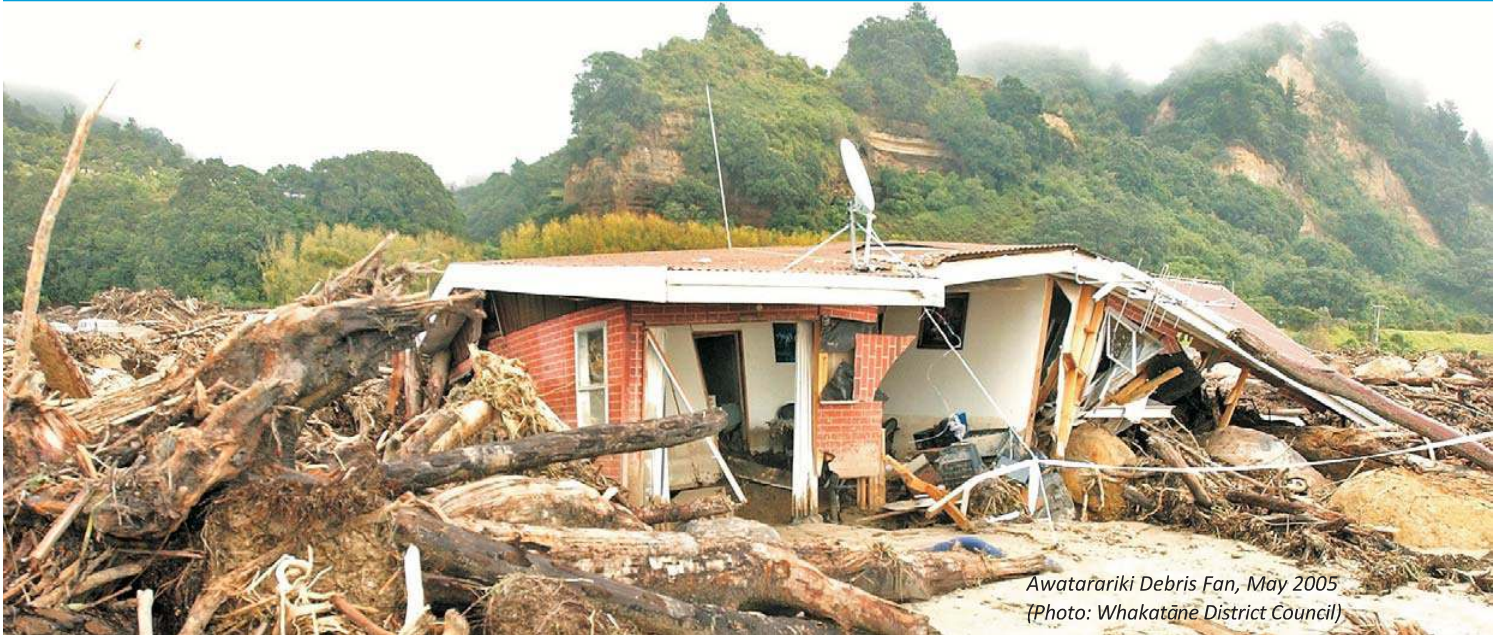


2 Planning and policy frameworks



Our evolving coastal planning framework – relying on the best of the old while awaiting the new

By Sylvia Allan

New Zealand pioneered effects-based resource management and planning with the introduction of the Resource Management Act (RMA) in 1991. The intention was to recognise the whole environment, including all natural systems, people and communities, and the myriad interactions between different parts of the environment while enabling development, but ensuring that predetermined environmental bottom lines were not overstepped. Changes within the environment brought about by human intervention to meet social, economic and cultural needs were to be managed so that adverse effects were avoided, remedied or mitigated. Regional councils were responsible for managing a region's water resources, air quality, some elements of land use, biodiversity and, in conjunction with the Minister of Conservation, all aspects of the coastal marine area. Territorial authorities, including city and district councils, were responsible for land use and subdivision within their areas. The responsibility for ensuring the avoidance or mitigation of natural hazards was allocated to both levels of local government with the actual responsibilities to be set out and allocated in the primary planning document for each region – the regional policy statement.

With the passage of time, the RMA has been amended many times. It is now no longer considered adequate for purpose. Following a review in 2020, recommendations were included

in 'New Directions for Resource Management in New Zealand' (widely referred to as the Randerson Report). The report's recommendations have been largely adopted by the current government and work is now proceeding on the development of three replacement statutes – a Natural and Built Environment Act, a Spatial Planning Act, and a Climate Adaptation Act. The first two are intended to come into law in 2023, and the third will follow.

In the meantime, the web of national policy statements, regional policy statements, and regional, coastal and district plans remain in place, underpinning all resource management decision making. The full transition period is expected to take several years.

Working quite well – national coastal policy and guidance

Considerable foresight was shown when the Resource Management Act included a requirement that there must at all times be a New Zealand Coastal Policy Statement (NZCPS) relating to the coastal environment (RMA s56, s57). Local authorities are required to give effect to the NZCPS and must amend their plans to achieve this national direction (RMA s55).

Equally important has been the statutory requirement of the NZCPS to 'state objectives and policies in order to achieve

the purpose of this Act in relation to the coastal environment of New Zealand'. Recognising that the coastal environment is a broad concept, not confined to a hard line between land and sea at mean high water springs, means that national policy can provide an appropriate framework for adaptive planning at the coast.

Matters of national importance that must be recognised and provided for in all RMA decision making (RMA s6) include the preservation of natural character of the coastal environment from inappropriate subdivision and development, protection of public access to and along the coastal marine area, and recognition of Māori relationships with ancestral land and water areas and other taonga. Together these concepts have provided for policy, including the NZCPS, plans and decisions, which have limited unbridled development in some parts of the coast, required careful investigation of impacts of new subdivision and development, and added conditions to consents including mitigation conditions. Only relatively recently (2017) was the management of significant risks from natural hazards added to RMA s6 as a matter of national importance. Its interpretation has been hampered by questions around what comprises a 'significant' risk, so elevating natural hazards as a matter of national importance has proved relatively ineffectual, including in the coastal environment. However, the approach to the management of natural hazards in the NZCPS transcends such details and has been widely supported – for example, through interpretive guidance issued by the Department of Conservation and the Ministry for the Environment.

The NZCPS contains provisions that set out in detail how managing natural hazards in the coastal environment should be approached and undertaken. There must be no increased risk of harm from coastal hazards – requiring limits on future development or intensification of existing land use in areas at risk.

These are fundamental precepts for adaptive planning in the coastal environment. The most relevant objective, Objective 5, is 'to ensure that coastal hazard risks taking account of climate change, are managed by:

- locating new development away from areas prone to such risks;
- considering responses, including managed retreat, for existing development in this situation; and
- protecting or restoring natural defences to coastal hazards.'

This leads into a suite of policies, specifically Policies 24, 25 and 27, which together set out in detail how to identify areas at risk from coastal hazards, a hierarchy of actions to manage risk in coastal areas that may be exposed to coastal hazards over the next 100 years, and a range of strategies and principles to apply to decisions where there is already significant existing development in identified hazard areas. The overall management approach is shown in the Ministry for the Environment's 'Guidance for Local Government' publication (Ministry for the Environment, 2017), shown in Figure 1.

Within the NZCPS policy framework, the Guidance promotes an iterative, community-based, planning approach, focused on five key questions over time. This framework is shown in Figure 2, and each step is expanded in the Guidance.

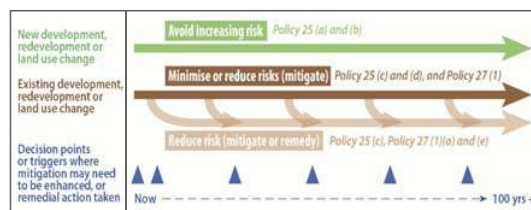


Figure 1: Broad planning decision context for coastal areas exposed to coastal hazards and climate change (New Zealand Coastal Policy Statement 2010) (MfE Guidance for Local Government).

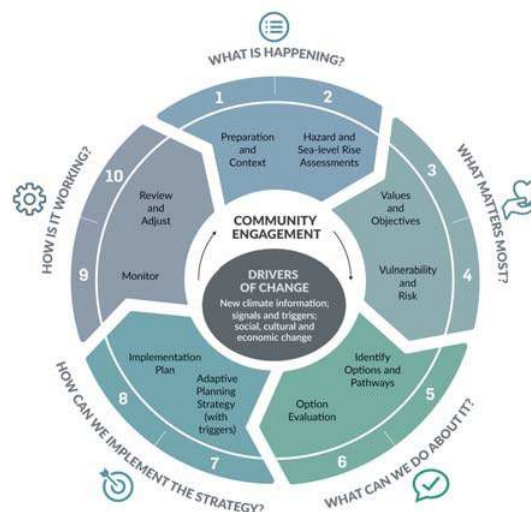


Figure 2: The 10-step decision cycle for planning in coastal areas (MfE Guidance for Local Government).

Adaptive management, where the nature of coastal change arising from a changing climate is generally understood but the timing and detail at local level is not, is at the heart of this approach. It is particularly useful for existing communities and developed areas.

Steps 5 to 8 of Figure 2 involve a process of detailed investigation of the potential impacts of sea-level rise and other climate change impacts at the local level, dynamic adaptive pathways planning (DAPP) to scope out and identify pathways to manage the practical implications of these changes, and suitable triggers for when a shift to a different pathway must be made. Monitoring is an essential part of the adaptive process, investigating community-agreed signals in the lead-up to the triggers of community response. The DAPP process is ideal for planning in a time of dynamic and uncertain coastal change, as it is not time bound. Rather it depends on pre-determined circumstances or triggers being reached, initiating a change to a different response pathway. Triggers can be expressed as physical measurements (such as when mean high water springs reaches an agreed marker) or functional circumstances (such as the number of days an access road is unusable per year). The method enables strategic planning at a regional level for future land uses and infrastructure, and existing communities can map out their future with a greater level of certainty in a changing world.

There are a large number of tools within the current planning and local government frameworks that enable the processes to take place and begin to be implemented through current plans. However, there are also impediments within the

current planning system that limit the long-term effectiveness of such approaches.

Shortcomings for adaptive planning within existing frameworks

The NZCPS was prepared and adopted at a time when case law indicated a 'balanced approach' to planning. Wording containing strong imperatives (such as 'avoid increasing the risk' and 'avoid redevelopment, or change in land use, that would increase the risk') has only been accorded full weight since the King Salmon decision¹ in 2014. This, together with the lack of a specified timeframe to amend plans, means that some councils are still functioning with looser policy. Further issues limiting the successful uptake of adaptive planning are embedded in the current resource management and interrelated statutes.

Much coastal development relies on favourable rules in district plans and/or existing use rights. Existing development is thus usually able to re-establish as of right even after significant storm or erosion damage. While existing use rights can be cancelled by regional land use rules (RMA s10.4(a)), regional councils are reluctant to take on a land use planning role, so such rules are rare. Regional councils can not directly control subdivision, meaning that intensification in urban areas through subdivision, and lifestyle rural subdivision, can continue to occur. Legacy subdivisions and land use consents, often provided for on a staged basis, enable further development in some areas now considered risky. Where consents for further development are required, there is a strong tendency for decision makers to accept mitigation responses, where hazards are accommodated by, for example, requiring raised ground levels or minimum floor levels in buildings, rather than declining consent. Such examples are adding to the foreseeable risks, problems and issues that future generations will have to face. Specific provisions in sections 71 to 74 of the Building Act also facilitate consents in many such circumstances.

New rules introduced through notified plan changes or plan reviews do not have immediate effect and must proceed through the processes of submissions, decisions and appeals. There are some exceptions to this, for example, for rules that relate to water, historic heritage, or the protection of indigenous habitats, but not rules for managing the risk of natural hazards. Thus, development consents can be and are obtained under rules applying before hazard areas were included in plans. A council can obtain the agreement of the Environment Court to have specific rules made effective from notification, but this is rarely used. One example is Tasman District Council's successful application to the Court for new rules relating to natural hazards at Mapua.

With rising seas, there is a particular issue around the RMA's different regimes for the coastal marine area and the land side of the coastal environment. Regional coastal plans may have strict policy and rules for new structures seaward of mean high-water springs, thus ensuring careful consideration of proposals for hard protection, but district rules may enable the construction of retaining walls or fences as permitted activities immediately landward of mean high-water springs. Such structures can be built as coastal

protection by owners, causing erosion at their ends over time. Even the combined plans of unitary authorities may incorporate such provisions, as was found in the Environment Court case of Auckland Council vs Auckland Council² where a proposed sea wall at Orewa was able to gain consent by being moved inland so that a coastal permit was no longer needed.

Finally, there are major problems in embedding the outcomes of DAPP processes into RMA statutory planning documents. DAPP takes a long view that transcends the 10-year life of all RMA plans. The process maps out pathways and specifies circumstances when there will be a change from one pathway to another, but the timing of the change cannot be known with precision. Although RMA plans can include techniques such as deferred zones for future development, or indicative alignments for new roads or other infrastructure, bringing these into effect usually involves a further cumbersome plan change. Monitoring of coastal change is also an essential underpinning of DAPP and few councils have prioritised this.

While some district and regional plans include provisions designed to facilitate adaptive planning in coastal areas, specifically placing limits on development in areas expected to be affected by rising sea levels over the next 100 years, these are rare and are often the result of extensive enquiry and lengthy litigation.

The Minister for the Environment has made it clear that current national direction, including the policy for the management of coastal hazards within the NZCPS, will be carried over into the future National Planning Framework. However, there is no indication as to how the many problems that currently beset detailed implementation of adaptive planning in vulnerable areas near the coast will be addressed. Future legislation will need to provide for, *inter alia*, integrated long-term techniques that span ownership of public and private property, control of buildings and infrastructure, public health and natural hazard risk management, and financing of processes and actions.

What should councils and communities be doing in the present state of legislative change?

With the current state of legislative reform, and the pressure many councils have recently come under to meet the more forceful targets of the National Policy Statement for Urban Development (see Box 1), planning for the impacts of climate change in coastal areas is often not being accorded high priority. A recent review (Lawrence et al., 2021) (the review) looked at what councils should be doing and identified examples of emerging good practice. Findings are briefly outlined here.

NZCPS Policy 24 requires the identification of areas at risk from coastal hazards and a hazard risk assessment. This responsibility has primarily been picked up by regional councils, with considerable development of techniques and processes, including iwi input and the use of advisory panels, with the expectation that it will be needed to support adaptive planning. Local government is being aided by national investigations such as those undertaken by Local

¹ New Zealand Supreme Court – Environmental Defence Society Inc v New Zealand King Salmon Company Ltd [2014] NZSC 38.

² Environment Court of New Zealand – Auckland Council v Auckland Council [2020] NZEnvC 70 (27 May 2020).

Box 1: A conflict of national direction – managing coastal hazards while planning for significant urban growth

The introduction in 2020 of the National Policy Statement for Urban Development (NPS-UD) with its highly directive language, followed by changes to the RMA in December 2021, mean some councils must now make provision to accommodate additional residential development in many parts of urban areas. While both seek to achieve ‘well-functioning urban environments’ their effect is to make more intensive residential development possible as a permitted activity, thus removing the scrutiny that would normally prevail through the planning system.

In making planning decisions affecting urban environments, the NPS-UD requires that particular regard must be had to ‘the likely current and future effects of climate change’. Under both instruments, required densities can be scaled back if a council can show a ‘qualifying matter’ applies. Qualifying matters include RMA s6 matters and provisions of national policy statements, including the NZCPS. This suggests that the development density otherwise permitted should be able to be significantly reduced in areas likely to be exposed to the effects of rising seas within at least 100 years (NZCPS Policy 25), that areas subject to significant risk

of natural hazard should be excluded (RMA s 6(h)), and that inappropriate development should be excluded from areas of natural coastal character (RMA s 6(a)).

In practice, the ‘softer’ language of the NZCPS and even the complexities of interpreting RMA section 6 matters to be applied (including whether natural hazards would be ‘significant’ in any circumstance) mean that councils are struggling to exclude even apparently quite vulnerable areas from the intensification requirements. The short time frame available to document reasons for exclusion of areas on the basis of qualifying matters contributes to the practical difficulties for councils.

The first tranche of plan changes under these new requirements were open for public submissions in August 2022, to be followed by hearings and decisions. Risks from coastal natural hazards have not always been effectively portrayed as a reason to reduce densities that would otherwise be permitted, and new opportunities to intensify development in vulnerable coastal areas have been created. Coastal adaptation is likely to become more difficult if this continues through decision making.



New medium density residential development under construction on a brownfields site at Petone – close to the sea and close to the current level of mean high-water springs (Photos: Sylvia Allan).

Government NZ and the Parliamentary Commissioner for the Environment, outputs from national science programmes, and national information sources such as RiskScape. The Guidance has assisted councils to develop information based on a range of climate change scenarios, to which information on vertical land movement can now be added. The review cited above found many examples of councils sharing approaches and information within and between regions. The purpose of the information collection is to complete stages 1 to 4 of the 10-step decision cycle in Figure 2 and to ready communities for further adaptive planning steps. This will be needed for all coastal environments and should be a priority for regions and districts with hazard-prone coastlines.

A fundamental requirement, if it has not yet been done, is for regional and district councils to agree on responsibilities for natural hazards management at the coast and to embed those responsibilities in the regional policy statement. These responsibilities may include the circumstances in which regional rules may be used to manage land uses in some areas. Along with this is the need for all regional policy statements to contain policy for managing coastal hazards

that reflects the NZCPS imperatives to avoid increasing the risk of harm from them, and the more nuanced requirements relating to areas of existing development, including the promotion of risk reduction techniques and the strong preference for natural defences over hard protection structures. It is also appropriate for regional policy statements and plans to set out methods to achieve policy, and methods such as DAPP are now mentioned in a handful of regional policy documents. While the review found that some regional policy statements had comprehensive policy that was well-aligned with the NZCPS, other regions lagged behind.

Councils should also be looking at working with the range of existing planning tools to make progress in line with NZCPS and stated regional policy. Once the priority areas for coastal hazard risk management have been identified, including through consultation and collaboration with affected communities, provisions to manage the risk can be included in regional and district plans. This is not necessarily straightforward, and some communities are resistant to such provisions. Nevertheless, a range of techniques such as restrictive zoning (including prohibited

activities), hazard lines on planning maps with rules for development reflecting the anticipated degree of risk, density controls, and subdivision controls have been used. Asset management plans under the Local Government Act can also indicate areas where services will not be provided, where infrastructure items will need to be shifted or abandoned, where future levels of service may be reduced, and where relocated infrastructure should go. The review report sets out examples where various techniques have been applied. As with information, councils are learning from each other and sharing experiences.

Perhaps the most important goal at present is for councils to ensure that their areas are ready to face the challenges ahead by readying communities to undertake DAPP over the next decade. This means ensuring a sound information base, educating communities on the risks and implications of the inevitable changes ahead, identifying priority issues and action areas, and ensuring that the policy framework is in place to manage future change. It also means preventing new development, subdivision, and land use changes that will expose more people and investment to future foreseeable and unacceptable risk.

Consideration of the needs of future generations is embedded within the present RMA framework, and this is becoming a greater imperative under a changing climate with rising seas and growing risk exposure to coastal hazards.

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