Reclamation and its associated activity has the potential to have adverse effects on the availability of public open space within and next to the coastal marine area and on public walking access. In many cases, public walking access to and along the coast is directly linked to public open space values. These links have implications for planning and management.

Policy 18 recognises the need for public open space within and adjacent to the coastal marine area, and promotes the provision of public open space. Reclamation generally replaces foreshore and seabed that is public open space with dry land that is to be developed for uses other than public open space. Part or all of the reclamation can become private land or be leased for private use through the vesting of rights under sections 29–45 of the Marine and Coastal Area Act 2011 (subject to any requirement for an esplanade reserve or strip).

Policy 19: Walking access

Policy 19(2) encourages the provision of public walking access to, along and adjacent to the coastal marine area, including by avoiding, remedying or mitigating any loss of public walking access resulting from use or development, which includes reclamation development and the uses on that reclamation. The policy also requires the maintenance and enhancement of public walking access by providing connections between existing public areas. This is closely related to 'Policy 18: Public open space', which focuses on the provision of public open space in the coastal environment and the linkages with walking access. Esplanade reserves are a means of providing public access; this mechanism is discussed below.

Policy 10(2)(d) requires the consideration of reclamation form and design to have particular regard to providing public access, unless a restriction on public access is appropriate as provided for in Policy 19. Policy 19(3) states that restrictions on public access are only to be imposed where necessary for particular specified purposes.

Resource Management Act 1991

Specific Resource Management Act 1991⁵ (RMA) provisions apply to reclamations of the coastal marine area:

- Sections 12(1)(a) and 12(3) of the RMA restrict the reclamation of any foreshore or seabed in the coastal marine area.
- Section 105(2) of the RMA requires a consent authority, in regard to a reclamation consent application, to consider whether an esplanade reserve or esplanade strip is appropriate and, if so, to impose a condition under section 108(2)(g) on the resource consent.

Other legislation

Marine and Coastal Area (Takutai Moana) Act 2011, sections 29–45

The Marine and Coastal Area (Takutai Moana) Act 2011 (the MACA Act) came into force on 1 April 2011. Readers should refer directly to the MACA Act. This Act sets the regime for the granting of interests⁷ in reclaimed land formed from the common marine and coastal area.⁸ The MACA Act gives Land Information New Zealand (LINZ) responsibility for processing applications seeking an interest in reclaimed land. Part 2 Subpart 3 of the MACA Act deals with reclaimed land. Section 39 covers vesting of reclamations under the MACA Act.

⁵ <http://www.legislation.govt.nz/act/public/1991/0069/latest/DLM230265.html>

⁶ <http://www.legislation.govt.nz/act/public/2011/0003/latest/DLM3213131.html>

⁷ Refer to the glossary of terms for a definition of 'interest'.

⁸ The 'common marine and coastal area' means the marine and coastal area other than specified freehold land located in that area; and any conservation area, national park or reserve owned by the Crown; and the bed of Te Whaanga Lagoon in the Chatham Islands (Section 9 of the MACA Act).

Decisions on interests in reclaimed land are made by the Minister for Land Information. Section 36(2) sets out the matters the Minister must consider in making a determination. Section 37 sets out a presumption that port companies/operators and specified airport companies will be granted freehold interest.

Origins of the policy

Policy 10 of the NZCPS 2010 is significantly different from the New Zealand Coastal Policy Statement 1994 (NZCPS 1994). Policies 4.1.4 and 4.1.6 of the NZCPS 1994 required that reclamation material must be free of contaminants⁹ which could adversely affect the coastal marine area; and that applicants must have regard to any available alternatives to the proposed reclamation and provide reasons for making its proposed choice. The NZCPS 1994 included a restricted coastal activity policy which addressed larger-scale reclamations, but the NZCPS 2010 contains no restricted coastal activities.

The Board of Inquiry¹⁰ considered that the NZCPS 2010 should give greater policy guidance on the types of subdivision, use and development that are appropriate or consistent with the purpose of the RMA.

A number of principles were identified during the Board of Inquiry process and helped shape the development of this policy. These were:

- Reclamations should be avoided unless clear need is demonstrated and the activity is in the public interest.
- Any development should respect natural values and fit within and be visually subservient to the natural environment.
- An additional clause was requested to recognise the relationship tangata whenua have with an area and their management of that area.
- There was a need to recognise and provide for the various beneficial circumstances in which reclamations are usually undertaken in New Zealand (e.g. reclamation for a motorway, arterial road, harbour wharf, container storage, transmission pylons or other public utility purpose).

During the Board of Inquiry process, a number of public benefits from reclamations were identified, such as:

- Infrastructure (e.g. embankments needed for bridges, railway lines, and sometimes roads)
- Port operations (e.g. back-up land for cargo handling and storage)
- Public access (e.g. provision for public access through coastal walkways and public viewing platforms)

The Board recognised that in many cases it is not appropriate to search for new land outside the coastal marine area because of practicality, efficiency, safety and other considerations. The Board also noted that provision for some of these types of facilities may need revisiting in response to sea level rise.

⁹ Refer to the glossary of terms for a definition of 'contaminant'.

¹⁰ <http://www.doc.govt.nz/getting-involved/consultations/results/new-zealand-coastal-policy-statement/board-of-inquiry-terms-of-reference/>

The NZCPS 2010 guides what makes reclamation a suitable use of the coastal marine area. Policy 10 clearly separates the justification for a reclamation from its design. Policy 10(1) focuses on whether a reclamation is a 'suitable use' of the coastal marine area. Policy 10(2) then addresses the question of design, should a proposed reclamation be considered a 'suitable use'. As a result of issues raised in submissions, the Board recommended including additional clauses to 10(2) to address cultural landscapes and sites of significance to tangata whenua, and the avoidance of other natural hazards.

The Board also noted that while de-reclamation of redundant reclaimed land is a mitigation technique, how far it may be feasible can only be determined on a case-by-case basis.

For further information refer to the NZCPS Board of Inquiry Report¹¹, Volume 2, pp. 162-173.

¹¹ <http://www.doc.govt.nz/getting-involved/consultations/results/new-zealand-coastal-policy-statement/proposed-new-zealand-coastal-policy-statement-2008-board-of-inquiry-report-and-recommendations/>

Implementing the policy

While guidance is provided here on implementing Policy 10, it is also necessary to consider the entire NZCPS 2010 when implementing each policy. Please also refer to the NZCPS 2010 Implementation Guidance Introductory note¹² which covers the matters that are relevant in giving effect to the NZCPS 2010.

If consent for reclamation is granted by the regional council, the reclaimed land (once formed) will be landward of mean high water springs and falls under the jurisdiction of territorial authorities.

Regional policy statement and plan preparation

In preparing regional policy statements, and plans, local authorities will need to give consideration to where future development and other activities should be provided for in the coastal environment. Please see also the guidance note prepared for 'Policy 7: Strategic planning'.

In regard to regional policy statement and plan preparation, implementing Policy 10 involves:

- Identifying¹³ high value areas in the coastal marine area where disturbing activities such as reclamation of land are likely to be inappropriate; and may be inappropriate without the consideration of effects (see Policy 7(1)(b)); for example, areas with significant conservation value, sites of significance to tangata whenua. Guidance in other NZCPS policy notes will be relevant e.g. 'Policy 11: Indigenous biological diversity', 'Policy 13: Natural character', 'Policy 15: Natural features and natural landscapes', 'Policy 17: Historic heritage', and 'Policy 18: Public open space'.
- Identifying the requirements for existing and new marine service areas, such as ports. Planning for activities that have a fundamental need to occur in or adjacent to the coastal marine area is important for ensuring the operation and development needs of such marine services are met. A component of this planning is through the consolidation of compatible activities and uses next to existing marine service areas (e.g. keep a port and its associated reclamations to a confined area and managed for that purpose).
- Identifying any reclaimed land that could be considered redundant and assess its suitability for de-reclamation (de-reclamation is a possible mitigating technique—for example, to create more public and useful open space, or to rehabilitate degraded environments).

¹² <http://www.doc.govt.nz/nzcps-introductory-note>

¹³ There are a number of options for 'identifying' high value areas in the coastal marine area in policy statements and/or plans. Options include mapping, listing in a schedule and/or a policy with criteria and direction.

It could also involve:

- Developing policy on coastal processes, resources or values that are under threat or at significant risk from adverse cumulative effects; and including provisions in plans to manage these effects (see Policy 7(2)). Reclamations can have adverse effects on coastal processes, resources or values. Plan provisions can usefully be included to determine where reclamations should not be occurring.
- Identifying priorities for restoration of the coastal environment which could be provided as mitigation in the event of a reclamation proceeding. Consideration could be given to de-reclamation of an equivalent area, or the provision of new wetland or habitat, where practicable to replace coastal habitats or other values lost as a result of a reclamation. See the guidance note on 'Policy 14: Restoration of natural character' for further discussion on options to remedy and mitigate adverse effects.

Plan provisions may, for example:

- Restrict reclamations of land in the coastal marine area to those situations where they meet the clauses (1)(a)–(d) of Policy 10.
- Require the use of materials in reclamations that are free of contaminants which could significantly adversely affect water quality, aquatic ecosystems and indigenous biodiversity in the coastal marine area.
- Encourage, where practicable, redundant reclamations to be removed where they would restore the natural character and resources of the coastal marine area; and provide for more public open space.
- Require that consultation is carried out where a reclamation activity may impact on a site of significance to tangata whenua.
- Require that public access, including to and along the coastal marine area, is not to be unnecessarily impeded.

Some commercial operations depend on access to the coastal marine area, and the use of reclaimed land for these activities can have benefits for people and communities. Careful consideration needs to be given to the location of these projects, particularly in light of the need to be close to other infrastructure, such as roads and rail.

The expected impacts of climate change on ports, marinas, road and rail infrastructure and waterfront developments must also be considered, to the extent that coastal hazard areas need to be defined and accommodated in planning for these facilities. This approach is consistent with the NZCPS 2010 direction on natural hazards, as discussed in the guidance note on 'Policy 25: Subdivision, use, and development in areas of coastal hazard risk'

Zoning enables local authorities to identify places in their district plans and regional coastal plans that are appropriate for specific uses or developments. Policy 10 has strong links with 'Policy 7: Strategic planning' and 'Policy 9: Ports'. These policies require a strategic approach to future planning for the coastal environment to achieve sustainable management of the coast. Reclamations may be required to meet port operation and development needs. Local authorities are encouraged to plan for

such future uses and give careful consideration to the operational and development needs of a port, and ensure that other developments or activities do not compromise the operation of ports. Future planning allows local authorities to consider where reclamations may be needed for ports, and zoning can be a useful tool for demonstrating where such reclamations may be considered appropriate.

A strategic approach to future planning could also lead to minimising the need for reclamations in the coastal marine area. For example, consideration should be given to which parts of the port operation need to be located at the land-water interface. The development of ‘inland ports’ provides an opportunity to carry out some traditional port activities (e.g. container marshalling, and goods storage pending ship arrival) well away from the coastal port and any coastal reclamation. The concept of inland ports is further discussed in the guidance note on ‘Policy 9: Ports’.

New reclamations

Policy 10 directs a cautious approach to the approval and development of new reclamations. The Policy effectively states that reclamation of land in the coastal marine area is to be avoided unless a factor of need can be shown; that is, unless Policy 10(1) clauses (a)–(d) can all be met.¹⁴

Policy 10 sets out a structured process for consent authorities when considering a proposed reclamation:

- Under Policy 10(1), the applicant should demonstrate that their proposal meets the four criteria in clauses (a)–(d) so that the consent authority can carry out an assessment of need and determine whether the reclamation is a suitable use of the coastal marine area.
- If the proposed reclamation is considered to be a suitable use, under Policy 10(2) the consent authority must have particular regard to seven listed matters when considering the form and design of the reclamation. One of those matters is the scope for mitigating or remedial works (Policy 10(2)(e)). The options for de-reclamation and/or coastal restoration at nearby sites would be expected to be considered as part of this assessment.
- Under Policy 10(3), when considering applications the consent authority must also have particular regard to the extent to which the proposed reclamation and its intended purpose would provide for the efficient operation of infrastructure, and of marinas and electricity generation.

¹⁴ The Interpretation section of the NZCPS 2010 (page 8) states that: ‘In this NZCPS, where bullet points in an objective or clauses in a policy take the form of a list: — where the list is cumulative, the word “and” is used before the last clause in the list’. Policy 10(1) clauses (a)–(d) are connected by an ‘and’, therefore the list is cumulative and all of these criteria are expected to be met.

Regulatory decision-making

Consent and other regulatory decision-making must have regard to Policy 10 of the NZCPS 2010.

If not managed well, reclamations have the potential to cause significant and direct adverse effects on the coastal environment. When assessing the actual and potential effects the reclamation may have on the coastal environment, decision-makers should consider such effects, including:

- Social and economic effects.
- Operational implications including health and safety and the efficiency of port operations.
- Loss of or damage to the natural character and natural features of the area.
- Adverse impacts on visual and aesthetic qualities associated with the size, shape, location and finish of the reclamation.
- Contaminant risk from materials used in reclamation and/or increased loadings of sediment in water bodies, including risk to other uses, aquatic ecosystems and indigenous biodiversity.
- Loss of public open space and options to remedy or mitigate this effect.
- Loss of, or restrictions to, public access to and along the coastal marine area, and whether an esplanade reserve or esplanade strip would be adequate mitigation, and options to improve provision of public access (e.g. providing walking access linkages in the coastal environment).
- Altering shoreline shape with consequential effects on water movement, sediment transport processes, tidal flows and wave energy.
- Loss of habitat and biological productivity, and effects on indigenous ecology and ecosystems for example benthic community, bird population (feeding and breeding sites).
- Restricting the tidal flushing capabilities of harbours and estuaries through changes to natural water movement patterns.
- Loss of or damage to cultural landscapes and sites of significance to tangata whenua.
- Methods to avoid consequential erosion and accretion, and other natural hazards.

The significance of direct adverse effects will depend on the size of the reclamation, the nature of the site to be reclaimed, the design of the reclamation, and the activities located on it.

Reclamation can also cause indirect adverse effects. These can be divided into those associated with construction, and those associated with the use of the finished reclamation. Activities carried out on the reclaimed land can also have potential adverse effects on the coastal environment and need to be considered when assessing a reclamation proposal.

Poorly designed reclamations may suffer from erosion and inundation, including that arising from sea level rise and other possible effects of climate change.

Depending on the provisions of a regional coastal plan, decision-makers may impose resource consent conditions requiring, for example, that:

- The materials used for the construction of the reclamation blend in visually with the area and are consistent with surrounding natural material and the natural character of the coastline.
- A protective fabric layer is used to enclose reclamation margins to prevent any materials from leaching into coastal waters.
- Monitoring is undertaken to monitor the effects of any temporary escapes of contaminants during the construction process of the reclamation.
- Prior to commencement of works, the consent holder must prepare a water quality monitoring programme which provides for baseline monitoring prior to commencement of works, during construction and thereafter (e.g. sediment sampling, suitable trigger levels which if breached indicate that the activity is likely to have caused/be causing discharges of contaminants from the material used).
- All necessary preventative measures are undertaken to minimise sedimentation during the construction process (e.g. by completing the works in the minimum time practicable, and minimising the area of disturbance; sedimentation is controlled through appropriate construction and treatment methods such as construction bunds, sediments traps and environmental filters).
- Ecological monitoring is undertaken to assess any adverse effects on indigenous ecology and ecosystems.
- Works are prohibited during important breeding/spawning seasons of indigenous fauna that inhabit the area.
- The construction of the reclamation is monitored by a suitably experienced archaeologist, and that an archaeological site discovery response plan is prepared.
- A monitoring programme is established to monitor the effects the reclamation may have on coastal and shoreline dynamics (e.g. tidal flows, wave energy), and sediment transport along the coast.
- Stability levels of the reclamation are monitored over time.
- Any erosion, scour or instability of the reclamation margin is remedied, and that the structural integrity of the reclamation is maintained.

Form and design

Where a reclamation is considered to be a suitable use of the coastal marine area, a consent authority is required to have particular regard to a number of matters in considering its form and design. Policy 10(2) outlines the seven matters that must be given particular regard to in considering a reclamation's form and design. These matters are to be considered by the consent authority in its assessment of effects during the decision-making process; an assessment of these matters will help determine whether the proposed reclamation should proceed. The applicant should have addressed all of these matters in its application.

The matters outlined in Policy 10(2) cover:

The potential effects climate change may have on the site

Anticipated climate change effects include a rising sea level. The design of a reclamation should have regard to these effects. For example, designing a reclamation to a height and shape (shape of the footprint and the vertical profile) that will meet the predicted sea level rise over no less than 100 years.

The shape of the reclamation, and visual and aesthetic compatibility with the adjoining coast

Reclamation shape can significantly alter the shoreline shape and have consequential adverse effects on water movement, sediment transport processes, or tidal flows and wave energy. The materials used to build the reclamation can affect the aesthetic and visual qualities. The design of the reclamation should be in keeping with the natural visual and aesthetic values of the area, including natural colours and features found in the surrounding natural environment.

The use of appropriate materials in the reclamation

The materials used to build a reclamation could potentially have adverse effects on water quality, aquatic ecosystems and indigenous biodiversity. Regard should be given to the quality and type of material used and any adverse effects it may have on the coastal marine area. The use of contaminated materials should be avoided. Monitoring controls can be established to ensure that only clean fill that meets strict criteria is used in the formation of the reclamation.

Providing public access

Reclamations can lead to a loss of public access to and along the coastal marine area. The reclamation should be designed to enable public access to and along the coast (unless a restriction on public access is considered appropriate as provided for in Policy 19). Public access can be provided through the creation of an esplanade reserve or could involve the development of a new recreational area or walkway. In some instances, reclamations can improve public access to the coast where previously that access was difficult, or they can provide connections between existing public areas.

Remedying or mitigating adverse effects

Reclamations can have adverse effects on the coastal environment. During the design process, regard should be given to approaches/methods that can be used to remedy or mitigate such adverse effects. For example, this could include mitigating visual effects by planting on the reclamation to soften the visual impact; or ensuring that the construction methodology has minimal disruption of the seabed in order to reduce siltation/sediment plumes during the creation of the reclamation, etc.

Impacts on cultural landscapes and sites of significance to tangata whenua

Reclamations can affect cultural landscapes and sites of significance to tangata whenua. The application should recognise and provide for the relationship of Maori with sites of significance to them. The design process should involve consultation with tangata whenua to determine whether the proposed activity will affect cultural landscapes or sites of significance. For example, such landscapes/sites identified by tangata whenua should be reserved from development.

Avoiding consequential erosion and accretion, and other natural hazards

Reclamations can alter coastal processes (such as sediment dynamics and longshore transport), which in turn can affect the rate of coastal erosion or accretion in the surrounding area. The application should have given regard to how consequential erosion and accretion can be avoided, and the reclamation should be appropriately designed to avoid these effects. For example, the reclamation should not intercept sediment flow in a way that could increase the risk of coastal erosion or accretion; the reclamation should not erode under wave attack nor cause erosion by reflecting wave energy. Consideration could also usefully be given to the nature of the reclamation fills and their potential for liquefaction and lateral spreading in the event of an earthquake.

Regional/national benefits and the efficient operation of infrastructure

Policy 10(1)(d) requires that the reclamation provides significant regional or national benefit. There are various beneficial circumstances in which reclamations are undertaken in New Zealand. Some examples of reclamations that may provide significant regional or national benefit are reclamation for a motorway, arterial road, harbour wharf, container storage, transmission pylon or other public utility; or additional reclamation may be required for infrastructure such as airports, ports, and road and railway routes. However, the benefit of a reclamation will need to be considered case by case/situation by situation.

The consideration of such regional or national benefits is further addressed in Policy 10(3), which requires that particular regard must be given 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.

Not all reclamations are for infrastructure or other projects that promote economic well-being. For example, the Port Havelock marina development case involved utilising dredge spoil to create bird roost sites (see 'Resources' section of this guidance note).

De-reclamation of redundant reclaimed land

De-reclamation of redundant reclaimed land is encouraged where it would restore the natural character and resources of the coastal marine area; and provide for more public open space (Policy 10(4)). De-reclamation is a possible mitigating technique. Actual feasibility will vary from case to case.

Vesting of interests in reclaimed land

The Marine and Coastal Area (Takutai Moana) Act 2011 (the MACA Act) came into force on 1 April 2011 and repeals the Foreshore and Seabed Act 2004. The MACA Act provides a new regime for the granting of interests in reclaimed land formed from the common marine and coastal area (Part 2, subpart 3).

Obtaining resource consent for a reclamation does not give the consent holder ownership to the reclaimed land. Once a lawful reclamation is built, the land is automatically vested in the Crown¹⁵. Applications for an interest in reclaimed land must be made to the Minister for Land Information. Under section 39 of the MACA Act, the Minister for Land Information may vest in an applicant an interest in the reclaimed land.

Under the MACA Act, if you are the developer of the reclaimed land, you must hold the resource consent before you can apply to the Minister for Land Information for an interest. The Minister must take into account any conditions or restrictions imposed on the resource consent that authorised the reclamation (section 36(2)(d) of the

¹⁵ Land that is unlawfully reclaimed from the common marine and coastal area is vested in the Crown if the Minister of the Crown signs a certificate that describes the position and extent of the reclaimed land and states that subsection 30(4) applies to the reclaimed land.

MACA Act). The resource consent decision will help inform the Minister's decision on any application for an interest in reclaimed land.

Once resource consent for the reclamation has been obtained, applications for an interest in the reclaimed land can be made at any time: before the reclamation is constructed; during construction; or after the reclamation has been completed. Only eligible applicants (a developer of reclaimed land or a network utility operator¹⁶) may apply for an interest in the reclaimed land for the first 10 years. Any other party can apply to the Minister for Land Information for an interest only if: the land has been subject to the MACA Act for more than 10 years, no other interest has been granted in the land, and there is no current application before the Minister (section 35(3) of the MACA Act).

The MACA Act allows applicants to seek an interest in the reclaimed land, ranging from fee simple (freehold) title to leases, licences or other rights or title to occupy or use the land. LINZ is responsible for processing applications from parties who wish to acquire an interest in reclaimed land. Decisions are made by the Minister for Land Information. Section 36 of the MACA Act sets out the matters the Minister for Land Information must consider in making a determination.

LINZ has prepared an 'Interim standard for dealing with coastal reclaimed land'¹⁷ to ensure that applications for, and the vesting of interests in, marine and coastal reclaimed land are dealt with in a fair and transparent process. Page 13 of the interim standard explains the process involved in vesting of an interest in reclaimed land.

Esplanade reserve or esplanade strip

In regard to resource consent applications for reclamations, decision-makers are required, under section 105(2) of the RMA, to consider whether an esplanade reserve or esplanade strip is appropriate and, if so, impose a condition on the resource consent. An esplanade reserve or esplanade strip can be for the purpose of provision of public access, or to contribute to the protection of conservation values (section 229 RMA).

When assessing an application for interest in reclaimed land, the Minister for Land Information will take into account the matter of esplanade reserves/strips if this matter has been addressed in a resource consent condition.

¹⁶ 'Network utility operator' has the same meaning as in section 166 of the RMA.

¹⁷ <http://www.linz.govt.nz/about-linz/news-publications-and-consultations/search-for-regulatory-documents/interim-standard-for-dealing-with-coastal-reclaim>

Resources

Examples of plan provisions

Environment Southland Regional Coastal Plan (September 2008)

<http://www.es.govt.nz/publications/plans/coastal-plan/>

Seabed and Foreshore - Policy 10.4.7 of Environment Southland's Regional Coastal Plan addresses the removal of reclamations.

Examples of regulatory decisions

Marlborough District Council

Port Marlborough's redevelopment and expansion of port and marina at Port Havelock, Marlborough (Restricted Coastal Activity coastal permit RCAC0410 granted in July 2000) involved the reclamation of the foreshore and seabed for creating additional land area for port and marina activities. The proposal also involved using the dredged material to create an island bird roost and to enhance the bird roost areas at the northern end of the existing harbour bund wall/mole.

Tasman District Council

Richmond Horticultural Products Limited's de-reclamation of surplus area at Lower Queen Street, Richmond, Waimea Inlet. The head of the inlet area had previously been reclaimed by a timber fibreboard plant (using bark chip and sawdust waste from their operation) and was used for log storage. Consent has since been granted for the de-reclamation of 5.92 hectares of that surplus area.

Reports, websites and additional information

Land Information New Zealand (LINZ)

- LINZ, 2011: Interim¹⁸ standard for dealing with coastal reclaimed land <http://www.linz.govt.nz/about-linz/news-publications-and-consultations/search-for-regulatory-documents/interim-standard-for-dealing-with-coastal-reclaim>
- Guidance on LINZ's role under the Marine and Coastal Area Act 2011 <http://www.linz.govt.nz/crown-property/marine-and-coastal-area-takutai-moana-act-2011>

¹⁸ Note: This will become a 'full' standard in due course (the 'interim' status will be in place until approximately 2014/2015 to determine whether the standard is working and what, if any, changes or improvements are deemed appropriate).

Ministry for the Environment

- Guidance on contaminated land management
<http://www.mfe.govt.nz/issues/hazardous/contaminated/>

Quality Planning

- Guidance on planning topics—Managing earthworks
<http://www.qualityplanning.org.nz/index.php/planning-tools/land/managing-earthworks>
- Subdivision and esplanade reserves
<http://www.qualityplanning.org.nz/index.php/planning-tools/land/subdivision#esplanade>

International Development Research Centre

- Lourdes O. Montenegro, Annie G. Diola, Elizabeth M. Remedio, 2005: 'The environmental costs of coastal reclamation in Metro Cebu, Philippines'. This study assesses the environmental cost of a large coastal reclamation project in the Philippines. It was undertaken to find out whether such projects generate an overall loss or gain for society as a whole (including economic costs to society) <http://web.idrc.ca/uploads/user-S/11381005521LourdesRR5.pdf>

Glossary of terms and definitions

NZCPS 2010 glossary

Infrastructure: In section 30, means—

- (a) pipelines that distribute or transmit natural or manufactured gas, petroleum, biofuel, or geothermal energy:
- (b) a network for the purpose of telecommunication as defined in section 5 of the Telecommunications Act 2001:
- (c) a network for the purpose of radiocommunication as defined in section 2(1) of the Radiocommunications Act 1989:
- (d) facilities for the generation of electricity, lines used or intended to be used to convey electricity, and support structures for lines used or intended to be used to convey electricity, excluding facilities, lines, and support structures if a person—
 - (i) uses them in connection with the generation of electricity for the person's use; and
 - (ii) does not use them to generate any electricity for supply to any other person:
- (e) a water supply distribution system, including a system for irrigation:
- (f) a drainage or sewerage system:
- (g) structures for transport on land by cycleways, rail, roads, walkways, or any other means:
- (h) facilities for the loading or unloading of cargo or passengers transported on land by any means:
- (i) an airport as defined in section 2 of the Airport Authorities Act 1966:
- (j) a navigation installation as defined in section 2 of the Civil Aviation Act 1990:
- (k) facilities for the loading or unloading of cargo or passengers carried by sea, including a port related commercial undertaking as defined in section 2(1) of the Port Companies Act 1988:
- (l) anything described as a network utility operation in regulations made for the purposes of the definition of network utility operator in section 166.

(Definition from section 2 of the RMA)

Other definitions

Coastal marine area: The foreshore, seabed, and coastal water, and the air space above the water—

- a. of which the seaward boundary is the outer limits of the territorial sea;
- b. of which the landward boundary is the line of mean high water springs, except that where that line crosses a river, the landward boundary at that point shall be whichever is the lesser of—
 - i. 1 kilometre upstream from the mouth of the river; or
 - ii. the point upstream that is calculated by multiplying the width of the river mouth by 5

(Definition from section 2 of the RMA)

Contaminant: Includes any substance (including gases, odorous compounds, liquids, solids and micro-organisms) or energy (excluding noise) or heat, that either by itself or in combination with the same, similar, or other substances, energy, or heat—

- a. when discharged into water, changes or is likely to change the physical, chemical, or biological condition of the water; or
- b. when discharged onto or into land or into air, changes or is likely to change the physical, chemical or biological condition of the land or air onto or into which it is discharged

(Definition from section 2 of the RMA)

Interest: A freehold interest or a lesser interest.

- Freehold interest means an estate in fee simple.
- Lesser interest means an interest in reclaimed land that is less than a freehold interest and includes a lease, licence, or other right or title to occupy or use the land.

(Definition from section 29 of the Marine and Coastal Area (Takutai Moana) Act 2001)

Reclaimed land: Permanent land formed from land that formerly was below the line of mean high water springs and that, as a result of a reclamation, is located above the line of mean high water springs, but does not include—

- a. land that has arisen above the line of mean high water springs as a result of natural processes, including accretion; or
- b. structures such as breakwaters, moles, groynes, or seawalls

(Definition from section 29 of the Marine and Coastal Area
(Takutai Moana) Act 2001)