

COASTAL EROSION MANAGEMENT MANUAL

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D. STATUTORY FRAMEWORK

The Resource Management Act (RMA), which came into effect in 1991, was created to provide an operational framework for integrated and sustainable resource management. Under the RMA the Auckland Regional Council (ARC) and territorial authorities (TLAs) have similar responsibilities in relation to the avoidance or mitigation of natural hazards. This section describes the statutory framework relevant to coastal erosion management.

D.1 THE AGENCIES

D.1.1 AUCKLAND REGIONAL COUNCIL

The Auckland Regional Council was established to provide better integration, co-ordination, co-operation and consultation in the management of the region's environment. The ARC's resource management functions are set out in section 30 of the RMA.

Refer Section D.3

The preparation and implementation of the Regional Policy Statement (RPS) and of the proposed Auckland Regional Plan: Coastal (PRP:C), and its consent authority role are the principle methods by which the ARC meets the requirements of the RMA. The RPS and PRP:C provide rules in relation to carrying out these functions.

Pursuant to the Building Act 1991 the ARC is responsible for the issuing of building permits within the coastal marine area. This responsibility has been transferred to the territorial local authorities within the Region.

D.1.2 TERRITORIAL LOCAL AUTHORITIES (TLAs)

The development of land (above MHWS) and the form in which it takes place, is controlled by TAs through their district plan and/or resource consents. The functions of TAs are set out in section 31 of the RMA.

D.1.3 MINISTER OF CONSERVATION

The Minister of Conservation has three main roles in coastal management under the RMA. They are the preparation of the New Zealand Coastal Policy Statement (NZCPS), the approval of all regional coastal plans, and as consent authority for those activities which are declared to be Restricted Coastal Activities.

D.1.4 DEPARTMENT OF CONSERVATION (DOC)

The Department of Conservation is responsible for administering a number of statutes that at times are relevant to coastal erosion management, including the Conservation Act 1987, the Reserves Act 1977, the Marine Reserves Act 1971, and the Foreshore and Seabed Endowment Revesting Act 1991, as well as advocating for the conservation of natural and historic resources generally.

D.1.5 MINISTER FOR THE ENVIRONMENT

The functions of the Minister for the Environment in the coastal environment, pursuant to Section 24 of the RMA, includes, the monitoring of the effect and implementation of the RMA and the 'call-in' powers for projects of national significance.

D.1.6 MARITIME SAFETY AUTHORITY

The Minister of Transport, via the Maritime Safety Authority (MSA) is responsible, pursuant to the Maritime Transport Act 1994, for navigation and safety. Pursuant to section 395 of the RMA the MSA assesses every coastal permit application in terms of the actual or potential effects on navigation.

D.1.7 HYDROGRAPHIC OFFICE

The Hydrographic Office produces the maritime charts that are used for navigation purposes. To enable the Hydrographic Office to keep their charts accurate, and pursuant to policy 3.2.9 of the NZCPS, they are to be notified of new works or structures in the CMA at the time consent is granted.

D.2 LEGISLATIVE FRAMEWORK

D.2.1 THE RESOURCE MANAGEMENT ACT 1991

The Resource Management Act (RMA), enacted in 1991, provides the framework for regulating development and protecting the environment. The cornerstone of the Act is Part II, Purpose and Principles. All section references below are to sections in the RMA.

D.2.1.1 SECTION 5 OF THE RMA

Section 5 (1) states the purpose of the RMA, which is:

"to promote the sustainable management of natural and physical resources."

Section 5 (2) defines "sustainable management" to mean:

"managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well being and for their health and safety while -

- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
- (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment. "

Accordingly, the Act requires the ARC to be continually looking forward when making decisions on resource management issues to meet today's needs, and to ensure that the options available to future generations are not jeopardised (section 5(2)(a)). The ARC must also recognise that viable communities and other life forms now and in the future will depend on maintaining the essential natural components of the coastal environment including the coastal marine area, and in using them today must ensure that their life supporting capacity is retained and ideally enhanced (s.5(2)(b)). Also, all people exercising functions under the Act need to ensure that the adverse effects from use and development are avoided, remedied or mitigated (s.5(2)(c)).

The Act defines the 'environment' in a manner which means that the adverse effects of activities must be considered not only in terms of natural and ecological resources, but also in terms of people and communities and the social, cultural, economic and cultural conditions affecting those people and communities. Furthermore, there needs to be consideration of the amenity values which people place on aspects of the natural and physical world. Thus the environment is defined in both physical and social terms.

The outcomes specified in Section 5(2) must all be met for an activity to be considered appropriate, and for the sustainable management of natural and physical resources to be fully promoted. Achieving this objective, and meeting the requirements of paragraphs (a), (b) and (c) of Section 5(2) therefore involves and requires the integration of the environmental, social and cultural aspects of the environment, and the establishment of safeguards to ensure these conditions are maintained. To ensure that these factors are managed in an integrated and sustainable manner, the provisions of the RPS and the PRP:C provide for the preservation and/or protection of particular values, whilst allowing people to provide for their social, economic, and cultural well-being.

D.2.1.2 SECTION 6 OF THE RMA

Section 6 of the RMA requires all persons exercising functions and powers under it, in relation to managing the use, development and protection of the natural and physical resources, shall recognise and provide for:

- (a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:
- (b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:
- (c) The protection of areas of significant indigenous vegetation and significant habitats of significant fauna:
- (d) The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:
- (e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga."

These matters have been recognised and provided for in the RPS and PRP:C. Part III: Values of the PRP:C identifies the values of natural and physical resources. These

values are recognised and provided for in the objectives, policies, rules and other methods throughout the Plan.

D.2.1.3 SECTION 7 OF THE RMA

Section 7 states that in achieving the purpose of the Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for.

- (a) Kaitiakitanga:
- (aa) The ethic of stewardship
- (b) The efficient use and development of natural and physical resources:
- (c) The maintenance and enhancement of amenity value:
- (d) Intrinsic values of ecosystems:
- (e) Recognition and protection of the heritage values of sites, buildings, places, or areas:
- (f) Maintenance and enhancement of the quality of the environment:
- (g) Any finite characteristics of natural and physical resources:
- (h) The protection of the habitat of trout and salmon."

Particular regard has been had to these matters in the development of the RPS and PRP:C, which contain a number of objectives, policies, rules and other methods to give effect to section 7.

D.2.1.4 SECTION 8 OF THE RMA

The RMA requires the ARC to take into account the principles of the Treaty of Waitangi. Section 8 states:

"In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)."

The management of natural and physical resources of the Auckland Region has not always been in accordance with the Treaty, and has resulted in Treaty claims seeking to restore the health of ancestral taonga and to have the Rangatiratanga and Kaitiakitanga of Tangata Whenua formally recognised and respected e.g. Manukau Harbour Claim of 1985.

Claims relevant to the sustainable management of natural and physical resources of the Region continue to be heard by the Waitangi Tribunal and other Courts, or are the subject of direct negotiation between the Crown and Tangata Whenua. While it may not be possible to remedy such matters through resource management processes, it is important that decisions under the RMA take these issues into account.

In relation to Crown land in the coastal marine area, the New Zealand Coastal Policy Statement (NZCPS) requires the special Treaty relationship between the Crown and Tangata Whenua to be recognised and facilitated.

D.3 POLICY FRAMEWORK

As well as providing the legislative framework for the development of the PRP:C, the RMA provides for a hierarchy of statutory policy statements and plans to guide and regulate the management of the coastal environment. The PRP:C fits within the hierarchy as shown in Figure 1.2 (in Part 1 of this Manual).

D.3.1 NEW ZEALAND COASTAL POLICY STATEMENT

The New Zealand Coastal Policy Statement is a statutory document prepared by the Minister of Conservation to guide regional and territorial councils in their day-to-day management of the coastal environment. The purpose of the New Zealand Coastal Policy Statement is:

“to state policies in order to achieve the purpose of this Act in relation to the coastal environment of New Zealand.”

The policies set out in the NZCPS cover the entire coastal environment and have provided a framework for the development of the PRP:C. Amongst other things the NZCPS specifies the restricted coastal activities (being "types of activities which have or are likely to have a significant or irreversible adverse effect on the coastal marine area", for which the Minister is the consent authority (for coastal permits).

D.3.2 REGIONAL POLICY STATEMENT

Under the RMA it is a statutory requirement for every region to have a regional policy statement. The RPS produced by the ARC sets out the broad resource management issues, objectives and policies for the Auckland Region to achieve the integrated management of natural and physical resources. Regional plans and district plans cannot be inconsistent with a regional policy statement. Therefore it functions as an umbrella policy document for environmental planning and policy development within our region.

D.3.3 PROPOSED REGIONAL PLAN: COASTAL

Sections 12, 14 and 15 of the RMA restrict certain activities in the coastal marine area unless expressly allowed by a rule in a regional coastal plan or a resource consent. The PRP:C provides a framework, by establishing objectives, policies and methods including rules within which certain uses are permitted and proposals for development can be assessed. The Plan provides certainty for existing and potential users of the coastal marine area by the provision of these rules.

The PRP:C is a regional plan which incorporates the Auckland Regional Coastal Plan, i.e. parts of the Plan relate only to the CMA, and not to the whole of the coastal environment.

D.3.3.1 AREAS TO WHICH THE PLAN APPLIES

The provisions of the PRP:C (objectives, policies, rules, and other methods) have an effect in several different ways. Where the objectives and policies deal exclusively with the coastal marine area they comprise part of the Regional Coastal Plan and provide guidance to the ARC, applicants and the public on how applications for coastal permits within the CMA will be assessed.

Where the objectives and policies affect land in the coastal environment above mean high water springs they form part of a wider regional environment plan. Such objectives and policies have four functions and effects:

1. they provide a set of objectives and policies that enable the ARC to assess applications for coastal permits that affect both the CMA and the landward component of the coastal environment;
2. they provide the ARC with guidance on the discharge of its functions under section 30 of the Resource Management Act;
3. they provide guidance to Territorial Authorities, applicants and the public on how some aspects of applications for land use and subdivision consents affecting land in the coastal environment above mean high water springs should be assessed;
4. they indicate how the District Plans prepared by the Territorial Authorities should treat the landward component of the coastal environment, thus ensuring appropriate and integrated management of the coastal environment.

The rules in the PRP:C relate only to the coastal marine area, and not to the landward component of the coastal environment.

a) Coastal Marine Area

The coastal marine area is defined in the RMA as:

“the foreshore, seabed, and coastal water, and the air space above the water-

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

b) Coastal Environment

The RPS notes that the coastal environment varies from place to place, depending on natural and physical characteristics. For the purposes of the RPS and the PRP:C the coastal environment is defined as including three distinct, but interrelated parts:

- coastal marine area;
- active coastal zone; and
- landward component.

This is consistent with the definition provided by the former Planning Tribunal (now Environment Court) under the Town and Country Planning Act 1977:

“ an environment in which the coast is a significant element or part”.

The criteria for determining the landward boundary of the coastal environment is defined in the RPS and included as Appendix A to this Plan. These criteria recognise habitat, landform, landscape, amenity values, the influence of coastal processes, flooding and surface runoff.

D.3.4 TRANSITIONAL REGIONAL COASTAL PLAN

Pursuant to section 370 of the RMA, instruments that were in force within the coastal marine area immediately prior to 1 October 1991 (the date of commencement of the RMA) are deemed to constitute the 'transitional' regional coastal plan.

In the Auckland Region the following such instruments constitute the transitional regional coastal plan:

- Waitemata Harbour Maritime Planning Scheme, prepared under the Town and Country Planning Act 1977;
- Manukau Harbour Maritime Planning Scheme, prepared under the Town and Country Planning Act 1977;
- District Schemes, prepared under the Town and Country Planning Act 1977; nad
- Determinations of the Ministry of Fisheries under Section 4(4) of the Marine Farming

Act 1971.

The 'transitional' regional coastal plan will cease to be operative in the Region when the PRP:C becomes operative.

D.3.5 OTHER REGIONAL PLANS

The RMA provides for the preparation, implementation and administration of other regional plans. An example is a regional plan dealing with the issues relating to the control of the beds of lakes and rivers, as set out in section 13 of RMA. At the time of the production of this manual there are no other regional plans which are relevant to coastal erosion management.

D.3.6 DISTRICT PLANS

Seven territorial local authorities abut the coastal marine area of the Auckland Region: Rodney District, North Shore City, Waitakere City, Auckland City, Manukau City, Papakura District and Franklin District Councils. These territorial local authorities have responsibilities for resource management landward of the line of MHWS, including land use control. These plans are critical to achieving the integrated management of the coastal environment. District plans must not be inconsistent with the NZCPS, RPS or PRP:C.

D.3.7 IWI PLANNING DOCUMENTS

Pursuant to the RMA, in preparing the PRP:C the ARC has had regard to relevant planning documents recognised by Iwi. As Iwi Management Plans provide useful information about the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga it is important that they are considered.

D.3.8 CONSERVATION MANAGEMENT STRATEGY (CMS)

The Department of Conservation has responsibilities under the Conservation Act 1987 to prepare a conservation management strategy for the Auckland Conservancy. The purpose of the CMS is to establish objectives for the integrated management of natural and historical resources managed by DOC and to implement policies prepared under section 17B of the Conservation Act. The CMS covers all land, marine areas, and historic resources administered by DOC, as well as all aspects of the Department's work. It also indicates desired outcomes for the protection of natural and historic values not directly managed by the Department, such as lands administered by other agencies or in private ownership.

D.3.9 OTHER STATUTES

While the RMA is the primary statute for the management of the natural and physical resources of Auckland's coastal marine area, several other statutes may also affect activities occurring in the coastal marine area. It may be necessary to obtain approvals pursuant to other legislation, such as:

- Building Act 1991;
- Conservation Act 1987;
- Historic Places Act 1993;
- Local Government Act 1974; and
- Reserves Act 1977.

D.3.10 CROSS BOUNDARY ISSUES

The line of mean high water springs is an administrative boundary which divides the management responsibility of the coastal environment between the ARC and the TAs of the region. Similarly the boundary between the Auckland region and the Northland and Waikato regions (north and south respectively) are simply administrative boundaries. Integration of management responsibilities, across all jurisdictional boundary lines is important in order to promote sustainable management. Cross boundary issues and administrative procedures for their resolution are discussed in Chapter 43 of the PRP:C.

D.4 OWNERSHIP OF THE COASTAL MARINE AREA

Most of the foreshore and seabed in the coastal marine area is land of the Crown, however in some places private property titles extend below MHWS into the coastal marine area. All rules in the PRP:C apply to the portion of private property in the coastal marine area in the same way that District Plan rules apply to that part of the property above MHWS, except those pertaining to public access and occupation.

Where coastal land is proposed to be subdivided, and the property title extends below MHWS, section 237A of RMA requires that the area below MHWS be shown on the survey plan as vesting with the Crown.

Tangata Whenua hold that their customary rights and responsibilities over their ancestral taonga have never been extinguished, and consider a significant issue to be the Crown's exercise of presumptive ownership, management and control over such taonga e.g. minerals, water, land in the coastal marine area. Though Treaty claims pertaining to the ownership of resources is a matter which cannot be resolved under the RMA, in some circumstances it may be particularly important to take this matter into account.