

COASTAL MANAGEMENT:

**PRESERVING THE NATURAL CHARACTER
OF THE COASTAL ENVIRONMENT**

**Administration by Far North, Tauranga
and Wanganui District Councils**

Office of the
PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT
Te Kaitiaki Taiao a Te Whare Pāremata

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Copies of the background reports (details of the three case studies) are available on request from this Office.

PREFACE

The investigation into the management of the coastal environment is the second in the series of reviews by my Office on the effectiveness of environmental planning and management carried out by local government under the Resource Management Act 1991. The focus is on the responsibilities of the territorial authorities and how they have recognised their responsibility to provide for the preservation of the natural character of the coastal environment.

New Zealanders are passionate about the coast. It is a place highly esteemed by tangata whenua, and it is physically and aesthetically important to all New Zealanders. The coast, however, is dynamic and is at risk from storms and flooding from the land. Particular areas of New Zealand's coast are under enormous pressure for housing development as are others for recreation; some areas are under pressure for both.

This particular investigation has dealt with the sea coast. However, similar constraints and similar pressures exist for other water bodies, especially lake margins. The findings and recommendations are thus applicable to all territorial authorities.

Although local government has been required under various pieces of legislation over the last twenty years to preserve the natural character of the coastal environment and protect it from unnecessary subdivision and development, this does not seem to have been a high priority for many councils.

I hope this report will give greater urgency to councils to recognise and make provision for protecting a unique part of their own districts and the New Zealand environment.

Helen R Hughes
Parliamentary Commissioner for the Environment

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1. INTRODUCTION

This investigation is the second in the series of local government quality assurance reviews that are being undertaken to check the implementation of the Resource Management Act 1991 by local authorities. The series of reviews has been approved by the Officers of Parliament Committee.

1.1 Terms of reference

The objective of this investigation is to ascertain how three territorial authorities are fulfilling their functions in relation to the coastal environment within their jurisdiction, to draw attention to areas of good practice and to advise the councils on any remedial action the Commissioner considers desirable.

Section 6 of the Resource Management Act 1991 outlines a number of matters of national importance. This section requires all those who exercise functions and powers under the Act, in relation to managing the use, development, and protection of natural and physical resources, to recognise and provide for, *inter alia*, “*the preservation of the natural character of the coastal environment...*” (refer to chapter 2 for discussion of the coastal environment).

The terms of reference for the investigation were:

1. Conduct the investigation by reviewing the performance of district councils’ responsibilities for the management of the coastal environment through a sample of three councils in the 50,000 to 70,000 population band: specifically, the Far North District Council, the Tauranga District Council and the Wanganui District Council.
2. Identify examples of good practice by the above councils (and possibly from others) in carrying out their functions under the Resource Management Act 1991 in respect of the coastal environment. For each district council in particular:

Wanganui: identify ways in which natural character can be managed in the coastal environment in the Wanganui city environs;

Tauranga: identify ways of managing residential development and redevelopment in a sensitive coastal area;

Far North: identify whether an appropriate intensity of activity in various coastal areas has been established and the relationship to management of subdivision.

3. Identify how preservation of the natural character of the coastal environment is managed through the district plan and possibly through examination of some selected resource consents.
4. Report on the outcome of the investigation and any recommendations to local government in the Parliamentary Commissioner for the Environment's 1995/96 Annual Report to Parliament.

This investigation has been conducted under section 16(1)(b) of the Environment Act 1986 in which the Commissioner has authority to examine the effectiveness of environmental planning and management carried out by public authorities, and advise them on any remedial action the Commissioner considers desirable.

1.2 Methodology

An initial visit to each of the three councils was made at the scoping stage of the investigation. This visit enabled the Commissioner to consult with the Mayor and Chief Executive Officer on the most important coastal management issues facing each council within the broad topic of section 6 requirements of the Resource Management Act 1991 before deciding on the scope of the investigation.

A second visit was made to each council in order to assess the council's implementation of section 6 requirements, to identify the documentation to support the council's initiatives and to consult with other public agencies, community groups, tangata whenua and environmental groups. (The list of groups and agencies consulted is included as appendix 1.) During the visits, the Commissioner's staff were joined by a senior coastal planner from Auckland City Council who assisted in each council visit.

A review of each council was compiled and sent to each council for factual checking before the summary report was compiled. This report was subject to internal and external peer review and was given to each council for comment.

This review does not compare the performance of the three councils because each has a different coastal environment, different community structures and different financial resources. Rather, the review outlines the various planning frameworks for each council, the pressures on their coastal environments and the ways in which the councils are recognising and providing for the preservation of the natural character of their coastal environments (s 6 matters). The planning framework has been examined as the premise has been that if the planning framework has taken into account the relevant issues, then any resource consents will reflect the purpose of the plans.

Wanganui District Council

1.3 Issues important to the three councils

The district's coastline is relatively short, having a total length of approximately 30 kilometres. The character of the coast is dominated by a dynamic dune system where the sand dunes are liable to migrate and a high energy shore. Coastal erosion occurs along much of the Wanganui district coastline, and the lower reaches of the Whanganui River are prone to severe riverbank erosion.

Parts of the city of Wanganui are located in, or have an effect on, the coastal environment. This includes the coastline and part of the Whanganui River. The coastal marine area has been defined to extend upstream from the river mouth to the Cobham Bridge, which is approximately where the boundary of the saline tidal waters is found. The Whanganui River has been used for transport, water supply, a food source and recreation. Maori settlement was both permanent and seasonal, with at least 21 kainga sites known. The river plays a central role in the identity of tangata whenua, being regarded as a living entity with great spiritual significance. Tangata whenua have been concerned about water quality issues and habitat destruction in the estuary and on the coast for many years.

Land uses on the riverbanks in the coastal marine area include port facilities and industrial/commercial activities situated mostly on the northern banks. Sewage and industrial waste have been discharged into the river. The Wanganui community has for many years "turned its back on the river" and has not regarded it as an asset. However, in more recent times this perception is changing as the importance of the river to the whole community, not just to tangata whenua, is being recognised.

Castlecliff Beach is the main beach located within the Wanganui district and it has been used for recreation for many years. The sand dunes at Castlecliff Beach are particularly vulnerable to change, as coastal processes adjust to port developments in the river estuary and to the construction of the moles at the river entrance.

Discussions with tangata whenua, representatives of local community groups and agencies elicited a number of issues for coastal management including:

- water quality and the effects on kai moana;
- the disappearance of some wildlife from the sand dunes;
- indiscriminate dumping of demolition material on the riverbanks;
- and
- the effects of discharges from industry located on the northern bank of the river.

The water quality issues are the responsibility of the regional council and have not been addressed in this review. However, the remaining issues have been incorporated into the issues chosen as part of this review, namely:

- the management of, and public access along, the coastal environment;
- infrastructure renewal and replacement as it affects the enhancement of the river environment; and
- sand dune management.

Tauranga District Council

The Tauranga district contains a diversity of natural landscape dominated by an extensive harbour and open ocean coastline. Tauranga has a long coastal edge, some 100 kilometres, ranging from an urban waterfront and intensive port development to sensitive tidal wetlands and dunelands.

The district benefits economically and in other ways from the recreational use and tourist attraction of its beaches. Each year approximately 350,000 domestic and 43,000 international tourists visit the district. The impact of this influx into a district with a resident population of 74,700 has a significant effect on the coastal environment, especially the sand dunes and the beaches along the open coast.

Sand dunes along the coast are particularly vulnerable to storm erosion, the loss of vegetation, encroachment of residential gardens, infestation by plant pests and the impacts of building development.

Tauranga Harbour is a dominant feature of the district, with more than 20,000 hectares of tidal mudflats, estuaries and channels. It is important as a habitat for both migratory and non-migratory wading birds, and as a spawning area for many fish. It has significant areas of saltmarsh and freshwater wetlands.

The district was one of the most densely settled areas of New Zealand prior to European arrival, and it has many historic places of significance to tangata whenua.

Tauranga is one of the most rapidly growing urban areas in New Zealand. Parts of the district have grown faster than others. The coastal strip area, comprising Papamoa West through to Mount Maunganui, saw a 17.9 per cent increase in population between 1986 and 1991, with Papamoa West having a 96 per cent increase in population during that period.

The development of “greenfields” areas landward of the beach and the redevelopment, as high density housing, of the coastal strip between Mount Maunganui Main Beach and Papamoa West places demands on the district council to manage the effects of development in this sensitive coastal environment.

Tangata whenua, representatives of local community groups and agencies raised the following issues during the Parliamentary Commissioner for the Environment’s review:

- the preservation of the heritage landscape at locations where development is taking place;
- the management and protection of the sand dunes along the ocean beaches;
- the discharge of effluent into Tauranga Harbour and to the coast;
- increasing pressure being placed on tangata whenua food resources;
- the impact of the port development on the natural character of the harbour;
- the management of stormwater in the coastal environment;
- the effects of ballast water discharge into the harbour; and
- the encroachment of beachfront gardens into the coastal environment.

These concerns were incorporated in the issues chosen as the subject of the Parliamentary Commissioner for the Environment’s review and can be summarised as:

- the management of stormwater arising from development and redevelopment in the coastal environment;
- the effects of building bulk and intensity on the natural character of the coastal environment; and
- dune management including the mitigation of coastal hazards and the benefits for enhancement of natural character.

Heritage issues are currently being addressed through the Parliamentary Commissioner for the Environment’s investigation into the management of historic and cultural heritage (in press 1996).

Far North District Council

The Far North district’s coastline is its most distinctive physical feature with harbours, estuaries and bays that vary in size and character. The district contains areas of outstanding coastal scenic quality. Tourism is an important part of the economy in the Far North as is marine farming located in different harbours.

With 1700 km of coastline and over 6800 sq km area (Far North District Council 1995a), the Far North landscape is one of the most complex and varied to be found within any district in New Zealand.

Parts of the coastal environment are under increasing pressure from development, as around one-third of the region's population live in coastal settlements and the proportion of people wanting to live in the coastal environment is growing. The attraction of the area to retired people has increased over recent years as has the return of tangata whenua to their ancestral lands. The changes in population and growth of communities has met with a mixed response from residents, some of whom want change and others do not.

Within the district, there are small communities with limited financial resources that are having to upgrade on-site wastewater systems and infrastructure for public health and/or environmental reasons. During the summer, the population can treble in some areas with the influx of tourists and people normally resident outside the area. The provision of services to cater for the seasonal increase in population creates huge pressures for a period of four weeks.

Tangata whenua, representatives of local community groups and agencies raised the following coastal management issues as part of the Parliamentary Commissioner for the Environment's review. These include:

- the impacts of residential subdivision and development on the natural character of the coastal environment;
- the definition of affected parties excludes community groups from participating in the statutory planning process;
- consultation with tangata whenua and hapu on major coastal management issues and resource consents was not consistent;
- enforcement of resource consent conditions is not being carried out;
- information on the planning process is not widely available; and
- community efforts to assist in planning for their community were not recognised by council.

These concerns were incorporated into the issues chosen as the subject of the Parliamentary Commissioner for the Environment's review, namely:

- the impacts of subdivision and development on the natural character of the coastal environment; and
- the management of sewage treatment and disposal for coastal communities.

The administration of compliance with resource consent conditions for developments in the coastal environment was not considered as part of

this investigation as it will be addressed in a forthcoming Local Government Quality Assurance Review.

1.4 Criteria for evaluating good practice for this investigation

A list of the criteria against which each council's environmental management could be reviewed is as follows:

- the natural character of the coastal environment has been identified (eg by landscape or other assessment);
- the preservation of the natural character of the coastal environment has been effectively recognised and provided for through appropriate measures in the transitional or new district plan;
- the district plan is consistent with the overall management of the coast as outlined in the New Zealand Coastal Policy Statement and in the regional coastal plan;
- assessment of risk to the natural character of the coastal environment is taken into account in the district plan and in the granting of resource consents;
- the community and tangata whenua are consulted when determining the natural character of the coastal environment;
- effective communication with other public agencies with coastal management responsibilities has been established;
- a strategic plan has been prepared and specifically provides for the preservation of the natural character of the coastal environment; and
- the extent to which the recognition and provision for the preservation of the natural character of the coastal environment has been achieved.

1.5 Summary

Managing the coastal areas of New Zealand is a challenge to local government. These areas are dynamic, in many cases are at risk from storms and in other areas are extremely sensitive to the actions of people. The coast is an important place for many New Zealanders. People want to live near the sea and the coast is an important recreation area. Tangata whenua have strong links to coastal places as sites of former and present settlement and for access to kai moana.

There are pressures on parts of the coastal environment to allow more residential housing and commercial activity. These pressures can

cause conflict within communities over whether to develop, the extent of development and the retention of public open space within sensitive coastal environments.

Although not investigated in this review, the presence of a working port has obvious implications for preservation of the natural character of the coastal environment in both Wanganui and Tauranga and by the old port at Opuia in the Far North as well.

The three councils chosen for this review had a number of issues in common, such as the need to recognise areas of cultural significance to tangata whenua and the management of discharges from coastal settlements. However, the ways in which the district councils have approached the issues has depended to a large extent on historical management, the rate of population growth, seasonal population fluctuations and whether populations are concentrated or dispersed. This review has identified the coastal management tools that the three councils have used. Each council used a distinctive set of approaches to fulfill its responsibilities.

2. PRESERVATION OF THE NATURAL CHARACTER OF THE COASTAL ENVIRONMENT- THE LEGAL FRAMEWORK

The focus of this investigation is on three district councils rather than regional councils, although regional councils have primary responsibility for the coastal marine area. As will be discussed below (para 2.2.1) the coastal environment takes in much more than the coastal marine area and, to the extent that the coastal environment is above mean high water springs, the control of land use is a district council responsibility. In addition, district councils are responsible for subdivision even if it covers the coastal marine area (see appendix 2).

2.1 Introduction

The three districts reviewed in this investigation are operating under transitional district plans, which were prepared under the Town and Country Planning Act 1977. Each council regarded this as a disadvantage in that some of the old rules were inappropriate to promote the sustainable management of natural and physical resources and some rules were inconsistent with others in different sections of the plan.

However, the responsibility of councils to recognise and provide for the preservation of the natural character of the coastal environment and for protection of the coastal environment from inappropriate subdivision, use and development is not entirely new. Under the Town and Country Planning Act 1977, there was a very similar matter of national importance; councils were to provide for “the preservation of the natural character of the coastal environment ...and the protection of [them] from “*unnecessary* subdivision and development” and there was no reference to “use”. There is a difference of focus between the two Acts; the Town and Country Planning Act 1977 was a planning statute and was concerned with controlling activities whereas the Resource Management Act 1991 is an environmental statute and is concerned with the management of the effects of activities. Professor Palmer, writing of the position prior to the enactment of the Resource Management Act 1991, commented:¹

“[T]he council could decline to approve a plan where a subdivision complies in every respect with the proposed or operative district scheme, but the subdivision would adversely affect the continued

¹ KA Palmer (1984): *Planning and Development Law in New Zealand*, Vol II. The Law Book Company: 574.

implementation of the matters of national importance [cited Hall v Paparua County Council [1976] 2 NZLR 350]. The power may be of significant value to a council where a district scheme is inadequate or outdated, or a change in circumstances had not been anticipated”.

2.2 Legal analysis of section 6(a) Resource Management Act 1991

This section sets out s 6 of the Resource Management Act 1991 and judicial interpretations of the terms used in s 6(a), which provides the preservation of the natural character of the coastal environment with the status of a matter of national importance. It also discusses the interrelationship of the matters of national importance listed, and demonstrates that more than one of them may be relevant in any particular situation. The s 6 matters of national importance may reinforce each other, compete with each other, or compete with other matters of national importance which are not listed.

Local authorities, as persons exercising powers and functions under the Resource Management Act 1991, are required to recognise and provide for the matters of national importance listed in s 6 of the Resource Management Act 1991.

“6. Matters of national importance—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 recognise and provide for the following matters of national importance:

- (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 indigenous 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.”

2.2.1 What is the coastal environment?

The Resource Management Act 1991 requires the Minister of Conservation to prepare at least one New Zealand coastal policy statement (NZCPS) to state policies in order to achieve the sustainable management of the coastal environment of New Zealand (ss 56 & 57). The Minister prepared a draft NZCPS in 1992 for public comment. The introduction to the draft acknowledges that the coastal environment “includes, but is larger than the coastal marine area”. It

goes on to define “coastal environment”,² for the purposes of the NZCPS, as follows:

“an environment in which the coast usually is a significant part or element. The coastal environment will vary from place to place depending upon the extent to which it affects or is (directly) affected by coastal processes and the management issue concerned. It includes at least three distinct, but interrelated parts:

- *the coastal marine area;*
- *the active coastal zone; and*
- *the land back-drop.*

The coastal environment includes at least the coastal marine area, the water, plants, animals, and the atmosphere above it; and all tidal waters and foreshore whether above or below mean high water springs, dunes, beaches, areas of coastal vegetation and coastal associated animals, areas subject to coastal erosion or flooding, salt marshes, sea cliffs, and coastal wetlands, including estuaries, and in the absence of such features (particularly in urban areas where the natural shoreline had been modified), all of the land that extends 40 metres inland of mean high water springs”.

A definition of “coastal environment” was not included in the *New Zealand Coastal Policy Statement* (Department of Conservation 1994). The Board of Inquiry was of the view that it would be inappropriate to include definitions of terms since such definitions would not be binding on the Planning Tribunal or other courts. The Board of Inquiry did, however, indicate that it approved of the definition developed by the Planning Tribunal in *Northland Regional Planning Authority v Whangarei County*³ and *Physical Environment Assn v Thames-Coromandel District Council*,⁴ upon which the definition included in the *Draft New Zealand Coastal Policy Statement* was based.

What will be within the coastal environment in a particular case will depend on the individual character of the area. A number of cases decided under the Town and Country Planning Act 1977 illustrate the possibilities. In *Subritzky v Bay of Islands County*⁵ the appeal board refused to exclude land that was not visible from the sea from a

² The definition draws on judicial definitions of “coastal environment” under the Town and Country Planning Act 1977: *Northland Regional Planning Authority v Whangarei County* (1977) A4828 (TCPAB) at A4831; *Physical Environment Assn of the Coromandel (Inc) v Thames-Coromandel District Council* (1982) 8 NZTPA 404 as cited in “Commentary of the New Zealand Coastal Policy Statement 1994” prepared for the Department of Conservation by Denis Nugent and Maui Solomon.

³ (1977) D A4828, 4831.

⁴ (1982) 8 NZTPA 404,408.

⁵ (1978) B888.

coastal protection zone, as it found that the property as a whole formed a prominent part of the coastal environment. The board agreed that it was difficult to distinguish areas not visible from the sea from those that were, this being largely dependent on the observation point of the viewer. In *Physical Environment Assn of the Coromandel (Inc) v Thames-Coromandel District Council*, headlands were found to be important features in the coastal environment because of the close relationship between hill and sea and because they enclose the environment when viewed from a distance and are an obvious part of what is perceived.

In *Coutanche v Rodney District Council*⁶ Judge Treadwell found that two areas of land for which subdivision was proposed were part of the coastal environment. The first area was land not visible from the coastline because of sand hills and pine forest, but which was found to be “clearly part of a coastal peninsula” and having a degree of isolation and coastal proximity which brought it within s 3 of the Town and Country Planning Act. (This was even though it was accepted that the natural character of the bush had been largely lost, as there was a marked absence of man-made structures and the peninsula retained its natural character on a grand scale.) The second area extended inland for 10 km. The coastline was rugged with high cliffs falling directly to the sea; part of the area had sea views, part could be seen from the coastal areas and part lay in a valley which comprised inland lakes and inland dunes and a significant wetland all contiguous with the actual coastline.

2.2.2 What is protection from inappropriate subdivision, use and development?

The word “protection” has been held to be a less strong word than “prevention” or “prohibition”. Rather it means “keeping safe from injury” and does not require the absolute protection of the coastal environment.⁷ In *New Zealand Rail v Marlborough District Council*⁸ the High Court found that the expression “ ‘the protection of them’ in its terms, means and refers to the coastal environment, wetlands, lakes, rivers and their margins, the items listed, but the protection is as part of the preservation of the natural character. It is not protection of the things in themselves but in so far as they have a natural character”.

The Planning Tribunal, in the “Fast Ferries” case,⁹ held that the words “subdivision, use and development” contemplated direct intervention with the natural character of the coastal environment by physically

⁶ W94/93.

⁷ *Environmental Defence Society v Mangonui County* (1989) 3 NZLR 257, 262 per Cooke P; *Harrison v Tasman District Council* (1994) NZRMA 193, 200.

⁸ (1994) NZRMA 70 Greig J (HC).

⁹ *Marlborough District Council v New Zealand Rail Ltd* (1995) NZRMA 357.

interfering with it in some way; the wake of a ferry was not within the meaning of that phrase.

Under the Town and Country Planning Act 1977 the coastal environment was to be protected from “unnecessary” subdivision, use and development.¹⁰ In the *New Zealand Rail* case¹¹ the High Court has held that “inappropriate” under the Resource Management Act 1991 has a wider connotation than “unnecessary” because there is a broader range of things that can be described as inappropriate, compared to those that are reasonably necessary. Although the decisions of the Planning Tribunal will be helpful, what is inappropriate will ultimately have to be decided on a case by case basis.

The appropriateness or otherwise of any subdivision, use or development will depend both on the character of the particular coastal environment and on the nature of the activity proposed. In *Lowe v Auckland Regional Council*¹² and *Minister of Conservation v Kapiti Coast District Council*¹³ subdivision was found to be inappropriate because:

- it involved disturbance to dune land forms;
- it would introduce buildings into an unmodified area;
- it was speculative; and
- it would be contrary to the policies and rules of the district plans.

The Planning Tribunal, in a case decided under the Town and Country Planning Act, recognised that there are some activities that need not take place in the coastal environment and that should not be permitted to be undertaken there.¹⁴ This recognition was also a factor in the Tribunal’s more recent decision under the Resource Management Act 1991 in *Harrison v Tasman District Council*¹⁵ that the establishment of a refuse transfer station on an existing tip site near to an estuary was inappropriate. Other factors contributing to that decision were that the site was within the coastal marine area; the siting of tips in the coastal environment was contrary to the council’s own district plan; and the estuary was a natural resource that should be sustained for future generations in terms of s 5 of the Act. The Tribunal found that the activity was inappropriate in a coastal environment and on the margin

¹⁰ Section 3(c).

¹¹ *New Zealand Rail v Marlborough District Council* (1994) NZRMA 70, 85.

¹² A21/94.

¹³ (1994) NZRMA 385.

¹⁴ *Bayly v Bay of Islands County* A88/81, as cited in Brooker’s Resource Management A6.08.

¹⁵ (1994) NZRMA 193.

of a river, particularly as some of the structures would be very close to the margin and impede public access to the estuary.¹⁶

In *Ngatiwai Trust Board v Whangarei District Council*,¹⁷ which involved a coastal subdivision consent for camping ground where there were waahi tapu nearby, the size and seasonal nature of the proposed camp, the fact that the kitchen/ablution facility would not involve erection of a wholly new building, the position of the site in relation to the surrounding area including other nearby buildings and land uses, and the conditions specified by the first respondent were factors that persuaded the Tribunal that upholding the consent would not mean endorsing “inappropriate subdivision, use and development” in terms of s 6(a).

Appropriateness can also be judged in terms of cultural responses to an activity. In *Te Runanga o Taumarere v Northland District Council*¹⁸ the Planning Tribunal found that the effect of a proposed discharge of effluent to a natural wetland in the catchment of Te Uruti Bay on the traditional cultural values placed by the tangata whenua on the natural resources of Te Uruti Bay was such that a discharge resulting in effluent passing into the waters of the bay was an inappropriate use of the coastal environment.

Further discussion of the way in which subdivision is managed under the Resource Management Act 1991, together with the creation of reserves upon subdivision, is given in appendix 2.

Policy 1.1.1 of the NZCPS has been considered recently in *Paihia & District Citizens Assn Inc v The Northland Regional Council*.¹⁹ That policy provides that it is a national priority to preserve the coastal environment by:

“encouraging appropriate subdivision, use or development in areas where the natural character has already been compromised and avoiding sprawling or sporadic subdivision, use or development in the coastal environment”.

Judge Sheppard commented that the area for the proposed pontoon had a compromised or built character and the pontoon would not detract from the natural character of the coastal environment. The pontoon and activities have an operational need to be in the coastal environment and the site is located and designed so as not to detract from the natural landscape and ecological values of the area.

¹⁶ Refer s 6(d) as to maintenance and enhancement of public access to and along the coastal marine area etc.

¹⁷ (1994) NZRMA 269.

¹⁸ (1996) NZRMA 77, 92.

¹⁹ A77/95, Judge Sheppard.

The draft NZCPS referred to “natural character” as including ecological, physical, spiritual, cultural, intrinsic, and aesthetic values, being the “essence of New Zealanders’ highly-treasured relationship with the coast”.²⁰ In *Physical Environment Assn*²¹ the Planning Tribunal defined “natural” as “that which is created by nature, as distinct from that which is constructed by man.” The Planning Tribunal found that the headland had a natural character as there were no man-made structures there.

2.2.3 What is “natural character”?

In *Harrison*,²² the Planning Tribunal found that “the word ‘natural’ does not necessarily equate with the word ‘pristine’ except in so far as landscape in its pristine state is probably rarer and of more value than landscape in a natural state. The word ‘natural’ is a word indicating a product of nature and can include such things as pasture, exotic tree species (pine), wildlife (both wild and domestic) and many other things of that ilk as opposed to man-made structures, roads, machinery etc”. The Tribunal in *Gill v Rotorua District Council*²³ found that the site and vegetative cover were key elements contributing greatly to the natural character of the area of the lake where subdivision was proposed. Judge Kenderdine also considered that botanical and landscape values were part of natural character and she accepted the ecologist’s opinion that the protection of ecosystems and ecological processes and the extent to which those are modified by any development is implicit in s 6(a):

“The fact that other parts of the lake margin have been developed does not take away from the integrity of the site as a natural landscape and it is this which must be considered in determining which type of development might be appropriate”.

The intensity of the proposed subdivision was relevant to the decision that it could not achieve a natural character. In this case, the proposal was to erect eleven dwellings on Kariri Point in Lake Tarawera; the site was surrounded by reserves, covered in native bush and in a conspicuous location. This degree of intensity would not preserve the native bush and distinctive character in particular, despite plans to replant extensively, as it would present both a grided and patchwork look for many years and would be subject to pruning to preserve the views.

It appears that “natural character” may be looked at in a comparative way. In *Jessep v Marlborough District Council*²⁴ Judge Treadwell compared Pelorus and Milford Sounds as to “natural character” and

²⁰ The explanation to Outcome 1, 17.

²¹ (1982) 8 NZTPA 404, 408.

²² (1994) NZRMA 193, 197.

²³ (1993) 2 NZRMA 604, 614.

²⁴ (1994) NZRMA 472, 477.

found that Milford has dominant natural character, but that Pelorus is of a composite nature, where forestry, pastoral farming, marine farming and other marine activity takes place. Scattered through the environment are numerous buildings. He found that the presence of one additional marine farm in a general area largely devoted to that activity was not a matter of national importance and thus contrary to s 6.

2.3 Effect of s 6 and Part II Resource Management Act 1991 on consent applications decisions

Section 6 of the Resource Management Act 1991 is contained in Part II of the Act, which also contains the purpose of the Act (s 5), other matters to which local authorities are required to have particular regard (s 7) and a requirement to take into account the principles of the Treaty of Waitangi (s 8).

There have been some judicial pronouncements on the weight to be accorded to the matters of national importance in s 6 in deciding consent applications. They are subordinate to the purpose of sustainable management²⁵ and must be given due emphasis; they are not just an equal part of a general balancing exercise.²⁶ The matters of national importance listed in s 6 may give way to other competing matters of national importance in the circumstances of a particular case.²⁷

In addition to recognising and providing for the protection of the coastal environment in district plans, consent authorities are also required to consider Part II generally in making decisions on consent applications. Section 104(1), which sets out the matters a consent authority must consider when deciding a consent application, is expressly “subject to Part II”. On the strength of this the Planning Tribunal has found that the exercise of the discretionary judgment under s 105(1)(c) must be informed by the statutory purpose in s 5; and the exercise of the discretion and giving of a decision, being a function and power under the Act, must also be subject to the duty imposed by s 6.²⁸ In a recent decision, *Royal Forest and Bird Protection Society of NZ Inc v Manawatu-Wanganui District Council*,²⁹ Judge Sheppard said:

²⁵ *NZ Rail v Marlborough District Council* (1994) NZRMA 70 (High Court) ; *Royal Forest and Bird Protection Society of NZ Inc v Manawatu-Wanganui District Council* (Planning Tribunal) A86/95.

²⁶ *Harrison v Tasman District Council* (1994) NZRMA 193.

²⁷ *Marlborough District Council v New Zealand Rail Ltd* (1995) NZRMA 357 the “Fast Ferries” case - inter-island ferry service; *New Zealand Rail v Marlborough District Council* (1994) NZRMA 70 Greig J (HC) - deep water port at Shakespeare Bay.

²⁸ *Minister of Conservation v Kapiti Coast District Council* (1994) NZRMA 385.

²⁹ A86/95, Judge Sheppard, 26 September 1995, at pp 28 & 29.

“[i]t would degrade Part II if a consent authority was not free to consider any of the matters under ss 6, 7 and 8 that are relevant in the circumstances of a resource consent application before it”. Relying on *Re application by Canterbury Regional Council*,³⁰ the Judge went on *“... the scope of the permissible considerations in deciding resource consent applications is not limited by the consent authority’s functions under ss 30 or 31 so as to preclude the statutory purpose, or to preclude influence by any other provisions of Part II that are material in the circumstances”*.

The other matters of national importance listed in s 6 (paras (b) to (e)) may also be relevant to the coastal environment in any particular locality.³¹ Section 6(a) may sometimes conflict with one or more of the other matters of national importance listed, or some of the matters may combine to support each other as in *Harrison*. There is no guidance provided in the Resource Management Act 1991 as to the weight to be given to the different matters in the event of conflict. This was also the case in respect of s 3(1) of the Town and Country Planning Act 1977, and the Court of Appeal in *EDS v Mangonui County*³² decided that therefore it was left up to the planning authority or the Tribunal on appeal to weigh the conflicting matters on the facts of each particular case.

This situation has arisen in *Mataka Station Ltd v The Far North District Council*³³ where paras (a) and (e) are in conflict. In this case the applicants propose to establish a papakainga development on a coastal property which is their ancestral land. An appeal was lodged on the basis that the location of so many dwellings on the seaward face of the land (the land included a coastal fringe and an inland valley) would detract from the natural character of the coastal environment. As the houses would be visually prominent, the appellants sought relocation of the dwellings into the valley. No final decision has yet been made by the Planning Tribunal as further details of the plans were required, however it commented that:³⁴

“While mindful of the need to preserve the natural character of the coastal environment and protect it from inappropriate subdivision, use, and development, we have endeavoured at the same time to meet the concerns of the applicant – namely, that the intended occupants be able to locate as closely as possible to those areas within the respective blocks where their special links and interests are derived – those special links and interests being based on ancestral connections and other strongly felt bases of association”.

³⁰ (1995) NZRMA 110.

³¹ *Harrison v Tasman District Council* at p 200 where paras (b), (c) and (e) were also relevant.

³² (1989) 3 NZLR 257, 260, 280 per Cooke P and Somers J.

³³ A69/95, 20/7/95, Judge Bollard.

³⁴ At p 25.

Judge Sheppard in *Te Runanga o Taumarere* said:³⁵

“We recognise that the individual contents of Part II are not absolutes to be achieved at all costs (see New Zealand Rail v Marlborough District Council [1994] NZRMA 70, 86) and that in some cases some of them conflict with others of them, and difficult judgments can be required about which is to yield to another and to what extent. Mangakahia Maori Komiti v Northland District Council (Decision A107/95) is a recent decision of the Planning Tribunal which illustrates that.”

2.4 Summary

It appears that the natural character of the coastal environment falls along a continuum of “naturalness”, with pristine coastal environments at one end moving towards severely compromised coastal environments at the other end. Where a particular coastal environment fits into that scale will be relevant to the decision of whether a proposed subdivision, use or development is appropriate or not.

The discussion points to the importance of the management of the coastal environment in order to fulfil the s 6 responsibilities. Judge Kenderdine has commented that *“recognition and provision for such matters of national importance shall be expressed in the way in which the use and development is managed and the way in which the natural and physical resources are protected”*.³⁶

³⁵ (1996) NZRMA 77, 95.

³⁶ *Gill v Rotorua District Council* (1993) 2 NZRMA 604, 614.

3. COASTAL PLANNING FRAMEWORK

The Resource Management Act 1991 provides for a hierarchy of instruments intended to be used to manage the environment in accordance with the purpose and principles of the Act. These instruments include:

- the *New Zealand Coastal Policy Statement*;
- a regional policy statement;
- a regional coastal plan;
- other regional plans; and
- district plans.

Each level of planning instrument is required to not be inconsistent with those above it in the hierarchy.³⁷ The need for consistency with the *New Zealand Coastal Policy Statement*, the relevant regional policy statement, regional coastal plan and other regional plans is recognised by each of the three councils in developing their new district plans.

Other planning instruments used by local government include annual plans, required under the Local Government Amendment Act 1989, and strategic plans which, although not statutory, are useful for identifying long-term goals for the council and for providing the framework for the preparation of the district plan and the annual plan.

The purpose of the *New Zealand Coastal Policy Statement* (Department of Conservation 1994) is to guide local authorities in their day-to-day management of the coastal environment. The policies set out in the statement provide guidance on how the s 6 matters are to be managed. For example policy 1.1.1 states:

“it is a national priority to preserve the natural character of the coastal environment by:

- a) *encouraging appropriate subdivision, use or development in areas where the natural character has already been compromised and avoiding sprawling or sporadic subdivision, use or development in the coastal environment;*

3.1 The system of resource management planning instruments

3.2 New Zealand Coastal Policy Statement

³⁷ Sections 62(2), 67(2), 75(2).

- b) *taking into account the potential effects of subdivision, use or development on the values relating to the natural character of the coastal environment, both within and outside the immediate location; and*
- c) *avoiding cumulative adverse effects of subdivision, use and development in the coastal environment.”*

Other policies refer to the protection of the characteristics of the coastal environment of special value to the tangata whenua (policies 2.1.1, 2.1.2 and 2.1.3); providing for the appropriate subdivision, use and development of the coastal environment; and matters to be included in any or all regional coastal plans (policies 5.1 to 5.3).

3.3 Regional policy statements

Each of the regional councils have produced proposed regional policy statements. These have included an overview of the characteristics of each region and its environment, matters of significance to tangata whenua, and a range of resource policy issues specific to the region.

All three policy statements have objectives to preserve the natural character of the coastal environment and outline methods of implementation for both district and regional councils to give effect to the objective.

All three policy statements have objectives relating to natural hazards, which include coastal hazards, and methods for district and regional councils to implement relevant policies.

3.4 Regional coastal plans

The provisions of a regional coastal plan have more detailed objectives, policies and methods for coastal management. Only one of the three regional councils, Environment B.O.P., prepared a regional coastal environment plan (Environment B.O.P. 1995) in order to integrate the “wet” and “dry” components of the coastal environment with regard to the management of natural values and natural hazards. Northland Regional Council prepared a coastal plan (Northland Regional Council 1995a) for the coastal marine area only but did not recognise, in the policies on natural character and natural hazards, that an integrated approach was required. Manawatu-Wanganui Regional Council, however, prepared a coastal plan that covers only the coastal marine area and in which the natural character issues are primarily issues of public access to and along the coastal marine area.

Natural hazard management is covered in each of the three coastal plans although in different ways. The two councils whose plans refer to the coastal marine area have emphasised the management of erosion control measures, including coastal works and structures, and ensuring

the regional council has sufficient information to control use and development in the coastal marine area.

Environment B.O.P.'s approach has been to identify land areas that are sensitive to coastal hazards, called Areas Sensitive to Coastal Hazards (ASCH). The two critical issues with regard to coastal hazard areas are which scientific methods to adopt to determine their extent and what to do with existing development located in these areas. The ASCH in the proposed regional plan include areas that were not previously thought to be susceptible to coastal hazards. Some property owners on the coast perceive they will be constrained as to development or redevelopment of their property which was previously not considered to be in the risk category.

The Tauranga District Council had required subdivision applications to include coastal hazard information prior to the Environment B.O.P.'s ASCH proposal. Developers are required to carry out a detailed site specific coastal hazard analysis in order to determine the actual area on a property subject to coastal hazard.

Regional councils may prepare plans on other resource management issues that may affect the coastal area. Northland Regional Council has prepared a proposed regional water and soil plan (Northland Regional Council 1995b); its purpose is to assist the council to manage discharges of contaminants into water or onto land. The plan advocates policies to promote the installation of reticulated community sewerage schemes in urban and rural residential areas where the contamination of water, including coastal water and groundwater is occurring. Policies are proposed to require all new discharges of effluent with high organic content to be either onto or into land or to receive tertiary treatment and be the best practicable option when compared to land disposal.

These policies will have a significant effect on those coastal communities where on-site wastewater treatment systems are inadequate or where discharges are affecting coastal water quality.

The district plan is the mechanism for managing the effects of development and for addressing some of the issues in coastal management raised by the public. The preparation of a district plan is required by the Resource Management Act 1991.

The previous planning legislation, the Town and Country Planning Act 1977, listed the preservation of the natural character of the coastal environment as a matter of national importance to be particularly recognised and provided for by councils. The former district schemes

3.5 Regional plans

3.6 District plans

prepared under this legislation were deemed to be transitional district plans under the Resource Management Act 1991.

The extent to which each council's transitional district plans did recognise and provide for the natural character of the coastal environment is quite variable. There have been two problems with the transitional district plans. Firstly, there are inconsistencies in the policies of the different sections of a transitional district plan. This is illustrated by reference to the Far North District Council's plan where the objective of one section of the plan was "to encourage development" and to "reduce administrative controls to a minimum level consistent with the need to retain public health and environmental amenity standards". The objective of another section of the transitional district plan was "to preserve the natural character and values of thecoastal environment and protect that environment from unnecessary subdivision and development".

The second problem is that there are often conflicts in the transitional district plans between objectives to preserve natural character and policies on subdivision. For example, as some subdivisions are controlled activities, council does not have discretion as to approval of the subdivision but only as to conditions to attach to the consents. A subdivision consent need not be notified, under the Resource Management Act 1991, if the subdivision is a controlled activity. The non-notified nature of some subdivision applications has created the perception within some communities in the Far North district that proper recognition of the natural character of the coastal environment is not being given when resource consents are considered for developments in the coastal environment.

Former councils have implemented policies of creating or acquiring reserves to give effect to the preservation of the natural character of the coastal environment. The 100 hectare coastal reserve at Papamoa and the use of estuarine protection zones in the Tauranga district are good examples of how natural character issues have been taken into account. Coastal protection zones have been used in Wanganui's transitional district plan to manage both coastal hazard areas and give effect to preserving natural character.

Tauranga District Council notified their new district plan in late March 1996. Neither of the other two councils have notified their proposed district plan. Far North District Council has produced discussion papers for community consultation on the preparation of the new district plan; the latest is a draft paper of objectives, policies and methods that could be included in the new plan.

3.7 Annual plans The preparation of an annual plan is mandatory under the Local Government Amendment Act 1989 and is the process within which council policies on the recognition and provision for the natural character of the coastal environment can be effected, and in which significant policies and expenditure must be identified. Community feedback on the priority to be given to policies and works is obtained through the annual plan and annual report processes.

Major projects of infrastructure provision or renewal that are related to management of the coastal environment were identified in the 1995/96 annual plans of all three district councils. These included:

- continuation of the urban wastewater collection, treatment and disposal scheme;
- upgrading coastal urban sewerage schemes; and
- provision of infrastructure, eg stormwater for “greenfields” residential development.

The Tauranga District Council’s annual plan also outlined reserve development for drainage purposes in Papamoa and land purchase for coastal reserves. Wanganui District Council outlined completion of reserve plans, such as the Urban River Esplanade Plan, for the 1995/96 year.

Strategic planning is not required by legislation although the Local Government Amendment Bill (No 5) with its provisions for the preparation of a long-term financial strategy would require councils to plan for the medium term. Councils are also recognising that effective annual planning is assisted by development of long-term (strategic) plans.

The purpose of strategic planning is to develop long-term goals for a district and ways in which these goals may be realised. Strategic planning also provides the framework for the preparation of the district plan and the annual plan. There are opportunities to provide for outcomes including preservation of the natural character of the coastal environment when strategic planning is undertaken, provided objectives for protecting the coast are clearly outlined.

The three district councils have each embarked on a strategic planning exercise and the intention to develop strategic plans was signalled in their respective 1995/96 annual plans.

Wanganui District Council is developing its strategic plan as a community strategic planning exercise where directions, issues, priorities, options, and how the community might move towards its goals will be discussed with the community.

3.8 Strategic plans

Several key elements of an overall strategic plan have already been implemented by the three district councils. For example, an urban growth strategic policy was completed by Tauranga District Council in 1991. Areas of land for future development, which included coastal and harbour edge land, were identified for “greenfields” development. Structure plans for these identified areas were included on the relevant planning maps. These structure plans defined the level of service to be provided in each area and included the location of and the specific nature of infrastructure services and the nature of the reserves in each area.

A key element for the Wanganui District Council was wastewater infrastructure upgrading since the problems of a combined stormwater/sewer system were first identified in the 1950s. The most recent pressure to continue upgrading the sewerage system resulted from an application in 1989 to renew water rights for the discharge of stormwater and sewage to the Whanganui River. Although the primary effect of sewage treatment and disposal schemes may be an improvement in coastal or river water quality to reduce public health risk, there can also be consequential beneficial effects on, for example, bird life and habitats in the Whanganui River estuary, leading to an enhancement of natural character.

Reviews of the need, provision and funding of water supply, sewerage and refuse facilities are to be completed by the Far North District Council this financial year as key components of an overall strategic plan. Engineering studies were carried out to evaluate the existing 21 community-based sewerage systems, the future need for upgrading of those systems and an evaluation of the need for new sewerage systems in communities that currently do not have them. The priority treatment and disposal systems are being identified and funded through the annual plan process.

The Tauranga District Council is reviewing its urban growth strategy policies with a view to consolidating urban growth first within easily serviced areas, then to determine the amount of “greenfield” area to release for further development.

A detailed study of the potential of coastal urban areas to accept a greater density of housing is currently underway by Tauranga District Council. This study involves a fundamental review of earlier estimates of how much high density housing could be built. Initial results indicate a far higher potential for high density housing could be accommodated than was previously estimated.

The Far North District Council commissioned studies in 1995 to review population growth and development trends within the Kerikeri area (Far North District Council 1995b) . The purpose of the studies

was to identify the environmental, social and economic implications of growth options and identify the areas where there was a predicted need to develop rural land for urban purposes. These studies used a constraints-based method of analysis to identify those elements of the environment that are sensitive to the potential adverse effects of human settlement. Consultation with the community, including tangata whenua, was part of the study. An overall strategy for the next 25 years was produced and recommended to the council.

There have been several outcomes of the review. Some areas were excluded from consideration for intensive residential development, including the coastal land of the North and South Inlets, to the east of the town. The study results will be used in the preparation of the Far North District Council's district plan. The council has also instigated a change to the district plan to alter subdivision requirements in two rural zones so that long-term decisions on future growth will not be compromised by the present rules for permitting rural subdivision.

Similar studies, which would enable strategic planning for other communities to be achieved, have not yet been carried out.

4. PRESSURES AND CONSTRAINTS ON MANAGEMENT OF THE COASTAL ENVIRONMENT

The Resource Management Act 1991 and the previous planning legislation have placed emphasis on the preservation of the natural character of the coastal environment by referring to it as a matter of national importance. Each council has a responsibility to recognise and provide for the preservation of the natural character of the coastal environment. However, each district with a coastal boundary is different, with different pressures, constraints, management problems and solutions.

The coastal environment is considered a very desirable place to live by many people. In some high growth areas of New Zealand this has given rise to developments which, because of their nature or intensity, have compromised the natural character of the coast. The desire to live on the coast, have unrestricted access to it, use it for recreational purposes, protect it from natural hazards, and preserve its natural character are conflicting interests that add to the pressures faced by councils in their responsibility for managing the coastal environment.

A continuing demand for homes in the coastal environment is causing pressure for both the Far North and Tauranga councils. The coastal strip area comprising Papamoa West through to Mount Maunganui in the Tauranga district has, for example, experienced a 17.9 per cent increase in population between 1986 and 1991. Papamoa West has had a 96 per cent increase in population during that period.

In urban coastal areas in Tauranga along the open coast, single dwellings on large lots were constructed in the past. Increasing demand for homes in this area has resulted in a change of building density as these large lots are developed with up to 6, but more commonly 3 to 4, townhouses on a site. The cumulative effects of the original housing and the high density housing can further modify the character of the urban coastal environment.

Communities hold a variety of views over the merits of high density housing in the coastal environment. Retention of open space and views, although not guaranteed under any planning scheme, is still important to many people who regard intensive development in the coastal environment as inappropriate.

4.1 Pressures on councils

4.1.1 High density development

An alternative to high density housing is high-rise development in the coastal environment. Again, there are a variety of views on the appropriateness of permitting high rise buildings. Mount Maunganui residents were formally consulted by the Tauranga District Council in 1993. The finding of the group, which covered the northern end of Mount Maunganui, was:

“ The residents felt that the high-rise in the Mount is a fact of life and they approve of it being there so long as it is limited to one area. It is also a good way to get increased density on a few blocks of land rather than covering the whole of the Mount with homes on tiny metre sections”.

Ngaiterangi Iwi have raised concerns with the Tauranga District Council about high rise construction and how this may detract from the attraction and dominance of Mauao (Mount Maunganui) in the coastal environment. Mauao has special cultural and spiritual significance for the Iwi of Tauranga Moana. It is waahi tapu.

4.1.2 Subdivision in the coastal environment

Parts of the Far North district’s coastal environment are under increasing pressure from development, as around one-third of the region’s population live in coastal settlements and the proportion is increasing. Settlements where growth is presently occurring include Mangonui-Taipa, Opononui/Omapere and Bay of Islands. The impacts of residential subdivision and development on the natural character of the coastal environment is identified in the Northland Regional Council’s regional policy statement to be one of the significant coastal management issues for Northland.

The rate of residential development in the Tauranga district has effectively doubled since 1991. Growth is presently accommodated in “greenfields” areas, which include land in the coastal environment and as high density in established urban coastal areas. A review of the 1991 Tauranga Urban Growth Strategy, predicted to set the scene for up to ten years, is underway because of the continuing growth pressures.

4.1.3 Summer population influx

Both the Far North district and the Tauranga district experience significant increases in their summer populations. The Tauranga district benefits economically and in other ways from the recreational use and tourist attraction of its beaches. Each year approximately 350,000 domestic and 43,000 international tourists visit the district. The impact of this influx into a district with a resident population of 74,700 has a significant effect on the coastal environment, particularly the sand dunes, and on the district’s infrastructure.

Similarly, in the Far North during the summer, the population of the area can treble with the influx of tourists and absentee property owners who normally reside outside the area. For example, the Paihia/Waitangi area's normally resident population of 3500 grows to some 10,000 people and Russell's population goes from 900 to 3500 people for a six week period.

These changes in population and growth have placed pressure on some coastal communities to respond to the fluctuating demand for services within their communities, eg for rubbish collection and sewage disposal.

In some parts of the Far North district, reserves adjoining the coastal marine area are well developed and, in some instances, adjoin Department of Conservation reserves. There is pressure to provide open space by means of esplanade strips when land is subdivided and through the purchase of land for reserves in sensitive and valued coastal environments.

Wanganui District Council has found, through community surveys, that the coast and the riverbanks have a much higher recreational usage than expected. Castlecliff Beach is used predominantly for walking as are the riverbanks. There are pressures on the council to upgrade and enhance these areas of the coastal environment.

Transitional district plans are a constraint on councils to achieve the matters set out in the Resource Management Act 1991 since the plans were prepared under the previous planning legislation. However, the requirement on councils to recognise and provide for the preservation of the natural character of the coastal environment was present in the previous planning legislation. As the new district plans are prepared and notified, this constraint will no longer be relevant.

The inability of soils to provide adequate soakage for on-site wastewater treatment systems is a major constraint to residential development in the Far North District Council. In many coastal areas the soils that are predominantly clay-based have limited ability to absorb effluent. Soils can become saturated for three to four months of the year due to high rainfall. In other areas there is an iron "pan" at shallow depths under the land surface that provides a horizontal channel for effluent through the ground to eventually reach natural water.

The council is currently identifying areas of poor soakage and establishing improved performance standards for on-site wastewater treatment systems. Once the performance standards are developed, a

4.1.4 Provision of open space

4.2 Constraints on councils

4.2.1 Transitional district plans

4.2.2 Effluent disposal limitations

methodology for assessing the suitability of on-site wastewater treatment systems for each site will be used by the Far North District Council at the planning stage when an application for subdivision is received and also when a building consent is issued.

4.2.3 Stormwater disposal limitations

Stormwater discharges to the coastal environment can either be unobtrusive or detract from the natural character of the coastal environment and be in conflict with other uses or amenity values of the coast, depending on the means of disposal.

The effects of stormwater disposal on the coastal environment include the construction of stormwater outfalls which can act as a visual and physical intrusion into the environment, water pollution, possible scour caused by the stormwater flowing over the beach, and alterations to the sand dunes through which the stormwater is flowing. These effects have occurred in the Papamoa/Mount Maunganui areas of Tauranga district. Concentration of stormwater into pipes and discharge across a beach is not favoured by residents in some coastal communities for the above reasons. The effects of not disposing of stormwater appropriately can include flooding of land and land instability.

A major constraint on councils in respect of stormwater management in the coastal environment is the limited range of options from which to choose and plan for its disposal. New subdivision or high density housing can increase the quantity of stormwater for disposal and thus exacerbate the effects of disposal. Some initial work on the disposal of stormwater in areas with sandy beaches has been commissioned by the Parliamentary Commissioner for the Environment. The work outlines the issues and options for initiating the planning process (refer appendix 3).

4.2.4 Coastal hazards

The coastal processes such as erosion occurring on beaches are not always fully understood by the public. Coastlines are dynamic features that periodically shift between phases of accretion and erosion, often in a cyclical manner, which may vary between 50 and 100 years. Both erosion and storm flooding are coastal hazards that have become more important because of people's desire to live near the coast. The historical development of housing along beachfronts has sometimes caused management problems for councils in either having to provide coastal protection works or other means of mitigating coastal hazards.

The management of the coastal dune system is crucial to coastal hazard management, particularly for Tauranga and Wanganui District Councils. The dune system is inherently dynamic and subject to change under different climatic conditions. One of the purposes of

dune management is to prevent any accelerated erosion as dunes are prone to rapid degradation under certain wind and tide conditions. The coastal dunes also play an important role in protecting property from potential future erosion and flood hazard. As a consequence, councils and landowners have to accept that there is uncertainty as to the extent of dune movement and its effect on property in the coastal environment.

For coastal communities, inadequate infrastructure can be a constraint on development. In the case of the former constituent councils of the Far North district, this is a legacy the present council is having to address.

The effects of on-site sewage treatment and disposal on groundwater quality can be significant, particularly where a low density residential development is subject to further subdivision after a period of time. The wastewater disposal system for a low density development may not be suitable for a higher density development if there is a smaller area of land for on-site disposal. If there is no ability to change the level of services as the intensity of land use changes, then the cumulative effects of septic tank discharges on surface water and groundwater could become adverse over time and can be a constraint on further subdivision.

Previous coastal management practices and provisions can place constraints and pressures on councils faced with the legacy of a poorly managed resource and the transitional phase between implementing the old and developing the new resource management system.

Wanganui's coastal environment has in the past been poorly regarded by its community. Industry has been located on the northern riverbank, and some parts of the coastal environment have been used for the disposal of solid waste and the discharge of sewage. The amenity value of some housing areas was allowed to degrade.

Previous councils administering the areas now covered by the Far North District Council did not prepare coastal management plans, and subdivisions were approved without consideration of long-term infrastructural needs.

In relation to the management of dunes, previous councils have planted inappropriate vegetation in an effort to stabilise the dunes, but this has resulted in erosion and the need to replant these areas with species more suited to the task.

In the past, councils did not have to have regard for the cultural values and concerns of tangata whenua, such as discharges of effluent into the

4.2.5 Provision of adequate infrastructure

4.2.6 Historical management of the coastal environment

coastal waters. Councils were not aware of areas in the coastal environment, such as cultural heritage sites, that were significant to local tangata whenua and required some management action.

4.2.7 Lack of information

Councils have recognised that, in the preparation of either the strategic plan or the new district plan, more information is required than had previously been collected in order to recognise and provide for the preservation of the natural character of the coastal environment. The information required is related to either the pressures the council is currently facing or the constraints that hinder councils from fulfilling their s 6 responsibilities.

All three councils have recognised the need for a landscape assessment for their coasts. The councils have commissioned either a landscape or a landscape and ecology study for the purpose of identifying natural features and landscapes that should be recognised and provided for in the new district plan. Ecological information is being compiled or updated, often with the assistance of the Department of Conservation.

Information on coastal hazards has been identified as a constraint in the Tauranga district since Environment B.O.P. included areas that were not previously thought to be susceptible to coastal hazard in the ASCH. A study, known as DuneWatch, is being undertaken to assess the condition and function of coastal dunes along the Mount Maunganui and Papamoa coastlines with regard to areas of current and potential development. It is intended that the outcome of the research will assist in determining future policy on development along the coast, and reduce uncertainty for council, landowners and developers.

5. MANAGEMENT MECHANISMS AND OPPORTUNITIES TO PRESERVE NATURAL CHARACTER

This chapter examines the way in which the three councils are managing their coastal environment given their particular combination of pressures and constraints. There are a range of management mechanisms being used by councils, either under the former planning legislation, the Resource Management Act 1991, the Reserves Act 1977 or through the preparation and implementation of non-statutory plans.

There are other management mechanisms that are available to councils, which were not considered as part of this review, such as heritage protection orders (covered by a current Parliamentary Commissioner for the Environment investigation), financial mechanisms such as rates relief and use of conservation covenants (a Department of Conservation and landowner option rather than a council option). The former two are briefly discussed in appendix 2.

Councils are required to consult over issues relating to, *inter alia*, the coastal environment. Consultation has been carried out by the three councils in a variety of ways to achieve different objectives and to comply with statutory requirements such as the preparation of the annual plan. A summary of the different consultation mechanisms is outlined in this section.

With regard to consultation with tangata whenua, there are two main issues that are concerning councils. One is that councils need to have confidence that they are consulting with appropriate representatives. The second is the specific concerns of tangata whenua about sewage discharges to natural water, including coastal waters, and finding appropriate ways to resolve the issue.

As a response to these concerns of tangata whenua, the Far North District Council convened a hui in 1995 to discuss the feasibility of land disposal in the district. This hui assisted both tangata whenua and the Far North District Council. The constraints to using land disposal and discussion on what is and is not acceptable to tangata whenua in respect of land disposal were discussed.

5.1 Community consultation

5.1.1 Consultation with tangata whenua

Te Runanga O Ngaiterangi Iwi is encouraging developers to consult with tangata whenua in the Tauranga district over their proposals. If necessary, tangata whenua can provide an assessment of their concerns for the developer. The Tauranga District Council is also encouraging developers to consult with tangata whenua and requires proof of consultation before proceeding with a resource consent application.

Conditions relating to monitoring of earthworks and processes to ensure that cultural artefacts found during land disturbance are treated appropriately are some of the concerns of tangata whenua. These procedures have in part arisen from the discovery of middens during stages 2 and 3 of the Royal Palm Beach housing development in the coastal environment at Papamoa. The developers created a reserve around a significant midden.

An alliance of Ngati Ranginui hapu has recently served notice on the Tauranga District Council that they are a body with whom council must deal in relation to the Treaty of Waitangi and the Resource Management Act 1991. Council is developing an accord which will define in some detail the working relationship between council and the alliance of hapu.

Consultation with Ngati Ranginui hapu and the Tauranga District Council with regard to an infrastructural project in Tauranga led to significant involvement of the hapu with the project. The council planned to duplicate 5 km of water mains within the city. The hapu prepared a preliminary archaeological report on the route prior to the commencement of the work. Hapu representatives were present during the excavations to record their history and to remove pre-European artefacts that were found.

In 1992, the Wanganui District Council developed a consultation strategy for the new district plan. In the strategy, the council acknowledged the significance of the requirement under the Resource Management Act 1991 to consult with the tangata whenua in the preparation of the new district plan. At that time, the council held discussions with its liaison committee Te Roopu Whakakotahi to identify appropriate procedures for consultation with the tangata whenua. In the early stages of plan preparation, the council held marae meetings to discuss specific aspects of resource management for the district plan. More recently the council has responded positively to requests from the tangata whenua to discuss these issues at hapu level. The process of hapu meetings is still underway.

The implementation of a wastewater reticulation and treatment scheme was recognised many years ago as strategically important for Wanganui District Council to enhance the coastal environment. The council established a working party in 1989, at the instigation of the then regional council, to recommend to the district council a further stage of sewage treatment and disposal. Membership of the working party comprised recreational users, government agencies, tangata whenua, an environmental group and the district council. An extensive process of consultation was undertaken, including the use of surveys. A critical part of the evaluation process was the question of economics and affordability, ie matching the costs of the scheme with the ability of the community to pay. Results of the survey determined that the community was willing to pay for the long-term improvement of the river water quality.

5.1.2 Consultation using a working party

Community boards can provide input on community concerns to subdivision and resource consent applications, including those proposed to be located in the coastal environment. This is particularly valuable in areas where the population is widely dispersed as in the Far North district. The comments of the Far North District Council's community boards are used to assess the matter of notification (if required) and incorporated into the staff report (if a hearing is held) and as conditions on consents granted. The community boards also consult with tangata whenua over wahi tapu sites that could be affected by a reserve proposal.

5.1.3 Consultation using community boards

There is at least one community in the Far North district in which the residents want to be more involved with providing comment on planning matters and the community board is perceived by some members of the community as not reflecting community concerns effectively.

Consultation can also be effected through community groups. A residents and ratepayers association in the Far North district has conducted surveys on local coastal management issues among the association members and the community. The association has also made a number of suggestions to the Far North District Council to improve consultation among the residents, tangata whenua and the council.

5.1.4 Consultation through community groups

A community views survey is another consultation initiative. A survey can be used to gather views on a range of subjects, such as the facilities provided by the council, and to compile information on issues important to the community. Two of the three district councils have initiated community views surveys.

5.1.5 Consultation using surveys

Wanganui District Council has used community survey information, along with other considerations, to set funding priorities in the annual plan. The surveys are carried out at yearly intervals so that changes and trends in community views are identified. Information on the community's satisfaction with council facilities, including beaches and reserves for both passive and active recreation, is sought.

The Tauranga District Council commissioned a benchmark satisfaction survey for a full range of council services and other issues of council consultation and performance in 1994 (Tauranga District Council 1994a). The study identified a level of satisfaction with council services, for example, the district's beaches (89 per cent satisfied) and stormwater services (77 per cent satisfied). Council decided to postpone a follow-up survey in 1995 in order to identify opportunities to consider improvements to the survey and its usefulness for strategic planning purposes.

5.1.6 Review panels

Proposals involving the council as the applicant for a resource consent are subject to an assessment of effects on the environment (AEE) in which consultation is an integral part. One method of ensuring appropriate consultation with both experts and the community is to form a review panel to assess either that the consultation has been carried out adequately or that the AEE has addressed the community's concerns. None of the councils reviewed had used this approach although panels have been used by a district council for a road widening proposal and by the Parliamentary Commissioner for the Environment who has established panels to assist public authorities in environmental assessment of controversial resource management proposals.

5.2 New district plans

The new district plans will be the key policy document for the implementation of the s 6 matters for each council. The development of objectives, policies and rules in the new district plans will provide the overview and coordinating framework for this, as well as other issues for each district.

Each of the three councils investigated recognised that more information on the coastal environment was needed prior to preparation of the new district plan. Accordingly, the following is a compilation of the studies that have been undertaken by the three councils:

- a landscape assessment of the district
- information on natural features
- ecological information
- cultural and heritage information
- assessment of coastal hazards

- reserves acquisition strategy
- stormwater management plan
- integrated hazard management plan
- settlements study
- noise study
- assessment of land use in the district
- infrastructure review.

Cooperation with the Department of Conservation over sharing ecological information for the district plan is in place for Far North and Wanganui District Councils.

Tauranga District Council has commissioned a tangata whenua resource management plan to assist in the preparation of the district plan (Te Runanga O Ngaiterangi 1995). A number of major reviews are also being undertaken with the results due to be incorporated into the district plan preparation process (refer section 4.2.7).

The creation of esplanade areas (reserves and strips), under the Resource Management Act 1991, provides a mechanism for a district council to achieve the purpose and principles of the Act and, in particular, section 6 matters of national importance (refer appendix 2 for further discussion). Reserves can also be created by local authorities under the Reserves Act 1977, which has some provisions for establishing reserves similar to the Resource Management Act 1991, including the preservation of the natural character of the coastal environment. There are other purposes for creating reserves under the Reserves Act 1977, eg recreation, historic, scenic, nature reserves and scientific reserves.

The Department of Conservation administers marginal strips (the Crown equivalent of the district council esplanade reserve), as well as other reserves, in the Crown estate. These reserves have a number of functions including nature conservation, historic, scenic, scientific and recreation. In Northland, the Department administers an extensive network of coastal reserves of which some 63,000 ha are located in the Far North district.

Coastal reserves can be created, under the Reserves Act 1977, to fulfill functions which include providing public access, ensuring that coastal areas with natural hazards have a “buffer” between the coast and any development, providing for recreation and for riparian management.

Councils need to know what reserves land they own and manage before they can determine the location and nature of future reserves. Information on the location and the purpose for which a reserve was acquired by a former local authority was not always clearly

5.3 Reserves

5.3.1 Reserves inventory

documented and may not be known to the present council. The three district councils in this report are putting resources into compiling or updating a reserves inventory.

A reserves strategy study for the Far North District Council has identified all reserves in the district together with information on the purpose of the reserve. Some 205 ha of coastal reserves in the Far North district are administered by the council (Far North District Council 1995a). The strategy has also outlined the criteria for needing reserves of different types in different areas in the future.

Wanganui District Council has undertaken a parks and reserves development study in which beach/foreshore/riverbank reserves are identified as one of the categories of reserves.

5.3.2 Acquiring reserves

There are two main ways of acquiring reserves:

- provisions in transitional district plans can require reserves contributions at subdivision as a means of obtaining funds to develop and maintain reserves to meet recreational demands;
- land may be designated for reserves using the designation procedures under the former planning legislation or the Resource Management Act 1991.

Designation is a holding procedure that ensures land is not compromised by development and can be retained for purposes such as conservation, public access or protection of vegetation. A council has to purchase the designated land at some stage or, alternatively, uplift the designation. A strategy to acquire the funds to purchase reserves is also needed.

The former constituent councils of the three councils studied had acquired reserves for purposes including preserving natural character of their coastal areas. For example, Papamoa is recognised in the Tauranga District Council's transitional district plan as unique with respect to the amount and extent of foreshore reserve (over 100 ha).

A policy of listing areas of coastline where it is desirable to acquire local purpose reserves (esplanade purposes) and, therefore, not appropriate to waive the reserve (esplanade) requirements has been promulgated by the Tauranga District Council. However, there is also some flexibility to enable the council to consider requests to reduce the width of the reserve on a case by case basis.

Information from the Tauranga Urban Growth Strategy, which identifies "greenfields" areas for residential growth, is used to plan for new reserves in accordance with structure plans that have been developed by the Tauranga District Council. A percentage of the value

of each new lot, collected as a reserves fee, goes towards the development of reserves within the vicinity of the new lots. The type of reserve for each local area is determined, in some cases, by a survey of local households. Reserves are acquired through negotiation and purchase at the time of subdivision or, in the case of major district reserves, through a designation procedure. Ensuring the council is able to purchase a designated area for a reserve is provided for by the funds created from development impact fees.

The provision of reserves within coastal areas of high density housing in Tauranga district is by purchasing identified land for specific purposes eg conservation, public access. The development impact fee charged on subdivision is tagged to the purchase of land for reserves. The amount of fees collected and the projects to which they are allocated are identified in the council's annual report.

The Tauranga District Council has extended, by designation, existing foreshore reserves in undeveloped areas of land adjacent to ocean beaches. The boundaries of the reserve extension have been fixed by the physical characteristics of the sand dunes rather than by any arbitrary line.

Far North District Council developed a reserves policy in 1995. It sets out the mechanisms the council may use to provide reserves and to coordinate with other agencies and organisations for this provision. Coordination within council in respect to the provision and need for reserves has improved since the policy was developed. Procedures within council have altered to ensure that the community services section, as asset managers of reserves, can now assess the need for esplanade reserves at the appropriate stage of a resource consent application and make recommendations to the planning staff rather than the planning staff assessing the need. Criteria for the acquisition of esplanade reserves, strips and access strips will be included in the new district plan.

Councils have prepared management plans for reserves to indicate how the protection and maintenance of significant features, such as sand dunes, salt marshes and sites of historical and cultural significance will be achieved.

5.3.3 Reserve management plans

Reserve management plans are prepared under the Reserves Act 1977 whose general purpose includes:

“Ensuring, as far as possible, the preservation of access for the public to and along the sea coast, fostering and promoting the preservation of the natural character of the coastal environment and of the margins of lakes and rivers and

the protection of them from unnecessary subdivision and development”.

The Wanganui District Council prepared the Castlecliff Coastal Reserve Management Plan (Wanganui District Council 1994a), which identifies management issues and conflicts, and develops objectives and policies for the area. The plan is intended to improve the overall appearance and recreational use of the reserve whilst protecting sensitive environmental features. A landscape plan for the reserve has recently been completed.

A community group in Wanganui that contributed to the development of the Castlecliff Coastal Reserve Management Plan is keen to see progress in implementing the provisions of the management plan within a reasonable time scale.

Far North District Council has recently appointed a staff person who will be responsible for preparing reserve management plans.

Where a reserve area is of great significance to tangata whenua, such as Mauao (Mount Maunganui) in the Tauranga district, a reserve management plan is being prepared in collaboration with tangata whenua.

Reserve management plans for reserves in the Tauranga district can include policies and actions for the following matters:

- vegetation of sand dunes with native species;
- construction of coastal walkways and public accessways to avoid damage to regenerating areas;
- beach clean up and maintenance activities;
- beach replenishment using harbour dredgings, eg Pilot Bay;
- native tree planting which also provides shade for beach users;
- research on dunes to gather information which will help determine future policy on development along the coast.

A management plan for the coastal reserve land between Papamoa East and Mount Maunganui in Tauranga district is currently being prepared. A number of reports dealing with aspects of coastal reserve management including coastal geomorphology, archaeology, landscape, botany/ecology, and recreation use have been commissioned prior to the preparation of the management plan.

5.3.4 Dune management

Many coastal reserves contain sensitive dunelands and reserve management plans can address the various activities needed to protect their integrity. Vegetation is an important means of stabilising dunes. Marram grass has been planted in many places to revegetate dunes. However, marram traps the sand and forms a steep dune. When there

is a strong wind or a change in wind direction, there is a potential for a “blowout” with significant sand movement and the potential for nearby homes and gardens to collect the windblown sand. Native plants such as pingao and spinifex are more open in their growth habit and tend to form a shallower dune than does marram. Dunes vegetated with native plants need a bigger area to allow them to form because of their more rounded shape. Because of the initial success of marram in stabilising sand, there has been little work carried out on the effectiveness of native species. Stabilisation of the dunes needs to be followed with other species so there is a succession of plants providing cover on the dunes.

The Tauranga District Council has policies for dune stabilisation and protection in the transitional district plan. Access to these dunes is an issue for both Tauranga and Wanganui districts as damage to the dunes has occurred by people not keeping to the paths provided and, in some cases, from off-road vehicles.

Unless the community understands the problems associated with dune management and coastal hazard management, cooperation to solve the problems is non-existent. Some community groups have become actively involved in the care and maintenance of the coastal environment to protect or restore its natural character.

5.4 Community involvement

The development of the Titoki wetland in Mosston Park in Wanganui is an example of a joint Wanganui District Council /Department of Conservation project to restore the wetland by fencing, improving walkway ramps and planting. Community working bees have been held over the past 4 ½ years to plant more than 1300 trees and shrubs donated by the district council, Maruia Society and TreeTrust.

Programmes such as Papamoa DuneCare and Mount Maunganui CoastCare in the Tauranga district are particularly successful in fostering a sense of community ownership and pride in sand dune protection, and educating beach users about the significance of such natural features (Tauranga District Council 1994b). Successful removal of existing vegetation and establishment of native species has been carried out at the Papamoa Domain by CoastCare.

In the short term, the DuneCare and CoastCare groups will continue with remedial sand dune protection and participate in the coastal management plan process. In the long term, the focus will be on maintenance of rehabilitated areas.

The formation of such groups has been assisted by the employment of a regional coordinator who can encourage the groups and carry out a public education role. The coordinator position is jointly funded by

the Tauranga District Council, in conjunction with the Opotiki and Western Bay District Councils and Environment B.O.P..

The community groups have also been active in developing proper accessways across the dunes to the sea as damage to the dunes has been caused by the creation of indiscriminate access pathways at the Mount Maunganui/Papamoa coast.

5.5 Zones

One management mechanism that has been used under the former planning legislation is the use of zones to control the types of activities in areas. Coastal protection and recreation zones were identified in the three councils' transitional district plans which contained objectives, policies and rules that specifically addressed matters within the coastal environment. Zones have been a method of recognising specific areas of the coastal environment as particularly valuable and of outlining development controls aimed at maintaining the integrity of the identified areas.

A coastal protection zone to prevent any use on a sensitive strip of coastal dune land has been used in the Wanganui district. The zone recognises that the mobile coastal sand dunes, especially the foredunes, need to be maintained in a sufficiently stable condition to prevent encroachment of drifting sand onto better quality land. The zone acts as a buffer between the eroding coastline and development which occurs inland. However, there is not sufficient direction in the transitional district plan to better protect this area from, for example, vegetation removal.

A hierarchy of coastal zones has been used in one part of the Far North district to recognise that subdivision of coastal land is closely linked with the intensity and effects of development. The purposes of the zones range from prohibiting further subdivision to directing subdivision towards areas that are already compromised and allowing subdivision in densely settled areas.

A rural zone has been used in another area of the Far North district to preserve and protect those features that contribute significantly to visual character of a harbour entrance. The zone also recognises the limitations of soil quality in the area and the potential for instability by disturbance of natural contours or existing vegetation.

Land in the coastal environment within Tauranga district in public ownership is managed under the Reserves Act 1977. The land is zoned for recreation as this zoning preserves the open space and the integrity of the land. The zone has a limited range of uses.

Tauranga District Council has used an estuarine protection zone in the transitional district plan to protect those estuarine areas, eg saltmarsh,

mangroves, that have important environmental and ecological values in relation to Tauranga Harbour. The zone generally covers the bulk of those areas within the city below mean high water and with either esplanade reserve or private land adjoining the margins of the harbour. The zone is based on an ecosystem approach to resource management and was an innovative measure. However, the Resource Management Act 1991, with the division between district and regional council responsibilities in the coastal environment, may not allow a single zone of this kind to protect estuarine areas in the new district plan.

The specification of housing bulk and intensity provisions through planning controls for urban development is available under the transitional planning regime, which can mitigate effects of high density development on the natural character of the coastal environment.

The intensity of urban development has been controlled in the Tauranga District Council's transitional district plan on a unit per site area basis along with other development controls. Specification of a minimum lot size, the maximum number of units for residential development, the maximum height and a building envelope specification has been used.

One technique for managing coastal hazards is to include a condition on subdivision consents for setbacks (or building line restrictions) from where a coastal property boundary adjoins the coast, a tidal river, estuary or natural water course. However, in the Tauranga district, this rule is only infrequently used in coastal locations but is used more in riverbank locations. Setbacks have also been applied from the mean high water springs (MHWS) boundary in an area of the Far North district for the purpose of protecting the aesthetic and recreational amenity enjoyed around the coast.

Redevelopment of land in the coastal environment can be effected through a change to a district council's district plan.

Proposals to redevelop the coastal waterfront at Paihia in the Far North district aimed to improve the integration between the waterfront and the town. Proposed Plan Change No 3 was notified in January 1995 and provided an opportunity for the public to make submissions on the proposal. Notification of the proposed plan change had been preceded by an area study (the Central Area Development Plan study) and variations to a previous district scheme in which public input had been sought.

As a response to the proposed plan change, many members of a citizens association considered that a heritage protection order should

5.6 Building controls

5.7 Redevelopment of coastal land through a plan change

be placed on the waterfront between Waitangi and Opuia as the association was concerned that development on the waterfront may decrease the amenity value of the waterfront area. This concept could be pursued through the proposed plan change.

Views of members of the Paihia community determined in a survey (Paihia and District Residents' and Ratepayers Association Inc., June 1994) were in favour of the proposed plan change provided the development preserved the seaward views, included more landscaping of areas around the town centre and incorporated a reserve on the seafront. The proposed plan change attracted a large number of objections

The proposed plan change was heard by Commissioners appointed by the Far North District Council and their decision was generally to approve the proposed plan change. The full implementation of the area study is dependent, however, on other organisations changing land uses or relocating facilities away from their present sites. Separate resource consents and building consents would still be needed for proposed alterations to a designated historic house and the construction of a proposed new visitors centre.

5.8 Non-statutory plans

In addition to statutory plans required under the Resource Management Act 1991 studies, which are generally either resource or issue specific, have been carried out and policies implemented which have had consequential benefit for the preservation of natural character of the coastal environment.

5.8.1 Precinct or area plans

Where historical land uses change, there are sometimes opportunities to redevelop land in a way in which some natural character can be restored to a coastal environment. The former rail yard in Wanganui (an area of 2 ha), has been redeveloped for commercial use. As the underlying zoning is a mixture of commercial and manufacturing, the commercial activities that were permitted on the site were in compliance with the transitional district plan. Land was taken for an esplanade reserve along the riverbank at the time of redevelopment.

Many residents have been critical of the council's decision to allow the type of development that has occurred on the former railway yard site. Views have been expressed by one community group regarding the visual effects of the commercial development and the lost opportunity to improve this aspect of this part of the riverbank (Friends of the Shoreline, pers comm 1995). At the time of development, there was no overall strategic plan for the Taupo Quay area and other planning initiatives for the riverbank as a whole were not sufficiently advanced to have influenced the redevelopment of this land.

This approach is in contrast to the Old Town Development proposals to renovate the older buildings near the central business district to improve the character and attractiveness of the riverbank area upstream of the Taupo Quay area.

A recreation plan was developed by the Wanganui District Council to provide a policy framework for recreation and leisure activities (Wanganui District Council 1995a). The plan was based on information (a “needs assessment”) collected from community surveys. Recreation plans are regarded by the council as part of the strategic plan and will be reviewed every five years.

5.8.2 Recreation plans

A Wanganui District Council Recreation Survey (Wanganui District Council 1994b) identified “walking for pleasure” as a major recreation activity in Wanganui. As the two recreation plans completed to date have preceded the strategic plan, the information contained within these plans forms part of the background for the strategic plan. Although the recreation plan is programmed to be reviewed every five years, this could be influenced by the outcome of the strategic plan.

The development of walkways has also been undertaken in Wanganui and Tauranga districts. In Wanganui, a walkway is being developed along the riverbanks (Wanganui District Council 1994c), while in Tauranga a walkway system is proposed around the estuaries in Tauranga Harbour.

In the past, many councils sited rubbish tips in coastal areas such as estuaries or on riverbanks. Site management for older landfills that were not lined or compacted is usually needed for about 30 years after closure. The Wanganui District Council adopted a solid waste strategy in 1992 that recognises that major improvements needed to be made to the way waste was managed.

5.8.3 Landfill management plans

The current landfill site at Balgownie situated in the former Kokohuia wetland was a highly prized food-producing area for tangata whenua. The landfill is due to close by the year 2000. The closure of a landfill situated in the coastal environment presents a council with an opportunity to enhance the character of the coastal environment through the production and implementation of an aftercare management plan.

The Wanganui District Council recognises, in its 1995/96 Annual Plan, that flood and erosion control for the Whanganui River is linked with recreation and leisure objectives. The Council has planned for

5.8.4 Flood control plans

stop banks and groynes to be used as walkways and for public access. Provision for a slip prevention study has also been made as there are a number of slips on the Whanganui River banks within the city that require repair.

In the recent past, the Wanganui District Council has allowed demolition debris to be dumped at sites on the northern riverbank to stabilise areas against erosion. However, this has become unsightly and detracts from the amenity value of the river banks. This practice has been discontinued.

As the district council has identified the amenity value of flood and erosion control works, there is an opportunity to improve the stability of the river banks using more suitable materials and to enhance public access to the river.

5.8.5 Stormwater strategy

The Tauranga District Council recognised that stormwater management required a strategic approach and started catchment management planning in 1990 for areas identified in their urban growth strategy. The catchment schemes allow the identification of drainage reserves, overland flow paths and other strategies to manage stormwater disposal within the urban growth areas. Stormwater schemes for new developments are funded by the development impact fee. This fee enables the council to proceed with the necessary work at the same time as, or soon after, the development.

In 1992 the council developed a stormwater strategy for the district (Tauranga District Council 1992). A variety of strategies to manage stormwater were outlined:

- retention of water for slow release, in preference to piping solutions where practicable;
- planning for secondary flow paths together with appropriate land uses;
- management of development in catchments to ensure downstream flood risks are not increased;
- identification of areas of flood hazard and exclusion of incompatible development;
- identification and removal of stormwater constraints to development in heavily urbanised areas; and
- identification and removal of the major sources of stormwater pollution.

A Code of Practice for Development prepared by Tauranga District Council includes, amongst other matters, information on appropriate design parameters for stormwater collection and disposal for individual properties.

Disposal of stormwater to soakholes is used in Tauranga District Council where there are suitable soils. In the past soakholes have also been used in unsuitable subsoil areas. There is a widespread belief that this has accelerated land slippage in some areas of the district. However, the extent to which this has accelerated slippage above natural rates is not known. In some areas the council is taking a precautionary approach and has recently begun a programme of removing soakholes and upgrading of downstream stormwater runoff systems.

Despite frequent water shortages during summer months, the council has not considered a policy to ensure that some residences could store rainwater and use it for domestic irrigation purposes.

6 EVALUATION, CONCLUSIONS AND RECOMMENDATIONS

The statutory obligation on councils to preserve the natural character of the coastal environment is not new. The Town and Country Planning Act 1977 (section 3) required councils to recognise and provide for the “*preservation of the natural character of the coastal environment...and...protection...from unnecessary subdivision and development*”. This intent has been carried through into section 6(a) of the Resource Management Act 1991, with “inappropriate” replacing “unnecessary”.

The Resource Management Act’s requirement on councils to recognise and provide for the preservation of the natural character of the coastal environment acknowledges the national significance and the fragile nature of the coastal environment. It also stresses the importance of public authorities’ management of the coastal environment: “*Recognition and provision for such matters of national importance shall be expressed in the way in which the use and development is managed and the way in which the natural and physical resources are protected*”.³⁸

The conclusion from this investigation is that, despite a longstanding obligation to preserve the natural character of the coastal environment, councils have not made this a high priority. There are instances where preservation of the natural character of the coastal environment has been effectively achieved but there are other instances where development pressures and historical management have combined to allow natural character to be compromised.

In the past, comprehensive information on the natural character of the coastal environment has been lacking and, in some areas, has only recently been gathered for the purpose of developing new district plans. The value of inter-agency cooperation in making information available has been demonstrated in this investigation. Councils are also recognising communitys’ changing values and appreciation of the importance of the coastal environment.

The nature and characteristics of the coastal environment can make it difficult to manage. It is a highly dynamic environment constantly undergoing natural changes of varying magnitudes. Movement of sand dunes is an example of this. Natural character is at risk, and public access and sites of cultural significance are threatened by

6.1 Obligations to manage the coastal environment

6.2 Difficulties in managing the coastal environment

³⁸ *Gill v Rotorua District Council* (1993) 2 NZRMA 604, 614.

inappropriate use and development. Councils are faced with the dilemma of managing growth and development as well as the preservation and protection of the coastal environment.

6.3 Constraints and pressures on the coastal environment

Councils need to identify the nature and importance of issues affecting the coastal environment, the options for addressing them, the priorities for action, and the development and implementation of action plans.

This requires information about the coastal environment, including community values and the community's views on the management of the coastal environment. It also requires councils to set up a list of criteria as to the constraints that should be addressed. The three councils reviewed as part of this investigation have recognised the need for further information for the development of their new district plans and have initiated a number of studies (refer to section 5.2).

RECOMMENDATION: That councils carry out or commission necessary studies to enable them to make informed decisions about managing the coast.

The preparation of strategic plans that enable the council, in consultation with the community, to identify long-term objectives for the coastal environment is vital for coastal management. Identification of particular pressures and constraints on the coastal environment is necessary as part of this strategic approach.

RECOMMENDATION: That councils identify the pressures and constraints in relation to management of the coastal environment as part of a strategic planning process.

6.4 Developing the new district plan

The new district plan is the key management tool for district councils to manage any adverse effects resulting from the use or development of the coastal environment. It enables the community to have input into management proposals and provides greater certainty for protection of community values.

One of the fundamental issues that councils must address in their district plans is the description of "natural character" of the coastal environment. This will vary throughout the district, but it is essential that councils identify this as a benchmark in order to determine what areas can accommodate change and what areas cannot. It also forms the basis for determining what will be "inappropriate subdivision, use and development" for a particular coastal area.

In the development of the new district plans, councils should give consideration to performance standards, eg for heritage values or public access, in relation to permitted, controlled or discretionary activities within the coastal environment in order to avoid, remedy or mitigate any adverse effects on this dynamic and fragile environment. This will enable appropriate rules for subdivision, use and development to be identified for particular areas of the coastal environment.

Where subdivision has been managed as a controlled activity there have been difficulties in also preserving the natural character of the coastal environment. Councils may have to consider using more stringent controls for subdivision in parts of the coastal environment.

RECOMMENDATION: That councils put in place policies and rules to ensure that adverse effects of development in the coastal environment are avoided or mitigated. This may require some activities to be made discretionary, non-complying or prohibited in a district plan.

This investigation has found that councils have used a variety of non-statutory planning tools that have had consequential benefits for the preservation of natural character of the coastal environment. These non-statutory plans include recreation plans, stormwater management plans, dune care plans, landfill site plans, and flood control and erosion plans.

6.5 Other statutory and non-statutory plans

Statutory plans such as reserve management plans, prepared under the Reserves Act 1977, have also contributed to councils' recognising and providing for the natural character of the coastal environment.

RECOMMENDATION: That councils use a mix of statutory and non-statutory planning mechanisms available to them to fulfill their obligations in respect of the coastal environment.

The development of strategic plans, district plans and action plans (eg recreation plans, dune care plans etc.) requires much consultation with and input from the community. Both the council and the community benefit from having a collective vision for the future management of the coastal environment. In order to ensure that consultation with communities is effective, a consultation strategy could be developed in which clear lines of communication are established. The strategy could build on the consultation presently being undertaken by councils.

6.6 Consultation

A consultation strategy enables a council to go through a systematic consultation process and to identify key groups with interests in particular issues. Such a strategy will be influenced by the nature of the district. In Wanganui's case, the community is well defined and focused on a relatively short coastline. This contrasts with the Far North district, which has a long and varied coastline and a large number of scattered, distinct communities. In each of these examples, the strategy and mechanisms for consultation need to be adapted to suit the circumstances.

RECOMMENDATION: That councils prepare a consultation strategy to ensure that consultation and communication on coastal management issues is effective.

6.7 Community involvement in the care of the coastal environment

There are a number of community groups that have a strong interest in protecting and maintaining the coast. Successful community involvement in the protection of the coastal environment has been demonstrated in areas where the community accepts some responsibility for the care of the coast and, with adequate resources, is able to have input into the planning and implementation of coastal management plans. Examples include the Friends of the Shoreline in Wanganui and the joint regional and district councils' sponsored CoastCare groups in Mount Maunganui and Papamoa.

RECOMMENDATION: That councils establish and support CoastCare or similar groups where the community wishes to participate in such programmes.

6.8 Setting priorities and identifying resources

Resources should be focused on the highest priorities identified by each council for recognising and providing for the preservation of the natural character of the coastal environment and protecting it against inappropriate subdivision, use and development.

RECOMMENDATION: That councils ensure that priorities, set in the annual plan for example, are related to those aspects of the coastal environment which are:

- most at risk (eg from losing "natural character"); or
- most under pressure (eg from growth and development).

APPENDIX 1

CONSULTATION LIST

- CoastCare Coordinator, Mount Maunganui
- Community Health Services, Northland Health
Health Protection Office, Kaitaia
- Department of Conservation: Bay of Plenty Conservancy, Rotorua
Head Office, Wellington
Northland Conservancy, Whangarei
Tauranga Sub-Office, Tauranga
Wanganui Conservancy, Wanganui
- Environment B.O.P., Whakatane
- Far North Maritime Ltd, Opuia
- Friends of the Shoreline Committee, Castlecliff, Wanganui
- Harbour Watch, Mount Maunganui
- Local Government Association, Wellington
- Manawatu-Wanganui Regional Council, Palmerston North
- Members of the Kororareka Marae Society, Paihia
- Member of Nga Rauru, Wanganui
- Members of Ngati Ranginui hapu, Tauranga
- Member of NZ Institute of Surveyors, Upper Hutt
- Members of Tauranga Moana Trust Board, Tauranga
- Members of Te Runanga O Ngaiterangi, Mount Maunganui
- Ministry for the Environment, Wellington

- Mount Maunganui Residents Association, Mount Maunganui
- New Zealand Coastal Society, Auckland
- Northland Regional Council, Whangarei
- Paihia and District Citizens Association Inc.
- Paihia Residents and Ratepayers Association
- Papamoa Progressive Association, Papamoa
- Regional council coastal planners meeting in Wellington
- Royal Forest & Bird Protection Society, Tauranga

In addition, a number of individuals from different communities were consulted.

APPENDIX 2

SUBDIVISION

The coastal environment is to be protected from “inappropriate subdivision, use and development” (s 6(a)). People find the coastal environment a particularly attractive environment in which to live. However, the intensity of subdivision activity is a substantial threat to the natural character of the coastal environment.

The original statutory provisions regulating subdivision were primarily aimed at ensuring adequate allotment size and access, but under the Local Government Act 1974 emphasis shifted towards ensuring that the purchasers of new lots are protected as to the adequacy of services and stability of land and that the subdivider should meet the fair and reasonable costs of providing the services which would otherwise be borne by the ratepayers. Professor Palmer commented:³⁹

“land subdivision can no longer be regarded as a right of ownership but is a privilege which must first accord with the objectives of the district planning scheme and these objectives may include contribution to community land reserves”.

The Resource Management Act 1991 provides specifically for subdivision and, unlike the case for other land use activities, the Act raises a presumption that subdivision is not permitted unless it is expressly allowed by a rule in a district plan and any relevant proposed district plan, or a resource consent and a survey plan relating to the subdivision has been deposited with the District Land Registrar or approved by the Chief Surveyor (s 11(1)(a)). Subdivisions are allowed in other cases relating to the application of other legislation (s 11(1)(b) - (d)). Section 11 does not apply to Maori land generally.

An application for subdivision consent must include the information specified in s 219 and an assessment of effects (s 88(4)). The information specified in s 219 includes adequate information about new boundaries, the areas of new allotments, the location and areas of reserves, esplanade strips and access strips (new and existing), the location and areas of land below the mean high water springs of the sea and the location and areas of land to be set aside as new road. Where all or part of the land that is proposed to be subdivided is in the coastal marine area, the application for a subdivision consent is made

³⁹ KA Palmer (1984): *Planning and Development Law in New Zealand* Vol II. The Law Book Company Ltd : 555.

to the territorial authority, which shall decide the application as if all of the land were part of the district (s 89).

Many subdivisions are controlled activities. As such the assessment of effects required to be included in the application for subdivision consent need only address those aspects of the subdivision over which the territorial authority has retained control (s 88(5)). Generally, applications for resource consent are to be notified under s 93. However, s 94 provides some specific exceptions. In particular, where subdivision is a controlled activity, the application for consent need not be notified. A territorial authority has no power to refuse an application for consent to undertake a controlled activity, although it may impose conditions in respect of the aspects over which it has retained control (s 105(1)(a)). The issue of whether or not subdivision should be a controlled activity should be considered carefully during the preparation of a proposed plan.

Section 106 provides that a subdivision consent is not to be granted in certain circumstances, ie where the land is subject to erosion, falling debris, subsidence, slippage or inundation unless the adverse effects will be avoided, remedied or mitigated by rules in the district plan, conditions on the resource consent, or other matters, including works.

Section 108 sets out the conditions that may be imposed by the territorial authority on any resource consent. These conditions include financial contributions, bonds in respect of the performance of any condition, payment of administrative charges and, specifically in respect of a subdivision consent, any condition described in s 220. The conditions in s 220 include the provision of esplanade reserves, esplanade strips and access strips, amalgamation of parts of land, height, foundations, and protection of the land from erosion.

Creation of esplanade reserves on subdivision

The creation of esplanade reserves can be a useful mechanism whereby a council can satisfy public demand for access and recreational use. It is also a mechanism for recognising and providing for the matters of national importance in s 6. Section 229 Resource Management Act 1991 sets out the purposes of esplanade reserves and strips:

- “(a) To contribute to the protection of conservation values by, in particular,–
- (i) Maintaining or enhancing the natural functioning of the adjacent sea, river, or lake; or
 - (ii) Maintaining or enhancing water quality; or
 - (iii) Maintaining or enhancing aquatic habitats; or

- (iv) Protecting the natural values associated with the esplanade reserve or esplanade strip; or
- (v) Mitigating natural hazards; or
- (b) To enable public access to or along any sea, river, or lake; or
- (c) To enable public recreational use of the esplanade reserve or esplanade strip and adjacent sea, river, or lake, where the use is compatible with conservation values.”

An esplanade reserve is an area of land, usually 20 m wide, along a riverbank, or sea or lake shore which is set aside on the subdivision of land and vested in the territorial authority as a local purpose reserve. The Resource Management Act 1991 also provides for esplanade strips, which remain in the ownership of the landholder. The requirements for esplanade reserves vary depending upon whether the size of the allotment created on subdivision is less than 4 ha or 4 ha or more.

This distinction did not exist prior to the enactment of the Resource Management Amendment Act 1993. The starting point where allotments of less than 4 ha are created is that a 20 m esplanade reserve is required, although a territorial authority may make a rule varying the size of an esplanade reserve, waiving it entirely, or requiring an esplanade strip instead (s 77(1)). Where allotments of 4 ha or more are created there is no initial requirement for an esplanade reserve to be set aside although the territorial authority may make a rule providing that esplanade reserves of the width specified in the rule shall be set aside (ss 229(5) & 77(2)). In both cases a resource consent may waive any requirement for an esplanade reserve altogether (ss 230(2) and (5)). Prior to the enactment of the Resource Management Amendment Act 1993 an esplanade reserve was required in every case unless the district plan provided otherwise.

Compensation

For allotments less than 4 ha, there is no compensation payable for esplanade reserves or strips of 20 m or less. If the reserve or strip exceeds 20 m in width, compensation is payable for the excess. Compensation is payable for an esplanade reserve or strip created on an allotment of 4 ha or more. Compensation payable is to reflect the value of the land set aside (reserve) or the value of the interest in land created (strip).

Territorial authority's obligations in respect of esplanade reserves and strips

The territorial authority's discretion to decide whether or not to include a rule providing for esplanade reserves in its district plan, or waive or vary a requirement for an esplanade reserve in granting a resource consent is not unfettered. It will be subject to the public submission process for the preparation of district plans and in respect of notified consent applications. The consent authority must exercise its discretion reasonably. That is, proper consideration must be given to the question of whether to require an esplanade reserve to be set aside in every case. Council policy should not predetermine the outcome, although the consent authority may have regard to general guidelines and criteria.

Transitional provisions

All of the councils studied are operating under transitional district plans. Sections 402 to 408 RMA set out the transitional arrangements for subdivisions. Nothing in section 11 or Part X applies to any subdivision in respect of which a scheme plan or survey plan was approved under ss 279 or 305 of the Local Government Act 1974 or where the right of objection or appeal in respect of refusal of approval has been exercised. The relevant provisions of the Local Government Act continue to apply to such subdivisions.

Every subdivision that is contrary to the provisions of the transitional district plan is deemed to be a non-complying activity; a subdivision subject to a discretion in the plan relating to approval or refusal is deemed to be a discretionary activity and every other subdivision is deemed to be a controlled activity (s 405). There is no provision for subdivisions to be deemed to be permitted activities. The application of s 405 may be excluded or modified in accordance with the First Schedule and otherwise will cease to have effect once the proposed district plan becomes operative.

Building Act 1991 and Resource Management Act 1991

Subdivision is usually a preliminary step to the construction of housing or other buildings. If more than one house is to be erected on one allotment, subdivision will be necessary to enable the houses to be sold separately. Although the Resource Management Act 1991 focuses on the activity of subdivision and its effects, subdivision in itself has no physical effects. It is the actual building and the attendant

earthworks, landscaping and other activities that have environmental effects. The Resource Management Act 1991 and the Building Act 1991 are closely connected:

- the Resource Management Act 1991 controls whether a particular sort of building may be erected on a specific site through district plans and land use consents; and
- the Building Act 1991 controls how the building is to be erected and used and compliance standards to ensure the safety and health of users.

“Building” is widely defined in s 3 of the Building Act 1991 and includes a septic tank where the septic tank is part of the building utility system. The *Building Code* (made under the authority of the Building Act 1991) requires buildings, in respect of the structure and certain services (those to which access is difficult), to satisfy the requirements of the code for the intended life of the building, but no less than 50 years. Other fixtures which are moderately accessible must comply for at least 15 years.

The Planning Tribunal has recently considered the relationship between the Resource Management Act 1991 and the Building Act 1991 in its decision on the application by Christchurch International Airport Ltd.⁴⁰ At issue was whether the territorial authority could impose a condition on a resource consent requiring persons undertaking building work to achieve certain performance criteria additional to or more restrictive than those specified in the *Building Code*.⁴¹ As the Building Act 1991 and the code are not designed to take into account the environmental effects of building work and the performance criteria imposed by the code are aimed at safety and sanitation, there was some doubt as to whether a condition imposed on a resource consent under the Resource Management Act 1991 would be regarded as additional or more restrictive than the criteria specified in the code and therefore invalid. As the law stands at present, conditions imposed on resource consents may be additional to or more restrictive than those imposed under the *Building Code*. However, this matter is the subject of an appeal, and there is a risk that the decision of the Planning Tribunal may be overturned.

⁴⁰ *Application by Christchurch International Airport Ltd* (1995) NZRMA 1.

⁴¹ Section 7(2) of the Building Act provides “(e)xcept as specifically provided to the contrary in any Act, no person, in undertaking any building work, shall be required to achieve performance criteria additional to or more restrictive in relation to that building work than the performance criteria specified in the building code”. The Planning Tribunal managed to reconcile the interpretation of ss 6 and 7(2) of the Building Act with the purpose of the Resource Management Act 1991.

The decision in *Application by Christchurch City Council* has come in for some criticism as “contrary to the legislative intent to eliminate local variations in building standards”.⁴²

Section 35(1A) of the Building Act 1991 provides that a territorial authority may attach to a building consent, a certificate to the effect that an authorisation under the Resource Management Act 1991, which in the opinion of the territorial authority will materially affect the building work, has not yet been obtained and the building work cannot proceed or may proceed only up to a specified point until the authorisation has been obtained. This provision was enacted in 1993 to address concerns that in many cases building construction commenced without the appropriate resource consents under the Resource Management Act 1991. Even if a certificate is not attached, the issue of a building consent does not relieve an applicant of the need to comply with the Resource Management Act 1991.⁴³

A territorial authority may grant a building consent subject to waiver or modification of the *Building Code* (subject to appropriate conditions) and subject to such conditions as the territorial authority is authorised to impose under the Building Act or the regulations (s 34(4)). In formulating conditions the territorial authority will have due regard to the code and the matters set out in s 47. The territorial authority is to notify the Building Industry Authority of any waiver or modification of the code by conditions.

OTHER MECHANISMS FOR PROTECTION OF THE COASTAL ENVIRONMENT

Reserves

Territorial authorities may provide for reserves in district plans as they are a method of providing for the protection of land and associated natural and physical resources. Under Part II of the Second Schedule to the Resource Management Act 1991 a territorial authority may include in a district plan “any matter relating to the management of the use, development or protection of land and any associated natural and physical resources for which the territorial authority has responsibility under the Resource Management Act 1991 ...” (cl 1) and the circumstances when a financial contribution (as defined in s 108(9)), in cash or land etc, may be imposed or the formula by which

⁴² Kenneth Palmer (1995): “Airport noise, the Resource Management Act 1991 and the Building Code – Judicial override?” BRMB 120, 122.

⁴³ *Pavlof v Hutt City Council* AP269/93, High Court Gallen J, 21/9/95, Wellington.

such amount may be calculated and the general purposes for which the levy may be used (cl 3). Under the Local Government Act 1974 there were specific provisions for a reserves contribution in the case of residential subdivisions generally⁴⁴ and subdivisions along the coast or lakeshore or riverbank.⁴⁵ Such reserves were local purpose reserves. Now the Resource Management Act 1991 gives local authorities greater flexibility in the purposes for which a contribution can be levied. Where a territorial authority decides to set aside a reserve other than an esplanade reserve, it must do so after considering the purposes for which a reserve may be set aside under the Reserves Act 1977.

Among the purposes of the Reserves Act 1977 is that of ensuring the preservation of access for the public to and along the sea coast and lakeshores and riverbanks and fostering and promoting the preservation of the natural character of the coastal environment and of the margins of lakes and rivers and the protection of them from unnecessary subdivision and development (s 3).

Existing or proposed reserves may be recognised in district plans by designations. The designation procedure is available to a territorial authority to provide for public work for which it has financial responsibility within its district, as reserves are specifically included in the definition of “public work” in s 118 Town and Country Planning Act and in s 2 of the Resource Management Act 1991 (refer to s 168A). The effectiveness of a designation will depend on the ability and willingness of the territorial authority to purchase the reserve.⁴⁶

Heritage protection orders

A heritage protection order is another possible means a local authority can employ to protect the natural character of the coastal environment, although its use would be most appropriate as a last resort measure. All local authorities are heritage protection authorities under the Resource Management Act 1991 (s 187). A territorial authority may provide in its district plan for a heritage protection authority’s requirement for a heritage protection order. A heritage protection order may be used to protect any place of special interest, character, intrinsic or amenity value or visual appeal, or of special significance to the tangata whenua for spiritual, cultural, or historical reasons and surrounding land. A place may be of special interest by having special cultural, architectural, historical, scientific, ecological or other interest (s 189). Once a requirement is included in the district plan no person may, without the

⁴⁴ Section 285 Local Government Act 1974.

⁴⁵ Section 289 Local Government Act 1974.

⁴⁶ *Waiotahi Contractors Ltd v Owen* (1993) 2 NZRMA 425.

prior consent of the heritage protection authority, do anything including undertaking a land use described in s 9(4), subdividing the land, and changing the character, intensity or scale of the use of any land which would wholly or partly nullify the effect of the order (s 193).

In order for a heritage protection order to be effective, the heritage protection authority must have the financial means to support the order as the authority may be called upon to contribute to the maintenance of the property covered by the order or even to purchase the property.

Rates relief

Under the Rating Powers Act 1988 a council may declare rating relief policies in respect of areas voluntarily protected by the owner.⁴⁷ The council has to go through the special consultative procedure provided for under the Local Government Act 1974. Conditions of such relief are that the public are allowed access to the land and that the land is not used to make a profit. This mechanism could be used in conjunction with negotiated covenants under other Acts, viz Queen Elizabeth II National Trust Act 1977, Historic Places Act 1993, Reserves Act 1977, Conservation Act 1987.

⁴⁷ Sections 179 and 180G to 180J Rating Powers Act 1988.

APPENDIX 3

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