

# REVIEW AND RECOMMENDATIONS FOR THE CLIFTON TO TANGOIO COASTAL HAZARDS STRATEGY JOINT COMMITTEE

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## **The Issue to be considered**

1. I have been engaged to review and deliver non-binding recommendations on the issue of which Hawke's Bay Local Authority should lead and fund the implementation of coastal hazard mitigation projects for the coast from Clifton to Tangoio. This extends to considering:
  - (a) Who should collect the rates that will fund the projects?
  - (b) Who should decide which rate payers should pay and in what amounts and proportions?
  - (c) Who should decide and control the projects to which the funds are applied?
  - (d) Who should be in charge of the implementation of the projects?

## **Summary of my recommendations**

2. For the reasons I now set out below, I recommend that the Hawke's Bay Regional Council takes charge of all aspects of the prevention and mitigation of coastal hazards on the Clifton to Tangoio coast including deciding on preventative, mitigating or remedial works, making all decisions about rating for these works and collecting those rates, the implementation of all decisions including supervising works, and the control of all maintenance.
3. I recommend that there be an advisory committee including members of the Napier City Council, Hastings District Council and the Hawke's Bay Regional Council that has notice of, considers, and can comment on all significant proposals, but that it has no decision making powers, and no ability to delay the implementation of those proposals.
4. Therefore, the answer to each of the four questions listed above is that the Hawke's Bay Regional Council should carry out all the stated functions.
5. I now turn to my reasons for these recommendations.

## **The relevant local authorities**

6. There are three local authorities in the Hawke's Bay area which are directly concerned with this issue of coastal hazards mitigation on the Clifton to Tangoio Coast. The first is the Hawke's Bay Regional Council (HBRC). The second and third are territorial authorities (TAs), being the Hastings District Council (HDC) and the Napier City Council (NCC). The HBRC is the only authority with jurisdiction over the whole stretch of coast between Clifton and Tangoio. The HDC and the NCC have responsibility for their individual territories, but do not have jurisdiction over the territories of each other.
  
7. The Resource Management Act 1991 sets out the functions of regional councils and territorial authorities. Under s 30, regional councils must achieve integrated management of natural and physical resources of the region. This relates to the natural environment including air, land, freshwater and the coastal marine area. Through policy statements and plans, regional councils must set objectives, policies and methods for controlling the use of land to avoid or mitigate natural hazards. Under s 31, territorial authorities must achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district. Through district plans, territorial authorities must control the effects of land use to avoid or mitigate natural hazards, as well as create rules for land use and subdivision.

## **The model choices**

8. There are two broad choices for the implementation of coastal hazard mitigation projects for the coast from Clifton to Tangoio. First, a hybrid model involving all the relevant local authorities, each having responsibility for some of the tasks or sharing the tasks between them. The alternative is a single agency model, involving a single authority which would have to be the HBRC.
  
9. These two broad models can be broken down into six possible sub-models:

### **(a) MODEL ONE: The present TA and HBRC set up continues**

No change to the present

(b) **MODEL TWO: HBRC Only**

HBRC acts as sole agency and the TA's have no further role in prevention of coastal hazards

(c) **MODEL THREE: HBRC + Advisory Forum**

HBRC leads and controls all Strategy implementation functions, supported by an advisory forum involving the TAs

(d) **MODEL FOUR: Council Controlled Organisation (CCO)**

HBRC establishes a new CCO whose composition could match the existing Coastal Hazards Committee, tasked with implementing and monitoring Strategy

(e) **MODEL FIVE: HBRC + Decision-making Forum**

HBRC rates for Strategy implementation, and funding decisions are delegated to a decision-making forum involving TAs

(f) **MODEL SIX: HBRC + TA**

Hybrid model / shared responsibility, where HBRC rates for the public good component of works, and the TAs rate for private good component.

10. The last three models can be seen as variations of a hybrid approach, involving some re-organisation and a greater role for the HBRC, while maintaining significant TA control. Before analysing these choices and which is best, it is necessary to place those options in their historical context to understand the present situation and the need for a report such as this.

## **The development of Regional Councils and Territorial Authorities in New Zealand**

11. The history of the development of local government in New Zealand can offer some lessons which assist in determining the best way forward.

### *Early days*

12. Māori, the indigenous people of New Zealand, did not have central or local governance in the European sense. Iwi and Hapū controlled their traditional lands, and the concept of absolute ownership was unknown.

13. Europeans brought with them a different concept of governance and land ownership, whereby the Crown held in fee simple all privately "owned" land following the Treaty

of Waitangi.<sup>1</sup> There were endeavours to apply the English local government structure consisting of provinces, towns/boroughs (municipal corporations), and counties (county councils).

14. In 1876 the central government created a new system of local government to be administered from the centre, due to the prevailing system that “hindered New Zealand’s social and economic development”.<sup>2</sup> Two new Acts were introduced, the Counties Act 1876 and the Municipal Corporations Act 1876, which provided the foundation for future local management.<sup>3</sup> These Acts outlined the functions of these local bodies; to set rates and establish and maintain basic services, including streets, water drainage, street lighting and transport.<sup>4</sup>

15. At the same time, special-purpose boards, or “*ad hoc* bodies”, were introduced to efficiently administer singular functions within a geographic region, such as the control of rabbits, rivers, harbours, fire, electric powers, hospitals and schools.<sup>5</sup>

16. Justification for the use of such *ad hoc* bodies at this time was that existing territorial authorities were often inappropriate, and “cooperative action could be politically difficult”.<sup>6</sup> In addition, the special expertise acquired by the special-purpose boards was considered “advantageous and efficient”.<sup>7</sup> The result was a “myriad of general-purpose and special-purpose local authorities”.<sup>8</sup>

17. By the 1890’s, a proliferation of local authorities was evident and there was need for reform. There was a worry that New Zealand was becoming “over-governed”, with

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<sup>1</sup> Hinde, McMorland & Sim *Principles of Land Law in New Zealand* (3<sup>rd</sup> edition, LexisNexis, Wellington, 2020) at [3.007].

<sup>2</sup> *Te Ara – The Encyclopedia of New Zealand* “Local and Regional Government” (online ed) <<https://teara.govt.nz>>.

<sup>3</sup> Jean Drage *A Balancing Act: Decision-Making and Representation in New Zealand’s Local Government* (Institute of Policy Studies Wellington, 2008) at 58; and Kenneth Palmer *Local Authorities Law* (Thomson Reuters, Wellington, 2012) at [23.1.1].

<sup>4</sup> Municipal Corporations Act 1876; Counties Act 1876.

<sup>5</sup> Drage, above n 3, at 59.

<sup>6</sup> Palmer, above n 3, at [23.1.1].

<sup>7</sup> *Ibid.*

<sup>8</sup> Drage, above n 3, at 59.

almost 2,135 territorial authorities in existence with a New Zealand population of only 630,000.<sup>9</sup>

### *First attempts at Regional Bodies*

18. A Local Government Board was established by the early twentieth century to supervise a re-organisation of the system. The intention was to “reduce the number of local authorities and abolish *ad hoc* boards”,<sup>10</sup> which were considered to be a waste of ability and money.<sup>11</sup> A further attempt at restructuring the system occurred in 1946.
19. In 1960, the Labour government began a major parliamentary inquiry into the structure and fragmentation of local government, in order to “examine whether it was capable of meeting the increasing demands of a rapidly developing population and economy.”<sup>12</sup>
20. A principal finding of the inquiry was that the “basic structure of local government was sound, but the tendency towards forming *ad hoc* boards was undesirable.”<sup>13</sup> One solution to the failure of the current local authorities to coordinate management was to introduce a regional tier of local government, which would “assume strategic functions such as water services, sewage disposal and regional roading, and acquire other functions held by special purpose authorities”.<sup>14</sup>

### *The first Regional Council*

21. In 1963, the concept of regionalism culminated in the formation of the Auckland Regional Authority. Its establishment came from the “inadequacy of the mess of territorial bodies to cope with rampant urbanisation.”<sup>15</sup> Services such as drainage and waste collection had become uncoordinated, and a need for better urban and regional

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<sup>9</sup> At 59.

<sup>10</sup> At 61.

<sup>11</sup> At 61, referencing GW Russell, the Minister for Internal Affairs.

<sup>12</sup> Drage, above n 3, at 63.

<sup>13</sup> Graham Bush *Local Government and Politics in New Zealand* (Auckland University Press, Auckland, 1995) at 38.

<sup>14</sup> Palmer, above n 3, at [23.1.2].

<sup>15</sup> Bush, above n 13, at 39.

planning was required.<sup>16</sup> As such, regional boundaries were delineated, and Auckland *ad hoc* boards abolished.<sup>17</sup> This new regional body was given was functions such as bulk water supply, sewerage, public transport, airport management, regional roads, civil defence and regional planning.<sup>18</sup> Territorial bodies in Auckland were slowly discontinued, as any new function was required to be administered by the new regional authority.<sup>19</sup>

*Local Government Act 1974 and the Local Government Amendment Act (No 2) 1989*

22. The *Local Government Act 1974* directed New Zealand to be divided into regions within 5 years, with each region having a directly elected regional council.<sup>20</sup> Under this Act, urban and rural territorial bodies were consolidated and many of the historic *ad hoc* functions of local government were taken over by these new regional bodies.<sup>21</sup>
23. The most extensive reform in local government occurred under the *Local Government Amendment Act (No 2) 1989*. It abolished all territorial authorities and many of the *ad hoc* boards (including catchment boards, harbour boards, electric power and health boards).<sup>22</sup> Approximately 850 bodies were consolidated into 86 multi-purpose local authorities, including regional councils with broad environmental responsibilities.<sup>23</sup>
24. Regional councils continued to have responsibility for the duties of many of the previous *ad hoc* boards as well as regional planning and environmental management. The new district and city councils were to carry out the functions of the previous general-purpose authorities.<sup>24</sup>
25. Under this Act, the purpose of local authorities was focused on the amalgamations of regions and districts, “to ensure recognition of different communities of interest, but

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<sup>16</sup> *Te Ara*, above n 2.

<sup>17</sup> Bush, above n 13, at 40.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> Palmer, above n 3, at [23.1.3].

<sup>21</sup> Drage, above n 3, at 64.

<sup>22</sup> Drage, above n 3 at 64–65.

<sup>23</sup> *Te Ara*, above n 2.

<sup>24</sup> Drage, above n 3, at 65.

also to ensure the efficient and effective exercise of powers and functions”.<sup>25</sup> These purposes were appropriate in reducing the number of local authorities throughout the country to achieve efficiencies and to minimise duplication of resources and costs.

26. A review of the Local Government Act 1974 occurred in 2001. This led to the Local Government Act 2002, where broader purposes and powers were conferred equally on regional council and territorial authorities. This is the relevant Act today.

### **The Local Government Act 2002**

27. Local authorities as they exist today, being regional councils or territorial authorities,<sup>26</sup> are created by the Local Government Act 2002 (LGA). Councils can create council-controlled organisations (CCOs), which are companies controlled by a local authority or authorities.<sup>27</sup> The role of local authorities is to give effect to the purpose of local government as stated in s 10 of the LGA. The purpose is to enable democratic local decision making by and on behalf of local communities. The “core services” to be considered in performing the role, (therefore both territorial and regional), include “*the avoidance or mitigation of natural hazards*”.<sup>28</sup>

28. Section 14 of the LGA sets out principles relating to local authorities. A local authority should have regard to the views of all its communities,<sup>29</sup> and when making a decision should consider the interests of future as well as current communities.<sup>30</sup> In taking a sustainable development approach, a local authority should take into account the need to maintain and enhance the quality of the environment,<sup>31</sup> and the reasonably foreseeable needs of future generations.<sup>32</sup>

29. Importantly for the purposes of this report, a local authority should actively seek to *collaborate and co-operate* with other local authorities and bodies to improve the effectiveness and efficiency with which it achieves its priorities and outcomes.<sup>33</sup>

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<sup>25</sup> Palmer, above n 3, at [23.2.4]; and Local Government Amendment Act (No 2) 1989, s 37K.

<sup>26</sup> As defined under s 5 of the LGA.

<sup>27</sup> As defined under s 6 of the LGA.

<sup>28</sup> LGA, s 11A(d).

<sup>29</sup> Section 14(1)(b).

<sup>30</sup> Section 14(1)(c)(ii).

<sup>31</sup> Section 14(1)(h)(ii).

<sup>32</sup> Section 14(1)(h)(iii).

<sup>33</sup> Section 14(1)(e).

30. Part 2, sub-part 3 of the LGA is headed “Co-ordination of responsibilities of local authorities”. This part does not seek to delineate the responsibilities of *regional and territorial authorities*. If a *regional council* wishes to undertake the same significant new activity and 1 or more territorial authorities in the region of the regional council have already undertaken a significant new activity or notified their intention to do so in their long-term plans or annual plans, the *regional council* must advise all the *territorial authorities* within its region and the Minister of the proposal and the reasons for it.<sup>34</sup> It must adopt the consultative procedure set out in s 93A, and if agreement is not reached with affected territorial authorities there must be a mediation process.<sup>35</sup> If the mediation is unsuccessful, the territorial authorities may ask the Minister to make a binding decision on the proposal, who will do so in consultation with the Local Government Commission.

### **The Resource Management Act 1991**

31. Like the LGA, the Resource Management Act 1991 (RMA) also makes no precise effort to delineate responsibilities between regional and territorial authorities. The RMA’s purpose is to promote the sustainable management of natural and physical resources, to manage the use and protection of natural and physical resources to sustain their potential to meet the reasonably foreseeable needs of future generations, and to safeguard and mitigate adverse effects on the environment.<sup>36</sup>

32. Section 30 of the RMA is titled, “Functions of regional councils under this Act”. Under this section, regional councils are given the function of integrated management of regional natural and physical resources,<sup>37</sup> for matters of regional significance, in particular for water and coastal resource management.<sup>38</sup> , and “the avoidance or mitigation of natural hazards”.<sup>39</sup> These functions are translated from a regional policy

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<sup>34</sup> Section 16(2).

<sup>35</sup> Section 16(4).

<sup>36</sup> RMA, section 5.

<sup>37</sup> Section 30(a).

<sup>38</sup> Peter Salmon and David Grinlinton *Environmental Law in New Zealand* (2<sup>nd</sup> edition, Thomson Reuters, Wellington, 2018) at [9.6.2].

<sup>39</sup> Section 30(1)(c)(iv).

statement into regional plans.<sup>40</sup> Regional Councils also have the function, in conjunction with the Minister of Conservation, for the control of land and associated natural and physical resources,<sup>41</sup> the occupation of space in the coastal marine area and *the avoidance of natural hazards*.<sup>42</sup> The coastal marine area in s 3 is defined as including the foreshore, which is in turn defined as meaning land covered and uncovered by the flow and ebb of the tide at mean spring tides, (the mean high water mark).

33. Section 31 of the RMA is titled “Functions of territorial authorities under this Act”. Territorial authorities have the function of establishing policies and plans concerning land use, storage of hazardous substances, control of subdivision of land, control of the emission of noise, and control of activities on the surface of water in rivers and lakes. These functions are the basis of the district plan and district rules.<sup>43</sup>
34. In contrast to regional council functions, territorial authorities have the function of controlling any *actual or potential effects on the use development or protection of land*, including for the purpose of the avoidance or mitigation of natural hazards.<sup>44</sup>
35. Under s 33 of the RMA, the planning function of local authorities may be transferred to another local authority on the grounds of community interest, efficiency, or technical or special capability. The intention of s 33 is to facilitate coordination of functions between regional councils and territorial authorities and to allow for combined plans and administrative arrangements.<sup>45</sup> This enables cooperation between councils as to which should exercise a common function.
36. Under s 34(1) of the RMA local authorities can delegate to any Committee established in accordance with the LGA. This is relevant to the later discussion of CCOs.

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<sup>40</sup> Palmer, above n 3, at [17.4.3], and RMA s 30.

<sup>41</sup> Section 30(1)(d)(i).

<sup>42</sup> Sections 30(1)(d)(ii) and 30(1)(d)(v).

<sup>43</sup> RMA s 31, and Palmer, above n 3, at [17.4.4].

<sup>44</sup> Section 31(1)(b)(i).

<sup>45</sup> Palmer, above n 3, at [17.4.5].

## Overlap between the functions of regional councils and territorial authorities

37. The provisions of the RMA and the LGA mean that there are functional interactions between territorial and regional authorities. This has been described as “a paradigm of complementarity rather than hierarchy”.<sup>46</sup> The 11 regional councils have hallmarks of autonomy identical to territorial authorities (election, corporate status, powers to set rates etc.), but there is no statement of regional superiority. In sharing government locality, the two levels are said to be on equal footing.<sup>47</sup>
38. As such, there is considerable scope for overlap and conflict between the roles of regional councils and territorial authorities. This is confirmed in the recent *Report of the Resource Management Review Panel (RM Review Report)*,<sup>48</sup> where it was said that this lack of clarification of roles and responsibilities in the legislation can lead to “unhelpful overlap”,<sup>49</sup> resulting in tensions between local authorities in resolving issues and achieving outcomes (including conflicting regional and district policies).<sup>50</sup> Generally, the RMA places territorial authorities “in a subsidiary role” to regional councils, as district plans are required to implement the policies set out at the regional level.<sup>51</sup> The RM Review Report makes specific reference to the Clifton to Tangoio coastline as a case study,<sup>52</sup> but expressed no view on which Council or Councils should take responsibility and set and collect rates for hazard mitigation purposes.
39. On a natural reading of ss 30 and 31 of the RMA, a regional council’s role is to have charge of policies to avoid or mitigate natural hazards in a region. Territorial authorities with regional councils have the function of controlling the actual or potential effects of the use development and protection of the land. It is my reading of sections 30 and 31 that it is regional councils who should develop the policy to avoid or mitigate coastal hazards, with the territorial authorities having a role with the regional council in controlling what is done in those areas. However, the legislation provides no

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<sup>46</sup> Bush, above n 13, at 117-118.

<sup>47</sup> Ibid.

<sup>48</sup> *Report of the Resource Management Review Panel*, “New Directions for Resource Management in New Zealand” (June 2020) [*RMA Report*].

<sup>49</sup> Chapter 8, “Policy Planning and Framework”, at [2].

<sup>50</sup> Ibid, at [47].

<sup>51</sup> RMA s 75(3)(c), and any district plan must not be inconsistent with any regional plan under s 75(4)(b); and Salmon, above n 38, at [9.6.2].

<sup>52</sup> *RMA Report*, above n 48, Chapter 6, at [43].

clarification on who should implement such policies, including the construction of new infrastructure to reduce hazard risks.

40. The obligations on local authorities are not just imposed directly by the RMA. Under the New Zealand Coastal Policy Statement 2010, local authorities must consider and plan for coastal hazards risks. Under Policy 24(1), local authorities are required to:

Identify areas in the coastal environment that are potentially affected by coastal hazards (including tsunami) giving priority to the identification of areas at high risk of being affected. Hazard risks, over at least 100 years, are to be assessed.

### **Summary of functions of local authorities**

41. In summary, the Local Government Act framework gives all three relevant authorities in Hawke's Bay a role in avoiding or mitigating natural hazards. There is nothing to indicate conclusively that one has primacy over the other, and they have a duty to collaborate and co-operate.
42. As was noted in the RM Review Report in relation to climate change adaption, there is a lack of clarity under the RMA in regard to the roles and responsibilities of local authorities, and confusion as to where primary responsibilities lie.<sup>53</sup> The RM Review Panel in its careful and lengthy report considered limiting the primary responsibility of natural hazards response to regional councils only, as matters of regional significance. However, it preferred an approach where responsibility for reducing the risks of natural hazards is assigned to both regional councils and territorial authorities, given the broad implications of the issues for both levels of local government.<sup>54</sup>
43. However, under the RMA some distinction can be seen in ss 30 and 31 between the power to be in charge of an integrated management of the natural and physical resources of a region, and the control of the use of land and avoidance of natural hazards. The former task is given to the regional councils, and the power to manage the effects of use and developments, which is given to the territorial councils.

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<sup>53</sup> Above n 48, at Chapter 6, "Climate Change" at [32].

<sup>54</sup> Above n 48, at Chapter 8, "Policy and Planning Framework" at [45].

44. Legislation leaves it open to councils, both territorial and regional, to cooperate and allow one council to have the controlling role in an area of common jurisdiction.

### **Case law on the relationship of regional councils and territorial authorities relevant to coastal hazards**

45. The element of hierarchy was noted by the Court of Appeal in *Canterbury Regional Council v Banks Peninsula District Council*.<sup>55</sup> It was observed that regional councils have the task of preparing policy as to any effects of the use of land which are of regional significance.<sup>56</sup> Territorial authorities have the function of establishing and implementing policies to achieve the integrated management of the effects of land and resources in their district and the control of the actual or potential effects of use including the avoidance or mitigation of adverse effects.<sup>57</sup>

46. The Court of Appeal held that the RMA provides a:

“...hierarchy of instruments to the extent that...district plans must not be inconsistent with...a regional policy statement or regional plan [s 75(2)]. It does not follow, however, that there can be no overlap between the functions of regional authorities and territorial authorities...to the extent that matters have been dealt with by an instrument of higher authority, the territorial authority’s plan must not be inconsistent with the instrument.”

47. It was also stated that:<sup>58</sup>

“A function of the regional council is to achieve integrated management of the resources of the region. It would be inconsistent with that function for...the decision as to the appropriate control to be carried out...on a regional basis, rather than by individual territorial authorities.”

48. The Court of Appeal concluded:

***“It follows that the control of the use of the land for the avoidance of mitigation of natural hazards is within the powers of both regional councils and territorial authorities. There will no doubt be occasions where such matters need to be***

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<sup>55</sup> [1995] 3 NZLR 189 (CA).

<sup>56</sup> At 191.

<sup>57</sup> Ibid.

<sup>58</sup> At 196.

*dealt with on a regional basis, and occasions where this is not necessary, or where interim or additional steps need to be taken by the territorial authority.* Any controls imposed can be tested by appeal to the Planning Tribunal, and inconsistencies are precluded by s 75(2).”

[emphasis added]

49. It is stated in a leading text, *Brookers Resource Management*<sup>59</sup> that a territorial authority cannot control the use of land for purposes that are within the jurisdiction of the regional council. However, a territorial authority may exercise control for the purposes set out in s 31(1)(b), even if an incidental result falls within the function of the regional council.<sup>60</sup> That approach was applied to allow a city council to include controls on cell phone sites in its plan irrespective of whether the regional council had the power to control radio emissions, on the basis they were contaminants.<sup>61</sup>

50. There is one respect, however, in which the regional council has a power of importance in relation to coastal hazards that a district council does not have. It has the power to alter or terminate existing use rights in relation to land. This comment was made by the Chief Judge of the Environment Court in *Awatarariki Residents Incorporated v Bay of Plenty Regional Council*:<sup>62</sup>

[10] *The District Council requested this change to the Regional Plan because it does not have any power to alter existing use rights arising under s 10 of the RMA. The Regional Council, under s 30(1)(c)(iv) of the RMA, has the function of controlling the use of land for the purpose of avoiding or mitigating natural hazards.* Under s 63(1) of the RMA, the purpose of a regional plan is to assist a regional council to carry out any of its functions in order to achieve the purpose of the RMA. A regional council may make rules under s 68(1) for carrying out its functions under s 30(1)(c). Under s 10(4) of the RMA, s 10 does not apply to any use of land that is controlled under s 30(1)(c). It is by that combination of functions and powers that the Regional Council may terminate existing use rights.

[emphasis added]

51. This statement is relevant to the issue to be determined of who should have charge of the task of managing coastal hazards to the Clifton to Tangoio coast, and the rating for it. It is only the HBRC that has the power, through the removal of existing use rights,

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<sup>59</sup> (online loose-leaf ed, Thomson Reuters).

<sup>60</sup> At [A30.05(2)].

<sup>61</sup> *Telecom NZ Ltd v Christchurch CC* EnvC C036/03.

<sup>62</sup> [2020] NZEnvC 215 at [10] and [11].

to direct property owners to engage in a managed retreat. This cannot be done by the territorial authorities. It is some indication from the legal framework that the general defence of the coast, which can presage a managed retreat response in the long term in some parts of Hawke's Bay, is more naturally the responsibility of the HBRC.

## Regional Plans

52. The Hawke's Bay Regional Resource Management Plan appears to recognise the primacy of the HBRC's role in RMA functions relevant to natural hazards. It records:

8.4.4.1 *Section 62 (1) (b) (h) of the RMA enables regional policy statements to set out the respective responsibilities of the regional council, and territorial authorities within the region concerned, for developing objectives, policies, and rules relating to the control of the use of land for:*

(a) *the avoidance or mitigation of natural hazards, and*

(b) *the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances.*

8.4.4.2 *If no responsibilities are identified in accordance with this provision of the Act, the regional council retains primary responsibility for natural hazards and hazardous substances.*

8.4.3.3 This section describes the respective functions of the HBRC, and of territorial authorities within Hawke's Bay, in relation to natural hazards and hazardous substances. This section is written in accordance with section 62 (1) (ha) of the RMA (and in keeping with the fact that this Regional Plan incorporates the role and provisions of a regional policy statement).

8.4.4.4 It is important that the HBRC and territorial authorities work together in the management of natural hazards and hazardous substances. To this end, the HBRC and territorial authorities have, through discussions and refinement of earlier arrangements set out in the former Hawke's Bay Regional Policy Statement (HBRC, 1995), reached the following agreements on their respective responsibilities.

### NATURAL HAZARDS

8.4.4.5.1 *Both the HBRC and the territorial authorities within the Hawke's Bay region will be responsible for developing objectives and policies for managing the use of land for the purpose of avoiding and mitigating natural hazards. Territorial authorities will be responsible for developing methods controlling the use of land for the purposes of avoiding or mitigating natural hazards, except in relation to coastal hazards. In relation to coastal hazards, both the HBRC and territorial authorities may be responsible for developing methods controlling the use of land for the purpose of the avoidance or mitigation of coastal hazards.*

8.4.4.5.2 To support the territorial authorities in developing and implementing their plan provisions in relation to natural hazards, *the HBRC will be the key information provider.* The HBRC will provide relevant, up to date and accurate data in an appropriate form for the territorial authorities to use. The HBRC will also use this information itself for natural hazard management and

planning purposes, and for Civil Defence management in accordance with the Civil Defence Act 1983.

[emphasis added]

53. The district councils or city councils so far have tended to be the proponents of physical coastal protection works and associated resource consent applications. That is because it is usually a residential settlement within their city or district which is threatened by the coastal hazard or some infrastructure (such as a road) for which that territorial authority has responsibility. There can be a need to get consents from both the territorial and the regional authorities when works situated in both jurisdictions are required.
54. The combined Regional Coastal Environment Plan (RCEP), created in the mid 2000's, was one of the first coastal plans in New Zealand to include regional rules controlling land use activities for the purposes of tackling coastal hazard risks. Previously, land use controls were only included in district plans. The HBRC had a leading role in identifying regionally significant coastal natural hazards, in particular in funding an extensive assessment of inundation and coastal erosion carried out by Tonkin & Taylor Ltd in 2004 which highlighted coastal hazard zones along the entire Hawke's Bay regional coastline.
55. However, support from territorial authorities is recognised in the RCEP. For example, a pragmatic approach was taken concerning the Westshore/Bayview coast in Napier. To avoid multiple coastal hazard zones and multiple rules, the RCEP omitted this hazard zone, and the Napier District Plan continued to govern hazard management in this area of the Napier coast. On the other hand, in reviewing its own district plan, the HDC made a policy decision to omit land use controls in relation to its own coastal hazard zones, save for subdivision, to avoid duplicity of rules. This was because the RCEP featured appropriate land use controls in relation to coastal hazard zones within the Hastings territory.

## **Practicalities**

56. Practical issues are discussed below under the following headings:
  - (a) Public recognition of a need for urgent action on an integrated basis;

- (b) Protection can only work through an integrated approach to all of the Clifton to Tangoio coast;
- (c) The need for an integrated approach has been recognised already by the three local authorities;
- (d) Election by geographic area;
- (e) The HBRC has helpful experience in managing flood hazards in the Hawke's Bay;
- (f) Which authority has greater expert personnel?
- (g) Comparison to Civil Defence Management Groups;
- (h) Which body is best suited to work out fair rates and in particular targeted rates?;
- (i) Any indications as to the preference of ratepayers?;
- (j) The need for co-operation from the territorial councils; and
- (k) The future need for similar strategies for other parts of the coastline in the Hawke's Bay region.

*Public recognition of a need for urgent action on an integrated basis*

57. That there is a need for action held by the people of the Hawke's Bay is, to an extent, supported by the 'Climate Crisis Survey' which can be found on the Hawke's Bay Regional Council website. It noted:<sup>63</sup>

- **41% of people associated the Regional Council as the main organisation responsible for actions on climate change in Hawke's Bay**
- 25% of residents believe climate change is one of the challenges facing New Zealand
- Drinking water was of the highest concern, followed by economic struggles then climate change
- **90% of people believe that climate change is already occurring**
- **62% of people are concerned about the impact of climate change in Hawke's Bay**
- Drought is seen as the main negative outcome of climate change
- **55% of residents were prepared to pay more in rates to minimise the impact of climate change**
- The most supported initiative that people were prepared to pay for was a reduction of carbon and erosion through tree planting (69%)
- Concern for future generations was the main driving force for taking part in environmental actions
- **80% of people said they have been moderately or greatly involved in environmental activities**

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<sup>63</sup> <https://www.hbrc.govt.nz/environment/climate-actionhb/climate-crisis-survey/>.

- Lack of alternatives or resources and cost were the two main cited barriers to engaging in environment related activities
- The top four activities were recycling, reusable product purchases, energy saving household products, and composting
- Two-thirds of residents do not think the Council is doing enough to prevent and reduce the impact of climate change.

58. This is some indication that the people of Hawke's Bay are aware of, and concerned with, the impacts of climate change on the region. They are prepared to contribute more rates to prevent the adverse impacts of climate change. To some extent, it shows a public consensus on the need to prevent the impact of climate change on the region. If that is so, it follows that the body with jurisdiction over the whole coast is the logical leader. That body is the HBRC.

*Protection can only work on an integrated approach to all of the Clifton to Tangoio coast*

59. Until now, the steps taken by local authorities to protect the Clifton to Tangoio coast have been reactive responses of territorial authorities to specific damage arising from coastal hazards. Among the measures, there have been steps taken by the HDC to prevent coastal hazards at Waimarama Beach and Clifton through sea walls, and steps taken by the NCC to prevent coastal hazards at Westshore Beach (in conjunction with HBRC), and Whakarire Avenue. These have involved the territorial authority making applications for resource consents to the regional council for works on the coastal strip, and to themselves for land use or subdivision consent. This does not pose a conflict problem, as independent hearing commissioners may hear and determine the resource consent application.<sup>64</sup>

60. However, it is accepted by all three Councils that an integrated approach to the whole coastline is needed, rather than a piecemeal approach turning on territorial authority boundaries. What can be done in one part of the coast to prevent coastal hazards can affect, possibly adversely, another part of the coast.

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<sup>64</sup> RMA, s 100A, whereby an applicant may request in writing that a local authority delegate its functions and powers, under s 34A(1), to an independent hearing commissioner to hear and decide their application.

61. This scientific reality was confirmed in the report of Emeritus Professor Paul D Komar and Professor Erica Harris.<sup>65</sup> They note that the Clifton to Tangoio coast contains two littoral cells, being stretches of beaches not separated by rocky shores and headlands.<sup>66</sup> These do not correspond to territorial council areas but are both within the HBRC area. In the coast North of the Napier Port up to Tangoio, gravel moves northwards.<sup>67</sup> Again, it can be noted that this movement crosses the territorial council border line.
62. The same is true South of the Port, where sediment has a predominant northward mitigation along the coast in response to the prevailing wave direction. Natural coastal processes have no relationship to territorial authority boundaries. However, the actions of authorities to respond to coastal hazards by intervening in coastal processes can have a direct consequence for a neighbouring jurisdiction. HBRC is the only authority with jurisdictional boundaries that can accommodate these entire littoral cells, including the coastal marine area.
63. When they commented on the effects of the 1931 earthquake in relation to the whole coast, the authors stated:<sup>68</sup>

“Prior to the uplift this coast in 1931, produced by the Hawke’s Bay earthquake, most of its beaches and backshore areas experienced chronic erosion and over wash flooding occurrences during storms, making it essentially impossible to develop. Even the downtown area of Napier was frequently inundated during the high water levels of storms. The character of this coast abruptly changed when the earthquake raised most of its shores by 1.5 to 2 metres, extending from Tangoio in the north to about the present-day communities of Awatoto and East Clive in the south. Elevated by that amount, those shores then exceeded the elevations of the tides plus the surge and wave runup of even major storms, their acquired stability permitting the development of homes and infrastructure found there today. Only the southernmost portion of this shore, extending along the present-day Haumoana, Te Awanga and Clifton, experienced subsided during the earthquake, increasing its hazards and in part accounting for its persistent problems with erosion and flooding. It is evident that any increase in the future levels of the sea and in the intensities storms, both being projected by climatologists to occur during the next 100 years, would result significantly enhanced threats to properties along the Hawke’s Bay coast.”

64. Earlier they had noted:<sup>69</sup>

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<sup>65</sup> *Hawkes Bay, New Zealand: Global Climate Change and Barrier-Beach Responses* (March 2014).

<sup>66</sup> At [1.1].

<sup>67</sup> At [1.2].

<sup>68</sup> At [1.5].

<sup>69</sup> At [1.3].

This pattern of shoreline erosion in the south versus accretion to the north is produced by there being a net northward longshore transport of the beach sediments, caused by the dominant waves arriving from the southeast, the gravel and sand supplied by the Tukituki River and erosion of Cape Kidnappers being rapidly carried to the north within this littoral cell.

65. This physical reality requiring an integrated approach to the whole coastline is a reason for the local body that has jurisdiction over that coastline to be the body that takes responsibility for controlling and managing coastal hazards.

*The need for an integrated approach has been recognised already by the three local authorities*

66. None of the three local authorities have determined which authority or authorities should take charge of implementing works to reduce coastal hazards risks along the Clifton to Tangoio coast. However, the need for an integrated approach can be seen in the creation in 2014 of a Clifton to Tangoio Coastal Hazards Strategy Joint Committee (the Joint Committee). This is a true joint committee established under the Local Government Act consisting of members of the three local authorities and local Iwi. The Joint Committee identified the extent of coastal erosion and coastal inundation hazards across the whole of the Clifton to Tangoio coast, adopted a bespoke decision-making process, created two assessment panels, and are in the process of developing an implementation plan for responding to coastal hazards.<sup>70</sup> Strategy monitoring and reviews would be ongoing for at least the next 100 years.

67. This report of the Northern and Southern Cell Assessment Panels is impressive in that it makes detailed findings of the hazards on the coast and provides precise recommendations on pathways for protection. The area is divided into a northern and southern cell, and within the cells into coastal units. The units are based on "...a combination of ward boundaries, land area units and topography".<sup>71</sup> The coastal units are numerous and do not correspond to the territorial authority boundaries.

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<sup>70</sup> *Report of the Northern and Southern Cell Assessment Panels* (14 February 2018) at [3.2].

<sup>71</sup> At [7].

68. The work of the Northern and Southern Cell Assessment Panels as recorded in that report, reflects the need for this integrated approach. Their final report of 14 February 2018 dealt with the Clifton to Tangoio coast as a whole, without territorial demarcation. The strategy covered the whole area and included the goal, “to take into account the impact of coastal hazards responses on natural coastal processes, and any resulting impacts on other parts of the coast”.<sup>72</sup>
69. This goal has been recognised by the Hawke’s Bay community and is a feature of the lead up to this report. The fact that the local authorities have themselves shown an admirable consensus through the use of a single body, the Joint Committee, to create an integrated response to coastal hazards, is itself a strong testimonial in favour of a single body being in charge of the actual rating and work.

#### *Election by geographic area*

70. It is significant that elected members of both territorial authorities and regional councils are elected by geographic districts with the authority area. Under the Local Electoral Act 2001 the members of territorial authorities are elected by ward,<sup>73</sup> and members of regional councils are elected by constituencies of the region.<sup>74</sup> This means that there is a specific member of each local authority with a particular interest in a particular part of the Clifton to Tangoio Coast.
71. This means that, while the NCC and the HDC will have particular geographic ties, so will the individual elected members of the HBRC. Within the HBRC, there is a member representing the northern part of the coast, a member representing the city of Napier, and a member representing the southern part of the coast. Therefore, the three relevant geographic areas in total encompass the relevant coastal area.
72. This means that, just as territorial councillors representing different wards will have a particular knowledge of and sensitivity of their particular ward area, so will the HBRC councillors to their particular constituencies.

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<sup>72</sup> At [3.1].

<sup>73</sup> Section 19C.

<sup>74</sup> Section 19E.

*The HBRC has helpful experience in managing flood hazards in the Hawke's Bay region*

73. It is useful to compare the management of flood hazards in the Hawke's Bay. The measures to prevent or control floods and provide protection in the Hawke's Bay are run by the HBRC. The HBRC decide what is necessary, rate for the cost, and manage the implementation of remedial measures. This has been the case as far as I can understand, since the creation of the HBRC. This is an indication that there has been a natural inclination to put the management of regional hazards in the hands of the HBRC.

74. What this means is that the HBRC has expertise in managing water encroachment. It has had to grapple with the need to calculate the movements and effects of water, the effects of extreme weather, the need to obtain permanent access to land to be used to prevent the damaging effects of water, and the creation and maintenance of structures on that land. It has had to deal with the issue that such expensive remedial measures will benefit some ratepayers far more than others, and on occasions to impose targeted rates that reflect this.

75. The territorial authorities have expertise in managing drainage and stormwater, but not in the creation of significant works to prevent water encroachment in specific vulnerable parts of their districts.

*Which local authority has greater expert personnel?*

76. Each territorial authority currently owns and maintains coastal structures. This means each territorial authority has a base level of capability. I understand that the NCC and the HDC have engineering and asset management teams dedicated to three waters (potable water supply, wastewater and urban stormwater), and many of these skills may be transferrable. They have large, dedicated project delivery teams to deliver a large and wide-ranging capital works programs. These capital works programs are in the \$50-\$100m per annum range, and include roads, bridges, Three Waters projects, and major buildings including museums, and those on reserves and parks.

77. HBRC has a smaller engineering and asset management team dedicated to flood control, drainage, and supporting coastal projects. HBRC employs a specialist dedicated to coastal modelling and analysis. HBRC currently actively monitors the extent of the coastline. HBRC holds expertise in modelling of drainage and rivers with two dedicated staff. They have additional flex and capability and frequently provide advice to the territorial authorities and Civil Defence.
78. HBRC has a small, dedicated project delivery team dedicated to delivering flood control and drainage projects, with a budget of around \$7m per annum.
79. I understand that the pending Three Waters reforms is likely to remove significant Three Waters engineering, asset management and project delivery resources from the territorial authorities, and amalgamate these into a single Three Waters entity, although no decisions have been made. This is a significant point as most of the transferable skills to coastal management will likely exit the territorial authorities over the next couple of years.
80. In considering the governance, rating, construction and maintenance of coastal strategy, the scale of the specialist resource required is a consideration. This is where there may well be a difficulty in putting control of the process in a Council Controlled Organisation (CCO). It would not have resources of its own and would have to use the resources of local authorities. It is difficult to see this as efficient, or economic. It would be difficult to develop a depth of expertise in managing coastal hazards over three local authorities, none of which controlled the works, the control being with a third body such as a CCO. It is difficult to see how such disparate expertise could be amalgamated into an efficient working unit. A model where all the expertise is in one organisation that collects the rates to pay for that expertise, and administers that expertise, seems preferable.
81. If there were one local authority in charge, then the right resources to deal with coastal hazards are likely to develop further, both as a group of staff members develops within the organisation, and through the use of independent consulting engineers and other expert professionals, who it would be expected would develop more expertise and a good working relationship with the local authority in charge. Members of that local

authority would develop knowledge of the best contractors and develop skills in dealing with them.

### *Comparison to Civil Defence Emergency Management Groups*

82. During the course of my investigations, the analogy of the Hawke's Bay Civil Defence Emergency Management Group, which is a group created for the whole Hawke's Bay region, has been raised as an alternative to control by a single local authority or authorities. This group is created under the Civil Defence Emergency Management Act 2002 (CDEMA). Its members are the HBRC and all those territorial authorities that lie wholly within the boundaries of the Hawke's Bay region. There is a group controller and a group plan, under which effective civil defence management is carried out on a region-wide basis. Could a similar model be used for the creation of a CCO, which would take charge of managing coastal hazards?
83. Such civil defence groups *must* be created by local authorities under s 12 of the CDEMA. Such groups are designed to ensure civil defence co-ordination over a whole large area, and involve a number of concerned bodies and organisations in addition to local authorities, such as the Hawke's Bay District Commander of NZ Police, the Area Commander Hawke's Bay Fire and Emergency NZ, the Chief Executive Hawke's Bay District Health Board, the Hawke's Bay Medical Officer of Health the Group Welfare Manager the Group Recovery Manager, the Heretaunga Territory Manager, St John, the Chief Executive Officer of each Local Authority of the Group, the Chairperson of the Hawke's Bay Lifelines Group, and any other persons that may be co-opted by the Group.
84. Such groups are one-off, involving multiple administrative bodies in order to deal with the broad spectrum challenge of civil defence, and in particular emergency response. Inevitably, a group different from a local authority or authorities was required. The same statutory and practical imperatives do not arise with regard to coastal hazards which are typically slow moving and evolving over years and decades.
85. In summary, I do not think that the Hawke's Bay Civil Defence Emergency Management Group provides an appropriate template for a similar structure regarding

coastal hazard management. Therefore, I do not consider that the Civil Defence model should be applied to controlling coastal hazards.

*Which body is best suited to work out fair rates and in particular targeted rates?*

86. It is arguable that all people in the Hawke's Bay get some benefit from the protection of its coast, but it is also true that some will get far more benefit than others. The difficult question will arise of finding a fair way to rate for hazard protection measures that will greatly benefit those properties immediately on the threatened shore, with the benefits lessening the greater the distance of the rated property from that shore.
87. This was done in relation to the Waimarama revetment and to an extent with the Whakarire Avenue revetment. However, this was not done with the Clifton revetment, (which had no residences that were immediately affected). Different policies can be adopted therefore, from significant targeting of rates to none at all.
88. Who is best to decide? A territorial authority may well have the better knowledge of its local people, and the history and their concerns about a local hazard. On the other hand, they may not have the same understanding of how the coast benefits the Hawke's Bay as a whole, in terms of being an amenity for recreation, attracting tourists, and as a barrier to protect infrastructure such as roads cables and pipes. There may also be complexities where some benefits of a particular work (or adverse impacts) accrue outside of the rating jurisdiction of a given territorial authority from resulting 'downstream' coastal change. This could occur from, for example, a major beach nourishment programme in Westshore and Bay View (within the jurisdiction of NCC) potentially benefiting residents in Whirinaki (within the jurisdiction of HDC) as the nourishment material naturally migrates northwards.
89. It is also the case that the territorial authorities face the reality that infrastructure owned by them is threatened by coastal erosion, in particular coastal roads, cables and pipes under their control. Accepting that the territorial authorities could not be rated for any works, there is an advantage in having a body independent of the owners of that infrastructure, deciding on what should be done to protect it. If, say, a managed retreat and the destruction of a piece of territorial authority infrastructure was an option, the

HBRC as an independent organisation with no financial interest could be better suited to the tasks of decision-making, rating, implementation and maintenance, than the territorial authority itself.

90. For these reasons, I suggest that a regional council, the HBRC, is best suited for the task of responding to coastal hazards and setting rates. The task is best undertaken by an authority with pan-jurisdictional reach and a regional (rather than specific local) frame of reference.

*Any indications as to the preference of ratepayers?*

91. The ratepayers of Hawke's Bay voted against the creation of a single new body for all of Hawke's Bay, with local boards, in a poll conducted in 2015. In that poll, 34% of ratepayers were in support of such a body, and 66% against it. I see this as a poll requiring a multiplicity of considerations, and not an indication of any preference from the local population as to how to deal with the coastal hazards problem. I am not aware of any indications from ratepayers as to which Council they might wish to take charge of responding to coastal hazards to the Clifton to Tangoio coastline.
92. Thus, when this result is seen in conjunction with the results from the Climate Crisis Survey referred to earlier, the ratepayers can be seen as generally agnostic as to who does the work, but it is clear that they want it done and they want it done efficiently and effectively.

*The need for co-operation from the territorial councils*

93. Some of the work that will have to be done will fall within the coastal marine area which is the HBRC's bailiwick. Other works, on the landward side of the mean high water mark, fall within the territorial authority jurisdiction. The fact that regional councils have to deal with land which falls within their own jurisdiction but also within the jurisdiction of a territorial council is common, if not unusual. Regional councils have experience in designations, and in acquiring land under the Public Works Act 1981. For instance, some of the flood prevention works that have been carried out by

the HBRC have been on land which is not under HBRC control, and included private land and land owned by territorial authorities.

*The future need for similar strategies for other parts of the coastline in the Hawke's Bay region.*

94. Coastal hazards issues are of course not unique to the coastline between Clifton and Tangoio. Indeed, I understand that one of the objectives of the Clifton to Tangoio Coastal Strategy is to develop an approach and model to apply in future to other parts of the Hawke's Bay coastline. This introduces the prospect of involving additional territorial authorities in this work, namely the Wairoa District Council and Central Hawke's Bay District Council.

95. The Wairoa District Council and Central Hawke's Bay District Council have not been approached for comment, and it is not part of my specific brief to consider their position. However I comment that consistent with my analysis above, additional agencies can add complexity and inefficiency for little practical benefit. A single agency-model enables a regional roll out of strategic planning in ways that a multi-agency model cannot. This is a strong argument in favour of a single agency model for all of Hawkes Bay. However, I make this observation with diffidence, as I have no knowledge of the history and coastal erosion issues in those Council areas.

**Summary of factors in favour of continuing the status quo, with each council dealing with coastal hazards (Model One)**

96. The creation of the Joint Committee appears to me to constitute a recognition by all the local authorities that an integrated approach is required through all the local authorities working together.

97. Through discussions held as part of developing this review, some support was expressed for retaining the existing status quo (Model One) based on the concept that there should be a direct connection between the money being taken from ratepayers and those who could be held to account. The works and the ratepayers should be as closely joined as possible. It was suggested that the HBRC has no role to play in relation to

coastal hazards that are essentially community issues, and the HBRC's involvement should be limited to providing only an environmental point of view. It was observed that territorial authorities have the responsibility for the built environment. It was said that given the concern that a regional council should have for the environment, it was thought that a regional council was more suited to managing retreat, rather than hard engineering on the coast.

98. While these arguments have merit, they are not persuasive of a piecemeal approach corresponding to territorial boundaries, with the HBRC having a limited role. As I have set out, the problem of coastal hazards along the Clifton to Tangoio coast is physically problem of the whole coast, in particular the southern and northern sections, and does not correspond physically to the territorial authority boundaries. If responses are carried out from the point of view of just parts of that coast, the response may have adverse effects on other parts of that coast. In my assessment, coastal hazards are to be approached as a whole of coast issue, requiring a whole of coast response.
99. The various legislation and regional plans mentioned above give the regional and territorial authorities overlapping responsibility and powers in dealing with coastal hazards. However, it is clear from the interpretation of those instruments that a regional body, the HBRC, is higher in the hierarchy and therefore can be seen to have primacy.
100. As I have set out, the HBRC is better able to assess rates with a whole of region approach. The HBRC already has some of the skills and knowledge in dealing with the prevention of coastal hazards, having been in charge of managing and rating for flood prevention across the Hawke's Bay for many decades. This is not going to change, and the skill sets involved for both areas of flood prevention and coastal management overlap.
101. These issues were already in part at least recognised by the formation of the Joint Committee, which was set up by all the local authorities to proceed on a region-wide basis. This move to a whole of region approach can be said to have arisen in part as an organic response to the issues.

### **Summary of factors in favour of a single agency model (Model Two)**

102. It should first be observed that the analysis earlier of the LGA and RMA, the relevant authorities interpreting those Acts, and the relevant plans, indicates primacy of the Regional Council in relation to policy on coastal hazards, and equality in relation to implementation. Only the Regional Council can in relation to coastal hazards direct managed retreat.
103. The Clifton to Tangoio Coast is not congruent with the boundaries of the territorial authorities. Neither the NCC nor the HDC has jurisdiction over the coast of the other. In contrast, the coast all falls within the boundaries of the HBRC. This is the most powerful reason for the HBRC to rate and manage coastal hazards. As mentioned, what happens on one part of the Clifton to Tangoio coast may adversely affect other parts. There is no other existing single suitable body with the power to plan for, rate for manage and implement measures to control coastal hazards other than the HBRC, (other than through the creation of CCO, which is discussed below). Thus, geographic logic supports a single agency implementing measures to respond to coastal hazards along this coast, and the reality of the boundaries of the territories of the councils supports that council being the HBRC.
104. This geographic logic, at least as a matter of fact if not law, is increasingly recognised by local body politicians and employees in all three local authorities. It is reflected in the work of the Joint Committee. In my discussions with the councillors of all three local authorities, there appeared to be a recognition by most that a single agency was the most practical option in terms of efficiency and cost.
105. Even with a single agency approach, local interests can be recognised and promoted by members of the HBRC, given that they are elected on a constituency basis.
106. There is a considerable body of experience in the area of coastal hazards in the HBRC, and the work has a connection with flood control. The HBRC has successfully carried out flood control throughout the region in recent years.
107. Further, the HBRC is well able to carry out the task of considering whether there should be targeted rating, and if so in what proportions, and the collection of those

rates. It already administers targeted rating in the area of flood control. The HBRC is experienced in identifying water hazards, coming up with a remedial concept, working out how to acquire or control required properties and implementing the acquisition of necessary land, and doing the construction.

108. It is true that if the HBRC carries out the rate collection exercise, this will result in a greater percentage increase in the HBRC rates than would be the case if the NCC and HDC did the rating, as the overall rates on household of the territorial authorities are much higher. An extra rate to pay for protection from coastal hazards may be less noticed by rate payers if it is made by the territorial authorities. However, this is not a valid reason for the task of collection of such rates to be left to the NCC and HDC. The same ratepayers more or less will end up paying for the cost of the works, they will simply be paying directly to the HBRC rather than to the NCC or HDC. Any cosmetic reason should be treated as irrelevant.

109. The only reasons why the single collection model may not be the best are that:

- (a) The territorial authorities know their ratepayers, and the history of their district and perhaps have a closer connection to their ratepayers than the HBRC. The HBRC covers a much wider area, and must take into account the interests of many more groupings of ratepayers;
- (b) The territorial authorities have the power to do these works under the LGA and the RMA (although, so does the HBRC);
- (c) The NCC and HDC will have a good institutional knowledge of the coastal hazards in their territories; and
- (d) In particular, both the NCC and HDC have had hands-on experience in taking successful measures to prevent coastal hazards, in particular at Waimarama, Clifton and Westshore and have skills in that area in their existing staff.

110. However, these are not persuasive in comparison to the reasons favouring a single agency model. Indeed, a single agency model can be constructed to still benefit from

the knowledge, experience and capability of territorial authorities through the formation of an advisory forum, which I discuss below. There are therefore powerful reasons why the single model approach should be adopted. I will traverse some other considerations to the contrary below.

### **Summary of factors in favour of HBRC and an advisory committee (Model Three).**

111. This model involves the HBRC being the decision-maker and implementer of all functions including rating (model 2) but supported by an advisory committee, (it could be called a forum or group), involving the territorial authorities. This approach was favoured by a number of politicians in two of the Councils.
112. For the reasons I have set out, I recommend that the HBRC takes charge of all aspects of the prevention and mitigation of coastal hazards on the Clifton to Tangoio coast. I believe that the HBRC's ability to carry out this role would be strengthened by an advisory panel or committee. While, for reasons that I will set out, I do not favour a CCO or any option that compromises the HBRC as the decision-maker and rating body in relation to all aspects of the prevention and mitigation of coastal hazards on the Clifton to Tangoio coast, a committee that had only an advisory role could be a real benefit.
113. As I have set out, the territorial authorities have a close connection with the ratepayers on their coastlines. They will know the socio-economic circumstances of the ratepayers of particular areas. They have a history of dealing with their own coastal areas that the HBRC has not had. They will know their infrastructure, and how it may be affected by a coastal hazard. They will be aware of the cost and implications of not stopping damage to that infrastructure.
114. The territorial authorities have had to manage coast related issues for many years. Obvious examples are the works at Westshore and Whakarire Avenue. The NCC has a good knowledge of what has been done, and what its ratepayers think about it. The HDC has had the experience of Clifton, and the long running issues at Haumoana.

115. In relation to specific proposals and issues relating to their coasts, the territorial authorities through an advisory body can let the HBRC know of the wishes of ratepayers and the history of parts of the coast. The individual territorial authorities through an advisory body can have an exact knowledge of what is happening in relation to coastal hazards in their area and how they are being dealt with, so that not only can they comment, but they can report back and have a sense of participation. The territorial authorities will be in a position to provide advice or assistance to the HBRC on proposals for works and strategies. They will also be able to come up with their own suggestions as to what could be done.
116. I would recommend that this advisory committee be modelled in composition at least in part on the existing Joint Committee, so that there would be an equal number, (perhaps two), of representatives from each of the three local authorities, plus continued Iwi representation. The local authority representatives should be elected politicians, who can be seen as responsible to, and representative of, their district's ratepayers. It will also be important to have inputs from key personnel in the three councils, in the same way as the existing Joint Committee has had the benefit of the TAG Group. I recommend that the advisory committee have an associated group of experts who work with them, like the TAG group.
117. I think it important that the HBRC has its own elected members on this advisory committee, and that they have a role in the HBRC in the area of coastal hazards. This will allow them to inform the other members of the advisory committee of what is intended and what is happening, and debate and learn. The HBRC members and Iwi representatives can also be a counter-balance against any particular sectional pressures and conflicts that might arise between the NCC and HDC.
118. I would envisage that the advisory forum or committee is given advance notice by HBRC of significant new works or maintenance works, and of rating proposals, so that they could be debated and commented on by the advisory committee. The finalisation of such proposals should allow the advisory committee reasonable time to understand, debate and comment. However, the time frame for such debate and comment would have to be such that there was no significant delay. Moreover, the view

of the advisory forum or committee, even if opposed to a proposed measure, could not delay the implementation of that measure by the HBRC.

119. The effect would be, then, that the advisory committee could come up with its own proposals or respond to those of HBRC. It would have to be given prompt advice of HBRC proposals, and then meet on relatively short notice to discuss and give such advice if considered appropriate. There would need to be a time frame for this, and it would need to be measure in weeks more than months. Significant delay would defeat one of the key benefits of having a single deciding body.

#### **Summary of factors in favour of a Council Controlled Organisation (CCO) (Model Four)**

120. The fourth proposed model is that HBRC establishes new council-controlled organisation (CCO) whose composition could match the existing Joint Committee, tasked with implementing and monitoring strategy. The HBRC would collect the relevant coastal hazard rates, but the CCO would decide on allocation of rate contributions, targeting, the projects to be undertaken, how those projects are to be carried out, and who should carry out those projects.

121. This model is supported by a number of councillors in one of the local authorities. I understand that it was envisaged that there would be an equal number of representatives from each local authority in this CCO.

122. This model is effectively a single entity in charge, not the HBRC, but rather a hybrid body of the local authorities. This would have some of the advantages of Model 2, with a single body making all the decisions, and which would develop skills and expertise in managing coastal hazards.

123. The power to delegate to CCOs is set out at part 5 of the LGA, and the power is wide. I will assume that it includes the power to decide on works and who will own them to prevent or mitigate coastal hazards, and to rate or get the regional council to rate for them, and to have staff and carry out those works.

124. The key disadvantage of such a model is that there would be the opportunity for conflict and stalemate, as councillors from particular authorities sought to maximise the position of the ratepayers that they represent, rather than the good of the Clifton to Tangoio coast as a whole. The great advantage of the HBRC being in charge, is that its councillors from all constituencies have a duty to advance the interests of the whole region, rather than one part of it. They are better able to manage a coast which demands a whole of coast approach, rather than one dictated by the boundaries of territorial authorities.
125. Also, there would be overlap in the CCO's functions particular in the area of flood control, with the HBRC. Such a move would be against the overall trend in local government, which is to try to check proliferation of authorities, and thus duplication of costs and a more piecemeal approach. The general move in local government is to conflate rather than expand the multiplicity of local government organisations. This would be a step in the opposite direction. A CCO would mean the creation of another *ad hoc* local body, a coastal hazards board, a move similar to the move to multiple boards in the late nineteenth century, where there were boards for rabbits, rivers and harbours.<sup>75</sup> Such a proliferation proved costly and inefficient and was firmly reversed in the next century.
126. The HBRC has representatives of all the ratepayers that are represented by the territorial authorities. The HBRC has representatives for the ratepayers in the constituencies that are on the Clifton to Tangoio coast. Those ratepayers do not therefore need a say in decision making through a CCO, as they already have a say through their votes for HBRC members. The territorial authorities, therefore, do not have to have a direct say in what happens through a CCO, because the ratepayers that they represent are already represented on the HBRC.
127. Further, if a CCO was to take charge, it would not have any staff. It would have to use NCC, HDC or HBRC staff. As a result, there would be more of a possibility of conflict and duplication.

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<sup>75</sup> Drage, above n 3, at 59.

128. The particular contributions that the NCC and HDC can make can be accommodated in an advisory committee as discussed in the preceding section. There is no need for the creation of a CCO, as the ratepayers affected by any coastal hazard works can have their democratic right to a say met through their votes for HBRC members. There is a significant downside in delegating all the coastal hazard functions to a CCO, in cost and delay and an unhealthy proliferation of the local government function. I do not recommend this model.

#### **HBRC + Decision-making forum (Model Five)**

129. Under this model, the HBRC would rate for strategy implementation, and funding decisions would be delegated to a decision-making forum involving the territorial authorities.

130. I do not support this concept for the reasons I have already set out. I favour the HBRC having all the decision making and rating functions, assisted by an advisory board which includes representatives of the NCC and HDC. If the HBRC's role was limited to rating and possibly implementation as well, this would involve its powers and functions being divided, which is undesirable for the reasons I have already set out. A decision making forum involving the NCC and HDC would be much like the CCO option, and could lead to division and stalemate, and the attendant delays and costs.

#### **HBRC + TA (Model Six)**

131. This proposal is for a hybrid model with shared responsibility between the HBRC, NCC and HDC. Under this model, the HBRC would rate for the public good component of works, and the NCC and HDC would rate for private good component.

132. Again, I do not support this for the reasons I have set out, where I favour the HBRC having all the decision making and rating functions, assisted by an advisory forum or committee which includes representatives of both territorial authorities. To split the rate collection function in relation to coastal hazards would lead to wrangles as to how the division should be made, and confusion among voters about to whom they are paying and for what. The advantages derived from the single authority option, which I have already set out, would be lost.

133. I have not sensed any particular enthusiasm for this option from any person or group.

## **Transition**

134. The recommended single agency model represents a change to the status quo. This necessitates a comment on the successful transition to a new operational model.

135. If the Councils do accept my recommendation, they should record this in a joint memorandum or similar document as a first step. This would ensure that all parties are clear and agreed on the changes and their respective roles moving forward. I envision that this memorandum would include agreed positions on key matters, such as the ongoing role of the advisory committee and its membership, any financial contributions to operational costs from advisory committee members, and the future ownership and maintenance of existing coastal hazard assets.

136. On the issue of existing assets, I would envisage that all existing coastal hazard assets owned by the two territorial authorities (the NCC and the HDC), such as revetments (and including the resource consents held for structures that have not yet been built), be transferred to the HBRC. They are unlikely to have any open market value. This will allow for a fully integrated approach to managing coastal hazards risks at present and into the future; to do otherwise risks perpetuating the issues I have identified with the multi-authority options discussed above.

137. The next step will be for the HBRC, I suggest in conjunction with the Joint Committee, to prepare a Transition Plan to set out the timing and orderly process of transitioning to a single agency model in accordance with the terms set out in the agreement.

138. The Transition Plan should be prepared in consultation with the territorial authorities and set out procedures for the transfer of assets. A full transition plan would then be finalised and implemented.

## Recommendation

139. For the reasons I have set out, I recommend that the HBRC takes charge of all aspects of the prevention and mitigation of coastal hazards on the Clifton to Tangoio coast including deciding on preventative, mitigating or remedial works, making all decisions about rating for these works and collecting those rates, the implementation of all decisions including supervising works, and the control of all maintenance. I recommend that there be an advisory committee which includes members of both the NCC and HDC, but that this advisory committee has no decision-making powers, and no ability to delay the implementation of proposals.

140. My recommendation is that the HBRC should take charge of:

- (a) The collection of the rates that will fund the projects;
- (b) Deciding which rate payers should pay and in what amounts and proportions;
- (c) Deciding and controlling the projects to which the funds are applied; and
- (d) Implementation of the projects.

Dated this 23<sup>rd</sup> day of April 2021



Raynor Asher