

COASTAL EROSION MANAGEMENT MANUAL

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B. LEGAL ISSUES

B.1 INTRODUCTION

The most common legal issue associated with coastal erosion management is who is responsible for providing it. This section provides a general discussion of the legal issues relevant to coastal erosion management.

The information presented here is not a substitute for carrying out appropriate investigation or seeking expert legal advice.

B.2 WHO IS RESPONSIBLE FOR COASTAL EROSION MANAGEMENT

Coastal erosion management is the responsibility of the individual property owner or the person who caused the erosion. Under the common law the owner of land has a duty to take reasonable steps to prevent or minimise a known risk of damage to a neighbouring property. This obligation can arise in the context of possible action to prevent damage to neighbouring land which is anticipated or rectification work following that damage where it ought to have been prevented or minimised in advance. What "reasonable steps" amounts to in any particular circumstance depends on a number of issues, including:

- i. the extent of the risk of damage;
- ii. the foreseeability of that damage (or of further damage);
- iii. the extent of that damage if that risk becomes a reality;
- iv. the practicality of preventing or minimising the damage;
- v. if that prevention or minimisation is practicable, the difficulty, extent, duration and cost of the remedial work;
- vi. the capacity on the part of the neighbour to "find the money" to carry out the work. In this regard it is the particular circumstances of that landowner which are relevant; and
- vii. the capacity of the landowner whose land is in danger to help themselves by protecting themselves from damage, e.g. by contributing to the cost of remedial works.

The legal obligations in this area are very fact-specific. It is advisable to obtain specific legal advice to determine an appropriate course of action.

B.3 CASE LAW AND THE RESOURCE MANAGEMENT ACT

Recent case law has established that common law property rights pertaining to the use of land, including the right to protect property from the sea, are subject to the purpose and principles of the Resource Management Act (RMA), and that where such rights are inconsistent with the Act they are no longer applicable¹.

Any coastal erosion management works must be undertaken consistent with:

- the fundamental purpose of the RMA, which is to promote the sustainable management of natural and physical resources;
- the principles of the RMA. These include "Matters of National Importance" such as "*The preservation of the natural character of the coastal environment (including the coastal marine area) ...*" and "*The protection of outstanding natural features and landscapes ...*". Also "Other Matters", such as "*The maintenance and enhancement of amenity values*"; and
- the various principles, objectives, and policies contained in the New Zealand Coastal Policy Statement, and relevant regional and district plans.

There is no over-riding right to construct coastline armouring devices, nor any presumption in favour of such management options over others. Any proposed coastal erosion management works must obtain all of the necessary statutory approvals, i.e. resource consents and building consents, as applicable.

¹ *J.I. Faulkner and Others v The Gisborne District Council and the Minister of Conservation* (AP1/95, High Court, 26/7/95, Justice Barker). See also "Case Notes", NZ Environmental Law reporter, October 1995, p.138; and "Case Notes", Resource Management Bulletin, Volume 1, Issue No. 12, September 1995, pp159-60.