



**Traverse  
Environmental**

Clifton to Tangoio Coastal Hazard Strategy

# Regulatory Workstream Background Paper

08 May 2024

# EXECUTIVE SUMMARY

This background paper has been developed to inform the Regulatory Chapter of the Clifton to Tangoio Coastal Hazards Strategy ("the Strategy"). Alongside overarching recommendations, this paper introduces the two key concepts to be addressed within the Regulatory Chapter:

- Regulatory Issue One - Exploration of the issue of the potential for perverse outcomes from implementation of pathway adaptation actions
- Regulatory Issue Two - How to appropriately make provision for implementing the Strategy within the current regulatory framework.

The Clifton to Tangoio coastline has been split into units to allow for consideration of the specific needs of each area. For each of the nine priority units, the community assessment panels recommended a preferred adaptation pathway. These pathways, compiled from a series of adaptation response options, indicate the current proposed coastal hazard response for each of the priority units for the next 100 years.

There is significant uncertainty associated with future climate change and sea level rise impacts, and as a result, the potential timing of any future actions. The adaptability of these pathways is therefore critical. The Regulatory Chapter is intended to explore the implementation of the Strategy beyond the short term actions, considering the future implementation of the full suite of potential pathway adaptation actions which require significant planning and lead time. This includes the adaptation action of managed retreat for some of the units.

This report explores the role of Councils in relation to managing natural hazards, the current approach to managing natural hazards and the role of the documents that make up the regulatory planning framework.

Maladaptation is the first of two regulatory issues explored. The intention with this paper is to avoid, where practicable, or mitigate situations where, as a result of the planning or implementation of physical works to increase resilience to natural hazard events, the community:

- Delays or halts preparation for longer term pathway actions including managed retreat,
- Take measures that unintentionally increase risk of natural hazards for current or future generations, including through further land development based on the 'protection' offered through planned physical works undertaken by partner agencies.

Consideration of timing, education and engagement, the role of regulatory reinforcement and the challenges with legislative misalignment are all identified as important factors when considering maladaptation risk. Recommendations are then made to address provide direction on avoiding, where practicable, or mitigating maladaptation risks through the Strategy.

Implementation of the Strategy into the regulatory planning framework is the second issue explored. There is a balance to be struck between providing for these strategy-endorsed activities to occur while ensuring that there is necessary robust consideration of any detailed proposal for work. Case studies looking at beach scraping/renourishment between Haumoana and Te Awanga and the Clifton revetment illustrate some of the current challenges with implementing adaptation actions on the coast.

The need to plan for managed retreat in some of the units is discussed including the significant planning and lead times that will be associated with retreating from the coast.

A series of recommendations are made for how the Strategy can be implemented through the regulatory planning framework, with an emphasis on the need to introduce the Strategy through the Regional Policy Statement as a key step.

Finally the transition to a fully implemented Strategy is discussed and the challenges that will continue to be faced by Councils and the community while this transition occurs.

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## Report Information

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# 1 Purpose

This discussion paper provides background to the matters to be addressed within the Regulatory Chapter of the Clifton to Tangoio Coastal Hazards Strategy ("the Strategy"). Alongside overarching recommendations, this paper introduces the two key concepts to be addressed within the Regulatory Chapter:

1. Regulatory Issue One - Exploration of the issue of the potential for perverse outcomes from implementation of pathway adaptation actions
2. Regulatory Issue Two - How to appropriately make provision for implementing the Strategy within the current regulatory framework.

## 2 Background

Work on the development of the Clifton to Tangoio Coastal Hazards Strategy 2120 commenced in 2014 with the intention to help the community understand the natural hazard risks along the coast and plan for how to respond over the next 100 years.

The long term vision for the Clifton to Tangoio Coastal Hazards Strategy 2120 is that *“Coastal communities, businesses and critical infrastructure from Tangoio to Clifton are resilient to the effects of coastal hazards”*.

The coastline has been split into a total of sixteen units to allow for consideration of the specific needs of each area. For each of the nine identified priority units, the community assessment panels recommended a preferred adaptation pathway. These pathways, compiled from a series of adaptation response options, indicate the current proposed coastal hazard response for each of the priority units for the next 100 year period.

Table 1 summarises these preferred pathways.

**Table 1 Preferred Adaptation Pathways for the nine Priority Units**

Priority Unit	Short Term (0-20 yrs)	→	Medium Term (20 – 50 yrs)	→	Long Term (50 – 100 yrs)
Whirinaki (B)	Status quo/ Renourishment	→	Renourishment + Control Structures	→	Sea wall
Bayview (C)	Status Quo/ Renourishment	→	Renourishment + Control Structures	→	Renourishment + Control Structures
Westshore (D)	Renourishment	→	Renourishment + Control Structures	→	Renourishment + Control Structures
Ahuriri (E1)	Status quo	→	Sea wall	→	Sea wall
Pandora (E2)	Status quo	→	Storm Surge Barrier	→	Storm Surge Barrier
East Clive (J)	Status Quo	→	Renourishment + Groynes	→	Retreat the Line / Managed Retreat
Haumoana (K1)	Renourishment + Groynes	→	Renourishment + Groynes	→	Managed Retreat
Te Awanga (K2)	Renourishment + Groynes	→	Renourishment + Groynes	→	Renourishment + Groynes
Clifton (L)	Status quo	→	Sea wall	→	Managed Retreat

The identified short-term actions are those with the most certainty as they are based on currently available information. It is likely that as information develops and more is understood about the changing climate, the actions in the medium and long term will be refined or revised.

The adaptation pathways have been developed to traverse a 100-year timeframe, to 2120. However, there is variable uncertainty associated with future climate change and sea level rise impacts, and as a result, the potential timing of any future actions. The adaptability of these pathways is therefore critical. To enable

adaptation of the Strategy and the pathways to new/updated information, the Strategy is intended to be reviewed every 10 years, or in response to changes in the environment that warrant an interim review.

It is therefore important that the Regulatory Chapter is intended to explore implementation of the Strategy beyond the short term actions, considering the future implementation of the full suite of potential pathway adaptation actions for each priority unit.

Many of the actions currently identified for the medium and long term will require significant planning and lead-in time and preparation to ensure the actions can be implemented. This includes actions such as the storm surge barrier in Pandora and the managed retreat of East Clive, Haumoana, and Clifton. Planning and preparation for these actions needs to include consideration of the regulatory planning framework, including whether and how these actions can be consented within the regulatory framework, or what future changes may be needed to make space for this.

## 2.1 Recommendations of this report

There are series of recommendations throughout this background report which provide direction to the content of the Regulatory Chapter of the Strategy.

These recommendations are intended to capture the conceptual nature of the direction of the Strategy. They are not intended to replace a fulsome evaluation of the potential options for achieving the purpose of the Resource Management Act ("RMA"), as is required by Section 32 of the RMA (in relation to proposed policy statements and plans).

Section 32 requires evaluation to, among other things:

1. Determine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of the RMA
2. Determine whether the provisions, in the case of the RPS, policies, are the most appropriate way to achieve the objectives.



## 3 Current Planning and Regulatory Framework

### 3.1 Role of Councils in managing natural hazards

The RMA outlines the specific functions and responsibilities of Councils in relation to the management of natural hazards. Those responsibilities were previously outlined in the 2020 Policy and Regulatory Review (Mitchell Daysh, 2020). This is a summary of the responsibilities.

#### 3.1.1 Regional Council

Section 30 of the RMA specifies the functions of Regional Councils under the RMA.

This includes:

- s.30(1)(c)(iv), "...the control of the use of land for the purpose of – the avoidance or mitigation of natural hazards" and
- s.30(1)(d)(v) in relation to the coastal marine area, the control of "... any actual or potential effects of the use, development or protection of land, including the avoidance or mitigation of natural hazards"
- s.30(1)(g)(iv) in relation to any bed of a water body, the control of the introduction or planting of any plant in, on or under that land for the purpose of "...the avoidance or mitigation of natural hazards".

The purpose of the RPS is defined at Section 59 of the RMA as:

*"...provide an overview of the resource management issues of the region and policies and methods to achieve integrated management of the natural and physical resources of the whole region".*

Any Regional Plan is required to be consistent with the direction in an RPS and includes objectives and policies as well as rules to implement the policies. Section 68 of the RMA directs the considerations for rules in Regional Plans including that rules must relate to a regional council carrying out its functions under Section 30(1) of the RMA and achieving the objectives and policies of the Regional Plan.

#### 3.1.2 Territorial Authorities

For territorial authorities, Section 31 outlines their functions under the RMA.

This includes s.31(1)(b)(i) which specifies *"...the need to control actual or potential effects of the use, development and protection of land including for the purpose of the avoidance or mitigation of natural hazards"*. A District plan is required to have regard to any RPS and Regional Plan<sup>1</sup>.

It is acknowledged that under the RMA, there is some overlap in natural hazard management functions which can result in confusion over the allocation of responsibilities in terms of managing natural hazards on land. However, the focus of this paper is on ensuring that the hierarchy of planning documents consider the management of natural hazard risks in such a way to, at least, not be inconsistent with the document(s) above it in the document hierarchy and to ensure there is no duplication in regulatory requirements.

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<sup>1</sup> RMA Section 74

Figure 1 illustrates the current document hierarchy under the RMA. Solid arrows in this diagram denote 'give effect to' requirements while dashed arrows require consistency between documents.

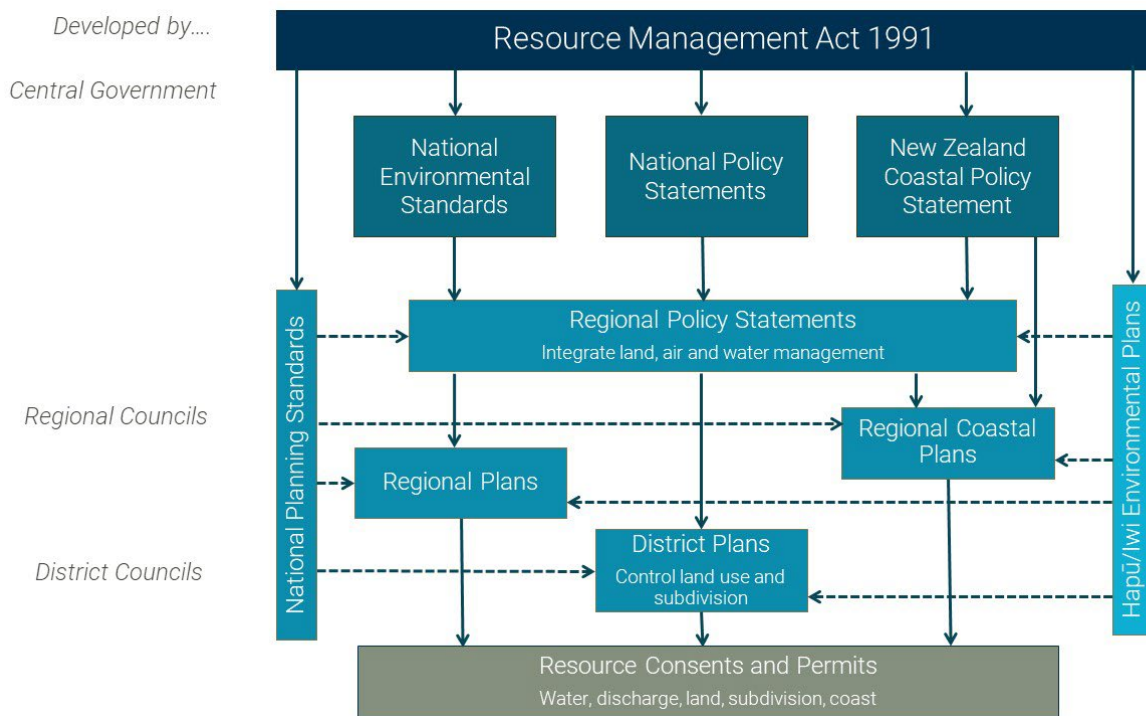


Figure 1 RMA Document hierarchy

### 3.2 Existing regulatory approach to managing hazards

The following sections provide an overview of the current approach to the management of natural hazard risk within the existing planning and regulatory framework in the Hawke’s Bay region.

Section 106 of the RMA provides specific provisions for Councils to refuse subdivision consent where it is considered that there is a significant risk from natural hazards, taking into account the likelihood of the natural hazard occurring, the material damage that would result, and any likely subsequent use of the land that would accelerate, worsen or result in material damage.

#### 3.2.1 Regional Policy Statement

As an overarching management tool specific to the Hawke’s Bay region, the RPS is first step in the regulatory planning framework to set the direction for managing natural hazard risk identified in the Strategy.

The current operative Regional Resource Management Plan (“RRMP”) includes the RPS.

Section 3.12 - Natural Hazards includes objectives and policies that address the susceptibility of the region to natural hazards and the potential impact of these hazards on people’s safety, property and economic livelihood.

Specifically objective OBJ 31 seeks:

*“The avoidance or mitigation of the adverse effects of natural hazard on people’s safety, property and economic livelihood”*

While the RPS specifically mentions a number of natural hazards affecting the region, the only coastal hazard mentioned is tsunamis. Coastal inundation and erosion are not specifically mentioned and as a result, no explanation of these hazards is included in Section 3.12 of the RPS.

Policy 55 is the only policy in Section 3.12 and it relates to the use of non-regulatory methods as the *"principal means of addressing hazard avoidance and mitigation"*. This policy includes:

- Provision of information on natural hazard risk to territorial authorities and a role in advocating for future development being managed to avoid, remedy or mitigate the risk of exposure to natural hazards
- Provision of hazard mitigation measures, flood mitigation in particular, where the benefits can be shown to outweigh costs and the identified beneficiaries can meet the costs
- Focussing hazard avoidance and mitigation on areas of high population density as the first priority.

There is mention of coastal inundation and coastal erosion in other parts of the RPS including:

- OBJ 8 "The avoidance of further permanent development in areas prone to coastal erosion or inundation, taking into account the risk associated with global sea level rise and any protection afforded by natural coastal features"
- OBJ UD1 requiring that urban form in the Region is established in the compact and strongly connected way that avoids or mitigates increasing the frequency or severity of natural hazard risk to people or property.
- POL UD2 District Plans provide for business activities in the Heretaunga Plains where active coastal erosion and inundation is avoided or mitigated
- POL UD4.2 outlines that future Residential Greenfield Growth Areas in the Heretaunga Plains are subject to several criteria including that areas of active coastal erosion and inundation are avoided or mitigated
- POL UD4.4 which outlines that residential greenfield growth within the Heretaunga Plains sub-region in inappropriate beyond existing settlements in various locations.
- POL UD6.1 requires that District Plans provide for papakāinga and marae-based development, outside existing urban areas, provided that the development in areas of active coastal erosion and inundation is avoided or mitigated.
- Section 8.4.4 outlines the responsibilities for local authorities in relation to natural hazards. This includes direction about the responsibility of both regional council and territorial authorities in developing objectives, policies and methods for controlling the use of land to avoid or mitigate coastal hazards. It also outlines that HBRC will be the "...key information provider..." in relation to natural hazard information and that information and assistance to territorial authorities will be provided by HBRC.

The RRMP does not include any specific rules relating to coastal inundation or coastal erosion. Much of the RRMP's content was operative before the 2010 NZCPS came into effect.

### 3.2.2 Regional Coastal Environment Plan – Coastal Hazard zones

The operative Regional Coastal Environment Plan ("RCEP") includes Chapter 15 which specifically addresses to coastal hazards. It includes objectives which seek to:

- Avoid or mitigate the risks posed by coastal hazards to people and property

- Avoid new or further inappropriate development in areas identified as being currently at risk of coastal erosion or inundation e.g. within Coastal Hazard Zone 1
- Avoidance of new or further inappropriate development identified as being at risk of coastal erosion or inundation during the next 100 years e.g. within Coastal Hazard Areas 2 and 3

The RCEP then specifies, through Policy 15.1, a series of environmental guidelines for the management of risks of coastal erosion and inundation with a series of issues and associated guidelines which cover the following topics:

- Management approach
- Identification of coastal hazard areas
- Precautionary approach
- Information
- Hazard Zone review
- Foreshore protection
- Existing subdivision, use and development
- New use and development
- New subdivision and district plan zoning
- Deposition and removal of sediment and other earthworks
- Hazard mitigation works
- Coastal protection structures
- Network utility operations
- Temporary activities
- Decision making

Policy 15.2 encourages the implementation of the above-mentioned guidelines through resource consents, regional rules and non-regulatory methods.

The RCEP also includes policies and environmental guidelines for the following activities that relate to coastal hazard management:

- Chapter 17 - Disturbances, depositions and extractions in CMA
- Chapter 18 – Structures and occupation of space in CMA
- Chapter 20 - Taking, using, damming and diverting water in CMA

Three types of coastal hazard zones (“CHZ”) are identified in Chapter 15 of the RCEP. The hazard zones have been defined based on the potential risk of coastal erosion and/or sea water inundation as follows.

**Coastal Hazard Zone 1 (CHZ1)**

*means an area identified on the planning maps which is land assessed as being subject to storm erosion, short-term fluctuations and dune instability and includes rivermouth and stream mouth areas susceptible to both erosion and inundation due to additional hydraulic forcing of river or estuary systems. For the purposes of this Plan, it extends a distance of 200m seaward from its inland boundary.*

### **Coastal Hazard Zone 2 (CHZ2)**

*means an area identified on the planning maps which is land assessed as being potentially at risk up to 2100 due to long term rates of coastal erosion and at some locations, may also include areas assessed as being potentially at risk of sea water inundation in a 1 in 50 year combined tide and storm surge event. It includes allowance for sea level rise, but does not include land within Coastal Hazard Zone 1 or Coastal Hazard Zone 3.*

### **Coastal Hazard Zone 3 (CHZ3)**

*means an area of land assessed as being potentially at risk of sea water inundation in a 1 in 50 year combined tide and storm surge event, and includes allowance for sea level rise, but does not include land within Coastal Hazard Zone 1 or Coastal Hazard Zone 2.*

CHZs 1-3 were informed by assessments of coastal erosion and coastal inundation risk undertaken mid to late 2000s. The RCEP includes a commitment from HBRC to “review coastal hazard zones no less than every six years to coincide with sea level rise scenarios reviewed by the IPCC and any subsequent guidance produced by New Zealand's government on planning for climate change and sea level rise”.

Land within the Coastal Hazard Zones are subject to rules managing land use activities as outlined in Chapter 27.6 of the RCEP.

Activities in the Coastal Hazard Zones that require resource consent include:

- Building work in Coastal Hazard Zone 2 including additions and alterations to existing lawfully established buildings or structures
- Building work in Coastal Hazard Zone 1 projecting seaward of an existing building
- Network utility structures not within the road reserve
- Repair, maintenance and upgrading of coastal protection structures
- Replacement, erection, placement, construction (including extension) demolition or removal of any coastal protection structure including those that may span or cross mean high water springs
- Replacing coastal protection structures damaged or destroyed by coastal hazards
- Sediment deposition and gravel extraction
- Landfills and dumping of hazardous substances

Subdivision is not regulated by rules in the regional coastal plan because such regulation does not fall within the role of regional councils. Subdivision is controlled by rules in district plans.

### **3.2.3 Hastings District Council**

Hastings District defers to the RCEP to set the regulatory framework for the management of coastal protection structures and for land use activities in the coastal environment (both above and below mean high water springs (“MHWS”).

Subdivision activities in Coastal Hazard Zone areas are managed by Hastings District Council with specific assessment criteria relating to natural hazards being referenced in Chapter 30.1 of the Hastings District Plan (“HDP”). These assessment criteria effectively reiterate the matters identified in Section 106 of the RMA discussed above and are therefore effective in controlling new subdivision in hazard zones.

The HDP includes controls on coastal protection works above MHWS in the coastal environment.

### 3.2.4 Napier City Council - Coastal Hazard Zones

A single Coastal Hazard Zones is a current feature of the operative Napier District Plan (“oNDP”). Here, a Coastal Hazard Zone extends from the Ahuriri Harbour entrance to the northern extent of the city’s jurisdiction<sup>2</sup>. These are areas that are not identified as Coastal Hazard Zones within the RCEP because they are based on specific, more recent data from 2002.

The primary focus of the oNDP Coastal Hazard Zone is coastal erosion, with the oNDP stating there is a long-term commitment to beach nourishment.

Similar to the RCEP, there are rules restriction land use activities within the coastal hazard zone including restrictions on:

- Network utility operation
- Land development including subdivision
- Coastal protection works
- New buildings or structures

Subdivision activities in Coastal Hazard Zone areas are managed by the oNDP with specific policy direction to avoid, remedy or mitigate risks to the community from subdivision use and development of land. A discretionary activity status under Rule 62.13 applies to land development and new coastal protection works (since November 2000) in the coastal hazard zones.

NCC records show that there have been no new subdivision activities consented since 2002 however land use consents for adding to existing buildings, creating minor dwelling units, sleepouts or additions to include a second storey are relatively lenient.

Further, the coastal hazard zone lines have been used as a hard ‘boundary’ for development, as is illustrated by the development of properties on the coast-side of Mer Place, Bay View in Figure 2. This raises a question around whether coastal hazard mapping was intended to be applied at a property-specific scale like it has in these instances.

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<sup>2</sup> <https://cms.hbrc.govt.nz/assets/Uploads/Review-1996CoastalHazardZone-AhuririEntrance-EskRiverMouth.pdf>



**Figure 2 Mer Place properties showing built development up to the edge of the coastal hazard zone line**

What is clear from comparing the rules in the RCEP with those in the oNDP is that rules are consistent for some activities but more lenient in the oNDP for others. For example, resource consent is required under the RCEP for repairs, maintenance and minor alterations to existing coastal protection works, buildings and structures and for beach renourishment however these activities are permitted under the oNDP.

### 3.2.5 Coastal Hazard management beyond the Strategy boundaries

#### Transition Hazard Zones

In addition to the Coastal Hazard Zones, Transition Hazard Zones are also identified in RCEP. These apply to a number of coastal areas, outside of the Clifton to Tangoio Coastal Hazard Strategy area and are an additional overlay on the regular CHZs 1 & 2. The 'overlay' introduces the need for decision-makers to not only think about beach erosion, but also the 'transition' into cliff shore erosion and the different dynamics of eroding cliffs. The THZs would be found at ends of CHZs where beaches run into hilly/cliff headlands (e.g. at northern Tangoio and at east Clifton).

#### Wairoa

Chapter 27A of the Wairoa District Plan provides rules for the management of Coastal Hazards within the Coastal Hazard Erosion Policy Area ("CHEPA"). As outlined in the chapter, the area of the CHEPA is derived from:

- the Current Erosion Risk Zone (CERZ),
- the 2060 year Erosion Risk Zone (2060 year ERZ), and

- the 2100 year Erosion Risk Zone (2100 year ERZ), being that area of land located between mean high water springs (MHWS) and the landward extent of the 2100 year Erosion Risk Zone boundary.

The CHEPA is applied as an overlay on Mahia Peninsula.

For land use activities within the CHEPA, the plan states as a note:

*Construction, modification and demolition of building, earthworks and vegetation removal within the CHEPA are managed by Hawke's Bay Regional Council (HBRC) in accordance with provisions of the Hawke's Bay Regional Coastal Environment Plan (HBCEP). Activities within the CHEPA are subject to the objectives policies and rules of the HBCEP and may require resource consent from the HBRC.*

Subdivision activities in areas subject to natural hazards are managed with specific policies and assessment criteria relating to natural hazards and a discretionary activity status for subdivision for land identified as being subject to a natural hazard.

### Central Hawke's Bay

The proposed Central Hawke's Bay District Plan (Appeals version, 2023) refers to the Coastal Hazard Zones and rules managing land use and buildings in the Hawke's Bay Regional Coastal Environment Plan. This approach, which reflects the Hastings District Council approach, ensures a consistent approach to coastal hazard management between these Council's, managed by the Regional Council.

Subdivision activities in areas subject to natural hazards are managed with specific policies and assessment criteria relating to natural hazards and a discretionary activity status for subdivision for land identified as being subject to a natural hazard.

## 3.3 Recommendations for the Strategy in relation to existing regulatory planning approach to coastal hazard management

Based on the approach to coastal hazard management in existing regulatory planning documents, there are a number of recommendations that would ensure a consistent, region-wide approach to coastal hazard management, acknowledging the role of the Strategy as a key part of this approach. It is assumed that these actions will be led by HBRC as the owner of the Strategy.

### Recommendations:

- Include recognition in the RPS, of the broad range of coastal hazard risks in Hawke's Bay including specific reference to coastal inundation and coastal erosion including clear descriptions of these hazards and the risks they pose to the community.
- Strengthen the direction in the RPS to avoid further inappropriate subdivision and intensification of land use in areas identified at risk of coastal erosion or inundation.
- Include specific reference to the direction in the Strategy in the RPS
- Direct the revision of regional and district regulatory planning documents to ensure that the management of land use and subdivision in areas at risk of coastal hazards is clear and consistent and does not result in duplication of resource consenting requirements. This should include all coastal areas within the Hawke's Bay region including those beyond the Strategy area i.e. wider Hastings District, Wairoa District and Central Hawke's Bay District. This could include a standard set of objectives and policies required to be implemented throughout the region outlined in the RPS.



- Revision of all coastal hazard zones in the Hawke's Bay Region to ensure a clear and consistent approach to identifying these zones and maintaining these zones within a single regulatory planning document, recommended as the Regional Policy Statement/Regional Plan. This would rely on modelling using consistent information and scenarios.
- Review of the controls on land use and subdivision activities in identified Coastal Hazard Zones to ensure consistency in management of natural hazard risks on these activities between District Plans across the region.
- Review the extent of current Coastal Hazard Zones to ensure that these use the best available information held by Councils on the extent of hazard risks (i.e. using hazard assessments as previously undertaken to inform development of the Strategy).
- Evaluate the merit of identifying Coastal Hazard Zones specific to erosion and inundation separately from those relevant to tsunami risk and consider whether there should be separate controls on subdivision and land use activities within these zones.
- Provide guidance on Strategy implementation to the regulatory planning framework as reviews are undertaken including current Kotahi Plan and Napier City Council District Plan Review.

### 3.4 Existing Use Rights

Activities that have been lawfully established, either as a result of a resource consent or permitted activity status, can become subject to new rules if changes occur in the planning regulatory framework.

Sections 10, 10A and 20A of the RMA outline the instances where existing use rights apply to the use of land, the surface of lakes and rivers and in relation to rules in regional plans. Generally, requirements of existing use rights are determining that the use was lawfully established before the rule became operative or a proposed plan notified and that the effects of the use remain the same or similar in character, intensity and scale to what was lawfully established. For existing use rights that are subject to regional plan rules, there is an additional requirement that the activity must not have been discontinued for a period of more than 6 months since the new rule took legal effect (S.20A(1)(c)).

Under Section 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 Section 68(1) for carrying out its functions under Section 30(1)(c). Under Section 10(4) of the RMA, Section 10 does not apply to any use of land that is controlled under Section 30(1)(c). It is through a combination of functions and powers that the Regional Council may terminate existing use rights.<sup>3</sup>

The role of existing use rights is a relevant consideration for the Regulatory Chapter as there may be a time when existing use rights for some properties may need to be removed or relinquished to implement one or more future actions in the pathways, for example, managed retreat.

### 3.5 Existing regulatory review processes underway

Regulatory documents forming part of the existing planning framework and administered by regional councils and territorial authorities are required to be regularly reviewed every ten years<sup>4</sup>.

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<sup>3</sup> Paragraph 10 of Environment Court Decision [2020NZEnvC 215] Awatarariki Residents Incorporated AND Bay of Plenty Regional Council and Whakatane District Council.

<sup>4</sup> RMA Section 79

These reviews allow for regulatory documents to be updated to reflect changes in resource management issues and as new information, such as new national direction through NPSs and NESs and the Strategy, becomes available.

The RMA specifies in the Schedule 1, the processes to be used to change regulatory planning documents including an RPS, regional and district plan.

The standard Schedule 1 process currently sets out requirements for:

- Public notification of a proposed plan
- Ability for the community to make submissions on the proposed plan
- The hearing of any submissions received
- The decision by the hearing panel on the proposed plan including amendments recommended as a result of submissions
- Ability to appeal decisions to the Environment Court.

The Schedule 1 process is a robust but relatively onerous process to make changes to regulatory planning documents. While the process maintains the integrity of planning documents, it can be expensive and time consuming for both the administering Council and the community to be involved in.

The relatively inflexible nature of this process is such that making changes to regional and district planning documents, such as those needed to incorporate new information on natural hazard risk, can often be a complex and expensive undertaking.

The following sections provide an overview of the current status of existing planning documents and any review processes underway or planned.

### 3.5.1 Hawke's Bay Regional Policy Statement and Regional Plan

Hawke's Bay Regional Council are currently preparing the Regional Policy Statement chapters of the Kotahi Plan. The Kotahi Plan is intended to be a combined document containing the Regional Policy Statement, Regional Plan and Coastal Environment Plan.

The Coastal & Marine and Natural Hazard chapters of the RPS Section of the Kotahi Plan are currently in preparation. Wider engagement with tangata whenua and community is likely in late 2024.

#### **Implications for the Strategy:**

It would be ideal for the Strategy to inform the relevant chapters of the currently proposed Kotahi Plan. However, this input would already have been needed, to inform the publicly notified version of the plan change.

There may still be opportunity to reflect the Strategy in the proposed Kotahi Plan including through the submission process.

Despite the Strategy not being an RMA document per se, future changes to the Kotahi Plan should reflect the direction in the Strategy. If the Strategy's direction is incorporated into the RPS, those directions will also filter down through the relevant regional plan and district plan.

### 3.5.2 Napier District Plan

Napier City Council has a full review of the oNDP underway at the time of writing (early 2024) ("pNDP"). A variation is being prepared for the Natural Hazards chapter. Public engagement on a high-level issues and options paper occurred through March 2024. Engagement with key stakeholders will continue in mid-2024.

The issues and options paper for this work identifies that the Strategy may result in the management of coastal hazards along the coast by HBRC but identifies that an interim approach is needed now until this occurs.

Anticipated timeframe for public consultation on this chapter is late 2024.

#### **Implications for the Strategy:**

It would be ideal for the Strategy to inform the development of the Natural Hazard chapter of the pNDP ahead of public notification in late 2024 of the District Plan variation.

Outside of this opportunity, there is an option for submission to be made to ensure that the Strategy is appropriately reflected in the proposed District Plan variation.

### **3.5.3 Hastings District Plan**

Hastings District Plan was reviewed and made mostly operative in 2020 with one remaining appeal relating to Wahi Taonga which has recently been settled (2024).

Hastings District Council will initiate a rolling review of the District Plan as required based on priorities set by the Council. Natural Hazards are not one of the current priority sections. There is a possibility that there may be plan updates as a result of land categorisation following Cyclone Gabrielle and the voluntary buy-out of land under Category 3 however it not likely that these changes would extend to include Strategy implementation.

There is potential that changes to priority sections could be made to re-prioritise the natural hazards chapter as is necessary to incorporate findings of the Strategy. Updates to reflect the National Planning Standards framework is underway which could provide an opportunity to make changes to the Coastal Environment chapter as necessary to reflect the Strategy.

#### **Implications for the Strategy:**

With no plan change proposed in the HDC work programme, it is anticipated that any substantive change necessary to the HDP to give effect to the Strategy will need to be factored into future reviews or progressed separately by HDC.

## **3.6 Policy and Regulatory Review**

In July 2020, a report<sup>5</sup> was commissioned as part of the Strategy development work which examined the key documents forming the relevant national, regional and district-level planning and regulatory framework applicable in the Strategy area. This work sought to understand whether the existing planning and regulatory framework supports the implementation of the preferred adaptation pathways.

The report explores potential implementation challenges of pathway actions and the broader Strategy principles and provides recommendations around what changes could be made to assist with Strategy implementation.

The report outlines a number of key findings and recommendations *“to ensure that the regulatory and policy framework within the Hawke’s Bay region and district assists with the consistent administration and*

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<sup>5</sup> Mitchell Daysh, 2020, Policy and Regulatory Review – Stage 4 Clifton To Tangoio Coastal Hazard Strategy 2120 <https://www.hbcoast.co.nz/assets/Uploads/NO-WATERMARK-Policy-and-Regulatory-Review-report-for-Stage-4-of-Clifton-to-Tangoio-Coastal-Hazard-Strategy-2120-FINAL-DRAFT-July-2020-5477.pdf>

implementation of the Strategy". The report groups these findings and recommendations based on the level of action needed either national or regional/local and 'other' actions as shown in the tables below.

**Table 2 Summary of recommended actions under non-RMA national statutes**

Statute	Report Recommendation	Strategy action and responsibility
Building Act 2004	<ul style="list-style-type: none"> <li>Develop consistent processing requirements within coastal hazard areas and an agreed set of baseline data.</li> </ul>	<ul style="list-style-type: none"> <li>Include a recommendation to maintain involvement in legislative reform to seek greater alignment between building and resource management legislation</li> <li>Include a recommendation in the strategy that requires territorial authorities across the region to collectively develop an approach to ensure consistent processing of consents within coastal hazard areas.</li> </ul>
Reserves Act 1977	<ul style="list-style-type: none"> <li>Commence a process to work through the implications of the Reserves Act, the reserve classifications, reserve management plans and what authorisations or other actions may be required.</li> </ul>	<ul style="list-style-type: none"> <li>Include a recommendation in the strategy that requires territorial authorities across the region to work collectively to establish the best mechanism for recognising, classifying and managing reserves within the coastal environment and within coastal hazard areas.</li> </ul>
Marine and Coastal Area (Takutai Moana) Act 2011	<ul style="list-style-type: none"> <li>Continue engagement with the three iwi groups that form part of the Joint Committee as further policy, planning and consenting work progresses</li> <li>Seek advice from Council liaison advisors regarding the additional engagement required with parties outside of the Joint Committee, including in light of the MACA applications. Consider establishing a separate cultural workstream.</li> </ul>	<ul style="list-style-type: none"> <li>Continue engagement with hapū, iwi and post-settlement governance entities is recommended to progress work in this space.</li> </ul>
Hawke's Bay Regional Planning Committee Act 2014	<ul style="list-style-type: none"> <li>Consider establishing a separate cultural workstream to ensure that tāngata whenua have an opportunity to meaningfully exercise their kaitiaki over the Priority Units of interest.</li> </ul>	<ul style="list-style-type: none"> <li>This Committee have oversight of RPS preparation and regional plan and will therefore be valuable advocates for the Strategy implementation through RMA regional planning docs.</li> </ul>
Heritage New Zealand Pouhere Taonga Act 2014	<ul style="list-style-type: none"> <li>Ensure that an archaeological authority is obtained for works within any Priority Units that are known or likely to contain historic artefacts.</li> </ul>	<ul style="list-style-type: none"> <li>Consider whether site by site or a comprehensive project to identify these sites most appropriate approach. Early access to this information would be useful to inform appropriateness of proposed adaptation options and associated resource consent applications</li> <li>NZAA site shows a number of sites along the Napier coastline that should be a starting place to inform this work, alongside input from mana whenua, iwi/hapū.</li> <li>Further exploration through the Cultural workstream of the Strategy</li> </ul>
Other statutes	<ul style="list-style-type: none"> <li>Identify what additional approvals may be required under other statutes not considered in this report, for example, the Wildlife Act 1953,</li> </ul>	

Statute	Report Recommendation	Strategy action and responsibility
	Marine Mammals Protection Act 1978 and fisheries legislation. This will become more apparent has technical assessments are completed with respect to each Priority Unit and as the environmental context and effects associated with each adaptation response identified.	

**Table 3 Recommended actions under RMA National Policy Statements**

National Policy Statement	Report Recommendation	Strategy action and responsibility
New Zealand Coastal Policy Statement	<ul style="list-style-type: none"> <li>• Undertake baseline studies to confirm the extent to which Policies 11, 13 and 15 may present challenges to the implementation of short-term adaptation responses.</li> <li>• Obtain archaeological authorities as necessary for sites which have or are likely to encounter historic artefacts.</li> <li>• Continue to advise Central Government and the Ministry of Conservation around the potential impact of the NZCPS on the delivery of short- and long-term management responses of coastal hazards and sea level rise.</li> <li>• Promote potential opportunities for a new coastal hazard and adaptation policy statement.</li> <li>• Promote amendments to the NZCPS</li> </ul>	<ul style="list-style-type: none"> <li>• These policies relate to the protection of indigenous biological diversity, preservation of natural character and natural features and landscapes. An assessment of the policy requirements will be required for each potential pathway adaptation action to understand the values of the area and how these can be appropriately managed when the adaptation actions are implemented. This could be carried out as a separate project to understand implications for Strategy implementation.</li> </ul>
Proposed National Policy Statement for Urban Development Capacity 2016 (now National Policy Statement for Urban Development 2020, updated 2022)	<ul style="list-style-type: none"> <li>• Work with Councils to confirm that future greenfield urban development is not located within areas exposed to coastal hazard risks.</li> </ul>	<ul style="list-style-type: none"> <li>• The NPS for Urban Development 2020 (updated 2022) is now in force, replacing the earlier NPS for Urban Development Capacity. It identifies Napier and Hastings as a “Tier 2 urban environment” and places requirements on territorial authorities in relation ensuring their urban environments are well functioning.  As with any other NPSs, NCC and HDC will need to prepare their district plans in accordance with the direction in this NPS.  No specific direction is needed in the Strategy in relation to this recommendation however the Future Development Strategy provides opportunities to align with the Strategy and therefore avoiding the risk of maladaptation and inappropriate urban development which may conflict with the Strategy.</li> </ul>

**Table 4 Summary of recommended actions under Regional and District Planning and Policy Documents**

Regional/District Planning and Policy Document	Report Recommendation	Strategy action and responsibility
Hawke's Bay Regional Policy Statement (part of the Regional Resource Management Plan)	<ul style="list-style-type: none"> <li>Update the RPS to better give effect to the NZCPS;</li> <li>Include new objectives and policies into the RPS which specifically give recognition and weight to the resource management-related elements of the final Strategy.</li> </ul>	<ul style="list-style-type: none"> <li>The RPS is the key tool to incorporate Strategy principles and implementation methods into all planning documents for the region.</li> </ul> <p>Include a recommendation in the Strategy that requires HBRC to take responsibility for leading the implementation of the Strategy through the RPS as initial point of introduction to the regulatory planning framework.</p>
Hawke's Bay Regional Coastal Environment Plan	<ul style="list-style-type: none"> <li>Undertake baseline studies to confirm the extent to which the Priority Units contain natural character, natural landscape, natural feature and indigenous biodiversity values;</li> <li>Update the Regional Coastal Environment Plan to better give effect to the NZCPS;</li> <li>Undertake mapping of key features identified in the NZCPS (such as area of significant indigenous biodiversity, natural character, natural landscapes and natural features) to provide greater certainty of outcome for plan users;</li> <li>Update the policy framework to better recognise and provide for the outcomes sought by the Strategy. This includes: <ul style="list-style-type: none"> <li>Establishing a more enabling and simplified consenting framework for the implementation of the short-term adaptation responses. Medium term should also be recognised and provided for (potentially via different consenting path) in the event that the medium-term triggers are reached, or planning for the implementation of medium term responses is required in the lifecycle of the Regional Coastal Environment Plan.</li> </ul> </li> <li>Establishing a stronger and more directive policy framework for land use activities within coastal hazard areas. While managed retreat is a long-term Strategy outcome, a strong policy dissuasion would gradually result in a migration from the coast.</li> </ul>	<ul style="list-style-type: none"> <li>Recommend Strategy to be specifically referenced and the direction reflected in the Kotahi Plan as it is developed.</li> <li>Recommended actions in relation to Strategy implementation and avoidance, where practicable, or mitigation of maladaptation addressed in Sections 5.3 and 6.3 below.</li> </ul>
Hastings District Council	<ul style="list-style-type: none"> <li>Establish greater alignment between the natural hazard and land use zone provisions by:</li> <li>Strengthening the land use zone provisions around the avoidance of land use activities and structures in natural hazard areas (insofar as it relates to subdivision – land use within these areas are addressed in the Regional Coastal Environment Plan);</li> <li>Providing of coastal hazard defence structures under a single set of rules rather than requiring multiple zone consents (typically as a non-complying activity).</li> <li>Update the Coastal environment strategy related provisions to reference the Clifton to Tangoio Coastal Hazard Strategy 2120.</li> </ul>	<ul style="list-style-type: none"> <li>Include a recommendation in the strategy that requires territorial authorities across the region to work with HBRC to develop a consistent approach to the identification of coastal hazard zones and then appropriate status of land use and subdivision activities within these zones taking account the findings of the Strategy and requirements of the RPS.</li> <li>Territorial authorities across the region to work with HBRC to determine most appropriate</li> </ul>

Regional/District Planning and Policy Document	Report Recommendation	Strategy action and responsibility
City of Napier District Plan	<ul style="list-style-type: none"> <li>To create consistencies between Napier City and Hastings, remove the coastal hazard zone over Westshore and Bay View, thus leaving control of land use activities within those overlay areas to rules in the Regional Coastal Environment Plan;</li> <li>Strengthen the natural hazard provisions particularly with respect to subdivision (and land use within the coastal hazard areas is recommended within the Regional Coastal Environment Plan) and ensure alignment between the objectives, policies and methods.</li> </ul>	agency to manage activities within the coastal hazard zone to prevent overlapping consenting requirements
Resource Consent/ Decision Making Process	<ul style="list-style-type: none"> <li>As set out in the accompanying report (Consentability of Short Term Adaptation Responses), obtain a legal opinion with respect to the statutory weight to given to the Strategy as it currently stands.</li> </ul>	<ul style="list-style-type: none"> <li>Recommend the Strategy include a section on how transition to implementation of the Strategy is to be managed including through the use of the Interim Response Plan</li> </ul>

**Table 5 Summary of recommended actions under other plans and strategies**

Document	Report Recommendation	Strategy action and responsibility
Heretaunga Plains Urban Development Strategy  (soon to be replaced by the Future Development Strategy (adoption expected in November 2024))	<ul style="list-style-type: none"> <li>Ensure future updates to the Strategy maintain alignment with the Clifton to Tangoio Coastal Hazard Strategy 2120.</li> </ul>	<ul style="list-style-type: none"> <li>Include a recommendation in the Strategy that requires all other future growth and development strategies to be consistent with the Strategy.</li> </ul>
Coastal Hazards and Climate Change and Guidance for Local Government	<ul style="list-style-type: none"> <li>Continue to feed into the review and development of guidance documents.</li> </ul>	<ul style="list-style-type: none"> <li>Include a recommendation in the Strategy that requires Councils to remain engaged in legislation and guidance on the coastal hazard and climate change space</li> </ul>
Hawke's Bay Conservation Management Strategy	<ul style="list-style-type: none"> <li>Review the proposed new Hawke's Bay Conservation Management Strategy when notified and prepare a submission (if necessary) to ensure the outcomes of the Strategy are enabled.</li> </ul>	<ul style="list-style-type: none"> <li>Hawke's Bay and East Coast Conservation Management Strategies are proposed to be combined however this is on hold pending iwi settlement for te Whānau a Apanui.</li> <li>HBRC to advocate for recognition of the Strategy in the CMS when the review takes place.</li> </ul>

### 3.7 Consentability of short-term adaptation responses

In July 2020, Mitchell Daysh also produced a report<sup>6</sup> which explored the consenting requirements of the short-term pathway adaptation actions and identified impediments and challenges to consenting these activities.

The report explores the consenting requirements for the short-term pathway actions to be implemented at each of the priority units. Under the current resource management framework (under the RMA), resource consents are required where an activity has a controlled, restricted discretionary, discretionary or non-complying activity status. Permitted activities can be carried out without the need for a resource consent, while prohibited activities are not allowed and a consent application cannot be made for these activities.

This report only considers the consenting requirements for short-term actions, however the intention of the Strategy is to look at the planning and regulatory requirements beyond those short-term actions.

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<sup>6</sup> Mitchell Daysh, 2020, Consentability of Short-Term Adaptation Responses – Stage 4 Clifton To Tangoio Coastal Hazard Strategy 2120 <https://www.hbcoast.co.nz/assets/Uploads/NO-WATERMARK-Consentability-of-short-term-adaptation-responses-report-for-Stage-4-of-Clifton-to-Tangoio-Coastal-Hazard-Strategy-2120-FINAL-DRAFT-July-2020.pdf>



Table 6 below is a summary table of the types of resource consents required to implement the short-term pathway action for each of the priority units.

**Table 6 Resource consent requirements to implement the short-term pathway actions**

Type of activities requiring consent	Priority Unit						
	Whirinaki	Bay View	Westshore	Pandora	Haumoana	Te Awanga	Clifton
Land use consent - Renourishment (deposition) on the foreshore or seabed	Rule 151 - Discretionary	Rule 151 - Discretionary	Rule 151 - Discretionary		Rule 151 - Discretionary	Rule 151 - Discretionary	Rule 147 – Restricted Discretionary
Land use consent - Renourishment (above mean high water spring) within the coastal margin			Rule 103 - Controlled		Rule 104 – Restricted Discretionary	Rule 104 – Restricted Discretionary	Rule 104 – Restricted Discretionary
Land use consent - Soil disturbance / earthworks within the coastal margin				Rule 8 – Restricted Discretionary	Rule 8 – Restricted Discretionary	Rule 8 + Rule 109 – Restricted Discretionary + Non-complying	Rule 8 – Restricted Discretionary
Discharge permit - Discharge of solid contaminants in the coastal margin				Rule 18 – Discretionary	Rule 18 – Discretionary	Rule 18 – Discretionary	Rule 18 – Discretionary
Discharge permit - Discharge of contaminant in the coastal margin				Rule 9 – Discretionary	Rule 9 – Discretionary	Rule 9 – Discretionary	Rule 9 – Discretionary
Coastal permit - Disturbance of the foreshore and seabed associated with the construction of coastal protection structures within the coastal marine area				Rule 130 - Discretionary	Rule 130 - Discretionary	Rule 130 - Discretionary	Rule 130 - Discretionary
Coastal permit - Construction of a coastal protection structure in the coastal marine area				Rule 125 - Non-complying	Rule 125 - Non-complying	Rule 125 - Non-complying	Rule 125 - Non-complying
Maintenance and repair of coastal protection structures (e.g. existing wall) within Coastal Hazard Zone 1 or 2							Rule 98 – Restricted Discretionary
Land use consent - Construction of a coastal protection structure in the coastal margins (including within land use zones)				Rule 100 – Non-complying	Rule 100 – Non-complying	Rule 100 – Non-complying	Rule 100 – Non-complying
				Rule 42.8(e), Rule 43.7(a) and (e) and Rule 46.7.1(a) and (f) - Discretionary	Rule OSZ15, CSZ23 & PP39 HTR25 – Non-complying	Rule OSZ15, CSZ23 & PP39 HTR25– Non-complying	Rule OSZ15, CSZ23 & PP39 – Non-complying
				Rule 178 - Discretionary	Rule 178 - Discretionary	Rule 178 - Discretionary	Rule 178 - Discretionary

Type of activities requiring consent	Priority Unit						
	Whirinaki	Bay View	Westshore	Pandora	Haumoana	Te Awanga	Clifton
Coastal permit - Occupation of the coastal marine area by coastal protection structures				Rule 42.8(a), 42.8.1(a) and 43.7.1(a) – Discretionary			
Water permit/coastal permit - Damming and diversion of coastal water				Rule 155 - Discretionary			
Coastal permit - Structures impounding Significant Conservation Areas (Ahuriri Estuary)				Rule 128 - Prohibited			
Earthworks exceeding permitted volumes				Rule 5A.10 – Discretionary	Rule EM 10 & EM 11 - Discretionary	Rule EM 10 & EM 11 - Discretionary	Rule EM 10 & EM 11 - Discretionary
Development or land use that does not comply with the relevant conditions (i.e. height, HIRB, yards, noise, vibration and earthworks)				Rules 42.7, 43.6, 50A.26 and 46.6 – Restricted Discretionary			

Key:

Hawke's Bay Regional Coastal Environment Plan
City of Napier District Plan
Hastings District Plan

It is noted that following the finalisation of Panel Assessment Report (in February 2018), preferred pathways for Pandora and Clifton were revised to maintain status quo in the short term for both Units. This is not reflected in the table above which addresses the consenting requirements for the previous short term actions of inundation protection for Pandora and seawall for Clifton.

### 3.8 Planning for Future Urban Development

Hastings District Council, Napier City Council and the Hawke's Bay Regional Council and iwi and hapū partners, are jointly developing the Hastings and Napier Future Development Strategy (FDS). The FDS will guide development within and nearby existing urban areas of Napier and Hastings over the next 30 years. The FDS is a requirement of the Government's 2020 National Policy Statement for Urban Development (NPS-UD). The coastal edge of the FDS 'study area' extends from Whirinaki in the north to Clifton in the south – almost the same as the Strategy, except the FDS does not extend further north to Tangoio.

The NPS-UD requires the three councils to prepare the FDS and publicly consult on a draft version. The FDS project work programme has earmarked June/July 2024 for a public submission period, followed by hearings. The FDS project plan is aiming to have a final FDS ready for adoption by the three partner councils in November 2024.

When it is finalised, the FDS will replace the current Heretaunga Plains Urban Development Strategy (HPUDS) as the key strategic urban growth strategy for the Heretaunga Plains. The NPS-UD requires councils to review the FDS every three years to ensure it takes into account changes in population and business forecast, and changes to the environment and climate change impacts for example. A programme of routine monitoring will need to be developed to support FDS implementation and those regular three-yearly reviews.

The purpose of the Napier-Hastings FDS is to provide a strategic blueprint for where and how the urban areas of Napier and Hastings will grow over the next thirty years. In doing this, it will:

- a. need to achieve 'well-functioning urban environments' in Napier and Hastings' current and future urban areas.
- b. identify the big issues around growth, things like housing, transport, employment, cultural wellbeing, the environment, climate change and resilience.
- c. allow councils and key agencies to plan and deliver the necessary infrastructure to support agreed growth goals and recovery from the impacts of Cyclone Gabrielle.

The NPS-UD says that, at a minimum, 'well-functioning urban environments' are ones that:

- a. have or enable a variety of homes that meet people's needs in terms of type of housing, price and location
- b. have a range of locations available to develop that meet the needs of businesses
- c. enable Māori to express their cultural traditions
- d. support market competition
- e. have good accessibility for all between where people live, work, play, access community services, natural places and open spaces; this must include walking, cycling and public transport
- f. support reductions in greenhouse gas emissions, and
- g. **are resilient to the likely current and future effects of climate change** (emphasis added).

Preliminary work undertaken to inform the FDS drafting during 2023-24 has been informed by earlier assessments of coastal erosion and inundation hazards – work undertaken as part of the Strategy project. Areas identified as being at risk of coastal erosion, coastal inundation and tsunami (now and in future) have been actively considered when assessing the constraints and opportunities for potential residential and business growth locations and associated key infrastructure needs.

### 3.9 RMA Reform

The regulatory planning framework under the Resource Management Act (“RMA”) has been the subject of reform since 2021. While a reform was enacted by the government in 2023, it was subsequently repealed by the succeeding government following the 2023 election and the RMA reinstated in large part.

The current government is planning a series of future RMA reforms rolled out in three phases.

The first of these phases, the repeal of the RMA replacement Acts, was completed in December 2023.

The second phase is to implement fast track legislation for projects of national and regional significance with Ministerial sign-off as final decisions makers. Projects eligible to be fast tracked will either be referred by the Ministers of Infrastructure, Transport and Regional Development or listed in the Act itself (which, at the time of drafting is not yet populated). At this stage it is anticipated that the Bill will be enacted in the last quarter of 2024.

The second part of phase two is proposed, targeted amendments to the RMA, designed to help investment in infrastructure, housing and primary industries alongside changes to national direction through national direction instruments (i.e. National Policy Statement (“NPS”) and National Environmental Standards (“NES”).

The third and final phase of reforms will look to permanently replace the RMA, based on the enjoyment of private property rights. These changes are currently heading for introduction to parliament in mid-2025.

The current state of flux with the legislative environment it is unclear what the future regulatory framework will look like. Regardless of the new framework, there will be a role for regionally significant work on natural hazard risks so it is anticipated that the work of the Strategy will form part of any future regulatory planning framework.

## 4 Link to other strategies

While the focus of this background paper is on the Strategy, it is acknowledged that this is one of many current strategies being developed and implemented by Hawke's Bay councils.

The following is a summary of existing a future emerging/ potential strategies that the Clifton to Tangoio Coastal Hazards Strategy needs to not be inconsistent with.

Existing	Emerging / potential
Regional Land Transport Plan	Future Regional Land Transport Strategies
Regional Biodiversity Strategy	Potential future National Policy Statement for Indigenous Biodiversity
Heretaunga Plains Urban Development Strategy	Napier-Hastings Future Development Strategy ('FDS') <i>[NB: adoption due ~Nov 2024]</i>
	Future of Category 3 Severely Affected Land(?)
	Future of Category 2 Severely Affected Land(?)
	Climate Action
Regional Economic Development Strategy ('Matariki')	
	Possible Regional Spatial Plan/Strategy
Napier Spatial Picture	Napier Stormwater Structure Plan
Napier Servicing Structure Plan	Proposed Napier District Plan
	Napier District Plan Natural Hazards Chapter Variation
	Napier District Plan Indigenous Biodiversity Chapter Variation
	Napier Transport Strategy
	Ahuriri Regional Park Masterplan

## 5 Regulatory Issue One – Perverse Outcomes

### 5.1 What is the issue?

'Moral Hazard' is a term that has been regularly used in discussions in the context of the Strategy. It has been used to describe a scenario where perverse outcomes arise as a result of coastal hazard adaptation measures being implemented.

The intention is that the Strategy seek to avoid where practicable or mitigate situations where, as a result of the planning or implementation of physical works to increase resilience to natural hazard events, the community:

- Delays or halts preparation for longer term pathway actions including managed retreat,
- Take measures that increase risk of natural hazards for current or future generations, including through further land development based on the 'protection' offered through physical works undertaken by Council.

The concept of Moral Hazard is explored below, including its origins and whether it is the most appropriate description of the scenarios that the Strategy is trying to avoid where practicable or mitigate.

#### 5.1.1 Moral Hazard

The concept of 'moral hazard' originated in the late 19<sup>th</sup> century in relation to insurance and economics with a broad range of associated definitions and applications. In this context, the term is used to describe a lack of incentive to take care i.e. as the result of an insurance policy covering the risk of a particular event occurring.

As the concept of moral hazard has expanded beyond economics and insurance, philosophers and social scientists have sought to further understand and clarify the concept. The morality component of moral hazard has also been questioned by some (Jebari et al 2021, Hale 2009).

In 2018, the concept of moral hazard was given a climate-specific makeover. Markusson, McLaren, and Tyfield (2018) have proposed a climate-specific version of the notion of moral hazard. This new perspective came about when exploring negative emissions technologies (NETS) with the potential to offer hope of removing greenhouse gases from the atmosphere and whether the prospect of NETs was significantly deterring or delaying timely action to cut emissions. The phrase "*mitigation deterrence*" was developed in this context.

Mitigation Deterrence moves away from the solely economic and insurance-related considerations of moral hazard and introduces a climate-relevant aspect; namely, whether "*considering or promoting [a given climate intervention] might, for any reason, deter or delay desirable levels of mitigation*".

The use of the Mitigation Deterrence terminology feels like a closer description of one of the concerns the Strategy is seeking to address in the Regulatory Chapter, however, is considered to be related more to climate change mitigation rather than to adaptation.

#### 5.1.2 Maladaptation

Maladaptation is a concept which is defined in the IPCC Climate Change Synthesis Report 2023, and adopted by the National Climate Change Risk Assessment for Aotearoa New Zealand (2020) ("NCCRA") as:

*"Actions that may lead to increased risk of adverse climate-related outcomes, including via increased greenhouse gas (GHG) emissions, increased or shifted vulnerability to climate change,*

*more inequitable outcomes, or diminished welfare, now or in the future. Most often, maladaptation is an unintended consequence.”*

The concept of maladaptation is considered to better describe the unintended consequences that the Regulatory Chapter of the Strategy is seeking to avoid, where practicable, or mitigate. It addresses actions that can result in an unintended increase in hazard risk, vulnerability and potential inequity within the community as a result of pathway adaptation actions.

Maladaptation received widespread attention as a result of the Third Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) in 2001 (Jones et al, 2015).

As identified in the NCCRA, the consequences of maladaptation are most likely to be borne by future generations. It can increase future vulnerability to hazards, limit future choices and can disproportionately impact on a community's more vulnerable people.

Maladaptation might look like:

- Individuals undertaking subdivision of their land in response to a pathway adaptation action despite a long term indication that managed retreat will be required.
- Removal of hazard zoning as a result of coastal adaptation measures being implemented.
- Significant investment in development of, for example, a residential subdivision or retirement village in an area subject to coastal hazard risks after a seawall is built.
- Deliberate decision(s) by Council(s) not to take action to reduce coastal hazard risks, giving the community a false perception about the coastal hazard risk.
- Council decisions making investment in the short term based on a perception of lack of urgency around coastal hazard risks
- Not maintaining adaptability of pathway adaptation actions through revision and refinement of preferred pathways as required to respond to new/changing information about hazard risks and sea level rise.
- A network utility operator upgrading their infrastructure assets believing a council will maintain an existing coastal protection structure even though that protection structure has a limited design lifespan.
- Perceptions of safety, at an individual property scale, directly adjacent to, but outside of identified coastal hazard areas.

Lawrence et al (2021) also identifies risks with current practices in New Zealand such as raising houses and filling land above coastal flood levels as being *“virtually certain to have only temporary or localised effect, exacerbate drainage issues, result in maladaptation (e.g. create harm and generate future demand for hard protection), transfer costs to future generations and exacerbate inequities between different groups in society”*.

## **5.2 Why it is important that it is addressed?**

There is a risk that without specific, deliberate action to prevent maladaptation from arising, community responses to the implementation of pathway adaptation actions could conflict with the actions intended to reduce the risk of coastal hazards. It is particularly important that the potential for maladaptation is a continual consideration as new/updated information becomes available and there may be a need to shift or alter pathway adaptation actions as a result of this new information.

Maladaptation can result from a proposed pathway adaptation action response to natural hazard risk that does not account for uncertainty and change over time. This is one of the reasons that the adaptation pathways identified in the Strategy for the medium and longer term are considered to be the most appropriate

options to adapt to known information on climate change now. But these actions are not 'locked in' and instead will be subject to regular review and re-evaluation as new information becomes available.

Enabling an adaptive response to management of hazard risks, including through the use of signals and triggers, means that the potential for maladaptation can be identified and managed, including through changes to the associated regulatory planning framework as required.

### 5.2.1 Timing

Timing is important when planning to avoid the potential risk of maladaptation. As preparation is underway for the implementation of a pathway adaptation action, the potential for maladaptation to arise needs to be evaluated. Where maladaptation risks are identified, changes in the regulatory planning framework need to coincide with the implementation of the action. Triggers and signals are useful not only for knowing when pathway adaptation actions may be needed, but also in planning for the avoidance of any maladaptation.

Delays in identifying potential maladaptation risks have the potential to result in challenges for Councils to implement necessary amendments to the regulatory planning framework, potentially placing the community at risk of maladaptation.

### 5.2.2 Education and engagement

Clear and consistent communication and education about the purpose of pathway adaptation actions is necessary to ensure the purpose of the actions is clear. This needs to include reinforcement of messaging around future uncertainty and the potential longer-term actions, including where these actions ultimately result in managed retreat.

Clear messaging and the sharing of knowledge will help the community to understand the anticipated results from the pathway adaptation action and set clear expectations about what the actions mean in the short, medium and longer term. Given the likely timeframes involved in implementing some pathway adaptation actions, i.e. up to 100 years, it is acknowledged that there could be reluctance by some community members who are only concerned with aspects of the pathways that will directly affect them.

Clear communication will also assist to clarify why changes to a regulatory planning framework may be needed, such as to limit future subdivision of land in an area subject to coastal hazard risk.

### 5.2.3 Regulatory reinforcement

While clear education and communication around hazard risks and pathway adaptation actions is critical, without an accompanying regulatory framework, there is still a risk that members of the community make decisions that exacerbate their own exposure, or the exposure of others to coastal hazards risks.

These decisions could result from a range of factors including:

- Denial of hazard risk
- Feeling of reduced risk exposure
- Timing (e.g. for those where the hazard will not occur within their lifetime)
- Strong sense of community and attachment to current place despite the best available information indicating increasing risk to the community at the present location.
- Ability to pay, resilience to financial loss and financial displacement meaning that staying may be preferable to spending more to move to safety.



- As well as any combinations of the above factors.

As a result, the pathway adaptation actions need to be supported by a regulatory framework that anticipates the potential for maladaptation to arise and plans to avoid, where practicable, or mitigate these situations from occurring.

Changes to the regulatory framework could:

- Place blanket restrictions on land use change and/or future development in areas where pathway adaptation actions are buying time before managed retreat including for developments relying on onsite wastewater disposal
- Place time limits on the use of land for certain purposes
- Require changes to building designs to accommodate for coastal hazard risks or require that buildings are temporary and/or moveable as part of the resource consent
- Remove existing use rights.

#### 5.2.4 Legislative misalignment

Lawrence et al 2021 discuss the consideration needed about the inconsistencies between the RMA and the Building Act 2004 to address the risk of maladaptation. This includes the implicit 50-year life of a building under the Building Act and the difficulty in refusing a building consent (under Section 72 of the Building Act) even where the land is known to be subject to one or more natural hazards unless it can be demonstrated that the building will worsen the hazard or affect other properties.

There is potential for maladaptation to arise from inconsistency and conflict between legislation. While this is not a matter for resolution at the local government level, it is a matter that local government could raise and influence through legislative reform, and through the development of future national level direction on management of natural hazard risks and response to climate change.

### 5.3 What direction is needed in the Strategy in relation to addressing maladaptation risks?

The following sections consider the role that the Strategy has in informing the regulatory planning framework in relation to maladaptation. Each section looks at a different level of the current planning framework and recommends how the Strategy should be implemented at each stage.

#### 5.3.1 National Direction

Future resource management reform legislation, alongside other national-level direction setting documents such as the NCCRA, the National Adaptation Plan and proposed National Policy Statement for Natural Hazard Decision-making (NPS-NHD) have the potential to provide useful direction on the avoid, where practicable, or mitigate the risks of maladaptation.

The NCCRA identifies the risk of maladaptation as one of New Zealand's top 10 most significant climate change risks, based on urgency. This finding is based across all five 'value domains' for assessing risks and opportunity; human, natural environment, economy, built environment and governance. This risk is identified as a result of "... the application of practices, processes and tools that do not account for uncertainty and change over long timeframes".

The benefit of matters such as maladaptation being addressed at a national level is that national consistency on these matters is achieved and it places less burden on individual local authorities. It removes the reliance on an individual regional council or territorial authority forging a path on these matters on their own and allows learnings from previous experience to be shared nationwide.

There is potential to engage in the development of these nationally directive documents, as the Joint Committee for the Strategy have done in relation to the proposed NPS-NHD. It would also be worthwhile that the Joint Committee and the Council teams staying abreast of potential changes to the NCCRA and the associated National Adaptation Plan in relation to direction on maladaptation.

Challenges with misalignment in legislation between the Building Act and the RMA should also be a focus of influence for the Joint Committee and Councils' teams. There is a risk that amendments through regulatory planning documents are undermined by the difficulty in restricting buildings under the Building Act that needs to be resolved to manage maladaptation risk.

#### **Recommendation:**

It is recommended that the Strategy include an objective that directs HBRC to directly engage in the development of legislation and the development of national direction on matters relating to coastal hazard adaptation including in relation to maladaptation.

### **5.3.2 Regional Policy Statement**

As previously mentioned in Section 3.2.1, a Regional Policy Statement is the overarching management tool for the region under the RMA. It has a critical role in setting direction on managing coastal hazard risks. This direction is then required to be recognised and given effect to through subsequent documents in the regulatory planning framework.

#### **Recommendations:**

It is recommended that the Strategy direct the inclusion of objectives and policies in the RPS, in relation to the risk of maladaptation, that require:

- The risks of maladaptation are identified and appropriately avoided, where practicable, or mitigated.
- The timing of the implementation of pathway adaptation actions and actions to avoid, where practicable, or mitigate maladaptation risks are aligned.
- The RPS to consider direction relating specifically to the Strategy's agreed/adopted adaptation actions being provided for through RMA plans while any other action/mitigation works that are not part of an adopted pathway will be subject to a greater level of scrutiny/high bar for approval.
- Include direction through objectives/policies that specify the relative roles of regional and district council's in relation to managing maladaptation risk.
- Consideration of the appropriateness of maintaining existing use rights where property is subject to coastal hazard risk.
- Consideration of limitations on new development and expansion/alteration of existing development in relation to coastal hazard risk.
- Consideration of limitations on permanent structures including by limiting development to temporary/removable built structures and imposing physical restrictions on finished floor levels. This

would require consistency in application of both the resource management framework and building consents to ensure effectiveness.

- Territorial Authorities to work together to employ a consistent approach to the identification and management of maladaptation risks.

### 5.3.3 Regional & District Plans

The Regional Plan is required give effect to the RPS. Therefore, the objectives and policies included in the RPS, in relation to maladaptation, will inform what needs to be included in the Regional Plan as objectives, policies and rules.

Objectives, policies and rules in District Plans are required also give effect to the RPS or and not be inconsistent with a Regional Plan.

#### **Recommendations:**

Both Regional Plans and District Plans will need to consider the potential for maladaptation risks resulting from pathway adaptation actions and incorporate directive objectives, policies and rules. However, in order to avoid unnecessarily overlapping or doubling up on controls.

Provisions intended to avoid, where practicable, or mitigate the risk of maladaptation will need to be specific about:

- The circumstances in which the provisions/rules apply to i.e. are they triggered directly by the implementation of pathway adaptation actions
- The method for identifying the physical extent/location where the provisions apply i.e. through zoning, zoning overlays, future zoning indications
- The timeframe for when the rules apply i.e. whether they apply prior to an adaptation action being implemented

## 6 Regulatory Issue Two - Recognition of Strategy implementation in regulatory framework

### 6.1 What is the issue?

The Strategy proposes to implement a series of adaptation pathways to address, over the short, medium and long term, coastal hazard risks for each of the Priority Units along the project area. These pathways are summarised in Table 1 above.

The currently preferred pathways actions, in the short-term, range from continuation of the status quo, including ongoing renourishment through to the introduction of control structures at Te Awanga and Haumoana.

In the medium-term, the introduction of hard structures such as seawall (Ahuriri and Clifton) and storm surge barrier (Pandora) as well as further use of renourishment and control structures.

In the long-term, the current preferred pathways are proposed to respond to coastal hazard risks with a range of hard engineering structures and in some cases, for East Clive, Haumoana and Clifton, managed retreat.

In order for these actions to be implemented, approvals under the relevant regional and district planning documents will be required likely alongside approvals under a number of other legislative instruments in addition to the RMA. The nature of these RMA consenting requirements will depend on the proposed pathway adaptation action and its location i.e. above, below or straddling MHWS. In some cases, consenting approval will be required from the Hawke's Bay Regional Council and/or from a relevant territorial authority.

There is a balance to be struck between providing for these strategy-endorsed activities to occur while ensuring that there is necessary robust consideration of any detailed proposal for work. In the instances where HBRC is both applicant and consent authority, this balance is even more critical.

### 6.2 Why it is important that it is addressed?

Significant effort by the community and the Council's has been invested in reaching the preferred adaptation pathways for each of the priority units. This work, spanning almost a decade, has been informed by community values, hazard expertise and Council-asset managers to provide, what is currently considered to be the most appropriate response to managing coastal hazard risk.

Recognition of the Strategy within the current regulatory planning framework, is needed to manage the risk that the intended pathway adaptation actions cannot be implemented. Some of the adaptation actions will require a significant amount of planning and lead time in order for them to be executed in a cohesive and efficient way e.g. planning for managed retreat.

Lead time for implementing pathway adaptation actions needs to factor in potential changes to the regulatory planning framework.

There are currently challenges with the implementation of coastal hazard mitigation. These are illustrated in the following brief case studies outlined below.

## Case study #1 – Beach scraping and renourishment between Haumoana and Te Awanga Domains

HDC holds a resource consent to undertake beach scraping, both seaward and landward of the beach crest, to manage coastal erosion risks. Where beach scraping is carried out on the seaward side of the beach crest, there is a requirement to provide the same volume of material (with similar characteristics) to the area via renourishment. The Council has a range of challenges in being able to meet the renourishment requirements including:

- Cost of accessing material and transporting it to site
- Sourcing material with suitable similar characteristics
- Limited, non-dedicated budgets for the works to be completed are limited

As a result of these challenges, HDC have not been able to undertake seaward beach scraping. Fortunately, an event resulting in overtopping of the beach crest has not occurred.

The Strategy needs to provide specific direction to inform how the implementation is to be actioned, and to ensure that Councils can budget and plan for necessary pathway adaptation action implementation. This includes planning for implementation within the regulatory planning framework.

The resource consent obtained by HDC for beach scraping and renourishment works was a non-complying activity under the Regional Coastal Environment Plan for works within Coastal Hazard Zone 1. Generally, a non-complying activity status is a signal that an activity is not anticipated to be undertaken. It is subject to specific tests under Section 104D of the RMA which require that one of two tests are satisfied before a consent authority can grant an application. The tests are:

- That the adverse effects of the activity on the environment will be minor; or
- That the application will not be contrary to the objectives and policies of the relevant plan.

If these tests are met, a consent authority can exercise their full discretion as to whether or not to grant a consent, and what conditions to impose on the consent if granted. These activities are generally subject to a greater level of scrutiny and indicate where it has been determined that activities are unlikely to be appropriate.

The consenting process ensures robust consideration of the implementation of proposed pathway adaptation actions. However, a non-complying activity status for works that are identified through the Strategy as necessary for coastal hazard risk mitigation, does not acknowledge the considerable work to identify and evaluate options through the Strategy development process.

The activity status for coastal hazard protection/risk mitigation works associated with the Strategy implementation needs to allow for robust consideration of the proposal but should be set in way that does not relitigate the appropriateness of the action unnecessarily.

### Case Study #2 Clifton Revetment

HDC applied for resource consents (from both HBRC and HDC) as a non-complying activity to upgrade an existing 80 metre limestone rock revetment (constructed in 2013) and to construct a new 400 metre limestone rock revetment (extending west, from the existing revetment) at Clifton Beach (495 and 466 Clifton Road). The works include provision for ongoing renourishment at the northern end of the revetment and involved realigning Clifton Road further inland.

The project was widely supported by the community and by HDC, including commitments to fund the works. The public notification process for the Regional Council consent resulted in 71 submissions being made, 70 of those in support of the proposal and a single submission in opposition. For the District Council consent, ten submissions were received; eight in support, one conditionally in support and one neutral.

The single submission in opposition to the proposal was from a community resident. That submitter opposed the granting of the application based on his belief that the solution would not work and therefore was a waste of ratepayer money. The submitter did not rely on any expert evidence for his reasoning. This is despite evidence from two expert coastal engineers who supported the application and agreed that the works would be effective and have no more than minor adverse effects on the coastal environment.

The single submission in opposition to the proposal meant that a full hearing of the application was needed.

While the application was ultimately granted, the requirement for the independent hearing process to be conducted resulted in significant additional cost for the parties involved.

### Case Study #3 Rangatira – Whakarire Ave Revetment

The Whakarire Ave revetment has a long history and has been designed to replace the existing breakwater which was constructed in 1994. A resource consent application for the construction of a seawall was lodged by NCC with the HBRC in 2009, for a significantly larger and more comprehensive structure than that which was finally consented.

The original design of the groynes to remediate the threat of coastal erosion in this area received significant opposition from the surfing community and local residents. As a consequence the resource consent application received many submissions in opposition. Through mediation a new design was introduced to the submitters. The new plans included a reserve area for public access and a revetment which would hug the coastline and not intrude into the surf break as the initial design had done. Residents in the Whakarire area and other submitters including the surfing community signed off on these new plans agreeing to the revetment and the reserve areas.

Consent was granted in October 2016.

Funding the project was a significant consideration for the Council and faced a series of reprioritisations. A targeted rate of 3% of the total project budget (~\$4 million) was set for the 14 properties which directly benefit from the revetment.

## 6.2.1 Managed Retreat

Preparing the regulatory planning framework for the likely implementation of managed retreat of coastal communities in the longer term is a particular matter that needs to be addressed through the Regulatory Chapter.

Typically, preparing for managed retreat will need a long lead time to enable it to occur. This time is necessary for identifying suitable alternative locations for communities to retreat to, securing land areas, determining retreat mechanisms e.g. voluntary or mandatory, undertaking building works and the development of infrastructure and new community spaces etc.

As a result, there are specific aspects of Strategy implementation that will need to be factored in when planning for longer term managed retreat. These requirements will likely change over time, as more information is available about climate change and associated sea level rise, but the initial draft of the Strategy should signal these aspects so they can be built on and factored into future iterations of the regulatory planning framework.

## 6.3 What direction is needed in the Strategy to provide for Strategy implementation?

It is important that the Strategy provide clear direction about how its implementation will be provided for through regulatory planning documents. The Strategy is not a mandatory planning document that any particular statute requires to be prepared. Nevertheless, the councils are following a 'special consultative procedure' under the Local Government Act 2002 in relation to the draft Strategy. The special LGA process will be an opportunity for the Strategy's direction to be scrutinised and 'tested' by tangata whenua and the community before being finalised and adopted.

### 6.3.1 National Direction

As discussed in Section 5.3.1 above, there is a role for National Direction in achieving Strategy implementation. While not specific to this Strategy, future resource management legislation could, for example, direct the implementation of coastal hazard adaptation strategies through regional/district planning documents.

There is potential for HBRC/Councils to engage in the development of nationally directive documents such as the NPS-NHD and in future changes to the NCCRA and the associated National Adaptation Plan in relation to direction on implementation of coastal hazard strategies.

### 6.3.2 Regional Policy Statement

There is the risk that pathway adaptation actions identified through the Strategy are relitigated through future plan change or resource consent processes which has the potential to add significant time and cost to implementing the actions. As a way to manage this risk, there is the potential for pathway adaptation actions in the Strategy to be given a specific activity status in a regional rule or district rule.

#### **Recommendations:**

It is recommended that the Strategy direct the inclusion of objectives and policies in the RPS that, in relation to the Strategy implementation, require:

- Specific objectives and policies requiring Strategy implementation to be factored into:
  - Determination of activity status
  - Decisions relating to future growth and development opportunities within the priority units
  - Future plan changes

- Specific objectives and policies in relation to future managed retreat including:
  - Consideration of how, when and where land for future development for retreated communities will be identified and procured
  - Consideration of whether managed retreat will be managed on a voluntary or mandatory basis
  - Consideration of a framework for informing about future managed retreat actions including, for example, covenants on titles, withdrawal of council services, plans for removal of redundant infrastructure.
  - Consideration of overlap and alignment with other powers e.g. Building Act
  - Consideration of time restrictions on new development and/or preferred (if any) mitigation methods for new land use activities, for example, requiring buildings to be relocatable
  - Consideration of cancellation of existing use rights for areas identified for managed retreat.
- How to avoid unnecessary duplication of consenting requirements
- How implementation of the Strategy is to be managed by Regional Council/District Council where the proposed pathway adaptation action spans MHWS requiring consents under regional and district plans
- Consideration of directions around costs/budgets for implementing pathway adaptation actions

### 6.3.3 Regional & District Plans

Implementation of the Strategy through a regional plan should be focussed on those activities within the coastal environment. In addition to objectives and policies to achieve the direction of the RPS, it is recommended that any regional and district plan include provisions intended to recognise the need to implement the Strategy including rules that are specific about:

- Consideration of activity status of activities associated with implementation of the Strategy including specifically for implementation activities that are carried out by a regional council or territorial authority or their agent.
- Consideration of the notification status for activities associated with implementation of the Strategy and whether there is a need for full public consultation of activities identified in the Strategy.
- Clear specifying roles/responsibilities that ensure unnecessary duplication of consenting requirements is avoided i.e. between regional councils and territorial authorities.
- Confirm how implementation of the Strategy will be managed by Regional Council/District Council where the proposed pathway adaptation action spans MHWS requiring consent under regional and district plans.



## 7 Transition

There are a series of phases involved in transitioning from Strategy development to implementation

Phase 1 – Prior to adoption of the Strategy

Phase 2 – After adoption of the strategy but before the planning regulatory framework is updated

Phase 3 – After planning regulatory framework is updated to implement the Strategy.

Each of these phases is described below.

### 7.1 Phase 1 – Before Strategy adoption

This first phase is where we are currently at, prior to the adoption of the Strategy.

Ensuring a consistent approach to the management of coastal hazard risk across the region is currently the role of the Interim Response Plan. This plan acknowledges that there are ongoing coastal hazard issues being faced by communities along the coast. Prior to the development of the Interim Response Plan, these issues were managed in a variety of way with actions determined on a case-by-case basis by the relevant territorial authority.

With the Interim Response Plan in place, actions to address coastal hazard risks are monitored, prioritised and responded to in a consistent, coordinated and efficient manner. This provides greater clarity for the community on what actions Councils may undertake and the limitations on such actions to manage emerging coastal hazard issues.

### 7.2 Phase 2 – After Strategy adoption, before regulatory planning framework updated

The most challenging transition phase will be the mid phase which is after the Strategy has been adopted but before it has been fully implemented through the regulatory planning framework.

During this phase, it is anticipated that the changes through the RPS to implement the Strategy will be the catalyst for changes throughout the regulatory planning framework. However, until this occurs and the Strategy is reflected throughout planning documents, there will be a period where a risk of maladaptation could continue to occur.

Also, until the Strategy is fully implemented, challenges are likely to remain in relation to consenting pathway adaptation actions where the current framework does not specifically provide for actions to be implemented through the Strategy. Activities that might be against the direction in the Strategy may also be able to be consented too easily.

However, it is intended that the Strategy is identified as being relevant to any resource consent application under Section 104(1)(c) which relates to other relevant matters.

This second phase is also anticipated to be a period of further and ongoing reforms to resource management-related legislation.

### 7.3 Phase 3 – After regulatory planning framework updated

Once the Strategy has been implemented through the regulatory planning framework through the various planning documents it is envisaged that the following will occur:

- Resource consents for pathway adaptation actions will be able to be obtained where required.
- The potential for maladaptation is identified and actively managed through the regulatory planning framework in a timely manner to avoid, where practicable, or mitigate any maladaptation risks.
- Future planning for managed retreat is underway.
- Plan effectiveness monitoring, specifically in relation to managing and adapting to coastal hazard risk.

Ultimately, implementation of the Strategy is critical to ensuring that coastal hazard risks are managed in a consistent and comprehensive manner now, and in the future.

## 8 Summary of recommendations

The following is a summary of the recommendations made throughout this background report. It is intended that these recommendations will form the basis for the Regulatory Chapter of the Strategy.

### 1. Recommendations in relation to the existing regulatory planning approach to coastal hazard management:

- a. Include recognition in the RPS, of the broad range of coastal hazard risks in Hawke's Bay including specific reference to coastal inundation and coastal erosion including clear descriptions of these hazards and the risks they pose to the community.
- b. Strengthen the direction in the RPS to avoid further inappropriate subdivision and intensification of land use in areas identified at risk of coastal erosion or inundation.
- c. Include specific reference to the direction in the Strategy in the RPS
- d. Direct the revision of regional and district regulatory planning documents to ensure that the management of land use and subdivision in areas at risk of coastal hazards is clear and consistent and does not result in duplication of resource consenting requirements. This should include all coastal areas within the Hawke's Bay region including those beyond the Strategy area i.e. wider Hastings District, Wairoa District and Central Hawke's Bay District. This could include a standard set of objectives and policies required to be implemented throughout the region outlined in the RPS.
- e. Revision of all coastal hazard zones in the Hawke's Bay Region to ensure a clear and consistent approach to identifying these zones and maintaining these zones within a single regulatory planning document, recommended as the Regional Policy Statement/Regional Plan. This would rely on modelling using consistent information and scenarios.
- f. Review of the controls on land use and subdivision activities in identified Coastal Hazard Zones to ensure consistency in management of natural hazard risks on these activities between District Plans across the region.
- g. Review the extent of current Coastal Hazard Zones to ensure that these use the best available information held by Councils on the extent of hazard risks (i.e. using hazard assessments as previously undertaken to inform development of the Strategy).
- h. Evaluate the merit of identifying Coastal Hazard Zones specific to erosion and inundation separately from those relevant to tsunami risk and consider whether there should be separate controls on subdivision and land use activities within these zones.
- i. Provide guidance on Strategy implementation to the regulatory planning framework as reviews are undertaken including current Kotahi Plan and Napier City Council District Plan Review.

### 2. Recommendations resulting from the Policy and Regulatory review report (2020)

Recommendations relating to non-RMA statutes:

- a. Building Act 2004:
  - i. Include a recommendation to maintain involvement in legislative reform to seek greater alignment between building and resource management legislation
  - ii. Include a recommendation in the strategy that requires territorial authorities across the region to collectively develop an approach to ensure consistent processing of consents within coastal hazard areas.
- b. Reserve Act 1977:

- i. Include a recommendation in the strategy that requires territorial authorities across the region to work collectively to establish the best mechanism for recognising, classifying and managing reserves within the coastal environment and within coastal hazard areas.
- c. Marine and Coastal Area (Takutai Moana) Act 2011
  - i. Continue engagement with hapū, iwi and post-settlement governance entities is recommended to progress work in this space.
- d. Heritage New Zealand Pouhere Taonga Act 2014
  - i. Consider whether site by site or a comprehensive project to identify these sites most appropriate approach. Early access to this information would be useful to inform appropriateness of proposed adaptation options and associated resource consent applications.

Recommendations relating to RMA National Policy Statements :

- a. New Zealand Coastal Policy Statement:
  - i. An assessment of the policy requirements will be required for each potential pathway adaptation action to understand the values of the area and how these can be appropriately managed when the adaptation actions are implemented. This could be carried out as a separate project to understand implications for Strategy implementation.
- b. Proposed National Policy Statement for Urban Development
  - i. Opportunity for the Strategy and the Future Development Strategy under the NPS-UD to align and therefore avoid the risk of maladaptation and inappropriate urban development which may conflict with the Strategy.

Note: recommendations under Regional and District Planning and Policy Documents: are reflected in the recommendations outlined below and are not repeated here.

Recommendations under other plans and strategies:

- a. Heretaunga Plains Urban Development Strategy (soon to be replaced by the Future Development Strategy, late 2024):
  - i. Include a recommendation in the Strategy that requires all other future growth and development strategies to be consistent with the Strategy.
- b. Coastal Hazards and Climate Change and Guidance for Local Government:
  - i. Include a recommendation in the Strategy that requires Councils to remain engaged in legislation and guidance on the coastal hazard and climate change space
- c. Hawke's Bay Conservation Management Strategy:
  - i. Hawke's Bay and East Coast Conservation Management Strategies are proposed to be combined. HBRC to advocate for recognition of the Strategy in the CMS when the review takes place.

### 3. Recommendations for addressing potential maladaptation risks in the Strategy:

- a. **National**- It is recommended that the Strategy include an objective that directs HBRC to directly engage in the development of legislation and the development of national direction on matters relating to coastal hazard adaptation including in relation to maladaptation.
- b. **Regional Policy Statement**- It is recommended that the Strategy direct the inclusion of objectives and policies in the RPS, in relation to the risk of maladaptation, that require:
  - i. The risks of maladaptation are identified and appropriately avoided, where practicable, or mitigated.

- ii. The timing of the implementation of pathway adaptation actions and actions to avoid, where practicable, or mitigate maladaptation risks are aligned.
  - iii. The RPS to consider direction relating specifically to the Strategy's agreed/adopted adaptation actions being provided for through RMA plans while any other action/mitigation works that are not part of an adopted pathway will be subject to a greater level of scrutiny/high bar for approval.
  - iv. Include direction through objectives/policies that specify the relative roles of regional and district council's in relation to managing maladaptation risk.
  - v. Consideration of the appropriateness of maintaining existing use rights where property is subject to coastal hazard risk.
  - vi. Consideration of limitations on new development and expansion/alteration of existing development in relation to coastal hazard risk.
  - vii. Consideration of limitations on permanent structures including by limiting development to temporary/removable built structures and imposing physical restrictions on finished floor levels. This would require consistency in application of both the resource management framework and building consents to ensure effectiveness.
  - viii. Territorial Authorities to work together to employ a consistent approach to the identification and management of maladaptation risks.
- c. **Regional and District Plans** - Both Regional Plans and District Plans will need to consider the potential for maladaptation risks resulting from pathway adaptation actions and incorporate directive objectives, policies and rules. However, in order to avoid unnecessarily overlapping or doubling up on controls, it is also recommended that objectives/policies specify the relative roles of regional and district council's in relation to managing maladaptation risk.

Provisions intended to avoid/mitigate the risk of maladaptation will need to be specific about:

- i. The circumstances in which the provisions/rules apply to i.e. are they triggered directly by the implementation of pathway adaptation actions
- ii. The method for identifying the physical extent/location where the provisions apply i.e. through zoning, zoning overlays, future zoning indications
- iii. The timeframe for when the rules apply i.e. whether they apply prior to an adaptation action being implemented

#### 4. Recommendations for addressing strategy implementation challenges in the Strategy:

- a. **National** - It is recommended that the Strategy include an objective that directs HBRC to directly engage in the development of nationally directive documents such as the NPSF-HD and in future changes to the NCCRA and the associated National Adaptation Plan in relation to direction on implementation of coastal hazard strategies.
- b. **Regional Policy Statement** - It is recommended that the Strategy direct the inclusion of objectives and policies in the RPS that, in relation to the Strategy implementation, require:
  - i. Specific objectives and policies requiring Strategy implementation to be factored into:
    - Determination of activity status
    - Decisions relating to future growth and development opportunities within the priority units

- Future plan changes
  - ii. Specific objectives and policies in relation to future managed retreat including:
    - Consideration of how, when and where land for future development for retreated communities will be identified and procured
    - Consideration of whether managed retreat will be managed on a voluntary or mandatory basis
    - Consideration of a framework for informing about future managed retreat actions including, for example, covenants on titles, withdrawal of council services, plans for removal of redundant infrastructure.
    - Consideration of overlap and alignment with other powers e.g. Building Act
    - Consideration of time restrictions on new development and/or requiring only relocatable buildings
    - Consideration of support to be provided to the community, "friend of the community" concept, to provide practical assistance and access to information including legal advice, counselling, financial advice associated with managed retreat
    - Consideration of cancellation of existing use rights for areas identified for managed retreat.
  - iii. How to avoid unnecessary duplication of consenting requirements
  - iv. How implementation of the Strategy is to be managed by Regional Council/District Council where the proposed pathway adaptation action spans MHWS requiring consent under regional and district plans
  - v. Consideration of directions around costs/budgets for implementing pathway adaptation actions
- c. **Regional and District Plans** including rules that are specific about:
- i. Consideration of activity status of activities associated with implementation of the Strategy including specifically for implementation activities that are carried out by a regional council or territorial authority or their agent.
  - ii. Consideration of the notification status for activities associated with implementation of the Strategy and whether there is a need for full public consultation of activities identified in the Strategy.
  - iii. Clear specifying roles/responsibilities that ensure unnecessary duplication of consenting requirements is avoided i.e. between regional councils and territorial authorities.
  - iv. Confirm how implementation of the Strategy will be managed by Regional Council/District Council where the proposed pathway adaptation action spans MHWS requiring consent under regional and district plans.

## 9 Outline of the Regulatory Chapter of the Strategy

1. Introduction to Regulatory Chapter
  - a. Importance of addressing regulatory planning requirements through the Strategy
  - b. Brief introduction of issues to be addressed in regulatory chapter
    - i. Maladaptation issue
    - ii. Strategy Implementation – regulatory framework
2. Purpose of the Chapter
3. Objectives of the Chapter
4. Overarching requirements for Regulatory Planning Framework
5. Maladaptation
  - a. Definition of the problem/risks
  - b. Potential actions needed to prevent maladaptation
  - c. Direction for the regulatory planning framework in relation to managing maladaptation risks
6. Implementation of the Strategy in the Regulatory Planning Framework
  - a. Definition of the problem/risks
  - b. Potential actions needed to acknowledge the need for Strategy Implementation
  - c. Direction for the regulatory planning framework in relation to implementing the Strategy
7. Transition to Strategy Implementation

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