

Subject: Appointment of Hearings Commissioners
Prepared By: Ian Petty (Construction/Consents Administrator)
Meeting Date: 25 March 2010

Report to COUNCIL for decision

SUMMARY

An application for Resource Consent has been received from Gisborne District Council (Rivers and Land Drainage) to construct coastal protection works within the Coastal Marine Area at the southern end of Wainui Beach. As the applicant is the Gisborne District Council and council is the landowner for some parcels of reserve land on the foreshore it is appropriate to appoint independent commissioners to hear and decide the resource consent applications.

The activity is a Restricted Coastal Activity as defined by the Resource Management Act and the hearing commissioners must include an elected member of Council as well as a member appointed by the Minister of Conservation.

RECOMMENDATIONS

That the Council

1. receives the report
2. appoints Mr John Matthews, Mr Ross Muir, Mr. Alan Davidson, and Mr Jim Dahm as Commissioners and delegates to them, pursuant to Section 34A(1) of the Resource Management Act 1991, all the functions, powers and duties of the Council under the Resource Management Act 1991 necessary to hear and decide on:
 - a. application for the coastal permit for protection work at Wainui Beach from the southern side of the Wainui Stream to the concrete groyne near Tuahine Crescent, a distance of approximately 370 metres
 - b. any other Resource Management Act matters ancillary or related to the coastal permit application
 - c. Commissioner J Mathews be appointed to chair the panel of commissioners appointed in (2) above.

Ian Petty
Construction/Consents Administrator

Hans van Kregten
Environment and Planning Manager

1. BACKGROUND

- 1.1 There is a long history of coastal erosion at Wainui Beach. The beach is a rip beach and the changing offshore banks cause differences in sand scour and deposition patterns that change with the seasons and subsequent to storm events. The rip nature of the beach has given rise to uncertainty along the beach front where an extreme hazard area has been delineated and encompassed in the Combined Regional Land and District Plan (the Plan). The extreme risk zone is defined as an area that could be subject to erosion in any one given storm event.
- 1.2 Various protection works have been constructed along Wainui Beach to protect beachside properties over the years. Some of these have been reasonably successful but others prone to failure. The lack of competent bedrock along much of the beach can lead to 'toe scour' of protection works which can hasten the failure.
- 1.3 The southern end of the beach is characterized by higher foreshore banks and different geology than the rest of the beach. The application that will be heard by the proposed panel is limited to this area and extends from the mouth of the Wainui Stream to the concrete groyne near Tuahine Crescent, a distance of approximately 370 metres.

2. DISCUSSION AND OPTIONS

- 2.1 Protection works at Wainui are long established and create some division between beach users and property owners. Beach users fear that the walls will cause a general deepening of the beach if toe scour occurs and that the sand area will disappear leaving an area where the sea and land interface is the foot of the protection works. Property owners wish to protect their considerable investments in what are desirable and highly sought after coastal properties.
- 2.2 The panel of commissioners needs to be able to understand and evaluate these differing points of view. The panel therefore requires members with a knowledge of coastal processes, planning expertise with a knowledge of councils plans (both the 'Plan' and the Coastal Plan), and in depth knowledge and experience with the Resource Management Act.
- 2.3 The proposed panel meets all these criteria. Mr. Matthews is an experienced RMA lawyer from Langley Twigg in Napier. Mr. Matthews has acted as a commissioner for this council previously, notably with the Warehouse application and a previous Wainui protection works application. He is an approved commissioner by the Ministry of Environment and has the chairing endorsement. Mr. Ross Muir is a private consultant doing resource consent work in our region. Mr. Muir has an in depth knowledge of council plans and of the region. He is an approved commissioner by the Ministry of Environment. Mr. Alan Davidson is the chair of Council's Hearing Committee. He is an approved commissioner by the Ministry of Environment and has experience in making decisions on RMA issues. Mr. Jim Dahm is the Minister of Conservation appointee and has knowledge of coastal dynamics and protection works.

3. SIGNIFICANCE

The proposal is not considered significant in terms of Council's significance policy.

4. CONSULTATION

No consultation is required in regard to the appointment of commissioners in regard to this application. The application has been publically notified and any submitter will be able to express their views during the hearing process.

5. COMMUNITY OUTCOMES

The application will not affect any of Council's community outcomes.

6. LEVELS OF SERVICE

The application has no impact on Council's levels of service.

7. FINANCIAL

It is important to ensure the commissioners are appointed in line with the Resource Management Act 1991 and the Local Government Act 2002. Should correct procedures not be followed there could be expensive time delays and costs to Council.

8. LEGAL

The appointment of commissioners is required in line with Section 34A(1) of the Resource Management Act 1991 and Clause 31(4) Schedule 7 of the Local Government Act 2002.

9. POLICY

Council has a policy of appointing commissioners to hear and decide on matters where Council has an interest greater than the public. As councils Engineering and Works Department through their Rivers and Land Drainage section are the applicants and council is the owner of some parcels of land on the foreshore in the proposed works area commissioners are required.

10. OTHER CONSIDERATIONS

None

11. APPENDICES

Appendix 1

Application to carry out restricted coastal activity

- (1) *An application for a coastal permit to carry out an activity that a regional coastal plan describes as a restricted coastal activity must be made to the regional council for the region concerned, except if the application is made to the EPA under [section 145](#).*
- (2) *The regional council is the consent authority in relation to the application for the coastal permit.*
- (3) *Any provisions of this Act that apply in relation to an application for a resource consent apply in relation to the application for the coastal permit, except as provided in this section.*
- (4) *The consent authority must, after receiving the application, promptly provide a copy of it to the Minister of Conservation and the relevant territorial authority.*
- (5) *The consent authority must publicly notify the application.*

- (6) [Section 100A](#) does not apply in relation to the application for the coastal permit.
- (7) The consent authority must delegate, under [section 34A](#), its functions, powers, and duties required to hear and decide the application to 1 or more persons permitted by section 34A(1), including 1 person nominated by the Minister of Conservation.
- (8) The consent authority must ensure that a notice of its decision on the application is served on the Minister of Conservation under [section 114](#).