



**Operational
Policy**

TITLE OF POLICY:

Coastal Hazard Policy Framework for Peninsula Coastal Hazard Prone Locations

Incorporating:

- Section 330 emergency coastal protection works policy;
- Policy to determine the use of Council foreshore property for coastal protection works;
- Policy to determine the Thames-Coromandel District Council's service delivery role with regard to coastal protection works at Peninsula locations affected by coastal hazard.

ADOPTED BY: Council

DATE ADOPTED: 15th March 2007

SPONSOR: Peter Wishart
Strategic Relationships Manager

DATAWORKS REFERENCE: Refer to Procedure for Registering Policy Documents

Thames-Coromandel District Council

Section 330 Emergency Coastal Protection Works Policy

Purpose of Policy

The purpose of this policy statement is to:

1. Set out policy to guide the Council when making a decision to undertake emergency works and invoke Resource Management Act Section 330 when a sudden event likely to cause loss of life, injury or serious damage to property impacts any public work or any natural and physical resource or area for which Council has jurisdiction.
2. Signal to third parties, public and private, the role Council will adopt in such cases.

Preliminary Notes

1. Council administers and is a consent authority in terms of the Resource Management Act 1991 (RMA) and is assigned roles and responsibilities under Section 330 of the Act. Other particular provisions of the RMA that Council is required to recognise and provide for lie within Part II (Matters of National Importance) of the Act and relate to the preservation of the natural character of the coastal environment, the maintenance and enhancement of public access to and along the coastal marine area, and the relationship of Hauraki Whanui to their coastal waahi tapu sites and the exercise of kaitiakitanga.
2. Council administers and is a consent authority in terms of the Reserves Act 1977.
3. Council recognises that it has responsibilities under other legislation, particularly:
 - Local Government Act 2002 – The Act requires Council to give effect to the community outcome statements derived through the Long-term Council Community Plan (LTCCP) process to promote the four limbs of community well-being within an inclusive participatory democratic framework and abiding by the principles of prudent financial and resource stewardship.
 - Civil Defence Emergency Management Act 2002: The Act requires all levels of government to work collaboratively to reduce the risk to people and their property through the sustainable management of hazards.
4. Council administers coastal reserve land on behalf of all ratepayers, residents and stakeholder groups but also recognises that there are special interest groups with secondary considerations. For example, adjacent property owners or lessees in respect of Council foreshore reserves.

Objectives

1. To allow Council to respond consistently and efficiently to sudden events threatening public and private coastal resources and values in terms of Section 330 of the Resource Management Act 1991.
2. To provide clarity to Council staff and elected members, other resource management agencies, coastal stakeholders and the wider community on the policy that Council will

use to guide decision making on when it may undertake emergency coastal protection works and invoke Section 330 of the Resource Management Act.

3. To discourage emergency works being undertaken without reference to and with the authority of Council.

Policy Statements

1. Council will, as a priority, protect public values associated with coastal reserves in accordance with reserve management plans.
2. Council will, in applying the provisions of this policy, take into account the normal principles of Administrative Law, i.e., that the decision-making process will be fair and rational, take into account all relevant considerations, and will involve decisions based on the matter at hand and good faith.
3. Section 330 will not be relied upon as a “fallback” provision. On that basis, the Council will exercise its discretion cautiously and will generally only invoke Section 330 where the circumstances require it to act reasonably and objectively out of consideration for the public good.
4. The policy will address the following points:
 - 4.1 When Section 330 will be invoked;
 - 4.2 The effect of invoking Section 330;
 - 4.3 Actions not covered by Section 330; and
 - 4.4 The internal procedure for invoking Section 330.

Section 330 statutory tests for undertaking emergency works

5. Prior to invoking section 330 the Council will determine that it is satisfied that:
 - 5.1. The Council has financial responsibility for any public work; or
 - 5.2. The Council has jurisdiction under the RMA in respect of any natural and resource or area; and
 - 5.3. That in its reasonable opinion any public work for which it has financial for, or any natural and physical resource or areas for which it has jurisdiction under the RMA, is likely to be affected by the following conditions:
 - An adverse effect on the environment which requires immediate preventive measures; or,
 - An adverse effect on the environment which requires immediate remedial measures; or,
 - Any sudden event causing or likely to cause loss of life, injury, or serious damage to property.

Guidance on decision making

6. As a general presumption the Council will not undertake emergency coastal protection works and invoke RMA section 330 but the Council may consider undertaking emergency coastal protection works and invoking RMA section 330 where it is satisfied that at least one of the following criteria is met:
 - 6.1. To prevent loss of life and serious injury to people, or serious damage to property; or,

- 6.2. To protect public values associated with coastal reserves in accordance with reserve management plans; or,
 - 6.3. To prevent the destruction of an identified archaeological site, listed heritage buildings; or, sites of significance to tangata whenua, where the locations of these sites have been identified to the Council prior to the emergency; or,
 - 6.4. To prevent the destruction of archaeologically significant evidence of Māori or Pakeha use and occupation; or,
 - 6.5. To prevent the destruction of established significant indigenous vegetation (e.g. pohutukawa), and culturally or historically significant non-indigenous vegetation; or,
 - 6.6. To prevent the destruction of significant amenity buildings and infrastructure.
7. The policy statement does not extend to authorising private individuals or third parties to undertake works without Council permission. Private individuals or third parties may only undertake works under Section 330 where they have been given prior permission to undertake works on behalf of the Council. The Council will generally not authorise private individuals or third parties to undertake works on its behalf.
 8. In anticipation of future emergency events and to prevent the need for the use of Section 330 Council will encourage landowners to, in the first instance, employ avoidance measures, and in the second and less preferred instance, employ mitigation measures. Council acknowledges that measures of avoidance and mitigation¹ may require the need to obtain resource consents and undertake works. Council may have a role to play in resource consent processes as land-owner, regulatory agency, infrastructural service provider and community advocate.
 9. It should be noted that for the purposes of this Policy that normal cyclical erosion and accretion of foreshore land associated with predictable periodic storm events, is not considered a 'sudden' event. It is the clear expectation of Council that third parties cannot rely on Council undertaking emergency works in response to such events. Third parties are encouraged to employ avoidance and mitigation measures cited in clause 8.

The effect of invoking Section 330

10. The undertaking of works by the Council, or by third parties upon the authorisation of the Council to undertake works on Council's behalf does not constitute approval of the works by the Council as a consent authority under the Resource Management Act. Council recognises that Section 330 acts as a defence to prosecution for a breach of the RMA and not as an authorising provision.
11. The works undertaken by Council, or authorised by Council, must address the emergency situation at hand and must be specifically to remove the cause of, or mitigate any actual or likely adverse effect of, the emergency. The action to be taken must be immediately necessary and sufficient for the relevant purpose. There must be a clear need for an

¹ Avoidance measures are intended to minimize risk by siting development away from a beach system's zone of active erosion and accretion. An example is the location of buildings on property away from this zone. Mitigation measures are intended to minimize risk in an active hazard zone and as an example might include ensuring all houses are relocatable.

immediate response, and the response must be sufficient to remove the cause or mitigate the effect, and no more.

12. Any works undertaken in accordance with Section 330 will be regarded as a temporary solution and will be removed within 20 working days unless a resource consent is applied for.
13. Any works undertaken on land owned or administered by the Council must obtain landowner approval from the Council in respect of such works. This Policy Statement does not purport to govern the circumstances in which Council will give landowner consent and reference to the objectives contained in the Council's Policy Statement: "*Policy to Determine the Use of Council Foreshore Land for Coastal Protection Works*", will guide Council decision-making in this regard.
14. A condition of allowing works in relation to a natural or physical resource or area over which the Council has jurisdiction and where there is an adverse effect on the environment that requires immediate preventative, or remedial measures or a sudden event likely to cause loss of life, injury or damage to property occurs, but for which Council does not bear any financial responsibility, is that the cost of the works, their removal or obtaining a resource consent is to be borne and agreed to in writing by the third party beneficiaries of the works, or their lawful agents, prior to the commencement of the works.
15. In the absence of the written consent of any or all third party beneficiaries Council shall reserve the right to make a decision, subject to the provisions of Section 341 of the Resource Management Act 1991, to undertake emergency works sufficient to protect against the loss of life, injury or damage to property in respect of a natural or physical resource or area over which Council has jurisdiction for but for which it does not bear a financial responsibility. Council further reserves the right to recover all reasonable costs from the third party beneficiaries of the works, including the cost of the removal of the works.

Actions not covered by Section 330

16. Any works undertaken by third parties who are not authorised by the Council to undertake works on Council's behalf will be regarded as an offence against the RMA and that appropriate enforcement action will be taken. Such persons will be prosecuted unless the Council considers that the action was reasonable and necessary and the effects of the action were mitigated, in accordance with Section 341(2) (a) of the RMA which relates to a legal defence for officers making reasonable decisions in good faith.

Internal procedure for invoking Section 330

17. The internal procedure for invoking Section 330 is set out in the protocol document between Environment Waikato, the Department of Conservation and Council entitled "*Section 330 Protocol for Emergency Coastal Protection Works*" which is appended to this Policy Statement. [Note that a revised protocol is currently being updated by staff of the three agencies.]
18. The authority to make decisions with respect to the application of Section 330 and the provisions of this Policy Statement lie solely with Council's Chief Executive Officer, or his or her appointed delegates. To avoid any future misunderstanding and for the purposes of clarity, elected members of Council will have no decision-making authority during any event requiring the application of this Policy Statement and the *Section 330*

Protocol for Emergency Coastal Protection Works between Environment Waikato, the Department of Conservation and the Council.

19. The Chief Executive, or his or her appointed delegate or delegates will, as soon as practicable, after making a decision pursuant to this Policy Statement and the joint agency *Section 330 Protocol for Emergency Coastal Protection Works*, document the pertinent details of the decision including the reasons for making the decision, any supporting material such as photographs, third party reports or statements, and consents obtained pursuant to Clause 14 of this Policy Statement.

Policy to Determine the use of Council Foreshore Property for Coastal Protection Works

Purpose of Policy

The purpose of this policy statement is to:

Achieve a cost effective and efficient balance between protecting public values associated with the District's urban beach systems; and the private values adjacent to Council administered foreshore property.

Preliminary Notes

1. Council administers and is a consent authority in terms of the Reserves Act 1977.
2. Council recognises that it has responsibilities under other legislation, particularly:
 - Resource Management Act 1991 – The particular provisions of the Resource Management Act (RMA) that Council is required to recognise and provide for lie within Part II (Matters of National Importance) of the Act and relate to the preservation of the natural character of the coastal environment, the maintenance and enhancement of public access to and along the coastal marine area, and the relationship of Hauraki Whanui to their coastal waahi tapu sites and the exercise of kaitiakitanga.
 - Local Government Act 2002 – The Act requires Council to give effect to the community outcome statements derived through the Long-term Council Community Plan (LTCCP) process to promote the identified aspects of community well-being within an inclusive participatory democratic framework and abiding by the principles of prudent financial and resource stewardship.
 - Civil Defence Emergency Management Act 2002: The Act requires all levels of government to work collaboratively to reduce the risk to people and their property through the sustainable management of hazards.
3. Council administers coastal reserve land on behalf of all ratepayers, residents and stakeholder groups but also recognises the concerns of special interest groups.

Objectives

1. To sustainably manage the affects of coastal hazards on the District's urban coastal reserves and other coastal foreshore land administered by Council on behalf of the wider community in terms of the provisions of the Reserves Act 1977, reserve management plans constituted under that Act, and the policy statements outlined below;
2. To maintain and enhance the values associated with such land particularly the values of natural character and public access and in recognition of its status under the Reserves Act 1977 if so classified.

Policy Statements

1. Council will protect public values associated with coastal reserves in accordance with reserve management plans (and if reserve management plans are silent or non-existent, then provisions of the Act and this policy will apply).
2. Council will generally not give its approval as landowner to any coastal protection works but may consider doing so provided that any application demonstrably displays the following attributes to the satisfaction of Council:
 - (i) Demonstrates a clear need for the works in terms of a risk assessment based on a recognised methodology that assesses the inherent threat to life and property.
 - (ii) Is supported by an economic analysis based on accepted sustainable management principles which considers the effects of the proposal on the social, cultural, economic and environmental values associated with the land subject to the application, the wider community and stakeholders.
 - (iii) Reflects sound engineering practice based on nationally and internationally accepted best practice guidelines.
 - (iv) Adopts an appropriate engineering approach that works with a beach system's natural processes rather than against said processes.
 - (v) Takes an approach that addresses the effects of the proposed works on an entire parcel of land (hazard cell) affected by the coastal hazard irrespective of ownership.
 - (vi) Addresses the issue of end effects of the proposed works whether it be in respect to either private or public land.
 - (vii) Does not have any significant adverse hydrological or environmental effects elsewhere in the relevant coastal system.
 - (viii) Does not prevent permanent public access to the Coastal Marine Area or make such access hazardous or difficult.
 - (ix) Will not or may not have an adverse effect on amenities (as defined in section 2 of the RMA).
 - (x) Will not or may not preclude the implementation of alternative strategies for addressing or responding to erosion issues, including "managed retreat" or "soft" engineering options such as sand replenishment.
 - (xi) Demonstrates and includes the outcomes of consultation with major stakeholder groups.²
 - (xii) Clearly indicates the relevant cadastral and administrative boundaries, i.e. mean high water mark springs, of the application site.
 - (xiii) Accepts that the onus and cost of demonstrating that the above tests have been met shall rest entirely with an applicant. Council also reserves the right to obtain independent professional peer reviews of any documentation lodged in support of any application at cost to the applicant.
3. These factors may also be considered in determining the duration of any approval granted. In particular, the Council may give a short-term approval for works pending the outcome of policy formulation or engineering investigations.
4. The Council may seek an indemnity from the applicant in relation to any potential damage associated with works constructed or established on Council land and/or

² Consultation is expected to proceed according to the principles set down in the case of *Wellington International Airport Ltd V Air NZ; Air NZ V Wellington International Airport Ltd* [1993] 1 NZLR 671; Court of Appeal, CA23/92; 73/92.

suitable financial arrangements (including entering into a bond) concerning the removal of any structure or the performance of any structure for which approval (short-term or long-term) may be granted.

5. Council reserves the right to levy an occupation charge for any works located on Council owned and administered land consistent with Council policy. The occupation charge will be based upon the assessed market value of the land and in recognition of the purpose for which the land is used, including any classification under the Reserves Act 1977.

Policy to Determine the Thames-Coromandel District Council's Service Delivery Role with Regard to Coastal Protection Works at Peninsula Locations Affected by Coastal Hazard³

Purpose of Policy

The purpose of this policy statement is to:

Define the process Council will follow and the circumstances it will consider in determining if it will undertake a service delivery role with respect to coastal protection works.

Preliminary Notes

- a) Council administers and is a consent authority in terms of the Reserves Act 1977.
- b) Council recognises that it has responsibilities under other legislation, particularly:
 - Resource Management Act 1991 – The particular provisions of the Resource Management Act 1991 (RMA) that Council is required to recognise and provide for lie within Part II (Matters of National Importance) of the Act and relate to the preservation of the natural character of the coastal environment, the maintenance and enhancement of public access to and along the coastal marine area, and the relationship of Hauraki Whanui to their coastal waahi tapu sites and the exercise of kaitiakitanga.
 - Local Government Act 2002 – The Act requires Council to give effect to the community outcome statements derived through the Long-term Council Community Plan (LTCCP) process to promote the identified aspects of community well-being within an inclusive participatory democratic framework and abiding by the principles of prudent financial and resource stewardship.
 - Civil Defence Emergency Management Act 2002 – The Act requires all levels of government to work collaboratively to reduce the risk to people and their property through the sustainable management of hazards.
- c) Council administers coastal reserve land on behalf of all ratepayers, residents and stakeholder groups but also recognises the concerns of special interest groups.
- d) “Service delivery” in the context of this Policy Statement refers to the following components or aspects, either in their entirety, in lesser combination or individually, and means:
 - (i) To undertake or commission research, either separately or jointly and severally with other resource management agencies, using internationally recognised best practice methodologies by independent practitioners, to determine the nature of the physical system and coastal processes operating at a particular recognised hazard prone location or locations, identify the range of available mitigation options, including a preferred option or suite of options, to address the adverse effects of coastal natural hazards, either for the purpose of better informing itself and other stakeholder groups, or for the purpose of compiling an assessment of

³ Coastal protection works: Works fall within two main categories: “soft” and “hard”. Soft responses typically involve mitigation measures that recognise and work with natural processes. Hard responses typically attempt to control the natural processes associated with coastal hydrodynamics and sediment transport.

environmental effects in support of a consent application pursuant to the Resource Management Act 1991 and companion legislation such as the Building Act 2004. It is expected that any research is considered within the policy regime imposed by Council's "*Policy to Determine the Use of Council Foreshore Land for Coastal Protection Works*".

- (ii) To lodge and pursue applications with the relevant RMA consent agencies for resource consent to establish, maintain, repair and remove coastal protection works;
- (iii) To lodge and pursue applications with the relevant Building Act consent agencies for consent to establish, maintain, repair and remove coastal protection works;
- (iv) To lodge and pursue appeals with the relevant appellant body, including with superior courts of New Zealand, in respect of any consent decision made in respect of an application by Council for coastal protection works;
- (v) To build, erect and construct or form, maintain, repair and remove any coastal protection works for which a consent is held pursuant by Council to the RMA, Building Act and companion legislation;
- (vi) To undertake consultation and obtain landowners consent in respect of the processes referred to in clauses (i) to (v);
- (vii) To develop, introduce, consult upon, approve and implement a funding regime in terms of the Council's approved Revenue and Funding Policy to provide for any activity described above in clauses (i) to (vi);
- (viii) To hold indemnity insurance to protect the Council and its ratepayers and residents from the foreseen and unforeseen circumstances resulting from Council's lawful activities in relation to clauses (i) to (vii).

Objectives

1. To implement a process that is guided by relevant legislation and policy to allow Council to consider whether or not to adopt a service delivery role, either solely or in collaboration with other resource management agencies or third parties, in respect of sustainably managing the affects of coastal hazards on the District's urban coastal reserves and other coastal foreshore land administered by Council on behalf of the regional community in terms of the provisions of the Reserves Act 1977, reserve management plans constituted under that Act, and the policy statements outlined below;
2. To ensure that if a service delivery role is determined by Council as appropriate at any hazard prone location, that any service delivery functions do not conflict with Council's primary role of maintaining and enhancing the values associated with such land particularly the values of natural character and public access and in recognition of its status under the Reserves Act 1977 if so classified.

Policy Statements

1. Council will protect public values associated with coastal reserves in accordance with reserve management plans (and if reserve management plans are silent or non-existent, then provisions of the Act and this policy will apply).
2. Council will generally not give its approval as landowner to any coastal protection works but may consider doing so provided that any application meets the tests imposed by Council's "*Policy to Determine the Use of Council Foreshore Land for Coastal Protection Works*".
3. Council will, in applying the provisions of this policy, take into account the normal principles of Administrative Law, i.e., that the decision-making process will be fair and

rational, take into account all relevant considerations, and will involve decisions based on the matter at hand and good faith.

4. Council will only consider adopting a service delivery role after the following circumstances have been met. The proposal:
 - (i) Demonstrates a clear need for the works in terms of a risk assessment based on a recognised methodology that assesses the inherent threat to life and property.
 - (ii) Is demonstrated to be affordable and is supported by an economic analysis based on accepted sustainable management principles which considers the effects of the proposal on the social, cultural, economic and environmental values associated with the hazard prone land subject to the proposal, the wider community and stakeholders.
 - (iii) Is supported by advice from Council's solicitors that the inherent risk for Council in adopting a service delivery role is acceptable within the parameters established by legislation, case law and Council's own policy framework and that of the Waikato Regional Council.
 - (iv) Reflects sound engineering practice based on nationally and internationally accepted best practice guidelines.
 - (v) Adopts an appropriate engineering approach that works with a beach system's natural processes rather than against said processes.
 - (vi) Takes an approach that addresses the effects of the proposed works on an entire parcel of land (hazard cell) affected by the coastal hazard irrespective of ownership.
 - (vii) Addresses the issue of end effects of the proposed works whether it is in respect to either private or public land.
 - (viii) Does not have any significant adverse hydrological or environmental effects elsewhere in the relevant coastal system.
 - (ix) Does not prevent permanent public access to the Coastal Marine Area or make such access hazardous or difficult.
 - (x) Will not or may not have an adverse effect on amenities (as defined in section 2 of the RMA).
 - (xi) Will not or may not preclude the implementation of alternative strategies for addressing or responding to erosion issues, including "managed retreat" or "soft" engineering options such as sand replenishment.
 - (xii) Demonstrates consultation with major stakeholder groups including iwi and hapu within whose rohe (territory) the hazard prone land lies.⁴
 - (xiii) Clearly indicates the relevant cadastral and administrative boundaries, i.e. mean high water mark springs, of the hazard prone site.
 - (xiv) Addresses the issue of inappropriate and unsustainable public and private development and investment behind the protection works.
 - (xv) Demonstrates that there is a significant public good.
 - (xvi) Demonstrates that there is clear financial responsibility established to the satisfaction of Council for ongoing maintenance of the works or removal should the protection works fail.

5. Council may use the special consultative procedure of the Local Government Act 2002 to determine community support for Council adopting a service delivery role at any particular hazard prone location.

⁴ Consultation is expected to proceed according to the principles set down in the case of *Wellington International Airport Ltd V Air NZ; Air NZ V Wellington International Airport Ltd* [1993] 1 NZLR 671; Court of Appeal, CA23/92; 73/92.

6. If Council, after due consideration of the previous clauses, establishes that there is a *prima facie* case for it assuming a service delivery role at a particular location, that role will be discharged with reference so as to give effect to the following:
- (i) Council's identified service delivery priorities and the degree of fit of the proposed service delivery functions;
 - (ii) Council's approved Revenue and Funding Policy for natural hazards with all funding for the service delivery functions that Council will undertake being assumed by the beneficiaries identified by that Policy;
 - (iii) The conditions of any resource or building consent obtained either by Council or third parties, prior to or subsequent to Council's decision to assume a service delivery role in respect of a particular hazard prone location.