

28 July 2022

Request for Official Information responded to under the Local Government and Official Information and Meetings Act 1987 (LGOIMA) (the Act) – reference: OIR 2122-300

I refer to your information request we received on 20 June 2022. On 20 July you clarified which address you were referring to regarding Question 1, which we have responded to below.

Coastal protection emergency rules

- 1. If we purchase a property directly on the beach front which is protected by an existing, well-built sea wall as part of the property, what are the current rules (if any) relating to the maintenance of this barrier should it be subjected to a future severe storm surge etc. which erodes away a portion of the sand embankment directly behind the current wall?***

Note: *If this occurred, I would consider it an ‘emergency situation’ as it would leave the protection zone on my property vulnerable to furthermore rapid erosion and threaten the stability of the bank behind it, potentially threatening the foundations of my house.*

On 20 July you clarified Q1 as: *I apologise for the delay in responding to your earlier email re the address relating to Q1. I have in mind here a waterfront property at the northern end of Groves Road, Raumati Beach and a waterfront property accessed from Ames Street, Paekakariki, along the stretch of dwellings no’s 54-60 that appear to have existing sea walls that have been constructed (by council and/or privately). I trust this assists you to provide details of the KCDC rules that apply to reinstating/maintaining the integrity of backfill behind seawalls, following severe damage by future storms/significant sea level rise.*

The responsibility of maintaining a seawall lies with the owner. The seawalls on the properties that you mention appear to be in private ownership but can be confirmed by checking the boundaries indicated on the record of title or by undertaking a site survey. If any work is proposed outside of the property boundary, it may be necessary to get the written approval of the landowner.

Maintenance work or reinstating a seawall could require both a building consent and a resource consent depending on what works are proposed. Resource consent is required for earthworks within 20 metres of coastal water, or on slopes of more than 28 degrees, or involving more than 50m³ of earth and altering the ground level by more than a metre.

As part of the building consent process if the structures are outside the boundaries of your property, you will need the permission of the owner of that land to undertake any work that requires a building consent.

The Building Act 2004 also requires any potential effects on neighbouring properties, such as erosion to be considered, meaning if proposed works were to exacerbate or create a risk for adjoining land it would need to be mitigated before a consent could be issued.

In relation to other aspects of Council's regulatory framework, [Council's District Plan](#) outlines the controls for land use and subdivision in our district, and specifies our desired environmental outcomes. It is reviewed every 10 years, as required by the Resource Management Act 1991.

Council also has a Beach Bylaw 2021 containing rules to manage human activities on the beach and protect the beach environment. We recommend you refer to the [Beach Bylaw](#) for additional information on the rules that apply.

The information we have provided above is of a general nature. As with any potential property purchase, we recommend that you undertake your own due diligence on specific properties you are looking to purchase, which may include requesting a Land Information Memorandum (LIM), building file and obtaining independent legal advice. This will assist with specific information you may require and in determining questions such as ownership, responsibility for seawalls, insurance cover and applicable rules under Council policies and plans.

You may also wish to refer below for additional information that you may find helpful:

- <https://www.kapiticoast.govt.nz/your-council/planning/building/seawalls>
 - [Paekākāriki coastal hazards - Kāpiti Coast District Council \(kapiticoast.govt.nz\)](#)
 - [Raumati coastal hazards - Kāpiti Coast District Council \(kapiticoast.govt.nz\)](#)
- 2. *What provisions in law exist that are relevant to this situation that might allow me, or prevent me, from fixing the sea wall and its level of backfill (all on my property) should the wall be badly eroded following a major storm and thereby, risk a financially crippling situation for me as owner?***

The Building Act requires building work to be confined within the boundaries of the nominated land. If work straddled 2 adjoining parcels of land, then both parcels need to be under the same ownership otherwise a building consent cannot be granted.

If the proposed work is on land not owned by the applicant, then the owner of the land will need to give written permission in order for a building consent to be granted.

If the seawalls were entirely within your property and they were damaged in a storm the Building Act allows building work to be done under urgency. The owner is then entitled to apply for a Certificate of Acceptance.

If the work in question was moving or removing of soil within your property this does not require a building consent however it may trigger the need for a resource consent.

We recommend you obtain your own legal advice on this question. It is also recommended that you contact Greater Wellington Regional Council as there may be requirements under the Proposed Natural Resources Plan.

3. What would happen if I was to go ahead without permission and use an excavator (driven by me or hired contractor) to return the eroded sand (originally placed there as backfill) from behind the seawall - sand which was lost through a breach in the wall during the storm and spread out along the beach on the seaward side of the wall?

We would recommend you seek legal advice on this matter as it will depend on whether the land is owned by the person authorising the work or another party.

If work was undertaken on land owned by another party who did not give permission for the work to proceed the owner of the affected land may be entitled to have the work in question removed at the expense of the person(s) who undertook the original work.

It is also recommended that you contact Council prior to undertaking works to ensure that no further approvals are required.

- ***To what extent would either KCDC and/or Regional Council take an interest in such activity and what penalty, if any, might be incurred by the property owner and/or contractor?***

If regulatory approval is required and works are undertaken without the appropriate consents, then the Council has enforcement powers which could be utilised. Any compliance or enforcement would be undertaken in accordance with the provisions of the relevant legislation and Council's Enforcement Policy.

4. Would the Kapiti Coast District Council or Greater Wellington have a problem with me as owner of a beach front property, taking emergency action to restore sand to the backfill area behind my seawall that had been removed by mother nature during a major storm.?

Any works would need to comply with Council's regulatory requirements (refer to the response to question 1 above). With regards to retrieving sand from the beach front you should contact Greater Wellington Regional Council. We recommend you consider seeking your own legal advice.

I trust this answers your queries. Please note you may request the Ombudsman to review this decision. Complaints can be sent by email to info@ombudsman.parliament.nz, by fax to (04) 471 2254, or by post to The Ombudsman, PO Box 10152, Wellington 6143.

Yours sincerely



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Te Kaihautū Ratonga Whakaritenga