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HAWKE'S BAY REGIONAL COUNCIL

**POLICY AND REGULATORY  
REVIEW**

Stage 4 Clifton to Tangoio Coastal  
Hazard Strategy

July 2020

HBRC Report # 5477

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## REPORT INFORMATION

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## 1. INTRODUCTION

Clifton to Tangoio Coastal Hazard Strategy 2120 (“**the Strategy**”) is entering into Stage 4 of a four-stage development process. Stage 4 will culminate in the identification of a clear implementation plan which will identify the actions required to implement the adaptation pathways identified as part of Stage 3 of the Strategy development process.

A key component of Stage 4 of the development process is establishing whether the existing planning and regulatory framework supports the implementation of the Stage 3 adaptation pathways. The purpose of this report is to identify and evaluate the key national, regional and district level planning and regulatory frameworks, and identify whether they are likely to pose any challenges to the implementation of the Stage 3 adaptation pathways and the broader principles set out in the Strategy. The report then makes recommendations around what changes could be implemented at a national, regional and local planning and policy level to assist with long term Strategy implementation.

### 1.1 PURPOSE OF THE REPORT

The purpose of this report is to:

- Provide an overview of the purpose and process of the Strategy;
- Identify and summarise the key national, regional and local level planning and regulatory documents that could impede or support the implementation of the adaptation pathways identified as part of Stage 3 of the Strategy;
- Provide recommendations around what changes may be required to the existing planning and policy framework, with particular focus on regional and local processes where the relevant Councils have jurisdiction to enact change;
- Identify recent approaches to coastal hazard management and interpretation of case studies; and
- Summarise the key finds of the report and actions to be taken to ensure the short-term adaptation responses identified in the Strategy can be implemented.

### 1.2 STRUCTURE OF THE REPORT

The report is structured as follows:

**Section 1:** Sets out the purpose of the report.

**Section 2:** Provides a brief overview of the Strategy development process, including and up to Stage 4.

- Section 3:** Identifies the key national, regional and local level policy and planning documents and provides commentary around consistency and alignment with both higher and lower statutory documents.
- Section 4:** Provides an overview of two case studies; one from the Tasman District and one from the Bay of Plenty.
- Section 5:** Summarises the findings of the report and identifies the key recommendations identified within.

## 2. THE CLIFTON TO TANGOIO COASTAL HAZARD STRATEGY 2120

### 2.1 OVERVIEW

The Strategy represents a co-ordinated approach to identifying and responding to coastal hazards and the influence of sea level rise over the next 100 years. It provides a platform for long-term planning and decision making.

The Strategy has been developed through a Joint Committee formed by representatives from the Hawke’s Bay Regional Council (“**HBRC**”), the Napier City Council (“**NCC**”), and the Hastings District Council (“**HDC**”), alongside representatives of the Maungaharuru-Tangitū Trust, Mana Ahuriri Incorporated and He Toa Takitini.

The Strategy:

- Covers the coastal area between Clifton to Tangoio;
- Seeks to develop a planned response to coastal hazards out to the year 2120;
- Assesses and responds to the following coastal hazards;
  - Coastal erosion (storm cut, trends, effects of sea level rise); and
  - Coastal inundation (storm surge, set-up, run-up, overtopping and sea level rise).
- Incorporates climate change as an overriding influence.<sup>1</sup>

The vision of the Strategy is:

*That coastal communities, businesses and critical infrastructure from Tangoio to Clifton are resilient to the effects of coastal hazards.*

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<sup>1</sup> Note the Strategy did not include consideration of tsunami risks or ground water table rises.

## 2.2 STRATEGY DEVELOPMENT PROCESS

The Strategy was initiated in 2014, with the establishment of a Technical Advisory Group (“TAG”) formed by senior Council staff and advisors, and the Clifton to Tangoio Coastal Hazards Strategy Joint Committee (“**Joint Committee**”). The Strategy is being developed in four key stages, followed by an ongoing monitoring and review process (Figure 1).

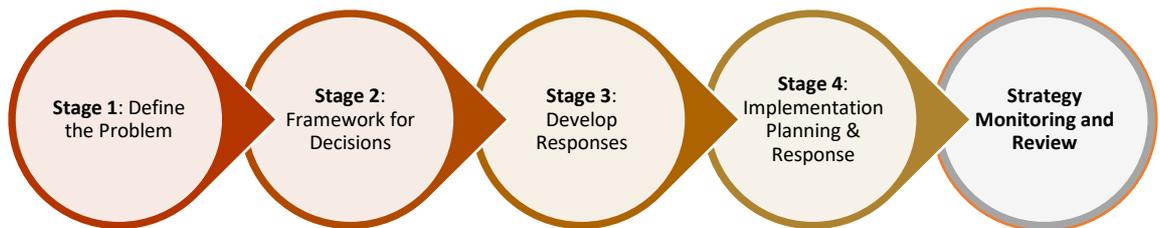


Figure 1: Clifton to Tangoio Coastal Hazard Strategy – Process of Development.

**Stage 1** commenced in late 2014. Fundamental to Stage 1 was the identification of the extent of coastal erosion and coastal inundation hazards out to the year 2120, and the risks these present. This technical study was undertaken by Tonkin & Taylor with oversight from TAG and the Joint Committee. This work resulted in two reports being produced: Coastal Hazards Assessment<sup>2</sup> and Coastal Risk Assessment<sup>3</sup>. The coastal hazard assessment work was independently peer reviewed by Professor Paul Kench of Auckland University.

A mapping tool was also developed to show the newly mapped hazard extents. This information is provided through the Hawke’s Bay Hazard Information Portal at: <http://www.hbemergency.govt.nz/hazards/portal>.

**Stage 2** comprised development of a bespoke decision-making framework for the 100-year Strategy by Mitchell Daysh Ltd,<sup>4</sup> based on a community decision-making model and utilising a range of decision making tools including Multi-Criteria Decision Analysis process (“**MCDA**”), Dynamic Adaptive Planning Pathways (“**DAPP**”) and Real Options Analysis (“**ROA**”). During this stage, a funding model think-piece report was prepared by Maven Consulting.<sup>5</sup> The preliminary funding model identified options for how planned responses

<sup>2</sup> Tonkin & Taylor, 2016. Clifton to Tangoio Coastal Hazards Strategy 2120 - Coastal Hazard Assessment.

<sup>3</sup> Tonkin & Taylor, 2016. Hawke’s Bay Coastal Strategy - Coastal Risk Assessment.

<sup>4</sup> Mitchell Daysh Ltd, 2017. Clifton to Tangoio Coastal Hazards Strategy 2120 – Stage Two Report: Decision Making Framework.

<sup>5</sup> Maven & Environmental Management Services Ltd, 2016. Stage Two – Clifton to Tangoio Coastal Hazards Strategy 2120: Hazards Response Funding Model.

to coastal hazards risks identified in the Strategy might be paid for. The report covers public / private benefits, the sharing of costs between Councils, and mechanisms for securing funds, including the proposed establishment of a Coastal Contributory Fund. Maven Consulting also prepared social impact assessments for each of the Priority Units.<sup>6</sup> Stage 2 was completed at the end of 2016.

**Stage 3** saw the implementation of the decision-making framework that was developed in Stage 2 to arrive at recommended responses to coastal hazards risks over the 100-year strategy period. The process was undertaken by the Assessment Panels, and the recommendations presented to the Joint Committee in February 2018. The recommendations of the Assessment Panels were adopted by the Joint Committee on 20 February 2018 and were subsequently endorsed and adopted in principle in order to progress to Stage 4.<sup>7</sup>

**Stage 4** involves the development of an Implementation Plan for the coastal hazard responses recommended in Stage 3. Stage 4 will include the sequencing of works to be implemented in the short-term, and the identification of any supporting funding and policy actions, including potential regional and district plan changes. Stage 4 will also see the development of triggers (decision points) to determine when to transfer to the next (or different) coastal hazard response option for each priority unit of the Strategy area. The completion of Stage 4 should culminate in the partner Councils deciding whether to endorse and adopt the Strategy itself.

## 2.3 OVERVIEW STAGE 3 ASSESSMENT PANEL RECOMMENDATIONS

Stage 3 of the Strategy culminated in the Assessment Panels making recommendations to the Joint Committee regarding their preferred adaption pathways for each of the Priority Units identified within the Strategy. The Priority Units and the associated pathways are shown in Table 1 below.

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<sup>6</sup> Marven Consulting, 2017. Coastal Hazards and Social Impact Assessment and Valuation for Ahuriri/Pandora, Westshore, Bay View and Whirinaki and a later 2017 assessment titled Cape Coast Area Coastal Hazards Social Impact Assessment and Valuation, prepared by Marven Consulting.

<sup>7</sup> Ratified by each Council as follows: Hawke's Bay Regional Council, 28 March 2018; Napier City Council, 9 April 2018; and Hastings District Council, 22 March and 28 June 2018.

**Table 1: Overview of the Assessment Panel adaptation pathway recommendations developed by the community Assessment Panels as part of Stage 3 of the Strategy.**

Unit	Short-term (0-20 years)		Medium Term (20-50 years)		Long Term (50-100 years)
<b>Northern Panel</b>					
Ahuriri	Status quo	→	Sea wall	→	Sea wall
Pandora	Inundation Protection	→	Inundation Protection	→	Inundation Protection
Westshore	Renourishment	→	Renourishment + Control Structures	→	Renourishment + Control Structures
Bay View	Status Quo / Renourishment	→	Renourishment + Control Structures	→	Renourishment + Control Structures
Whirinaki	Status Quo / Renourishment	→	Renourishment + Control Structures	→	Sea wall
<b>Southern Panel</b>					
Clifton	Sea wall	→	Sea wall	→	Managed Retreat
Te Awanga	Renourishment + Groynes	→	Renourishment + Groynes	→	Renourishment + Groynes
Haumoana	Renourishment + Groynes	→	Renourishment + Groynes	→	Managed Retreat
Clive / East Clive	Status Quo	→	Renourishment + Groynes	→	Retreat the Line / Managed Retreat

### 3. REGULATORY CONTEXT

A brief overview of the key national, regional and local level regulatory documents that relate to the management of coastal hazards is set out in the following sections. Where relevant, a number of “other” plans and strategies have also been considered. At the end

of each section, observations are made around the extent to which the short-term adaptation responses are consistent with the outcomes sought by each document, and opportunities identified where further amendments or changes to the documents would assist with the overall delivery of the Strategy.

### 3.1 NATIONAL LEGISLATION

While the Resource Management Act 1991 (“**RMA**” or “**the Act**”) is the primary legislative document for managing land use activities and structures within identified natural hazard areas, the RMA interplays with a number of other statutes that also have functions and responsibilities in these areas. For the purposes of this review, the following statutes are considered relevant as they may influence the implementation of the adaptation pathways identified in Stage 3 of the Strategy:

- RMA.
- Climate Change Response Act 2002 (including the Climate Change Response Zero Carbon Amendments Act 2019).
- Building Act 2004.
- Local Government Act 2002.
- Reserves Act 1977.
- Heritage New Zealand Pouhere Taonga Act 2014.
- Marine and Coastal Area (Takutai Moana) Act 2011.

While the primary focus of this report is on the RMA and the statutory documents prepared under it, other statutes are briefly considered as relevant. There will also be a range of other statutes that may be relevant to any particular project, including the Wildlife Act 1953, Marine Mammals Protection Act 1978 and fisheries legislation for example. These will need to be addressed on a case-by-case basis.

#### 3.1.1 Resource Management Act 1991

The RMA is the primary legislative document guiding national and regional policy planning in New Zealand.

The purpose of the RMA is to promote the sustainable management of natural and physical resources.<sup>8</sup> In achieving that purpose, regional councils and territorial authorities must recognise and provide for a number of “matters of national importance”, including:

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<sup>8</sup> Section 5, Resource Management Act 1991.

- The preservation of the natural character of the coastal environment (including the coastal marine area) and their margins, and the protection of them from inappropriate subdivision, use and development;<sup>9</sup>
- The maintenance and enhancements of public access to and along the coastal marine area;<sup>10</sup> and,
- the management of significant risks from natural hazards as a matter of national importance.<sup>11</sup>

Under the RMA, “natural hazard” means any atmospheric or earth or water related occurrence (including earthquake, tsunami, erosion, volcanic and geothermal activity, landslip, subsidence, sedimentation, wind, drought, fire, or flooding), the action of which adversely affects or may adversely affect human life, property, or other aspects of the environment.

For the purposes of giving effect to the RMA, the statutory functions of regional councils<sup>12</sup> (such as HBRC) are, as relevant to this report, the:

- establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region; and
- to control of the use of land, water bodies and the coastal marine area, for the purpose of the avoidance or mitigation natural hazards.

The functions of territorial authorities (such as HDC and NCC) include the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of the avoidance or mitigation of natural hazards.<sup>13</sup>

When preparing policy statements, regional plans and district plans, local authorities must give effect to national policy statements, including the New Zealand Coastal Policy Statement.

When considering an application for subdivision consent, a consent authority may refuse to grant subdivision consent if it considers there is a significant risk from natural hazards. An assessment of the risk from natural hazards requires a combined assessment of the

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<sup>9</sup> Section 6(a), Resource Management Act 1991.

<sup>10</sup> Section 6(d), Resource Management Act 1991.

<sup>11</sup> Section 6(h), Resource Management Act 1991, inserted on 19 April 2017 via the Resource Legislation Amendment Act 2017.

<sup>12</sup> Section 30, Resource Management Act 1991.

<sup>13</sup> Section 31, Resource Management Act 1991.

likelihood of the hazards occurring, the material damage that would result from natural hazards, and any subsequent use of the land.<sup>14</sup>

### 3.1.2 Climate Change Response Act 2002

The Climate Change Response Act 2002 (“**CCRA**”) puts in place a legal framework to enable New Zealand to meet its international obligations under the United Nations Framework Convention on Climate Change and the Kyoto Protocol. Relevantly, the CCRA also puts in place a framework to develop and implement clear and stable climate change policies that allow New Zealand to prepare for and adapt to the effects of climate change.<sup>15</sup>

Part 1C was introduced in 2019 by the Climate Change Response (Zero Carbon) Amendment Act 2019 and addresses climate change adaptation. Specifically, it requires that a national climate change risk assessment be prepared by the Minister which assesses the risks to New Zealand’s economy, society, environment and ecology from the current and future effects of climate change. It also requires that the most significant risks are identified, based on the nature and severity of those risks and the need for a co-ordinated response to those risks. The first assessment must be prepared by the Minister within one year (by November 2020), with repeat assessments every six years thereafter.<sup>16</sup>

In response to the national climate change risk assessment, the Minister must prepare a national adaptation plan.<sup>17</sup> This plan must set out the Government’s objectives for adapting to the effects of climate change and the Government’s strategies, policies and proposals for meeting the objective. This plan must be prepared no later than two years after the date of the national climate change risk assessment being made publicly available (2022).

Government progress in the adaptation space will be monitored and reported by the new Climate Change Commission every two years. As part of this reporting, any barriers to the implementation and effectiveness of the adaptation must be identified and recommendations provided around how those barriers might be addressed or overcome in the future.<sup>18</sup> Such national level initiatives will likely assist with the long-term delivery of the Strategy as national guidance is established to assist with long term delivery and management of climate change risk in New Zealand. It would be prudent for the TAG to remain abreast of the national adaptation plan to ensure the Strategy continues to align with national level direction.

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<sup>14</sup> Section 106, Resource Management Act 1991.

<sup>15</sup> Section 3(1)(aa)(i), Climate Change Response Act 2002.

<sup>16</sup> Section 5ZP(1), Climate Change Response Act 2002.

<sup>17</sup> Section 5ZS, Climate Change Response Act 2002.

<sup>18</sup> Section 5ZU, Climate Change Response Act 2002

### 3.1.3 Building Act 2004

The Building Act 2004 sets out the rules for the construction, alteration, demolition and maintenance of new and existing buildings in New Zealand.

The Building Act states that a building consent authority (i.e. HDC, and NCC, and HBRC for dams only) must refuse to grant a building consent for a new building or a major alteration if the land is subject or likely to be subject to one or more natural hazards, or the building work is likely to accelerate, worsen or result in a natural hazard. An exception can be made if the building consent authority is satisfied that adequate provisions have been or will be made to protect the building or work from natural hazards or to restore any damage to that land or other property as a result of the building work.<sup>19</sup>

The natural hazard provisions apply only to “major alterations” or the construction of new buildings. The Building Act does not define “major alterations”.

#### COMMENTARY

The Building Act does not provide any guidance as to the requisite source or origin of natural hazard data to be used by building consent authorities when making assessments under sections 71 to 74 of the Building Act. Rather, when preparing project information memorandum, the building consent authority is required to include information relevant to the building work that identifies any “special feature of the land concerned”. This includes potential natural hazards.

At present, the Hastings District and Napier City Councils rely on different baseline data and mapping to identify coastal hazard erosion along the Clifton to Tangoio coastline. The Hastings District Council relies on the data contained within the Hawke’s Bay Regional Council’s Hazard Portal<sup>20</sup>, whereas the Napier City Council relies on the data contained in a 2002 report titled “Review of the 1996 Coastal Hazard Zone between Ahuriri Entrance and Esk River Mouth”. This report was used to define the coastal hazard zone in the City of Napier District Plan. As a result of the different baseline dataset, significantly more properties are identified within an area considered to be subject to coastal hazards (for building consent purposes) in the Hastings District, and commensurately more building consents are being subjected to sections 71 to 74 of the Building Act.

Building consent authorities should rely on the most up-to-date, reliable and calculated data when processing building consent applications. The Local Government Act 2002 also encourages the local authorities and other bodies to collaborate and co-operate to

<sup>19</sup> Section 71, Building Act 2004.

<sup>20</sup> Note that this data has not been through a public process or quality control process outside of that undertaken by the experts that prepared the data.

improve the effectiveness and efficiency in the way they achieve their identified priorities and desired outcomes. For a Strategy area, alignment should be reached between HDC and NDC around the source data used for evaluating building consent applications within hazard zones and how the Building Act is being interpreted and applied.

It is anticipated that the inconsistency in approach between Councils will be resolved when the partner Councils decide how the hazard assessment will be used, what probability risk would be acceptable for controlling land uses and in which planning document/s the coastal hazard zones should be incorporated. In the interim however, it would be prudent for HDC and NCC Council staff to continue to work collaboratively on this matter and develop an agreed set of baseline data and an agreed evaluation process for new building consent applications with the hazard areas identified in the Strategy.

It should be noted that recent work by both HDC and NDC to align the messaging on land information memorandum with respect to coastal hazards is a positive step in creating consistency (as appropriate) along this coastline.

### **3.1.4 Local Government Act 2002**

The Local Government Act 2002 (“**LGA**”) establishes the purpose of local government and the role of local authorities. It provides for local authorities to play a broad role in promoting the well-being of their communities, while maintaining a sustainable development approach.

Under the LGA, local authorities must:

- Actively seek to collaborate and co-operate with other local authorities and bodies to improve the effectiveness and efficiency with which they achieve their identified priorities and desired outcomes;
- Actively seek to collaborate and co-operate with other local authorities and bodies to improve the effectiveness and efficiency with which they achieve their identified priorities and desired outcomes;
- Ensure prudent stewardship and the efficient and effective use of their resources in the interests of their district or region, including by planning effectively for future asset management; and
- In taking a sustainable development approach, take into account the:
  - Social, economic, and cultural interests of people and communities; and
  - Need to maintain and enhance the quality of the environment; and
  - Reasonably foreseeable the needs of future generations.

## COMMENTARY

The LGA requirements for local authorities to be both collaborative and cooperative with other local authorities goes beyond the consultation requirement under the RMA and encourages a higher level of participation which will benefit the implementation of the Strategy.

The sustainable development approach in the LGA generally aligns well with the sustainable management purpose and principles in Part 2 of the RMA. While local authorities have statutory duties under the RMA and LGA which may overlap at times, the more specific requirements of the RMA will take precedence when undertaking functions under that Act.

As a consequence, just because a capital project is identified in a Long Term Plan made in accordance with the LGA, this does not necessarily mean that RMA approvals for that project will be granted. If compliance with the RMA cannot be achieved by a consent application, local government capital projects are like any other and an application can be declined. Understanding these risks and how to navigate them is needed before identifying projects in Long Term Plans.

### 3.1.5 Reserves Act 1977

The Reserves Act 1977 is the current legislation for administering public reserves. The general purpose is set out in Section 3 of this Act, summarised as follows:

- Providing for the preservation and management of areas for the benefit and enjoyment of the public;
- Ensuring, as far as possible, the survival of all indigenous species of flora and fauna;
- Ensuring, as far as possible, the preservation of access for the public;
- Providing for the preservation of representative samples of all classes of natural ecosystems and landscape; and
- Promoting the protection of the natural character of the coastal environment and the margins of lakes and rivers.<sup>21</sup>

Reserves are generally gazetted by the Minister of Conservation with a specific purpose to ensure they are controlled, managed, developed, used, maintained and preserved in line

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<sup>21</sup> Section 3, Reserves Act 1977.

with their intended purpose. There are seven types of reserves under the Reserves Act<sup>22</sup>, however only two apply to the Priority Units, including:

- Recreation reserves: the purpose of these reserves is to provide areas for the recreation and sporting activities and the physical welfare and enjoyment of the public, and for the protection of the natural environment and beauty of the countryside, with emphasis on the retention of open spaces and on outdoor recreational activities, including recreational tracks in the countryside.<sup>23</sup>
- Local purpose reserves: the purpose of local purpose reserves is to provide and retain areas for such local purpose or purposes as are specified in any classification of the reserve.<sup>24</sup>

#### COMMENTARY

All of the reserves within the Priority Units have either been Gazetted for Recreation or Local Purpose Reserve purposes. Further investigation will be required to determine whether the proposed adaptation pathways are in keeping with the purpose of these reserves or the ambit of activities that are anticipated within them, and/or whether specific authorisations will be required.

The reserve status for those reserves within each of the Priority Units will need to be further evaluated and consideration to determine the appropriate next step.

The key next steps include reviewing the classification, any reserve management plan and the detailed provisions of the Reserves Act, to determine what actions or authorisations are required.

### 3.1.6 Marine and Coastal Area (Takutai Moana) Act 2011

The Marine and Coastal Area (Takutai Moana) Act 2011 ('**MACA**') acknowledges the importance of the marine and coastal area to all New Zealanders and provides for the recognition of the customary rights of iwi, hapū and whānau in the common marine and coastal area.<sup>25</sup>

There are two avenues available under MACA: direct Crown engagement and applications to the High Court. There are currently a number of MACA applications for various stretches of the Hawke's Bay region's coastline for customary marine title and / or

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<sup>22</sup> Sections 17 to 23, Reserves Act 1977.

<sup>23</sup> Section 17, Reserves Act 1977.

<sup>24</sup> Section 23, Reserves Act 1977.

<sup>25</sup> <https://tearawhiti.govt.nz/te-kahui-takutai-moana-marine-and-coastal-area/>

protected customary rights. The application area of the following groups includes the coastal marine area covered by the seven Priority Units:<sup>26</sup>

- Heretaunga Tamatea Settlement Trust.<sup>27</sup>
- Maungaharuru-Tangitū Hapū.<sup>28</sup>
- He Toa Takitini (Heretaunga Tamatea).<sup>29</sup>
- Mana Ahuriri Incorporated.<sup>30</sup>
- Te Aitanga a Puta, Ngati Kurupakia e Ngai Tauria Hapu.<sup>31</sup>
- Ngai Tamahaua hapu (Herewini).
- Ngāti Pāhauwera.<sup>32</sup>
- Ngāti Parau Hapū.<sup>33</sup>

If an activity requiring a resource consent is located within the area of a customary marine title application, the resource consent applicant is required to notify and seek the views of any group that has applied for recognition of a customary marine title in that area.<sup>34</sup> If a customary marine title determination is made, then a consent applicant must have written permission from that customary marine title group before an activity authorised by a resource consent can commence.

If an activity requiring resource consent is in an area where a group exercises protected customary rights, the resource consent must not be granted if the activity will or is likely to, have more than minor adverse effects on the rights unless permission of the protected customary rights group is obtained or the activity fits one of the exceptions listed.<sup>35</sup>

## COMMENTARY

No determinations have been made under the MACA at this stage for either customary marine title or protected customary rights, although there are a number of processes, including some High Court proceedings that are in train in the Hawke's Bay. Until

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<sup>26</sup> Based on the maps appended to each application published on Te Arawhiti website (<https://tearawhiti.govt.nz>).

<sup>27</sup> Relevant to the Te Awanga, Haumoana and Clifton Priority Units.

<sup>28</sup> Relevant to the Whirinaki and Bay View Priority Units.

<sup>29</sup> Relevant to the Te Awanga, Haumoana and Clifton Priority Units.

<sup>30</sup> Relevant to the Whirinaki, Bay View, Westshore and Pandora Priority Units.

<sup>31</sup> Relevant to all Priority Units.

<sup>32</sup> Relevant to the Whirinaki Priority Unit.

<sup>33</sup> Relevant to the Pandora and Westshore Priority Units.

<sup>34</sup> Section 62, Marine and Coastal Area (Takutai Moana) Act 2011.

<sup>35</sup> Section 55(2), Marine and Coastal Area (Takutai Moana) Act 2011.

determination has been made, any person applying for a resource consent must notify and seek the views of any group that has applied for a customary marine title or protected customary rights. It is likely however that there could be orders/agreements in place by the time the Strategy is to be implemented, and that could have a significant bearing on the ability to implement resource consents. That means that careful engagement with those groups will be critical.

Once a determination is made the approval of the customary marine title and/or protected customary rights group must be obtained.

It is important to note as background that the three main iwi groups within the Strategy area, Heretaunga Tamatea Settlement Trust (previously He Toa Takitini), Mana Ahuriri Trust (previously Mana Ahuriri Incorporated) and the Maungaharuru-Tangitū Trust, appointed representatives who were part of the Assessment Panels who developed the adaptation pathways as part of Stage 3 of the Strategy. Wider iwi members were also involved in a focused multi criteria decision-making analysis process relating to Maori values which was brought to the Northern and Southern Assessment Panels as part of recommending the preferred pathways. These iwi groups also ratified the adaptation pathways as part of their governance role within the Joint Committee. The proposed adaptation pathways identified for each of the Priority Units are therefore informed through this process.

As work further evolves as part of Stage 4 of the Strategy, including any potential policy changes and the advancement of consenting processes, advice should be sought directly from relevant iwi groups (with support from Council iwi liaison advisors) around the additional engagement required as these processes move forward.

### **3.1.7 Hawke's Bay Regional Planning Committee Act 2015**

The Hawke's Bay Regional Planning Committee Act 2015 was established following discussions between the Crown, HBRC, Tūhoe and tāngata whenua of Hawke's Bay in the context of Treaty settlement negotiations. The discussions identified a need for greater tāngata whenua involvement in the management of natural resources in the regional planning committee ("**RCP**").

The purpose of the Hawke's Bay Regional Planning Committee Act 2015 is to improve tāngata whenua involvement in the development and review of documents prepared under the RMA in the Hawke's Bay Region.

The RCP consists of ten appointed tangata whenua members and 10 appointed Councilors. At a high level, the purpose of the RPC is to oversee the development and review of documents prepared in accordance with the RMA for the RPC region.

## **COMMENTARY**

While the Hawke's Bay Regional Planning Committee Act 2015 relates specifically to documents prepared under the RMA, it is just one of many examples that highlights the importance of recognising and enabling iwi to exercise kaitiakitanga over areas of particular cultural interest. While iwi representation has been provided for three iwi as part of the development of the Strategy, it would be prudent to consider broadening this engagement as part of the Stage 4 implementation phase. While there are a number of ways in which this could occur, it is critical that all engagement occurs in a meaningful and respectful way. Consideration should be given to developing a separate cultural workstream that ensures that iwi interests are given appropriate recognition during the implementation phase of the Strategy.

### **3.1.8 Heritage New Zealand Pouhere Taonga Act 2014**

Under the Heritage New Zealand Pouhere Taonga Act 2014 it is unlawful and an offence for any person to modify or destroy, or cause to be modified or destroyed, the whole or any part of an archaeological site without the prior authority of Heritage New Zealand. An archaeological site can generally be described as a site that is associated with human activity that occurred before 1900.

## **COMMENTARY**

A number of heritage and cultural sites are located within or nearby the priority units. Many of the units also carry significant cultural value.

If any of the proposed works are located within known heritage areas or it would be reasonable to assume that some historic artefacts may be found during the works, it would be prudent to obtain an archaeological authority prior to works commencing. If an archaeological authority is sought for the site, an application would need to be prepared and submitted to Heritage New Zealand by an appropriately qualified heritage expert. Iwi consultation may also be required depending on the nature of the likely discovery. This archaeological process can create consenting risk and the tests are different to the RMA. Archaeological authorities can be appealed to the Environment Court.

## **3.2 NATIONAL POLICY STATEMENTS AND PLANS**

The purpose of national policy statements is to state objectives and policies in order to achieve the overarching purpose of the RMA in relation to matters of national

significance.<sup>36</sup> When considering a resource consent application, designation or plan change under the RMA, the appropriate level of legal weighting must be applied to the relevant provisions of a national policy statement.

All regional policy statements, regional coastal plans and district plans (discussed in the following sections) must give effect to any national policy statement.<sup>37</sup> National policy statements therefore guide the policy framework for all matters to which a policy statement applies. Of particular relevance to this evaluation are the following national policy statements:

- New Zealand Coastal Policy Statement 2010 (“**NZCPS**”); and,
- National Policy of Urban Development Capacity 2016 and the Proposed National Policy of Urban Development 2019 (“**NPS-UD**”).

National Policy Statements are relevant to the RMA decision making process and are not directly applicable to all elements and dimensions of Strategy implementation (for example, funding models).

### **3.2.1 New Zealand Coastal Policy Statement 2010**

The purpose of the NZCPS is to state objectives and policies in order to achieve the overarching purpose of the RMA in relation to the coastal environment.<sup>38</sup> The NZCPS is a national policy statement under the RMA and took effect in December 2010.<sup>39</sup> Section 104(1)(b)(iv) of the RMA requires that when considering an application for resource consent, regard must be had to any relevant provisions of a NZCPS.

All regional policy statements, regional coastal plans and district plans must give effect to the provisions of the NZCPS.<sup>40</sup> The NZCPS, therefore, guides the policy framework for all planning documents pertaining to the coastal environment throughout New Zealand, and recent case law confirms the powerful effect of the NZCPS.

The key provisions of the NZCPS that are particularly relevant to the implementation of the Strategy relate to strategic planning, the Treaty of Waitangi, tangata whenua and Māori Heritage, indigenous biodiversity, landscapes, coastal hazards and historic heritage.

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<sup>36</sup> Section 56 of the RMA.

<sup>37</sup> Section 61(1)(da), section 66(1)(ea) and section 74(1)(ea) of the RMA respectively.

<sup>38</sup> Section 56 of the RMA.

<sup>39</sup> The NZCPS took effect after decisions on submissions on the Regional Coastal Environment Plan were notified in July 2008, therefore the Regional Coastal Environment Plan cannot be taken as having given effect to the NZCPS.

<sup>40</sup> Section 61(1)(da), section 66(1)(ea) and section 74(1)(ea) of the RMA respectively.

### ***Policy 2 The Treaty of Waitangi, Tangata Whenua and Māori Heritage***

Policy 2 of the NZCPS specifically requires kaitiakitanga to be taken into account in relation to the coastal environment, provision for the exercise by Tangata Whenua of kaitiakitanga, and direct involvement of Tangata Whenua in decision making. As noted earlier, the Joint Committee and Assessment Panels include representatives from the three main iwi within the Strategy area. As work further evolves as part of Stage 4 of the Strategy and subsequent policy changes, plan changes or resource consents are sought under the RMA to implement the policy, advice should be sought from Council liaison advisors around the additional engagement required with parties outside of the Joint Committee, both with tangata whenua generally and in light of applications that have been made for customary marine title and protected customary rights under MACA.

### ***Policy 7 Strategic Planning***

Policy 7 provides guidance around strategic planning. Specifically, when preparing regional policy statements and plans, Policy 7 encourages that consideration be given to where, how and when to provide for future development and activities in the coastal environment, identification of areas where subdivision or development may be inappropriate, and identification of coastal processes, resources or values that are under threat or at significant risk from adverse cumulative effects, and how these effects might be managed.

### ***Policy 11 Indigenous Biological Diversity / Policy 13 Preservation of Natural Character / Policy 15 Natural Features and Landscapes***

Policies 11, 13 and 15 of the NZCPS relate to indigenous biodiversity, natural character, and natural features and landscapes, respectively.

Policy 11 addresses indigenous biodiversity. Policy 11(a) seeks to protect indigenous biodiversity within the coastal environment by avoiding adverse effects on more sensitive areas of indigenous biodiversity - such as threatened or at-risk indigenous taxa, threatened or naturally rare indigenous ecosystems, habitats and vegetation, naturally rare habitats of indigenous species, nationally significant examples of indigenous community types, and areas set aside for full or partial protection of indigenous biodiversity.

By contrast, sub-paragraph 11(b) seeks to avoid significant adverse effects and avoid, remedy or mitigate other adverse effects in less sensitive indigenous biodiversity - such as the habitats of indigenous species during vulnerable life stages, or habitats that are important for recreational, commercial, traditional or cultural purposes, indigenous ecosystems and habitats vulnerable to modification, and ecological corridors.

A similar cascading management approach is set out within Policy 13 with respect to natural character. Specifically, Policy 13(a) seeks to preserve natural character and protect it from 'inappropriate use and development' by avoiding adverse effects of activities in

areas of outstanding natural character. Policy 13(b) requires a different level of protection for natural character areas that are not 'outstanding' and states that significant adverse effects on natural character are to be avoided, and all other effects on natural character are to be avoided, remedied or mitigated.

Policy 15 addresses natural features and natural landscapes. In line with Policies 11 and 13, the cascading approach requires under sub-paragraph (a) that natural features and landscapes (including seascapes) be protected from 'inappropriate use and development' by avoiding adverse effects on areas identified as outstanding natural features and outstanding natural landscapes. Sub-paragraph (b) requires that significant adverse effects on other natural features and landscapes (including seascapes) be avoided, and all other effects on those features and landscapes be avoided, remedied or mitigated.

### COMMENTARY

In recent years, the interpretation of these provisions, particularly Policies 13 and 15, has been extensively litigated in the Courts. The most significant of these being the Supreme Court decision *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] 1 NZLR 593. In this decision, the Supreme Court found that the use of terms such as 'avoid' has an ordinary meaning of "not allow" or "prevent the occurrence of".<sup>41</sup> As a result of this interpretation, the language used within Policies 11, 13 and 15 (being as directive as it is) therefore effectively establishes 'bottom lines' as the policies all seek to avoid (i.e. not allow or prevent the occurrence of) certain effects in the interests of protecting indigenous biodiversity (Policy 11), preserving natural character (Policy 13) and protecting natural features and landscapes (Policy 15).

Subsequent decisions have further emphasised the significance of 'directive' NZCPS policies. For example, in the *Davidson* decision,<sup>42</sup> the Court of Appeal held that when considering whether to grant RMA authorisations, it is not appropriate to override directive NZCPS and regional (including "avoid") policies through the (previously orthodox) balancing of positive and adverse effects of the project overall. The litigation around the effect of the NZCPS in planning and consenting decisions is continuing.

Against the backdrop of this jurisprudence, subsequent experience has shown that the NZCPS (and plans prepared post the gazettal of the NZCPS) can present some significant consenting challenges for any new development in the coastal marine area. In places of outstanding or high natural character or landscape value, or where ecological values are significant, the 'avoid' language in Policies 11, 13 and 15 (and the policies in corresponding lower-order plans) can effectively act as a bar to consents being able to be obtained. With

<sup>41</sup> Note that decision makes exceptions for minor or transitory effects.

<sup>42</sup> *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316.

respect to other less sensitive or significant indigenous biodiversity, natural character, natural features and natural landscapes, a lower threshold applies whereby only significant adverse effects are required to be avoided and other adverse effects can be mitigated or remedied, but that can still present significant consenting hurdles. The strict interpretation of these provisions could potentially create a consenting challenge for some Priority Units.

When applied to the current context, it is important to note that HDC has recently reviewed its District Plan, including updates to the mapping of indigenous biodiversity, natural character and natural landscape areas. NCC is currently in the process of undertaking a similar piece of work as part of its District Plan review process. Based on the HDC mapping and discussion documents released by NCC to date with respect to the Proposed Plan, none of the Priority Units are holding values of outstanding significance. These documents relate however, to land above mean high water springs.

Below mean high water springs, there appears to be a gap in the Regional Coastal Plan with respect to the mapping and expression of areas of indigenous biodiversity, natural character and natural landscape value. This is not uncommon for regional coastal plans prepared before the 2010 NZCPS was gazetted nor plans prepared in a “post King Salmon” regulatory environment where a greater degree of certainty is typically expected by submitters with respect to the mapping of such features, due to the environmental bottom lines associated with provisions that seek to manage effects with respect to these areas.

In the absence of such information within the Regional Coastal Plan it would be prudent to undertake further natural indigenous biodiversity, natural character and natural landscape assessments as part of the development of the short-term adaptation responses to understand the extent to which each Priority Unit may or may not be affected by Policies 11, 13 and 15. This will inform the extent to which the interpretation of these policies may present a barrier to the future consenting of the adaptation responses.

Furthermore, in light of the environmental “bottom lines” resulting from the interpretation of NZCPS provisions, it would be prudent for future policy and plan reviews to carefully map areas of indigenous biodiversity, natural character and natural landscape. This would provide certainty to plan users around the degree to which provisions designed to give effect to the NZCPS may apply to any given site. Depending on the sequencing and robustness of such work, it may negate the need for similar assessments to be repeated as part of the site scoping and resource consent acquisition process for each of the Priority Units.

### ***Policy 17 Historic Heritage Identification and Protection***

Policy 17 seeks to protect historic heritage in the coastal environment from inappropriate subdivision, use, and development.

### ***Objective 5, Policy 24 Identification of coastal hazards, Policy 25 Subdivision, use and development in areas of coastal hazard risk, Policy 26 Natural defences against coastal hazards, and Policy 27 Strategies for protection of significant existing development from coastal hazard risk***

Objective 5 specifically relates to coastal hazards. The objective seeks to ensure that coastal hazard risks, taking account of climate change, are managed by locating new development away from areas prone to such risks, considering responses (including managed retreat) for existing development in this situation and protecting or restoring natural defences to coastal hazards.

Policy 24 of the NZCPS specifically relates to the identification of coastal hazards. The policy requires the identification of areas that are potentially affected by coastal hazards (including tsunamis), giving priority to the identification of areas affected by high risk. The policy then sets out the matters of regard when assessing hazard risk over a 100-year period, and also requires that national guidance be taken into account

Policy 25 relates to subdivision, use and development in areas of coastal hazard risk over at least the next 100 years. In these areas, the policy seeks to avoid increasing the risk of social, environmental and economic harm from coastal hazards and avoid redevelopment or change in land use that would further increase the risk of adverse effects from such hazards. Redevelopment or change in use that reduces the risk of adverse effects, such as through managed retreat, is encouraged by policy, while the use of hard protection structures is generally discouraged over natural defences.

Policy 26 seeks to encourage the use of natural defences against coastal hazards. Where appropriate, the policy aims to provide for the protection, restoration or enhancement of natural defences that protect coastal land uses, or sites of significant biodiversity, cultural or historic heritage or geological value, from coastal hazards. The policy recognises that such natural defences include beaches, estuaries, wetlands, intertidal areas, coastal vegetation, dunes and barrier islands.

Policy 27 relates to strategies for the protection of significant existing development from coastal hazard risk. In areas of significant existing development likely to be affected by coastal hazards, Policy 27 encourages that a range of options be considered and assessed for reducing coastal hazard risk. When undertaking this evaluation, the policy focuses on management approaches that reduce the need for hard protection structures and similar interventions. The policy seeks to ensure that the environmental and social costs of permitting hard protection to protect private property is considered, and where

considered necessary, their form and location are designed to minimise adverse effects on the coastal environment.

## COMMENTARY

In light of case law, Policy 25 effectively prohibits any activity that would increase the risk of harm or adverse effects of coastal hazards. The proposed short-term adaptation pathways are designed to reduce the risks associated with coastal hazards and with appropriate effects management and mitigation, would unlikely be captured by this policy. By contrast, this policy would likely capture new development or land use activities (for example, residential activity) and prevent them from establishing if they increase the risk of harm or adverse effects of coastal hazards.

Both Policies 25 and 26 set out a clear preference of natural defences to be used over hard protection structures. Hard protection structures are discouraged in Policy 25, while Policy 27 states that where hard protection structures are considered to be necessary (generally once other options have first been discounted), it must be ensured that the form and location of any structures are designed to minimise adverse effects on the coastal environment. and should not be located on public land if there is no significant public or environmental benefit in doing so. The lack of unfettered policy support for hard protection structures fails to recognise the opportunities that they provide Councils and communities to “buy time” to:

- develop a plan around how and where to gradually migrate assets and infrastructure away from the coast;
- undertake a cost benefit evaluation around whether it is operationally, technically or financially feasible to relocate such assets and infrastructure, who or how any relocation or upgrade works are paid for;
- complete engineering and concept designs;
- obtain the relevant RMA approvals for the relocated assets and infrastructure; and
- construct and implement the mitigation response (be it hard protection, soft or natural protection or managed retreat) both on the coastal site and if relocating, at the new site.
- Meet the new policy guidance from government to follow Dynamic Adaptive Pathways Planning (“**DAPP**”) in dealing with coastal hazards

While Policies 24 to 27 have not previously created any challenges for the small number of consent applications for hard protection structures between Clifton and Tangoio (for example, the granting of sea walls at Whakarire Avenue in Napier, or a new revetment at Clifton), there are examples from other parts of New Zealand where such structures have been declined (for example, Wainui Beach in Gisborne). These are discussed in section 6

of the companion report<sup>43</sup> to this policy and regulatory review regarding the consentability of the short-term adaptation responses. Future resource consent applications will therefore need to carefully navigate through the NZCPS generally, including each limb of Policies 24 to 27 to demonstrate how the proposed adaptation pathways are overall consistent with these provisions.

As a national level document, HBRC, NCC and HDC have to give effect to the NZCPS in their policy development and decision-making functions. However, the fact is the Strategy, which followed an extensive community-led process and was adopted by the Councils, includes many hard protection adaptation pathways, the Councils should therefore continue to look for opportunities to present these “real world” adaptation preferences to Central Government and the Ministry of Conservation and highlight the potential mismatch of this group of policies which will inevitably impact on the vulnerable communities between Clifton to Tangoio to deliver their preferred short and long term management responses to coastal hazards and sea level rise. When liaising with Central Government, it is particularly important to identify that the Strategy was in general accordance with the latest Central Government guidance for coastal hazards, including DAPP which requires all potential pathways to be considered, including hard protection structures.

A potential solution that could be explored at this level is development of a new national policy statement focused on coastal hazard management (or natural hazards more broadly) and adaptation. This new policy statement could set out clear roles and responsibilities, establish a framework for balancing the environmental effects of hazard management and adaptation responses, and identify an agreed set of planning parameters to be applied to sea level rise and climate management (for example, rate of sea level, rate of temperature increase, etc). The latter could be reviewed and updated annually based on the most up-to-date data in this area. A recent case study by the Ministry for the Environment into the Strategy (refer to Section 3.3.2) shows growing support for such an approach. There is also the potential to review and amend the NZCPS over time, or for specific legislation to ensure that coastal hazard strategies such as this one can be implemented.

### **3.2.2 National Policy of Urban Development Capacity 2016 and the Proposed National Policy of Urban Development**

NPS-UDC recognises the national significance of urban environments and the need to enable such environments to develop and change, and also seeks to provide sufficient

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<sup>43</sup> Mitchell Daysh Limited, 2020. Hawke’s Bay Regional Council Consentability of Short-term Adaptation Responses, Stage 4 Clifton to Tangoio Coastal Hazard Strategy 2120.

development capacity to meet the needs of people and communities and future generations in urban environments.

The Government recently consulted on a proposed National Policy Statement for Urban Development (“**Proposed NPS-UD**”). The Proposed NPS-UD would replace the NPS-UDC. The Proposed NPS-UD would build on many of the existing requirements for greater development capacity. It would broaden its focus and add significant new content.

The Napier-Hastings area was identified as a medium growth area in 2018. Accordingly, the respective NCC and HDC must ensure that there is sufficient housing and business land capacity zoned and serviced in the short (0-3 years), medium (3-10 years) and long term (10-30 years). While addressed further in Section 3.4.2 with respect to the Heretaunga Plains Urban Development Strategy, it is important that in meeting the requirements of the NPS-UD the respective Councils do not inadvertently intensify existing or establish new areas of housing and business type land uses within areas exposed to coastal hazard risks (as per the focus of this report). The recent sub-regional industrial land study undertaken by NDC and HDC suggests that these areas are largely being avoided for industrial purposes, with the exception of the existing industrial areas within the Pandora and Ahuriri Priority Units. Extensive adaptation responses are proposed for these areas, both over the short to long-term.

### 3.3 REGIONAL AND DISTRICT POLICY STATEMENTS AND PLANS

The purpose of regional policy statements (“**RPS**”) is to achieve the purpose of the RMA by providing an overview of the natural resource management issues of the region and to identify policies and methods to achieve integrated management of natural and physical resources of the whole region.<sup>44</sup> Regional and district plans assist a regional or district council to carry out those functions in order to achieve the purpose of the RPS, any relevant NPS and ultimately, the RMA.<sup>45</sup>

Of relevance to this evaluation are the following RPS and regional and district plans:

- Hawke’s Bay Regional Resource Management Plan (“**Regional Resource Management Plan**”);
- Hawke’s Bay Regional Coastal Environment Plan (“**Regional Coastal Environment Plan**”);
- Hastings District Plan; and,
- City of Napier District Plan.

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<sup>44</sup> Section 59 of the RMA.

<sup>45</sup> Section 63 of the RMA.

### 3.3.1 Hawke's Bay Regional Resource Management Plan

The Regional Resource Management Plan sets out the policy and rule framework for the management of resource use activities in Hawke's Bay and includes an operative Regional Policy Statement.

The RPS seeks to set out the strategic direction that the HBRC and local authorities will take to achieve the purpose of the RMA. As the RPS is required to give effect to Part 2 of the RMA and the NZCPS, its objectives contain similar themes to this higher order document. The RPS is not as directive as the NZCPS, however, it predates the current NZCPS being made operative in 2010 and therefore does not give full effect to the NZCPS.

Key themes of relevance to the implementation of the short-term adaptation responses within the RPS include:

- Preservation of the natural character of the coastal environment and its protection from inappropriate subdivision, use and development.<sup>46</sup>
- The protection of coastal characteristics of special significance to iwi, including wāhi tapu, taurangawaka, taonga raranga, mahinga kai and mahinga mataitai.<sup>47</sup>
- The avoidance of further permanent development in areas prone to coastal erosion or inundation, considering the risk associated with global sea level rise and any protection afforded by natural coastal features.<sup>48</sup>
- The preservation and enhancement of remaining areas of significant indigenous vegetation, significant habitats of indigenous fauna and ecologically significant wetlands.<sup>49</sup>
- The avoidance or mitigation of the adverse effects of natural hazards on people's safety, property, and economic livelihood.<sup>50</sup>
- To recognise tikanga Maori values and the contribution they make to sustainable development and the fulfilment of HBRC's role as guardians, as established under the RMA, and tangata whenua roles as kaitiaki, in keeping with Maori culture and traditions,<sup>51</sup> and consult with Maori in a manner that creates effective resource management outcomes.<sup>52</sup>

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<sup>46</sup> Objective OBJ4, Hawke's Bay Regional Resource Management Plan.

<sup>47</sup> Objective OBJ7, Hawke's Bay Regional Resource Management Plan.

<sup>48</sup> Objective OBJ8, Hawke's Bay Regional Resource Management Plan.

<sup>49</sup> Objective OBJ15, Hawke's Bay Regional Resource Management Plan.

<sup>50</sup> Objective OBJ31, Hawke's Bay Regional Resource Management Plan.

<sup>51</sup> Objective OBJ34, Hawke's Bay Regional Resource Management Plan.

<sup>52</sup> Objective OBJ35, Hawke's Bay Regional Resource Management Plan.

The RPS does not contain any policies to guide how to achieve these objectives within the coastal environment. It defers this role to the Regional Coastal Environment Plan.

#### **COMMENTARY**

As the highest regional planning document under the RMA, there is potential for the RPS to provide much greater clarity and direction around how coastal hazards should be managed within the Hawke’s Bay region. Due to the hierarchy of planning documents, a greater focus on such matters within the RPS will ensure alignment and co-ordination of the management response for coastal hazards in the region, as all regional and district plans must “give effect to” the RPS.

The Strategy is currently a “non-statutory” document and therefore does not carry the same weight as provisions within the RPS. By inserting a targeted objective within the RPS that seeks to achieve coastal hazard management outcomes consistent with the Strategy, coupled with one or two policies which guide how to achieve this, the Strategy would, by reference, have greater statutory weight in the subsequent plan making and resource consent decision making processes. These proposed new provisions should focus on the strategy from two distinct but inter-related lens – one that enables outcomes consistent with the Strategy (i.e. the introduction of hard and soft adaptation response), and one that dissuades outcomes inconsistent with the Strategy (i.e. intensification of land use activities that are inconsistent with the Strategy).

The RPS was made operative in 2006 and is therefore overdue for review.<sup>53</sup> The Ministry for the Environment has also recently released new national planning standards designed to streamline and create consistency in the style and form of planning documents throughout New Zealand.

HBRC, HDC and NCC have five years, or until November 2024 to implement the national planning standards. This would present an opportune time to include the Strategy related objectives and policies into the RPS.

### **3.3.2 Hawke’s Bay Regional Coastal Environment Plan**

The Regional Coastal Environment Plan is the primary planning instrument under the RMA that sets out the framework for managing resource use activities within the Coastal Marine Area and coastal environment of the Hawke’s Bay. It is noted that the NZCPS took effect after decisions on submissions on the Regional Coastal Environment Plan were notified in July 2008. This means that the Regional Coastal Environment Plan cannot be taken as

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<sup>53</sup> Under section 79 of the RMA, Council’s must commence a review of their plans and policy statements within 10 years of becoming operative.

having given full effect to the NZCPS, therefore necessitating the assessment of plan changes and applications for discretionary or non-complying activities against the NZCPS. It is also noted that, for this reason, the NZCPS is likely to carry greater weight in any planning assessment on matters that the RCEP does not currently fully give effect to.

The key provisions contained within the Regional Coastal Environment Plan that are likely to have greatest bearing on implementation of the adaptation responses is set out in the following sections.

### **Matters of National Importance**

The Regional Coastal Environment Plan identifies a number of “Matters of National Importance”. This includes a suite of objectives and policies relating to natural character, outstanding natural features and landscapes, indigenous species and habitats, public access, cultural matters and historic heritage.

### **COMMENTARY**

As of April 2017, the management of significant risks from natural hazards is a matter of national significance under section 6 of the RMA. Natural hazard management should therefore be elevated within the Regional Coastal Environment Plan to reflect that it sits among these significant matters. As per the recommendation to include an objective and policy suite within the RPS to recognise and provide for the outcomes sought in the Strategy, this section of the plan should also look to include a similar policy suite at a strategic level that gives effect to the RPS.

These “gap” in the Regional Coastal Environment Plan is likely a consequence of timing, with the Regional Coastal Environment Plan predating the April 2017 amendments to the RMA.

### **Natural Character**

The Regional Coastal Environment Plan seeks to preserve the natural character of the coastal environment and protect it from inappropriate subdivision, use and development.<sup>54</sup> To achieve this outcome, key provisions:

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<sup>54</sup> Objective 2.1, Hawke’s Bay Regional Council Coastal Environment Plan.

- recognise that protecting areas of significant indigenous vegetation, significant habitats of indigenous fauna and historic heritage, assists in preserving natural character of the coastal environment;<sup>55</sup>
- promote the location of future use and development in areas of the coastal environment which are already significantly modified by similar activities;<sup>56</sup>
- recognise and provide for appropriate use and development provided any adverse effects on the coastal environment’s natural character arising from such use and development are avoided, remedied or mitigated.<sup>57</sup>
- Promote, where practicable, the protection and enhancement of natural values and features (including migration of natural features as a result of coastal processes) that provide a natural buffer against coastal erosion and inundation. These features include dunes, gravel barriers, active offshore sediment reservoirs, inter-tidal rock platforms, reefs and indigenous coastal vegetation.<sup>58</sup>

#### COMMENTARY

While ordinarily directive provisions that seek to preserve and protect the coastal environment would create a significant consenting challenge for activities within the coastal environment, the plan has qualified that these measures relate to “inappropriate” subdivision, use and development. The subsequent policies provide further guidance around what might be considered “appropriate” or “inappropriate” in the circumstances.

Specifically, the plan encourages that activities are located in already modified environments, that the adverse effects should be avoided, remedied or mitigated and where practicable, the protection and enhancement of natural values and features should be promoted where they provide a natural buffer against coastal hazards.

2014<sup>59</sup> and 2019<sup>60</sup> reviews of the Regional Coastal Environment Plan identified that a number of amendments are required to ensure the plan gives full effect to the NZCPS. It is therefore likely that future reviews of the Regional Coastal Environment Plan will bring the provisions into greater alignment with Policy 13 of the NZCPS. As noted earlier with respect to the NZCPS, if any of the Priority Units exhibit outstanding natural character, any adverse effects on that character will need to be avoided, irrespective of the benefits that

<sup>55</sup> Policy 2.2, Hawke’s Bay Regional Coastal Environment Plan.

<sup>56</sup> Policy 2.3, Hawke’s Bay Regional Coastal Environment Plan.

<sup>57</sup> Policy 2.4, Hawke’s Bay Regional Coastal Environment Plan.

<sup>58</sup> Policy 2.11, Hawke’s Bay Regional Coastal Environment Plan.

<sup>59</sup> Van Voorthuysen, 2014. Gap Analysis of Hawke’s Bay Regional Council’s Regional Coastal Environment Plan against the NZCPS 2010.

<sup>60</sup> O’Callaghan, 2019. Draft Hawke’s Bay Regional Coastal Environment Plan RMA Section 35: Efficiency and Effectiveness Report.

any future mitigation measures might provide. With respect to other less significant natural character, a lower threshold applies whereby only significant adverse effects are required to be avoided. This could create potential consenting challenges for Priority Units where outstanding values are held, or where the effects on natural character are considered to be significant. This equally applies to areas of with natural feature, natural landscape and indigenous biodiversity value.

Based on existing mapping contained within the Hastings District Plan, the discussion documents relating to the Proposed Napier District Plan and the Proposed Hawke's Bay Regional Resource Plan, only one of the Priority Units (the water based areas of the Ahuriri Unit) is considered "Outstanding", although it may be timely to double-check these findings as we have recommended. The remaining Priority Units may, however, hold lesser natural character values where significant adverse effects would have to be avoided. It would be prudent to undertake some baseline studies to identify the natural character value of each Priority Unit and identify the extent to which the proposed adaptation pathways may adversely impact on those values. A similar analysis should be undertaken of natural feature, natural landscape and indigenous biodiversity values of these areas.

It would also be beneficial if such areas were also mapped as part of any future Regional Coastal Environment Plan review processes to provide greater clarity and certainty for plan users. This will also assist in the quantification of costs and benefits in terms of section 32, as it will clear where potential social, environmental, cultural and economic costs or benefits accrue from any new provisions that give effect to the NZCPS.

### **Outstanding Natural Features and Landscapes**

The Regional Coastal Environment Plan seeks to protect the outstanding natural features and landscapes within the coastal environment from inappropriate subdivision, use and development.<sup>61</sup> To achieve this outcome, key provisions:

- protect the physical and ecological values of estuaries and river mouths in the coastal environment;<sup>62</sup>
- ensure estuarine habitats and physical processes are used or developed in a way that avoids, remedies or mitigates adverse effects on the biological integrity of the estuarine system;<sup>63</sup>

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<sup>61</sup> Objective 3.1, Hawke's Bay Regional Council Coastal Environment Plan.

<sup>62</sup> Policy 3.4, Hawke's Bay Regional Coastal Environment Plan.

<sup>63</sup> Policy 3.6 Hawke's Bay Regional Coastal Environment Plan.

- promote the restoration and rehabilitation of areas that have been degraded by past activities.<sup>64</sup>
- map 21 Significant Conservation Areas across the HB region’s coastal marine area. Only two of those SCAs are within the coastal marine area between Clifton to Tangoio.

As identified earlier, proposed Plan Change 7 to the Hawke’s Bay Regional Resource Plan identifies the Ahuriri Estuary as an Outstanding Waterbody. Submissions on Proposed Plan Change 7 have closed and a hearing is scheduled later in 2020.

#### **COMMENTARY**

These provisions require that the Ahuriri Estuary is protected from “inappropriate subdivision, use and development”. In order to achieve to this outcome, any resource consent application to implement the adaptation responses within the Pandora and Ahuriri Priority Units will need to demonstrate that the proposed coastal protection structures are “appropriate” in a given circumstance and that the effects have generally been “avoided, remedied or mitigated”. This is not a particularly high threshold for outstanding natural features and landscapes and is therefore not likely to present significant consenting challenges for the Pandora or Ahuriri Priority Units (located adjacent to and in part, within the Ahuriri Estuary).

As noted above, further baseline studies should be undertaken to confirm a pathway through Policy 15 of the NZCPS.

#### **Indigenous Species and Habitats**

The Regional Coastal Environment Plan seeks to protect areas of regionally and nationally important ecosystems, significant indigenous vegetation or regionally or nationally significant habitats of indigenous fauna from inappropriate subdivision use and development.<sup>65</sup> To achieve this outcome, the key relevant policies seek to:

- Ensure adverse effects on ecological systems (including natural movement of biota, natural biodiversity, productivity and biotic patterns) are avoided.<sup>66</sup> Except for areas containing nationally vulnerable species or nationally outstanding examples of indigenous community types, where avoidance is not practicable, adverse effects are to be remedied or mitigated.<sup>67</sup>

<sup>64</sup> Policy 3.5 Hawke’s Bay Regional Coastal Environment Plan.

<sup>65</sup> Objective 4.1, Hawke’s Bay Regional Coastal Environment Plan.

<sup>66</sup> Policy 4.1 Hawke’s Bay Regional Coastal Environment Plan.

<sup>67</sup> Policy 4.2, Hawke’s Bay Regional Coastal Environment Plan.

- Protect ecological values of existing estuaries and river mouths in the coastal environment.<sup>68</sup>
- Ensure adverse effects on cultural, ecological, historic, geological, and scenic values of Significant Conservation Areas are avoided, remedied or mitigated.<sup>69</sup>

#### COMMENTARY

Provided the proposed site works do not give rise to adverse effects on any nationally vulnerable species or nationally outstanding examples of indigenous community types, and, in the case of Pandora, does not give rise to adverse effects on the ecological values of the estuary, it is anticipated that all other effects on indigenous species and habits will be able to be avoided, remedied or mitigated in line with the key policy directives.

As noted above, further baseline studies should be undertaken to confirm a pathway through Policy 11 of the NZCPS.

#### Natural Hazards

The Regional Coastal Environment Plan seeks to avoid or mitigate the risks posed to people and property by natural hazards<sup>70</sup> and avoid new and further inappropriate development in areas identified as being at risk of coastal erosion or inundation.<sup>71</sup> To achieve this outcome, the Plan seeks to manage coastal erosion and inundation risk through environmental guidelines<sup>72</sup> which, at a high level:

- Proactively manage coastal hazards, including through:
  - Seeking the avoidance of new development in areas that are or have potential to be subject to coastal hazards;
  - maintaining and enhancing natural values and features that provide a buffer against coastal erosion and inundation;
  - relocation and removing existing uses and development from at risk coastal areas;
  - evaluating and if appropriate, implementing, activities that mitigate coastal hazard risk (for example, beach renourishment); and,

<sup>68</sup> Policy 4.3, Hawke's Bay Regional Coastal Environment Plan.

<sup>69</sup> Policy 4.4, Hawke's Bay Regional Coastal Environment Plan.

<sup>70</sup> Objective 15.1, Hawke's Bay Regional Coastal Environment Plan.

<sup>71</sup> Objectives 15.2 and 15.3, Hawke's Bay Regional Coastal Environment Plan.

<sup>72</sup> Policy 15.1, Hawke's Bay Regional Coastal Environment Plan.

- evaluating, if appropriate, implementing (subject to point below) permanent structures (for example, sea walls, groynes, artificial reefs) to mitigate coastal hazards.
- Identify coastal hazard areas based on most recent or updated information and science and review areas subject to, or likely to be subject to such hazards and ensure they are managed in an integrated way.
- Encourage foreshore protection, particularly those that provide a natural buffer against coastal erosion and inundation.
- Managing existing subdivision, use and development, including by:
  - Avoiding further development of within areas subject to coastal hazards, unless it is for a temporary activity, it protects or enhances natural mitigation features, the hazard risk is less than minor,
  - Considering the removal of existing uses and avoidance of further development as a means of managing coastal hazards.
  - Recognising and providing for local authorities' existing structures, facilities and infrastructure activities within coastal hazard zones; and,
  - Permitting activities that have a less than a minor effect on exacerbating coastal hazards, and structures for public recreation facilities.
- Managing new use and development, including by not locating such activities in coastal hazard areas unless it is for a temporary activity or protects or enhances natural features (for example, dunes, wetlands, gravel barriers, intertidal rock platforms) between existing development and the sea, or it presents a less than a minor risk of exacerbating coastal hazards.
- Discouraging new and further subdivision within area subject to coastal hazards unless it presents a less than minor risk of exacerbating hazard.
- Not allowing deposition and removal of sediment (and other earthworks) in coastal hazard areas, unless it is for a temporary activity, protects or enhances natural features (for example, dunes, wetlands, gravel barriers, intertidal rock platforms) and it presents less than a minor risk of exacerbating coastal hazards;
- Recognising and providing for local authorities to carry out hazard mitigation works. Such work shall, to the greatest extent practicable, avoid adversely affecting public access, natural character, dynamic coastal processes, historic heritage, landscape and ecological values in the coastal environment. Recognition and provision should be made for the ongoing renourishment of Westshore Beach as an appropriate means of mitigating coastal hazard effects.
- Only using coastal protection structures to mitigate coastal hazards when:

- it is the best practicable option<sup>73</sup> and no other non-structural alternative is effective or feasible to reduce coastal hazard risk;
- the structure is located and designed so as to avoid adverse environmental effects to the greatest extent practicable; and
- the structure is to have a functional need to locate in the coastal marine area and protects existing development.

In applying the above policies, the Regional Coastal Environment Plan primarily focuses on coastal erosion and inundation. Tsunami is not addressed within the Regional Coastal Environment Plan (though it is included in the definition of “natural hazard”).

## COMMENTARY

### *Implementation of adaptation responses – coastal protection structures*

The policy directives within the Regional Coastal Environment Plan are generally supportive towards soft over hard coastal protection structures. As noted with respect to the NZCPS, this approach fails to recognise the benefits that hard coastal protection structures can provide, at least in the short-term, for establishing longer term plans around hazard protection and/or managed retreat. While the natural hazard provisions do not preclude hard coastal protection structures measures from being established, the policy framework is more onerous for such structures.

In a companion report to this policy and regulatory review, Mitchell Daysh undertook a high-level evaluation of the consentability of the short-term adaptation responses.<sup>74</sup> As identified in this report, consenting of coastal protection structures generally requires a number of ancillary resource consents. The activity status for coastal protection structures also generally attracts a non-complying activity status despite their being an inherent need for such structures to typically be located within the coastal environment. The complex consenting requirements are inefficient and do not reflect that by the time Stage 4 workstreams are complete, the Strategy will have been through a decision-making process that presumably will be subsequently endorsed by HBRC, NCC and HDC. There would be merit seeking amendments to the Regional Coastal Environment Plan that are more enabling of outcomes consistent with the strategy once finalised.

<sup>73</sup> “Best practicable option” is a phrase used in a number of provisions within the Regional Coastal Environment Plan. This phrase is used in the RMA with respect to discharges and noise and not typically in this particular context.

<sup>74</sup> Mitchell Daysh Limited, 2020. Hawke’s Bay Regional Council Consentability of Short-term Adaptation Responses, Stage 4 Clifton to Tangoio Coastal Hazard Strategy 2120.

Similar to the RPS, it would be prudent to include new streamlined objectives, policies and methods into the Regional Coastal Environment Plan. These objectives should be supportive of outcomes consistent with the Strategy, subject to the appropriate management of effects. Policies to implement the objectives would be more granular and provide guidance around how different types of coastal protection structures are to be managed. With respect to methods, a more simplified approach should be considered where the coastal protection structures in line with the Strategy are subject to a tailored set of consent requirements with specific development standards providing an opportunity for the consent status to increase as the nature and scale of effects increases. For example:

- A new rule(s) relating to coastal protection structures within the coastal marine area which depending on size and the nature and scale of anticipated effects, could be a controlled activity, moving towards discretionary;
- A new rule relating to discharges associated with the construction, maintenance and use of coastal protection structures within the coastal marine area;
- A new rule relating to the occupation of the coastal marine area by coastal protection structures.

Such an approach would simplify the analysis of consents required under the Regional Coastal Environment Plan and would provide greater certainty and clarity around the matters to be considered for any particular resource consent for the adaptation responses.

#### Implementation of adaptation responses – land use activities

With respect to the intensification of land use activities within the Strategy area, the Regional Coastal Environment Plan sets a clear expectation that new development within coastal hazard areas should be avoided, and that existing subdivision, use and development should be discouraged within coastal hazard areas unless the hazard presents a less than minor risk. With the exception of new buildings within the Coastal Hazard 1 Zone, the methods do not appear to match this expectation (Table 2).

The only condition imposed on the permitted extensions to existing buildings and structures is that they must not project further seaward than the existing structure. With respect to the restricted discretionary activities, the matters of discretion relate to:

- the intended purpose of the structure;
- effects on health and safety;
- effects of the use of land on coastal processes;
- probability and magnitude of erosion and inundation;
- methods to avoid or mitigate coastal hazard; and

➤ degree of protection works that have been carried out at the property.

**Table 2: Summary of land use activity status within the Regional Coastal Environment Plan.**

Activity	Coastal Hazard Zone 1	Coastal Hazard Zone 2
Extension to existing building or structure (less than 20m <sup>2</sup> )	Restricted Discretionary <sup>75</sup>	Permitted <sup>76</sup>
New buildings or structures or extension to existing building or structure greater than 20m <sup>2</sup> .	Non-complying <sup>77</sup>	Restricted discretionary <sup>78</sup>

These matters of discretion are reasonably broad and do not establish a particularly high barrier for justification of new or extensions to existing structures. This does not assist the Council with addressing long term risk and the moral hazards (discussed later in this report) that arise as result. The discrepancy between the policy and methods was also identified by HBRC staff as one of the key deficiencies in the natural hazard framework of the Regional Coastal Environment Plan.<sup>79</sup>

Given that managed retreat or retreat the line has been identified as the long term outcome (i.e. 50 to 100 year) for a number of Priority Units and in light of the 100 year coastal planning timeframe set out in the NZCPS, the policy directives seeking to manage land use, subdivision and development within coastal hazard areas would benefit from further strengthening to ensure that this long term outcome is being achieved. As an important corollary, the methods would also benefit from further tightening to ensure that new subdivision, use and development is the exception rather than the rule, or alternatively, that land use consents are issued for a short duration rather than in perpetuity. This would enable the ongoing use of areas not at immediate risk of coastal erosion and could include rules that only allow, for example, relocatable homes in these areas until a certain trigger point is reached. Such triggers need to consider natural hazard risk as well as the servicing costs imposed on Council and other utility operators associated with maintaining and renewing services in such areas.

<sup>75</sup> Rule 90, Hawke's Bay Regional Coastal Environment Plan.

<sup>76</sup> Rule 89, Hawke's Bay Regional Coastal Environment Plan.

<sup>77</sup> Rule 95, Hawke's Bay Regional Coastal Environment Plan.

<sup>78</sup> Rule 102, Hawke's Bay Regional Coastal Environment Plan.

<sup>79</sup> Draft Hawke's Bay Regional Coastal Environment Plan RMA Section 35: Efficiency and Effectiveness Report, dated October 2019.

### Moral Hazard

Moral hazard can be defined as a situation where an individual has an incentive to increase their exposure to risk because they do not bear the full costs of that risk or that risk can be passed on. In the present context, an example of moral hazard would be purchasing property within the Priority Units in the knowledge that the in the short-term, the Council intends to install coastal protection measures for which they will not have to bear the full costs.

By comparison, residual risk can be described as the risk remaining after the implementation or undertaking of risk management measures. In the present context, it refers to the risk of a short-term adaptation response being overwhelmed, overtopped or damaged during a coastal hazard event or unrelated events (such as earthquake) that may undermine its integrity. Despite the residual risk that remains behind a coastal protection structure, a heightened sense of security can persist for those with land and/or assets being protected by these structures.

Based on the above discussion regarding the land use planning framework within natural hazard areas, the Regional Coastal Environment Plan lacks the policy dissuasion to slow or prevent an increase in moral hazard and residual risk. Strengthening the provisions to require the avoidance of development inconsistent with the Stage 3 Strategy outcomes would make it more difficult to undertake plan changes, subdivision and development in these areas, however this will need to be coupled with similar changes to the relevant District Plans due to jurisdiction of land use, subdivision and development. Over the longer term, this will likely result in a gradual migration of activities from these areas. Taking such measures now is imperative to avoid long lasting coastal hazard management issues, as has been observed in other areas of New Zealand, such as Ruby Bay in Tasman District (refer to section 4.1).

If an area has been identified as been subject to significant natural hazard risk and it poses a more immediate threat to human health and safety, the Regional Coastal Environment Plan could be amended to go a step further than current rules do and extinguish the existing use rights of landowners within such areas. This approach has recently been adopted in the Bay of Plenty by the Whakatāne District Council (refer to section 4.2). This was a landmark decision and a New Zealand first. At the time of preparing this report, the period for filing appeals with respect to this decision was still open.

### **Public Access and Amenity**

The Regional Coastal Environment Plan has a strong focus on public access and amenity.

Key provisions seek to maintain and enhance public access to and along the coastal marine area while recognising the need to protect certain areas for ecological, cultural,

historic heritage, health, safety, or security (including biosecurity) reasons.<sup>80</sup> This includes by enabling appropriate tangata whenua access to their traditional fishing grounds and other sites of cultural significance within the coastal marine area in accordance with tikanga Maori.<sup>81</sup>

#### **COMMENTARY**

The majority of the Strategy's proposed adaptation responses could allow for public access to the coastal environment. For example, the proposed groyne fields and inundation and extension to the Clifton sea wall will enable the continued public access and enjoyment of the coast and beach. For other areas such as Pandora, there will likely be opportunities to enable public walking access adjacent to or upon the proposed structures and to continue to provide public access to the adjacent coastal environment.

#### **Disturbances, depositions and extractions in the coastal marine area**

Key provisions seek to avoid, remedy or mitigate the adverse effects associated with the deposition of substances within the coastal marine area.<sup>82</sup> To achieve this outcome, the Plan seeks to manage the deposition and extraction of material within the coastal marine area and the disturbance of the foreshore and seabed in accordance with environmental guidelines<sup>83</sup> which, at a high level:

- Avoid deposition on the foreshore and seabed within Significant Conservation Areas (i.e. the Ahuriri Estuary) and otherwise, minimising adverse effects on indigenous flora, fauna, benthic organisms and their habitats. Deposition should also only occur where the sediment is of a similar particle size to the deposition site, at times and rates that minimise effects on flora and fauna, water quality, recreation and commercial activities and cultural and social values
- Discourage disturbance of the foreshore and seabed in areas likely to be subject to coastal hazards unless it is for a temporary activity, protects or enhances natural hazard mitigation buffers, presents a less than minor risk of exacerbating coastal hazards, or it provides for deposition activities within the coastal marine area which help renourish beaches adjacent to existing development areas that are at risk of coastal hazards.

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<sup>80</sup> Objective 5.1, Hawke's Bay Regional Coastal Environment Plan.

<sup>81</sup> Policy 5.6, Hawke's Bay Regional Coastal Environment Plan.

<sup>82</sup> Objective 17, Hawke's Bay Regional Coastal Environment Plan.

<sup>83</sup> Policy 17.1, Hawke's Bay Regional Coastal Environment Plan.

- Disturbances in Significant Conservation Areas will not be provided for unless for environmental enhancement.

#### **COMMENTARY**

The NZCPS proposition that natural barriers for coastal hazard management should be encouraged filters through the provisions in the Regional Coastal Environment Plan relating to disturbance, deposition and extraction activities within the coastal marine area.

By contrast, there is limited acknowledgement or support of disturbance, deposition or extraction activities relating to hard coastal protection structures.

With respect to the Pandora and Ahuriri priority units, it is important to note that the Ahuriri Estuary is identified as a Significant Conservation Area. While the proposed inundation structures for both Priority Units will only traverse the outer edge of this area, the policy directive for these areas is for disturbance activities to be avoided. If a finer grained analysis of the effects of the inundation measures proposed for these Priority Units (including any associated construction footprint) are found to be significant, this could present some consenting challenges for implementation of the adaptation responses within these units.

While the provenance of these provisions likely stems from the higher order NZCPS requirements around the indigenous biodiversity, a more simplified and targeted consenting approach for natural hazard structures would create a greater balance between these matters.

#### **Structures and occupation of the Coastal Marine Area**

The Regional Coastal Environment Plan seeks to avoid, remedy or mitigate the adverse effects on the environment arising from the development and use of structures and the occupation of the coastal marine area.<sup>84</sup> To achieve this outcome the plan seeks to manage structures and the associated occupation through guidelines which, at a high level (and insofar as they relevant to this report):

- Require structures that have a functional need to locate in the coastal marine area not to adversely affect navigation channels, coastal processes and contribute to a proliferation of structures in the coastal marine area. Adverse effects on historic heritage, sites of cultural significance, indigenous flora, fauna, benthic organisms and their habitats, are avoided, or mitigated where avoidance is not practicable.

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<sup>84</sup> Objectives 18.1 and 2, Hawke's Bay Regional Coastal Environment Plan.

- Seek that structures and activities occupying space in the coastal marine area shall be established and operated in a manner that maximises public use and access, except where public access is inappropriate.
- Seek that structures in the coastal marine area should not be located in areas that are likely to be subject to coastal hazards, unless it is for a temporary activity, it protects or enhances natural mitigation buffers and the potential of exacerbating coastal hazard risk is less than minor. Structures should also only be used to mitigate coastal hazards when it is the best practicable option, the structure is to serve a use with a functional need in the coastal marine area, and the structure is located and designed so as to avoid adverse environmental effects to the greatest extent practicable, particularly effects on coastal processes and natural character.

#### **COMMENTARY**

Within these provisions there is a clear requirement for coastal protection structures to be the best practicable option, have a functional need to locate within the coastal marine area and for adverse effects to be avoided to the greatest extent practicable. As part of Stage 2 and 3 of the Strategy, a number of potential adaptation responses were considered for each Priority Unit before identifying the recommended adaptation pathways. This optioneering and evaluation processes will help demonstrate that each response has been through an iterative process which balances the best practicable option with environmental effect and community aspirations. These matters will have to be documented carefully as part of the consenting process.

The alternative adaptation response for the Pandora priority units includes a storm surge barrier. This was not identified as the preferred pathway for the Pandora Priority Unit. If an application is made for such a structure, a revised analysis as to why this is now the most practicable option would be required.

### **3.3.3 Hastings District Plan**

The Hastings District Plan was made partially operative in February 2020. The Plan therefore gives effect to the NZCPS.

With respect to coastal hazards, the Hastings District Plan defers the management of land use and development within coastal hazard areas to the HBRC. This approach ensures that there is a single regulatory body administering the coastal hazard rules and avoids the potential for inconsistencies between the regional and district level administration of coastal hazards. The exception to this being at the time of subdivision and/or plan changes to the Hastings District Plan where jurisdiction for such matters rests with HDC.

The Hastings District Plan seeks to minimise the effects of natural hazards on the community<sup>85</sup> and built environment and avoid increasing the risk to people, property, infrastructure and the environment.<sup>86</sup> This includes by:

- adopting and promoting the best practicable option (including mitigation or the 'do nothing' option) in the management of areas of existing development actually or potentially at risk from natural hazards.<sup>87</sup>
- Managing land use activities in identified natural hazard areas where communities and resources are potentially at risk.<sup>88</sup>
- Adopting and promoting an avoidance approach to development located within areas of significant natural hazard risk, rather than mitigation or remedial measures.<sup>89</sup>
- Allowing Public Bodies exercising their statutory powers to carry out natural hazard mitigation activities.<sup>90</sup>

Related subdivision provisions seek to avoid subdivision in localities where there is significant risk from natural hazards by ensuring that land being subdivided<sup>91</sup>, including any potential structure on that land, is not subject to material damage by the effects of natural hazards.<sup>92</sup>

#### COMMENTARY

Collectively, these provisions support both the need to implement coastal protection structures for the management of hazards as well as avoid subdivision within coastal hazard areas. The “avoidance” approach should, in theory, dissuade future plan changes and intensification of land uses within identified coastal hazard areas. If the underlying land is already zoned for residential type purposes (such as the Haumoana Te Awanga Residential Zone or the Coastal Settlement Zone), the objectives are slightly softened by objectives seeking to “avoid buildings and developments (including extensions) on parts of the coastal margin “most at risk” from erosion and inundation.<sup>1</sup> It is not clear however, what the basis of comparison is when evaluating areas “most at risk” (i.e compared to what?).

Adaptation measures often require district council consent as such activities are generally not anticipated within the underlying land use zone. For example, the proposed footings of coastal protection structures located at Haumoana, Te Awanga and Clifton will likely

<sup>85</sup> Objective NH01, Hastings District Plan.

<sup>86</sup> Objective NH02, Hastings District Plan.

<sup>87</sup> Policy NHP3, Hastings District Plan.

<sup>88</sup> Policy NHP2, Hastings District Plan.

<sup>89</sup> Policy NHP4, Hastings District Plan.

<sup>90</sup> Policy NHP8, Hastings District Plan.

<sup>91</sup> Objective SLD03, Hastings District Plan.

<sup>92</sup> Policy SLDP4, Hastings District Plan.

require consent as non-complying activity as such structures are not consistent with the underlying Open Space and/or Rural Zone purpose. While this did not recently hinder the granting of resource consent for the Clifton seawall application, it would create a more simplified process if the objectives, policies and methods relating to coastal protection measures were amended as part of the next plan review process to ensure all coastal hazard management and mitigation measures are located within a single plan chapter rather than reverting to the underlying land use zone (or only reverting for key matters as relevant for each zone).

### **Coastal Environment Strategy**

The Hastings District Plan seeks to ensure that the integrated management regime contained within the Coastal Environment Strategy that protects, manages and develops the Coastal Environment is implemented.<sup>93</sup> The Coastal Environment Strategy was established in 2000 and emerged in recognition of the diversity of resources and management issues within the coastal environment and a general need to ensure an integrated management approach was being applied to both plan development and resource consenting.

While the Coastal Environment Strategy will be superseded by the current Strategy (once finalised), the management response for the coastal communities of Tangoio, Whirinaki, Haumoana, Te Awanga and Clifton are not drastically different from the Clifton to Tangoio Strategy. Specifically, the following outcomes are sought:

- Tangoio: the planned retreat of existing bach settlement and avoidance coastal ribbon development by limiting redevelopment so as to not prolong the reasonable building life of the baches;
- Whirinaki: promote a coastal care approach (avoiding built structures in the Coastal Hazard zone) to management of the shingle beach and reserve;
- Haumoana: Methods include identification of a Coastal Hazard Zone, planned retreat (for example through 'Transferable Development Rights and the promotion of community coast care schemes to rehabilitate natural defence mechanisms including the lagoons and wetlands, and establishment of reserves on vulnerable areas. Managing Flood Hazard: Further investigation on the effectiveness of the rules proposed in the District Plan's Flooding Inundation Resource Management Unit, including minimum floor levels (see Technical Paper #4).

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<sup>93</sup> Objective CE01, Hastings District Plan.

- Te Awanga: further investigations into the effectiveness of the rule proposed in the District Plans Flooding Inundation Resource Management Unit, including minimum floor levels;
- Clifton: Avoid and mitigate natural hazards by promoting planned retreat of existing structures (e.g camping ground and public road) to safer areas inland.

While the policy is outdated and requires updating to reflect the Strategy, the outcomes sought are sufficiently similar that it should not result in perverse outcomes in the intervening period.

### 3.3.4 City of Napier District Plan

NCC are currently reviewing the City of Napier District Plan and intend to publicly notify a draft district plan for comments by the end of 2020. The existing operative district plan will however continue to have legal effect for some time into the future until the submission and hearing process progresses for the proposed plan.

There are two separate coastal management regimes within the City of Napier District Plan – one for the Westshore and Bay View area and a separate approach for the wider district.

The City of Napier District Plan identifies a “Coastal Hazard Zone” over the area of Westshore and Bay View. This area has been identified based largely on coastal hazard report prepared by Dr J Gibb titled “Review of the Coastal Hazard Zone Between Ahuriri Entrance and Esk River Mouth” and is based on the assumption that the existing renourishment programme at Westshore will continue to provide natural hazard mitigation for the areas of Westshore and Bay View located behind the hazard zone. Within this area, the Napier City Plan controls land use activities and development. Outside of these areas, management of such activities is controlled by the Regional Coastal Environment Plan as is the case for the rest of the Hawkes Bay Coastline. With the exception of the Westshore and Bay View area, this approach is therefore consistent with the HDC approach and ensures consistency in the administration of coastal hazard rules. Like with HDC, subdivision and applications for plan changes to the City of Napier District Plan remain within the jurisdiction of NCC.

The City of Napier District Plan seeks to manage the effects of natural hazards on land uses,<sup>94</sup> including by controlling subdivision, use and development of land to ensure that risks to the community are avoided, remedied or mitigated, and ensuring that practical protection methods are considered.<sup>95</sup> The Plan also seeks to control the effects of land uses and development on areas subject to natural hazards,<sup>96</sup> including by directing

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<sup>94</sup> Objective 62.3, City of Napier District Plan.

<sup>95</sup> Policies 62.3 and 62.3.4, City of Napier District Plan.

<sup>96</sup> Objective 62.4, City of Napier District Plan.

development away from areas known to be subject to natural hazards, controlling development in areas subject to natural hazards and monitoring the state of natural hazards.<sup>97</sup>

## COMMENTARY

The objectives and policies within the City of Napier District Plan are not particularly directive with respect to natural hazard management from the perspective of implementing coastal protection structures or from managing land use activities. The objectives and policies therefore do not necessarily support, nor prevent the implementation of the short-term adaptation responses within the Napier City District. By contrast however, the methods are prescriptive, prohibiting new buildings and permitting beach renourishment within the Coastal Hazard Zone at Westshore and Bay View. A disconnect therefore exists between the objectives, policies and methods. The District Plan review process provides an opportunity to rectify this situation to ensure that avoidance requirements are matched with a prohibited or non-complying activity status, and enabling requirements matched with a permitted or controlled requirement.

The current inclusion of a coastal hazard zone over the Westshore and Bay View areas is an outlier in what is otherwise a consistent approach to coastal hazard management between Clifton and Tangoio and also involves different methodology for determining the extent of the hazard zones. Similarly, the coastal hazard mapping methodology differs to that undertaken in the wider region. These circumstances are a legacy of the relative timing of the Napier District Plan and preparation of the then proposed Regional Coastal Plan in the early 2000s. To avoid inconsistency in the mapping and management of coastal hazards in the future, it would be useful to align the coastal hazard management approach for Westshore and Bay View with the wider Strategy area.

Based on discussions with NCC Policy Planners, it is understood that the Westshore and Bay View coastal hazard zones (which are based on hazard data from 2000) are likely to be rolled over into the Proposed District Plan. Despite the adaptation pathways identified as part of Stage 3 of the Strategy being endorsed and adopted by HBRC, HDC and NCC, the NCC Officers were of the view that there is no overarching strategy document that incorporates these recommendations, nor has such a document been through a local government public consultation process. Accordingly, there was reluctance to provide the Strategy with any statutory weight. This view is consistent with that of the commissioner for the Clifton seawall application (within the Hastings District) who found that:

*“Given that the strategy has not been through a public consultation process I can give little weight to it, but it does provide useful background regarding*

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<sup>97</sup> Policies 62.4.1 to 62.4.3, City of Napier District Plan.

*coastal hazard management approaches being considered in the District and wider area.”<sup>98</sup>*

These views highlight the importance of ensuring that the outcomes sought in the Strategy are given statutory weight through reference in the RPS (and regional/district plans), or by undertaking a local government consultation process. Notwithstanding this, section 104(1)(c) of the RMA allows decision makers to have regard to “any other matter the consent authority considers relevant or reasonably necessary”. Similarly, statutory and non-statutory strategies are often a key focus and driver of plan change applications. The Strategy is therefore not precluded from being considered as part of future resource consent or plan change applications, nor does it preclude the Strategy from being considered in line with the NZCPS requirement to consider coastal hazard management over a 100-year timeframe. The weighting will depend on the specific nature of the case and for example, whether the Strategy can be linked to existing policies and methods within the respective plans.

### **3.4 OTHER RELEVANT DOCUMENTS**

A number of other relevant plans and strategies are of relevance to the implementation of Strategy, including:

- Iwi and Hapū Management Plans.
- Heretaunga Plains Urban Development Strategy.
- Coastal Hazards and Climate Change Guidance for Local Government.
- Hawke’s Bay Conservation Strategy.

#### **3.4.1 Iwi and Hapū Management Plans**

Iwi and hapū management plans are tools for understanding the concerns that iwi and hapū may have in relation to resource management and council planning. They originate from iwi authorities and hapu groups and are not subject to the public submission and hearings process of statutory plans prepared under the RMA.

When agreed between the parties, iwi and hapū management plans should be incorporated into Regional and District Plans to ensure that due regard is given to their content when seeking sustainably manage natural and physical resources. There are

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<sup>98</sup> Resource Consent CL170304C, CL170305D, CL170306E, LU170307C, CL170308O, CL170309M, CD170310Land CL170311R.

currently five lwi and hapū management plans lodged with the Hawke’s Bay Regional Council within the area of interest, including:<sup>99</sup>

- Kahungunu ki uta, Kahungunu ki tai, Marine and Freshwater Fisheries Plan;
- Tūtaekurī Awa Management and Enhancement Plan;
- Ngāti Hori Freshwater Resources Management Plan –Operation Pātiki;
- Mana Ake, Ngā Hapū o Heretaunga; and
- Ngāti Hāwea ki Ruahāpia Hapū Management Plan (which is still in draft).

#### COMMENTARY

These plans express the values of importance to the lwi and Hapū in their area. Many values are held in common although there may be specific values associated with hapū and certain areas of significance. Generally, the values include:

- Rangatiratanga—More than a desire to be consulted, but a determination to participate in the management of the natural resources and environment within the rohe;
- Manaakitanga –Continuation of traditional practices, including access to places and resources eg. mahinga kai, in order to look after the needs of the whānau, hapū and host responsibilities;
- Kaitiakitanga –an intergenerational responsibility towards the natural environment, akin to a guardianship role; and
- Mauri –The absolute need to maintain and enhance the essential quality and vitality of a being or entity; a physical object, individual, ecosystem or social group in which this essence is located.

### 3.4.2 Heretaunga Plains Urban Development Strategy

The Heretaunga Plains Urban Development Strategy (“**HPUDS**”) is the result of a collaborative approach by HDC, NCC and HBRC towards managing urban growth on the Plains from 2015 to 2045. The joint Strategy was first adopted in 2010, then a reviewed version re-adopted by the three councils in early 2017.

The Strategy is based on a preferred settlement pattern of ‘compact design’ for the Heretaunga Plains sub-region. The strategy reflects the community’s preference to

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<sup>99</sup> Aramanu Ropiha, 2017. Assessment of Cultural Values Report, Coastal Hazards Strategy 2120 Clifton to Tangoio, Mai Te Matau a Māui ki Tangoio.

maintain the versatile land of the Heretaunga Plains for production purposes and to progressively move to a more consolidated urban form.

Defined growth areas are a key element of the settlement pattern blueprint identified in the HPUDS. These areas have been identified to ensure that growth and development is efficient and cost effective from an infrastructure and servicing point of view, and also to ensure that land use and infrastructure is co-ordinated, development well planned, and growth on the versatile land of the Heretaunga Plains avoided as much as possible.

Within the Strategy area, the communities of Bay View, Haumoana (south of East Road) and Te Awanga are identified as areas of potential future growth, albeit in a limited capacity within the constraints of the land. The HPUDS seeks to avoid future development within Coastal Hazard Areas.

HPUDS also identifies areas where greenfield development is deemed inappropriate. This includes Tangoio, Clive and Haumoana (north of East Road). However, the Strategy is not a rulebook. Rules about where development can and cannot occur as of right are found in other documents such as district plans noted earlier

#### **COMMENTARY**

The HPUDS is reviewed every five years, although directives from national policy statements on urban development may further shorten that cycle. As part of the next review and subsequent reviews, and to ensure consistency with the recommendations set out above with respect to regional and district planning documents, it would be prudent to ensure that the identified growth areas align with the adaptation pathways and the outcomes sought for each priority unit.

### **3.4.3 Coastal Hazards and Climate Change Guidance for Local Government**

Late in December 2017, the Ministry for the Environment (“**MfE**”) released “Coastal hazards and climate change: Guidance for local government” as an update to the 2008 version.<sup>100</sup>

The guidance:

- provides information on the effects of climate change on coastal hazards, incorporating the latest science and relevant legislation, information from the Parliamentary Commissioner for the Environment’s 2015 report on sea-level rise, and feedback from stakeholders;

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<sup>100</sup> Ministry for the Environment, 2017. Coastal hazards and climate change: Guidance for local government. Publication Reference ME 1341.

- recommends a new ‘pathways’ approach to adaptive planning that is dynamic and flexible. It is designed to be used when there is uncertainty about future physical conditions affecting the coastal environment;
- contains new sections on collaborative approaches to engaging with communities (which is central to the adaptive planning approach), and local government roles and responsibilities; and
- outlines a 10-step decision-making process that councils and communities can follow when planning for the effects of climate change on coastal hazards (Figure 2).

The MfE coastal guidance document was released late in the Strategy development process and following the conclusion of the Assessment Panels’ work. Notwithstanding this, there was a high degree of alignment between the process adopted by the Strategy and the 10-step process suggested by the MfE guidance (Figure 2). This consistency was enabled through discussions with several of the MfE guidance authors who were also part of the Living at the Edge research team that supported the Strategy development process. This ensured that the Strategy’s decision-making framework<sup>101</sup> reflected the key elements of the guidance approach. Table 3 provides an overview of this alignment.

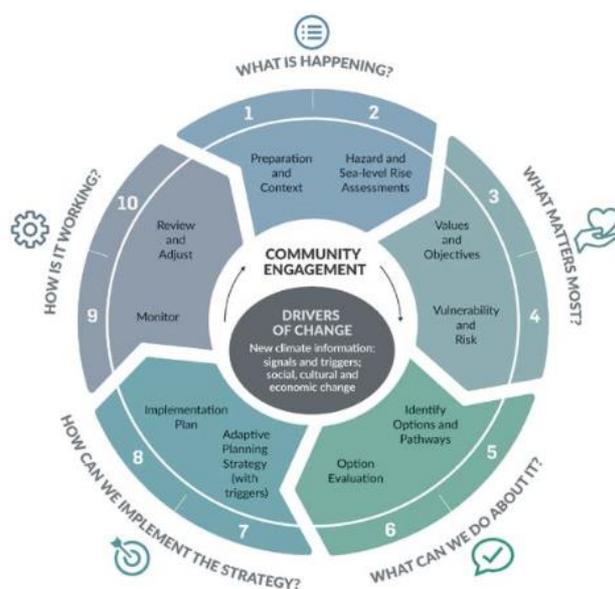


Figure 2: 10 Step Decision Cycle<sup>102</sup>

<sup>101</sup> Mitchell Daysh Ltd, 2017. Clifton to Tangoio Coastal Hazards Strategy 2120 – Stage Two Report: Decision Making Framework.

<sup>102</sup> Source: Ministry for the Environment

**Table 3: 2017 MfE Coastal Guidance alignment with the Strategy Development Process**

MfE Guidance Step	Alignment with the Strategy
a. Preparation and Context	Completed through Stage 1 and 2 of the Strategy with the establishment of the Joint Committee and Technical Advisory Group, the completion of the Hazard and Risk Assessment by Tonkin & Taylor and the development of the Decision-Making Framework. The methodologies employed in the hazard and risk assessment work by Tonkin & Taylor used a smaller number of sea-level rise scenarios than recommend in the Guidance but were otherwise consistent with the approach outlined.
b. Hazard and sea level rise assessments	Completed through Stage 1 and 2 of the Strategy with the establishment of the Joint Committee and Technical Advisory Group, the completion of the Hazard and Risk Assessment by Tonkin & Taylor and the development of the Decision-Making Framework. The methodologies employed in the hazard and risk assessment work by Tonkin & Taylor used a smaller number of sea-level rise scenarios than recommend in the Guidance but were otherwise consistent with the approach outlined.
c. Values and Objectives	Completed by the Northern and Southern Cell Assessment Panels with input from technical advisors through Stage 3 of the Strategy, including the cultural values assessment, surveys undertaken in support of the social impact assessment and the use of high level vulnerability assessments to assist with the determination of priorities and the development of pathways.
d. Vulnerability and Risk	
e. Identify Options and Pathways	
f. Option Evaluation	
g. Adaptive Planning Strategy (with triggers)	To be completed in Stage 4 of the Strategy, including the development of triggers to monitor.
h. Implementation Plan	
i. Monitor	To be undertaken through the Strategy monitoring and Review process, including through the monitoring of triggers and formal Strategy reviews at least every 10 years (or earlier in response to triggers being reached).
j. Review and Adjust	

The Ministry for the Environment has recently co-authored a report<sup>103</sup> into the challenges with implementing the Clifton to Tangoio Coastal Hazard Strategy 2120. At a high level, the key issues have been identified as:

- **Issue 1 Core responsibilities for adaptation are ambiguous:** Regional council and territorial authority responsibilities in relation to natural hazards and climate adaptation are derived from a range of statues and accordingly, councils cannot decide who has primary responsibility for addressing natural hazards and climate change. In the Hawke's Bay, this is playing out in discussions on which council/s should rate for the

<sup>103</sup> Ministry for the Environment and Hawke's Bay Regional Council, 2020. Case Study: challenges with implementing the Clifton to Tangoio Coastal Hazards Strategy 2120.

'public good' component of adaptive action, and there is currently no clear resolution to this issue although work continues in this space.

- **Issue 2 The tools and mechanism to manage current and future hazard are limited or inefficient:** The councils are concerned that the current legislative framework is not fit for purpose in terms of implementing a best practice Dynamic Adaptive Pathways Planning approach. In particular, the system is not set up to respond dynamically to changing information. Changes to, or better integration of, the RMA and the LGA may be necessary to address this along with the NZCPS because by promoting a pathway approach all mitigation options (including hard engineering) need to be recognised.
- **Issue 3 There is a lack of agreed approach and principles for sharing costs of work:** The total cost of the works to implement the coastal hazard strategy is likely to be very large, with high-level estimates from Tonkin and Taylor in 2016 putting the figure at \$130-285 million over the Strategy's 100-year planning horizon. In addition to the issue of which council should rate for the 'public benefit' part of the costs (and any associated debt), councils are facing difficulties drawing the line between what is paid for by general rates and what should be paid for by targeted rates for properties identified as 'beneficiaries' of works. Councils are concerned that a lack of central guidance on these questions means that whatever they decide to do will set a precedent for the rest of the country without having been informed by principles that would have national applicability.

#### COMMENTARY

Further work is currently being undertaken to identify how best to resolve some of the issues raised in the report, including the further development of policy options for Central Government Ministers to consider. As the key case study for this work, it will be imperative for HBRC, NCC and HDC to provide input into any formal or informal engagement processes and to openly share their experiences with the process in order to enact meaningful guidance and potentially national level policy changes to allow the strategy to assist with the long term implementation of the Strategy.

#### 3.4.4 Hawke's Bay Conservation Management Strategy

The Hawke's Bay Conservation Management Strategy 1994-2004 was made operative almost 16 years ago with a proposed new Strategy due for notification early 2020.<sup>104</sup> The management of the coastal environment has progressed significantly since that time and includes two generations of NZCPS, the first released in 1994 and the second in 2010. For

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<sup>104</sup> Note that Covid-19 may have impacted the notification date.

this reason, the Hawke’s Bay Conservation Management Strategy 1994-2008 has not been considered as part of this review.

#### **COMMENTARY**

It is recommended that when the Proposed Hawke’s Bay Conservation Management Strategy is released later this year, a detailed review is undertaken to understand the implications it may or may not have on the implementation of the Strategy and a submission filed accordingly. It should be noted that future decision makers will give consideration to the Conservation Management Strategy during both plan change and potential resource consent processes. It is also relevant for the Reserves Act, and the Councils should participate in the Conservation Management Strategy process to ensure that the outcomes sought in the Strategy are accommodated.

## **4. CASE STUDIES**

### **4.1 TASMAN DISTRICT – RUBY PLAN CHANGE 22**

The coastal plain at Mapua and Ruby Bay is subject to coastal erosion and inundation. Multiple owners of properties that front the beach have erected (consented and unconsented) hard protection structures to limit the impact of storms and wave action. Tasman District Council (which is a unitary authority) has worked with the community on how to deal with the flooding issues since the mid-2000s with mixed results.<sup>105</sup>

In 2009, the Council commissioned modelling of freshwater flooding in the area and undertook an assessment of coastal hazards. This modelling work showed that a number of properties were highly likely to be subject to inundation as a result of sea level rise and increased storm frequency. The Council engaged with the community over the next 2 years to work through the issues and options, resulting in a draft Plan Change (PC22) in 2011.

The policy position in the Plan Change assumed that climate change and sea level rise will continue, and that existing hard protection structures will not be maintained. Controls are imposed on subdivision and development in areas subject to seawater and stormwater flooding. Housing in the defined coastal hazard area must be relocatable and further subdivision in these areas is restricted, although future expansion of the township was provided for on elevated sites away from the hazard areas.

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<sup>105</sup> Department of Conservation, 2017. Review of the effect of the NZCPS 2010 on RMA decision making, background information.

Four appeals were received, three of which were resolved by negotiation. One of these related to land owned by the Gallaghers, which sought to incorporate rules to allow 12 elevated building platforms on the property on which relocatable houses would be constructed. In defending the appeal, the Council undertook further detailed modelling work of the impact on the Gallagher property. Aside from the legal costs of defending the appeal, the additional technical work cost the Council over \$100k.

There was no dispute that coastal erosion is occurring in Ruby Bay. The Court found that whilst the Gallagher property would be unlikely to be affected by coastal erosion within a 100-year timeframe, it would be affected by stormwater flooding and seawater inundation as a result of overtopping. The Court found that the seawater inundation created a high level of hazard for occupants of or visitors to dwellings on the site.

The proposal was assessed against Objectives 5 and 6, and Policy 25 of the 2010 NZCPS. The Court found that Objective 5 was similarly directive as Policies 13 and 15 and sought to ensure that hazard risks are managed in defined ways. The Court concluded that 'ensure' is directive and means to secure, guarantee, make certain and protect. Policies 25(a) and (b) signal in very clear terms that increasing the risk of social, environmental and economic harm from coastal hazards is to be avoided. Given the modelled level of inundation, the Court considered that restricting the level of development on the site was not based solely on the precautionary approach but rather represented a very real possibility. As a result, the Court found that the appellant's proposal for 12 dwellings did not give effect to the NZCPS 2010 and was contrary to Objective 5 and Policy 25. The appeal was dismissed.

In respect of Policy 3 (Precautionary approach), while there are clear uncertainties, the controls contained in the Plan Change are not only justified on a precautionary basis. In considering the extent of uncertainty, the Court considered the factors identified in King Salmon to determine whether or not the precautionary approach required the activity to be prohibited until further information was available and concluded that in short, although the RMA is not a no risk statute, it was considered in this case that the nature of the risk to the Gallagher property was such that the Council's response was appropriate in the context of Objective 5 and Policy 25.

Whilst the policy development process had been started prior to the gazettal of the NZCPS 2010, its advent provided supporting policy direction for the Plan Change.

The Court found that the wording of the objectives and policies to address coastal hazards were equally as directive as Policies 11 and 13, which were considered by the Supreme Court in the King Salmon decision. Objective 5 and Policy 25 were found to be directive about avoiding increasing the risk of harm from hazards.

The case also demonstrated the difficulties in seeking to extrapolate the effect of future estimated sea level change undertaken at a broad scale onto individual properties where

the science and modelling are imprecise, and experts may often present differing methodologies and opinions.

#### **4.2 BAY OF PLENTY - MATATĀ REGIONAL NATURAL RESOURCE AND DISTRICT PLAN CHANGES**

In June 2018 the Whakatāne District Council (“**WDC**”) notified Plan Change 1 – Awatarariki Fanhead, Matatā (“**PC1**”) to the operative Whakatāne District Plan and the Bay of Plenty Regional Council (“**BOPRC**”) notified Plan Change 17 – Awatarariki Fanhead, Matatā (“**PC17**”) to the operative Regional Natural Resource Plan. PC17 was a private plan change request made by WDC.

In May 2005, a storm triggered a debris flow of approximately 300,000m<sup>3</sup> in the small and steep Awatarariki Stream catchment at Matatā, causing significant damage to land buildings, road and rail infrastructure on the Awatarariki Fanhead. Fortunately, there were no fatalities during the event.

The return period of the storm was calculated as approximately a 200 to 500-year event. A meteorological report subsequently determined that, considering the effects of climate change, the return period for the same event would reduce to between 40 to 80 years by the return of the century. Debris flows can occur as a result of any storm capable of generating them and where there is enough material (or debris) available in catchment. This risk of further debris flows at Matatā was therefore considered to be significant and as certain as any natural phenomenon can be.

Following a number of investigations between 2005 and 2015, WDC reached the view that managed retreat was the only effective means of addressing the long-term risks at the Awatarariki Fanhead. Accordingly, WDC proposed PC1 to the Whakatāne District Plan which introduced three new risk hazard areas over the fanhead (Figure 3). Within the high-risk areas, residentially zoned land was rezoned to Coastal Protection Zone and new residential activity prohibited. Within medium risk areas, the existing residential zoning remains but new residential activities or intensification of existing activities require resource consent, with natural hazard risk comprising a matter of discretion. The residential zoning remained in low risk areas, with natural hazards a consideration for the intensification of activities.



**Figure 3: High, medium and low risk areas at the Awatarariki Fanhead, Matata**

Because of existing use rights under section 10, the changes to the Whakatane District Plan are only effective at managing new development or redevelopment in the Awatarariki Fanhead. Owners of existing dwellings can continue to use these dwellings so long as the effects of that use are the same or similar in character, intensity and scale to the effects when the PC1 rules take effect.

To address the existing use right, WDC proposed PC17 of the BOPRC Regional Natural Resources Plan. PC17 inserted new rules into the plan that would extinguish existing residential use rights for residential activities within the high-risk area by making them a prohibited activity of 31 March 2031. This is possible because s10 of RMA does not apply to rules in regional plans. Instead, section 20A of the RMA is applicable to rules in regional plans regarding existing uses.

PC1 and P17 were coupled with a voluntary management retreat programme for residential activities within the high-risk area. A “voluntary managed retreat” fund package was created that enables property owners to sell their properties at an assessed 2019 baseline market value. The property owner can then relocate to a safer location.

In July 2019 Central Government (specifically the Minister of Local Government), confirmed up to \$5.019 million of financial assistance towards managed retreat at Matatā. That equated to a one third share of the \$15.058 million total cost of managed retreat, with the other two shares being provided equally by WDC and BOPRC. The size of the funding package was based on property valuations initiated by WDC in 2016 and updated in 2018 to account for likely property market movements out to July 2019. The funding package was a complementary initiative alongside the two proposed plan changes, but the funding package itself was not something that the independent hearings panel was expected to determine or issue findings on.

Both plan changes were approved by a panel of independent RMA hearing commissioners on 26 March 2020 in what was a New Zealand first for the extinguishing of existing use rights for hazard management purposes. At the time of preparing this report, the time for filing Environment Court appeals had yet to close.

While this case study presents an option that may become available to HBRC, NCC and HDC, the key difference in this case is the risk that the hazard poses to human health and safety, as well as property. The voluntary managed retreat package also featured quite heavily in the decision, with 32 of the 34 properties located within the highest hazard area entering the programme.

## **5. SUMMARY OF RECOMMENDATIONS AND ACTIONS**

In the preceding sections, a number of recommendations have been made to ensure that the regulatory and policy framework within the Hawke's Bay region and district assists with the consistent administration and implementation of the Strategy. These recommendations are also summarised in Tables 4 to 7 below.

Overall, a number of inconsistencies between national and regional planning and policy documents and regional and district planning and policy documents have been identified. It has also been identified that broadly, the regional and local planning and policy frameworks could be strengthened to better enable the outcomes sought by the Strategy.

At a high level, the key findings and recommendations include:

1. Consider establishing a separate cultural workstream as part of the Stage 4 implementation phase of the work to ensure that tāngata whenua have an opportunity to be to exercise kaitiakitanga with respect to their cultural interests at each Priority Unit;
2. Changes are required to the NZCPS to better recognise and provide for hard coastal protection structures as a mechanism for managing coastal hazard risk;
3. Applying a top down approach, the RPS should provide policy recognition and support for the implementation of outcomes sought by the Strategy;

4. Given the recommended changes to the RPS, amendments will be required to the Regional Coastal Environment Plan, the Hastings District Plan and City of Napier District Plan to ensure the objectives, policies and methods within these documents enable the outcomes sought by the Strategy. This is twofold – greater recognition of the implementation of short-term hazard adaptation responses (including benefits) and the avoidance of future land use intensification that will hinder long term delivery of the Strategy and increase moral hazard;
5. Based on discussions with Council Officers and commentary provided in a recent resource consent decision, there is a view that the “Strategy” has no statutory weight as it has not been through a local government or RMA process. This is despite the Stage 3 recommendations being endorsed and adopted by all three Councils and accepted for advancement to Stage 4. Amendments to the RPS or taking the strategy through a local government consultation process would assist to resolve this ambiguity;
6. While not identified earlier in this report, another matter that was identified by Council Officers is that there is no agreed set of coastal hazards, climate change and sea level rise parameters between the Councils. Ensuring that all three Councils are applying a consistent set of base parameters for future long-term planning would be beneficial and would address consistency issues. These should be regularly reviewed and made available to the public.
7. While also not identified earlier in this report, there appears to be some discrepancies between Council Officers regarding the provision of coastal hazard information available. Ensuring Council Officers are kept abreast of the coastal hazard workstreams and how to apply their findings to their relevant roles would be beneficial and would assist with developing greater alignment between the Councils.

The range of recommendations set out in this report are summarised in Tables 4 to 7 below. These have been grouped into three categories; national, regional/local, other actions. While HBRC, NCC and HDC’s ability to enact change is greatest at regional/local level, national level guidance will be required to address the wider issues around who is ultimately responsible for adaptation, the tools and mechanism available to manage current and future changes and the costs of responding to climate change.

**Table 4: Summary of recommended actions under other (non RMA) national statutes.**

<b>Statute</b>	<b>Recommendation</b>
Building Act 2004	<ul style="list-style-type: none"> <li>• Develop consistent processing requirements within coastal hazard areas and an agreed set of baseline data.</li> </ul>
Reserves Act 1977	<ul style="list-style-type: none"> <li>• Commence a process to work through the implications of the Reserves Act, the reserve classifications, reserve</li> </ul>

Statute	Recommendation
	management plans and what authorisations or other actions may be required.
Marine and Coastal Area (Takutai Moana) Act 2011	<ul style="list-style-type: none"> <li>• Continue engagement with the three iwi groups that form part of the Joint Committee as further policy, planning and consenting work progresses</li> <li>• Seek advice from Council liaison advisors regarding the additional engagement required with parties outside of the Joint Committee, including in light of the MACA applications. Consider establishing a separate cultural workstream.</li> </ul>
Hawke's Bay regional Planning Committee Act 2014	<ul style="list-style-type: none"> <li>• Consider establishing a separate cultural workstream to ensure that tāngata whenua have an opportunity to meaningfully exercise their kaitiaki over the Priority Units of interest.</li> </ul>
Heritage New Zealand Pouhere Taonga Act 2014	<ul style="list-style-type: none"> <li>• Ensure that an archaeological authority is obtained for works within any Priority Units that are known or likely to contain historic artefacts.</li> </ul>
Other Statutes	<ul style="list-style-type: none"> <li>• Identify what additional approvals may be required under other statutes not considered in this report, for example, the Wildlife Act 1953, Marine Mammals Protection Act 1978 and fisheries legislation. This will become more apparent as technical assessments are completed with respect to each Priority Unit and as the environmental context and effects associated with each adaptation response identified.</li> </ul>

**Table 5: Summary of recommended actions under National Policy Statements.**

National Policy Statement	Recommendation
New Zealand Coastal Policy Statement	<ul style="list-style-type: none"> <li>• Undertake baseline studies to confirm the extent to which Policies 11, 13 and 15 may present challenges to the implementation of short-term adaptation responses.</li> <li>• Obtain archaeological authorities as necessary for sites which have or are likely to encounter historic artefacts.</li> <li>• Continue to advise Central Government and the Ministry of Conservation around the potential impact of the NZCPS on the delivery of short- and long-term management responses of coastal hazards and sea level rise.</li> <li>• Promote potential opportunities for a new coastal hazard and adaptation policy statement.</li> <li>• Promote amendments to the NZCPS</li> </ul>

National Policy Statement	Recommendation
Proposed National Policy of Urban Development Capacity 2016	<ul style="list-style-type: none"> <li>• Work with Councils to confirm that future greenfield urban development is not located within areas exposed to coastal hazard risks.</li> </ul>

**Table 6: Summary of recommended actions under Regional and District Planning and Policy Documents.**

Regional / District Planning and Policy Document	Recommendation
Hawke's Bay Regional Policy Statement (part of the Regional Resource Management Plan)	<ul style="list-style-type: none"> <li>• Update the RPS to better give effect to the NZCPS;</li> <li>• Include new objectives and policies into the RPS which specifically give recognition and weight to the resource management-related elements of the final Strategy.</li> </ul>
Hawke's Bay Regional Coastal Environment Plan	<ul style="list-style-type: none"> <li>• Undertake baseline studies to confirm the extent to which the Priority Units contain natural character, natural landscape, natural feature and indigenous biodiversity values;</li> <li>• Update the Regional Coastal Environment Plan to better give effect to the NZCPS;</li> <li>• Undertake mapping of key features identified in the NZCPS (such as area of significant indigenous biodiversity, natural character, natural landscapes and natural features) to provide greater certainty of outcome for plan users;</li> <li>• Update the policy framework to better recognise and provide for the outcomes sought by the Strategy. This includes:</li> <li>• Establishing a more enabling and simplified consenting framework for the implementation of the short-term adaptation responses. Medium term should also be recognised and provided for (potentially via different consenting path) in the event that the medium-term triggers are reached, or planning for the implementation of medium term responses is required in the lifecycle of the Regional Coastal Environment Plan.</li> <li>• Establishing a stronger and more directive policy framework for land use activities within coastal hazard areas. While managed retreat is a long-term Strategy outcome, a strong policy dissuasion would gradually result in a migration from the coast.</li> </ul>
Hastings District Council	<ul style="list-style-type: none"> <li>• Establish greater alignment between the natural hazard and land use zone provisions by:</li> </ul>

Regional / District Planning and Policy Document	Recommendation
	<ul style="list-style-type: none"> <li>○ Strengthening the land use zone provisions around the avoidance of land use activities and structures in natural hazard areas (insofar as it relates to subdivision – land use within these areas are addressed in the Regional Coastal Environment Plan);</li> <li>○ Providing of coastal hazard defence structures under a single set of rules rather than requiring multiple zone consents (typically as a non-complying activity).</li> <li>● Update the Coastal environment strategy related provisions to reference the Clifton to Tangoio Coastal Hazard Strategy 2120.</li> </ul>
City of Napier District Plan	<ul style="list-style-type: none"> <li>● To create consistencies between Napier City and Hastings, remove the coastal hazard zone over Westshore and Bay View, thus leaving control of land use activities within those overlay areas to rules in the Regional Coastal Environment Plan;</li> <li>● Strengthen the natural hazard provisions particularly with respect to subdivision (and land use within the coastal hazard areas is recommended within the Regional Coastal Environment Plan) and ensure alignment between the objectives, policies and methods.</li> </ul>
Resource Consent / Decision Making Process	<ul style="list-style-type: none"> <li>● As set out in the accompanying report (Consentability of Short Term Adaptation Responses), obtain a legal opinion with respect to the statutory weight to given to the Strategy as it currently stands.</li> </ul>

**Table 7: Summary of recommended actions under other plans and strategies.**

Document	Recommendation
Clifton to Tangoio Coastal Hazard Strategy 2120	<ul style="list-style-type: none"> <li>● Update to reflect the work undertaken as part of Stage 1 to 4 of the Strategy and publicly release through a local government process:</li> <li>● Identified agreed parameters for coastal hazard management, climate change and sea level rise.</li> </ul>
Heretauranga Plains Urban Development Strategy	<ul style="list-style-type: none"> <li>● Ensure future updates to the Strategy maintain alignment with the Clifton to Tangoio Coastal Hazard Strategy 2120.</li> </ul>
Coastal Hazards and Climate Change and Guidance for Local Government	<ul style="list-style-type: none"> <li>● Continue to feed into the review and development of guidance documents.</li> </ul>



Document	Recommendation
Hawke's Bay Conservation Management Strategy	<ul style="list-style-type: none"><li>Review the proposed new Hawke's Bay Conservation Strategy when notified and prepare a submission (if necessary) to ensure the outcomes of the Strategy are enabled.</li></ul>