

BEFORE AN INDEPENDENT HEARINGS COMMISSIONER

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER a resource consent application and an objection to a decision of the Gisborne District Council by Simon Cave concerning a revetment wall at the toe of the cliff below 4, 6 and 8 Tuahine Crescent, Wainui Beach

**STATEMENT OF EVIDENCE OF GEORGINA BETH MCPHERSON
FOR SIMON CAVE**

PLANNING

Dated: 5 October 2022

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1. EXECUTIVE SUMMARY

- 1.1** Simon Cave has applied for resource consent to undertake works to an existing coastal protection structure at 4, 6 and 8 Tuahine Crescent (the RC application). An s42A report was prepared in June 2020, following which the application was placed on hold to allow further consideration of the issue of the term of consent and whether or not the works required a consent.
- 1.2** An application for existing use rights to undertake those same works (the EUR application) was subsequently lodged in May 2021. A number of factors led to the interpretation that the works are able to occur under the section 10 existing use rights provisions of the Resource Management Act (RMA). This included a closer examination of the wording of the Tairāwhiti Resource Management Plan (TRMP) rules and associated definitions, a clearer definition of the nature and scale of the works including as they relate to the relevant regional overlays, and legal analysis of the relevant TRMP and RMA provisions.
- 1.3** In a decision dated 25 February 2022, the Gisborne District Council (GDC) declined Mr Cave's EUR application.
- 1.4** This evidence addresses both an objection to that decision and the recommendations of the reporting planner for the council, Mr Whittaker, on the RC application.
- 1.5** There is a long history of coastal protection structures at Wainui Beach. This is documented in a chronology prepared by the Gisborne District Council to inform the Environment Court in the Falkner case of the history, nature and authority for coastal protection work undertaken at Wainui Beach. The chronology confirms that the existing coastal protection structure was lawfully established under relevant provisions of the Soil Conservation and Rivers Control Act 1941.
- 1.6** The purpose of the existing structure is to protect the adjacent elevated residential development from coastal processes and natural hazard risk. The works now proposed involve the material repair and maintenance of the existing structure in order to ensure its integrity and ongoing ability to achieve this purpose.
- 1.7** The design of the northern end of the works has been altered slightly to address concerns raised by the owner of 4 Tuahine Crescent through the RC application around potential end effects. Confirmation has been received that the owner is now in support of the works. The proposed works are as shown in the plans submitted in support of the EUR application and are within scope of the RC application.
- 1.8** In my opinion, the works trigger district level consents under the TRMP, but are a permitted activity under the relevant regional provisions. Specifically, it is my opinion, that the works are a permitted activity under regional rules relating to the maintenance and minor

upgrading of a legally established structure in all natural hazard overlays and relating to the maintenance and repair of lawfully established structures in Land Overlay 3.

- 1.9** Key to this is my interpretation that the works meet the TRMP definition of 'minor upgrading', which is an effects-based definition providing for an expansion in the capacity of an existing structure, where the effects resulting from the minor upgrading process are the same or similar in character, scale and intensity as those that existed at 20 November 1997. In my opinion, such minor upgrading works may include the change or replacement of component pieces of a structure, provided the effects resulting from the process are the same or similar in character, scale and intensity.
- 1.10** Taking this into account, and on the basis of legal advice around the applicability of section 10(4)(a), which excludes the use of land that is 'controlled under section 30(1)(c) (regional control of certain land uses), it is my opinion that s10 RMA existing use rights are available to the works.
- 1.11** The relevant effects based test for s10 existing use rights is that the effects of undertaking the works will remain the same or similar in character, intensity and scale as those that existed in 2006, being the date on which the relevant district level provisions were made operative.
- 1.12** In relation to the RC application, consideration must be given to the actual and potential effects on the environment of allowing the activity, while disregarding the effects of the lawfully established existing environment, being the existing coastal protection structure. Consideration must be given to a range of other matters including the relevant provisions of the NZCPS and the TRMP.
- 1.13** The expert evidence of Mr Morgan addresses the coastal processes aspects of the proposal. Mr Morgan concludes that potential effects on local coastal processes will be insignificant in the context of the receiving environment and will be the same or similar in character, scale and intensity as has been experienced over time.
- 1.14** The expert evidence of Ms Cray addresses landscape, natural character and amenity effects. Ms Cray concludes that effects of the works in regard to these matters will be the same, or similar in character, scale and intensity and less than minor.
- 1.15** For the reasons set out in my evidence, and subject to implementation of an appropriate construction methodology including in relation to the management of potential construction effects on little blue penguins, I consider effects on public access, residential character and amenity, biodiversity and ecological values will be the same, or similar in character, scale and intensity and less than minor.
- 1.16** An offer early in the process of the RC application to limit the term of consent to align with that of the consent for the coastal protection structure to the south is no longer valid, as it

was subject to the consent proceeding on a non-notified basis.

- 1.17** In the addendum s42A Report, Mr Whittaker identifies that he did not originally consider the works to be contrary to the NZCPS on the basis of the works being on private property, that the wall was effectively replacing an existing wall and that there was a defined term to be applied to any consent. However, in the absence of a limit on the duration of the consent, he considers the proposal to be inconsistent with and contrary to the NZCPS, particularly Policies 25 and 27, which discourage the use of hard protection structures and promote consideration of alternatives.
- 1.18** In my opinion, placing a limit on the term of a consent relating to a hard protection structure is not definitive of the ability or otherwise for such a structure to be considered consistent with the policy direction in the NZCPS. Any long-term adaptive management strategy that GDC may seek to implement at Wainui Beach in future will need to be supported by a planning framework that extinguishes existing use rights and/or formally requires removal of existing protection structures at Wainui Beach generally, with that direction being informed by coastal monitoring data for the system as a whole.
- 1.19** I do not agree that the absence of a limit on the duration of the consent would foreclose GDC's ability to give effect to any future adaptive management programme. Notwithstanding this, a consent duration of 50-years is now proposed on the basis of the evidence of Mr. Morgan, which acknowledges increasing uncertainty of effects beyond that time frame.
- 1.20** While I do not consider it appropriate to tie the duration of the consent now sought to that in place for the structure to the south, I acknowledge that consideration of actual and potential coastal processes effects will likely be appropriate if that adjoining structure is removed. I consider the appropriate way of addressing this would be by way of a review condition and I have suggested wording to this effect.
- 1.21** Such a condition could also provide for a review of the consent conditions (and potentially even cancellation of the consent), in the event significant adverse effects on the environment arise which have not been contemplated by the application (there is an inaccuracy), which materially influenced the recommendations of the Commissioner.
- 1.22** In my opinion, relying on the evidence of the coastal and landscape experts for Mr Cave (while also noting the evidence of Dr De Lange in his report), it is my opinion that the effects of the works will be:
- (a) The same or similar in character, scale and intensity as those which existed prior to November 1997, such that they can be considered 'minor upgrading' for the purpose of the TRMP.

- (b) The same or similar in character, scale and intensity as those which existed prior to the relevant TRMP rules becoming operative in 2006, such that they could continue to occur under section 10 of the RMA.
- (c) No more than minor for the purposes of section 104 of the RMA and not contrary to the objectives and policies of the relevant planning documents.

1.23 The recommendation of the original s42A Report is to grant consent to the application subject to conditions. I support that recommendation but disagree with Mr. Whittaker on the matter of the duration of consent and the decommissioning of works. Mr. Whittaker and I have agreed on the majority of the remainder of the draft consent conditions, with the exception that some additional minor changes to wording are suggested in the evidence of Mr. Morgan. I have included a track change version of the conditions setting out my suggested changes to those attached to the s42A Report.

2. INTRODUCTION

2.1 My full name is Georgina Beth McPherson. I have 18 years' experience in the field of resource management and planning in New Zealand and overseas. I hold a Bachelor of Resource and Environmental Planning degree from Massey University and am a full member of the New Zealand Planning Institute.

2.2 I am currently employed as a Principal Planning and Policy Consultant at 4Sight Consulting, part of SLR (*4Sight*). I have been in this role since September 2018 when the company I was previously employed by, Burton Planning Consultants Limited (*Burtons*), was acquired by 4Sight. I was employed at Burtons from August 2011. Previous employment includes as a planner at Planning Potential Limited (based in London), CPG NZ Limited in both its Auckland and Christchurch offices, Tonkin and Taylor (Wellington) and Boulder Planning (Auckland).

2.3 My planning experience includes the provision of planning and resource management consenting and policy advice to a range of infrastructure, Council, commercial and private clients. This has included preparation of both district and regional resource consent applications, policy analysis, provision of strategic policy advice and preparation of submissions and evidence.

2.4 My experience traverses a wide variety of resource management matters affecting clients at both regional and district council level across much of the country. Of particular relevance to the current applications is the consenting of a range of structures in the coastal environment, including erosion protection structures, a jetty and infrastructure. I am currently assisting Eastland Port Limited with its resource consent applications for the Twin Berths project, which is currently undergoing public notification. I have also been involved

in various district and regional policy processes, primarily on behalf of infrastructure clients, addressing natural hazards and development in sensitive environments, such as outstanding natural landscapes, coastal environments and sites with cultural values. I provided input to the drafting of natural hazard provisions for the recently notified Proposed Far North District Plan. I also have considerable experience at both a policy and consenting level in addressing the management of risk associated with hazardous substances and contaminated land.

2.5 With respect to the current applications, I became involved in the project in late 2020 during preparation of the Existing Use Rights application (the EUR application). A former colleague (who has now left 4Sight) prepared the Resource Consent application (RC application) and coordinated the response to the section 92 requests relating to that application. I have visited the site.

2.6 In preparing this evidence, I have relied on the reports and evidence of the coastal and landscape experts for Simon Cave and have had regard to a range of relevant material including:

- (a) The RC application, including supporting documents and further information provided;
- (b) The material relevant to the Hearing of the RC application including the s95 decision report, the Officer's s42A Report and addendum, the reports of Council's coastal expert and environmental science team leader as well as the submissions made;
- (c) The EUR application and the Council's decision to refuse that application;
- (d) The RMA;
- (e) The New Zealand Coastal Policy Statement;
- (f) The Tairāwhiti Resource Management Plan.

2.7 With respect to the RC application, I have attached a set of draft consent conditions as **Attachment A** to my evidence. These are based on the conditions presented in the s42A Addendum Report, dated 28 September 2022. It has not been possible for the reporting planner, Mr. Whittaker, and I to reach full agreement on the conditions, although the disagreement relates primarily to the matter of the duration of consent and the decommissioning of works. Minor changes to the wording of four other conditions is suggested based primarily on the evidence of Mr Morgan. I refer to this set of conditions in various sections of my evidence.

Code of Conduct

2.8 I confirm that I have read the Code of Conduct for expert witnesses contained in the Environment Court of New Zealand Practice Note 2014 and that I have complied with it when preparing my evidence. Other than when I state that I am relying on the advice of another person, this evidence is entirely within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

Scope of evidence

2.9 My evidence addresses the following aspects of the EUR and RC applications:

- (a) The Site and Locality
- (b) The Proposal
- (c) Tairāwhiti Resource Management Plan Rules
- (d) The Basis for the Existing Use Rights Application
- (e) The Basis for the Resource Consent Application
- (f) Actual and Potential Effects
- (g) The New Zealand Coastal Policy Statement
- (h) The Objectives and Policies of the Tairāwhiti Resource Management Plan
- (i) Consent Duration
- (j) Decommissioning of Works
- (k) Section 104D “Threshold Test”
- (l) Other Matters to be Considered
- (m) Conclusion

3. THE SITE AND LOCALITY

3.1 The site comprises three residential properties (4, 6 and 8 Tuahine Crescent) located at the southern end of Wainui Beach, approximately 6km to the east of Gisborne. Each property contains an existing residential dwelling with vehicle access onto Tuahine Crescent.

3.2 Each of the dwellings are built at the top of a cliff above the beach. The cliff top is generally flat other than the cliff face close to the eastern end of the properties, which slopes down steeply to the beach. The site is bounded by Tuahine Crescent to the west, public stairs and a reserve providing access to the beach from Tuahine Crescent to the north, Wainui Beach to the east, and residential properties to the south.

3.3 At the eastern-most (and lowest) extent of these three residential properties is the existing coastal protection structure (“the structure”), which is the subject of both the EUR and RC applications.

- 3.4** The structure extends between 7.0 – 9.0m seaward of the cliff toe. The structure is approximately 40 years old and has deteriorated over time.
- 3.5** Other existing coastal protection structures in the area include a rock revetment and groyne to the south. To the north are gabion baskets (generally located within the coastal marine area ('CMA')) together with coastal protection structures which extend along the Wainui beach foredune in the front of existing residential development (above the line of mean high water springs ('MHWS') as far north as the Hamanatua Stream.
- 3.6** The purpose (use) of the existing structure is to protect the adjacent elevated residential development from coastal processes.
- 3.7** The relevant geomorphic setting and nature of local coastal processes is comprehensively detailed in the 'Coastal Processes Memo' attached as Appendix H to the Resource Consent Application and the 'Coastal Environment Assessment' attached as Appendix B to the Existing Use Rights application, both of which were prepared by coastal specialist Sam Morgan.
- 3.8** As detailed in the EUR application, a chronology prepared by the Gisborne District Council to inform the Environment Court in the Falkner case¹ of the history, nature and authority for coastal protection work undertaken at Wainui Beach confirms that the existing coastal protection structure was lawfully established under relevant provisions of the Soil Conservation and Rivers Control Act 1941. It has not been discontinued at any time after it was lawfully established. In the Council's decision on the EUR application, it does not contest the lawful establishment and continued presence of the existing coastal protection work and this is taken as agreed.

4. THE PROPOSAL

- 4.1** The proposal is to carry out material repair and maintenance work ('the work') to the existing coastal protection structure at 4 and 6 Tuahine Crescent and the northern-most end of 8 Tuahine Crescent as far as the existing concrete groyne.
- 4.2** Below, I provide a brief overview of the works proposed and address two matters raised by Mr Whittaker in the s42A addendum report around the scope of the proposal. These relate to the design plans and the duration of consent.
- 4.3** The RC application and the EUR application relate to the same work. As identified in the s42A addendum report, the plans submitted in support of the EUR application show a design change to the works at the northern end of the structure, when compared to the plans originally submitted as part of the RC application. Specifically, the front face of the

¹ *Gisborne District Council v Falkner* A082/94 (attached at **Appendix J** to the EUR application).

wall has been extended further north and a shallower angle applied to the return to the cliff. This change allows for a reduction in the northern slope of the structure, which will provide a smoother transition between the area of the works and the remainder of the existing structure and reduce the potential for end effects. The change is proposed in response to concerns already raised by submitters and potentially affected parties to the RC application around the potential for the works to result in end effects on adjoining land, including the public accessway. As detailed in section 5 below, it does not result in any new or additional consent requirements. Further, it does not alter the purpose of the works, which is to ensure the continued efficacy of the existing coastal protection structure (which extends across all of numbers 4 and 6 Tuahine Crescent) nor does it increase the character, intensity or scale of effects generated - quite the reverse (I address effects further in section 8 of this evidence). On this basis, I consider the design change to be within the scope of the RC application and can advise that it should be treated as updating and forming a part of that application. On this basis, all references to 'the works' from here on are made with reference to the design plans submitted in support of the EUR application, being the LDE drawings titled '*Seawall Renewal 4-8 Tuahine Crescent, Wainui Beach, Gisborne Resource Consent Drawings*' Drw 14608 CO1 Sheets 1 to 4 Rev 3 and dated February 2021.

- 4.4** The scope of the work proposed is detailed in the EUR application. To summarise, the work involves the replacement of the existing rusting railway irons at the toe of the wall with timber piles to restrict the toe and to allow the rip-rap behind the wall to be built up to design heights. The timber piles will be spaced at 900mm centres to avoid migration of rock between the individual piles. The result will be a hybrid type erosion protection solution, as per the existing structure. Appropriate planting and weed control is proposed.
- 4.5** Rock from the existing structure will be reused in the repair of the rock revetment. Where additional rock is required to achieve design levels, this will be locally sourced rock of light tones. The larger rock will be placed along the seaward face and along the top of the rip-rap wall to create a stable platform to construct the remainder of the wall. The structure will have a maximum height of RL 4.0 at its crest (along the seaward frontage of number 6) and will be approximately 30m long in total. The remainder of the existing structure to the north will be retained.
- 4.6** To the north (along the seaward frontage of 4 Tuahine), the slope of the structure reduces to a 2(h) to 1(v) slope to allow the repair work to merge into the existing structure and an outcrop of hard siltstone. To the south, the wall will tie into the existing concrete groyne and appear contiguous with the crestline and driftwood accumulation of the existing coastal protection work as it extends along the seaward frontage and is tied into existing work within 8 Tuahine Crescent.

- 4.7** This is the equivalent of what was initially constructed in this location except that the height of the crest is being increased by 1m (in the middle section) and the existing railway irons at the front of the wall are being replaced with structurally equivalent timber piles.² These will be approximately 0.7m lower in height than the existing railway irons.
- 4.8** In his original s42A report, Mr Whittaker relied upon a limited consent term forming part of the application and states in the s42A addendum report that this was a key part of his overall assessment and recommendation for consent to be granted. The reason for this approach is recorded, at para 18 of the original s42A report as being that:
- 'The application was amended on 14 August 2019 to include a proposal for a term of the consent aligning with the term of the existing revetment wall located to the south of the site. The consent term recorded for this wall is to 31 December 2040.'*
- 4.9** A copy of the relevant correspondence, being a letter dated 13 August 2019 from 4Sight Consulting, is reproduced at paragraph 11 of the Section 42A Addendum Report. As clearly stated in the letter, the acceptance of a limit on the duration of any resource consent granted for the works was on the proviso that the application was processed on a non-notified basis. Given the application was subsequently publicly notified, I consider the offer to accept a limit on the duration of consent is no longer valid and does not form part of the RC application.
- 4.10** To further assist, as I understand it, the offer to limit the duration of consent was intended to assist the Council in reaching a conclusion that the effects of the proposal would be less than minor for the purposes of making a decision on notification under s95 of the RMA. Further, it responded to an expectation communicated that the scale of any adverse effects would be assessed as linked to the duration of a consent. In my experience, it is not uncommon for applicants to set certain parameters on the scope of their proposal if that will avoid the time and costs associated with a notification and hearing process. It does not and cannot be read to constitute an amendment of the application itself once Council determines in its notification decision that notification is required. Therefore, the notified RC application simply falls to be considered in the usual way under sections 104 and 104D of the RMA, which set different tests (than those provided by s95) around the consideration of and acceptability of the scale of adverse effects associated with consent applications. I do not consider there to be any question around the ability to consider the application without an offer to limit the duration of consent. This is the basis on which the application was both originally lodged and then notified.

5. TAIRAWHITI RESOURCE MANAGEMENT PLAN RULES

² See attachment "D" of the chronology referred to in detail in section 8 below and attached as **Appendix G** regarding the design parameters of the structure as established.

- 5.1** The Tairāwhiti Resource Management Plan (TRMP) is a combined plan that contains the regional policy statement, regional plans and district plan in one document. The site is zoned General Residential under the TRMP and is subject to a number of district and regional overlays, as follows:
- Coastal Environment Management Area - Significant Values Management Area
 - Coastal Environment Overlay
 - Stability Alert
 - Coastal Hazard – Extreme Risk
 - Outstanding Landscape Area Overlay
 - Land Management Area 3
 - Historic and Cultural Heritage
- 5.2** An assessment of the TRMP rules applying to the works is set out in both the RC and EUR applications as well as in the associated s42A report and decision on the EUR application. I note that the rules assessment presented in the EUR application varies from that contained in the RC application. This results from a closer examination of the wording of the TRMP rules and associated definitions, along with a clearer definition of the nature and scale of the works including as they relate to the relevant regional overlays (Land Overlay 3; Coastal Hazard Overlay – Extreme Risk and Stability Alert – Site Caution) applying to the site.
- 5.3** As denoted on the TRMP Regional Overlay Maps (refer excerpts in **Attachment B**), these overlays cover a limited part of the seawall structure along its landward edge. Works within the overlay areas will be limited to pruning of obstructive vegetation and clearance of weeds for site preparation, placement of rock at the upper extent of the seawall and subsequent planting of salt tolerant native vegetation.
- 5.4** The reporting officer concurs with the rules assessment set out in the RC application, but not that contained in the application for EUR. I have, therefore, focused on the difference in interpretation between the rules assessment as set out in the EUR application and the Council’s decision on that application.
- 5.5** For completeness, I note that I agree with the reporting planner that the following district level rules apply to the works:
- i. Non-complying activity consent is required under rule DD1.6.1(32) as the works are an activity that is not otherwise provided for as a permitted, controlled, restricted discretionary or discretionary activity in the residential zones.
 - ii. Restricted discretionary activity consent is required under rule C9.1.6(12) as the drilling of holes for placement of the new timber piles at the toe of the wall may

result in land disturbance of more than 10m³ of earth in an Outstanding Landscape Area Overlay.

5.6 The difference in interpretation relates primarily to the applicability of regional rules associated with the regional natural hazard overlay 'Coastal Hazard Overlay – Extreme Risk'.

5.7 As detailed in the EUR application, I consider the works to involve '*the maintenance and minor upgrading of a legally established existing structure*', which is a permitted activity under rule C8.1.6(4) in all natural hazard overlays. This is based on the Gisborne District Council chronology, referred to in para 3.8 of my evidence, which confirms that the existing coastal protection structure was lawfully established, and on the TRMP definition of 'minor upgrading', which reads as follows:

'Minor Upgrading: Means to expand the capacity of an existing structure, where the effects that result from the process are the same or similar in character, scale and intensity as those that existed at 20 November 1997 or prior to the commencement of the minor upgrading for activities established after 20 November 1997.

To clarify, in relation to C4 – Cultural and Historic Heritage, minor upgrading shall not extend to any land disturbance on land not previously disturbed by the established activity.'

5.8 The reporting planner considers that the works, at least, represent an alteration of the existing structure, rather than 'maintenance and minor upgrading' and therefore trigger the need for discretionary activity consent under Rule 8.5.7(1), which applies specifically within the Coastal Hazard Overlay – Extreme Risk area. He also considers the works may be considered as collectively subject to an additional two rules that apply within the Coastal Hazard Overlay – Extreme Risk area. Together the three rules read as follows:

- C8.5.7(1) The installation or alteration of works designed to mitigate the effects of coastal hazards – discretionary
- C8.5.7(3) Any activity, including earthworks, that will alter natural dune landform associated with physical works on coastal protection structures and along the dune system – discretionary
- C8.5.7(4) Removal of any works designed to mitigate the effects of coastal hazard – discretionary

5.9 The reporting planner considers that the works should be assessed, at least, as an alteration of works on the basis that the construction process will involve removal of components of the existing wall (the railway irons and existing rocks), and its subsequent

reconstruction involving the drilling of holes for timber piles and the likely use of some new rock to ensure the design specifications can be met. On this basis, the reporting planner concludes that *'the scale and nature of works is neither maintenance nor minor upgrading to an existing structure. Put simply, the section of proposed works is removing the existing structure and replacing this with a new and upgraded section of sea wall.'*³

- 5.10** Further, that while the definition of minor upgrading *'does contemplate and permit some change to an existing structure, subject to the effects of the activity being the same or similar'*, it *'also refers to an existing structure and, as discussed above, the current proposal seeks to remove the existing section of sea wall, and then to rebuild the sea wall with new material.'*
- 5.11** In my opinion, the fact that components of the existing coastal protection structure are to be removed and replaced with new material does not preclude the works from falling within the TRMP definition of 'minor upgrading'. The definition is effects based, and sets a clear test that *the effects* resulting from the minor upgrading process must be the same or similar in character, scale and intensity as those that existed (in this case) at 20 November 1997. Nothing in the definition suggests a requirement or expectation that minor upgrading works be broken down into component pieces, in the way the processing planner has done, or assessed on the basis of whether or not the structure remains intact or operational during the minor upgrade process, or the extent to which new or replacement materials might be used to ensure the ongoing integrity of a structure.
- 5.12** In my assessment, and relying on the evidence of the coastal and landscape specialists, I consider the effects of the works will be the same or similar in character, scale and intensity as those that existed at 20 November 1997, and I address this further in section 8 of my evidence.
- 5.13** I acknowledge the works will result in some change to the physical dimensions of the existing structure, specifically an increase in the crest height. I consider this is provided for within the definition of 'minor upgrading', by the ability to *'expand the capacity of an existing structure'*, provided the overall test is met, that the effects will be the same or similar in character, scale and intensity as those that existed at 20 November 1997.
- 5.14** I also note the wording used in the definition of 'minor upgrading' and the wording in s10 of the RMA relating to existing use rights. In both cases, the test is that the effects of the process must be the same or similar in character, intensity, and scale to those which existed before. While I acknowledge the differences between the TRMP and the RMA, I also note that the case law in relation to s10 RMA is clear that activities (or the 'use') meeting the test of effects (being the same or similar in character, intensity and scale),

³ Para 26 of the Council decision on the EUR application

may involve the complete removal and reconstruction of a building or structure, provided there is no increase in the degree to which a building fails to comply with any rule in a district plan or proposed district plan. In my opinion, this further supports an interpretation that the works are 'minor upgrading' as defined in the TRMP

- 5.15** In the Council's decision on the EUR application, the reporting planner identifies the expectation that all relevant plan rules will apply to an activity. In this case, he considers recourse to Rules C8.5.7(1), C8.5.7(3) and C8.5.7(4) is required as they are specific to the 'Coastal Hazard Overlay - Extreme Risk' area applying to the site, as opposed to the generic nature of Rule C8.1.6(4), which applies generally to all natural hazard overlays.
- 5.16** I acknowledge the accepted planning principal of applying all relevant rules to a proposed activity. However, for the reasons set out above, it is my opinion that the works clearly fall to be considered as '*maintenance and minor upgrading of a legally established existing structure*' under permitted activity Rule C8.1.6(4) and that there is a clear distinction in the TRMP between rules applying to 'minor upgrading' and 'alteration' of a structure. In my opinion, Rule C8.1.6(4) clearly protects existing lawfully established structures from the need to obtain a fresh consent and enables the reasonable repair and maintenance of such structures over time.
- 5.17** In the event that the Hearings Commissioner disagrees with my interpretation that the works fall to be considered as permitted '*maintenance and minor upgrading of a legally established existing structure*' under Rule C8.1.6(4), I consider the works should be considered under Rule C8.5.7(1) only, as an alteration of works designed to mitigate the effects of coastal hazards. I do not consider the works will alter the natural dune landform as regulated under Rules C8.5.7(3), as land disturbance within the Coastal Hazard Overlay - Extreme Risk' area will be limited to the drilling of holes for installation of 4 new timber piles, and will not result in any permanent alteration of the landform, if indeed any 'natural dune landform' could be considered to be present in this location at the toe of the cliff. Any land disturbance associated with construction works will be temporary and incidental in nature. Nor do I accept that the works represent the *removal* of the existing coastal protection structure, as regulated by Rule C8.5.7(4). I understand this rule to apply to proposals to permanently remove an existing coastal protection structure, in recognition that those works are likely to result in a range of flow on effects that may need to be avoided, remedied or mitigated. In this case, the purpose of the works is to maintain the efficacy of the existing coastal protection structure, and I consider it would be artificial to consider the 'removal' of component pieces of the existing structure during the construction process to be a 'removal' of the works.
- 5.18** I note also that the assessment of the works in relation to the regional soil conservation overlay 'Land Overlay 3' applying to the site varies between the RC application and the

EUR application. While restricted discretionary activity consent was initially sought, under Rule C7.1.6(30) for more than 10m³ of land disturbance in the Land Overlay 3, a subsequent assessment as part of the EUR application identified that the works would be permitted either:

- (a) Under Rule 7.1.6(25), which permits the maintenance and repair of lawfully established structures excluding network utility structures, in Land Overlay 3; or
- (b) Under Rule 7.1.6(21), which permits 'land disturbance and vegetation clearance activities which are not specifically provided for in any other rule in this Chapter', on the basis that only four timber piles, rather than the entire works, would be located within the overlay area such that any associated land disturbance would be below the threshold of 10m³ set by Rule C7.1.6(30).

5.19 This interpretation does not appear to be challenged in the Council's decision on the EUR application, such that it appears to be agreed that the works do not trigger the need for consent under Rule C7.1.6(30).

6. THE BASIS FOR THE EXISTING USE RIGHTS APPLICATION

6.1 As identified in section 5.5. of my evidence, it is agreed that the works trigger the need for district landuse consents under rule DD1.6.1(32), (non-complying activity consent for activities not otherwise provided for in the residential zones), and rule C9.1.6(12) (restricted discretionary consent for land disturbance in excess of 10m³ in an Outstanding Landscape Area Overlay).

6.2 Section 10 of the RMA provides for land to be used in a manner that contravenes a rule in a district plan, where the relevant tests are met. In my opinion, the works are able to meet the relevant section 10 RMA tests for the following reasons:

- (a) The works will comply with section 10(1)(a)(i) as the existing erosion protection structure was lawfully established under the Soil Conservation and Rivers Control Act 1941 before the relevant district land use provisions of the TRMP became operative in 2006. This is confirmed by the Gisborne District Council chronology⁴, which identifies that establishment and subsequent enhancement work involving coastal protection structures at Wainui Beach, including the location of this application, occurred over a period of time between the 1960's and the 1980's.
- (b) The works will comply with section 10(1)(a)(ii), as the effects of undertaking the works will remain the same or similar in character, intensity and scale as those

⁴ *Gisborne District Council v Falkner A082/94* (attached at **Appendix J** to the EUR application).

that existed in 2006. As detailed in section 8 of my evidence, I rely on the evidence of the coastal and landscape specialists in concluding that effects on coastal processes and natural hazards; and landscape, natural character and amenity effects, will remain the same or similar in character, on completion of the works. I also address effects on public access, residential character and amenity and biodiversity and ecological values, in section 8 of my evidence and reach the same conclusion that the effects of the works will remain the same or similar in character, intensity and scale as those that existed in 2006.

- (c) The works are not excluded from section 10 existing use rights by way of section 10(2) as the existing lawfully established coastal protection structure has not been discontinued for a period of longer than 12 months.
- (d) Nor are the works excluded from section 10 existing use rights by way of section 10(3) as the structure is not a 'building' for the purposes of the TRMP, as it is not an enclosed or partially enclosed structure built with a roof.
- (e) The applicability of section 10(4)(a), which excludes the use of land that is *'controlled under section 30(1)(c) (regional control of certain land uses) [emphasis added]* from the ability to benefit from section 10 existing use rights is a key point of difference with the Council. Under the TRMP, a regional soil conservation overlay 'Land Overlay 3', and two regional natural hazard overlays 'Coastal Hazard Overlay – Extreme Risk' and 'Stability Alert – Site Caution' apply to the properties at 4, 6 and 8 Tuahine Crescent and affect the upper extent of the seawall where it rests against the toe of the cliff. As detailed in section 5 of my evidence, I have assessed the relevant TRMP rules applying in these regional overlays and have reached the conclusion that the works fall to be considered as permitted *'maintenance and minor upgrading of a legally established existing structure'* in a natural hazard overlay under rule C8.1.6(4), and permitted *'maintenance and repair of lawfully established structures'* in Land Overlay 3 under rule 7.1.6(25).
- (f) I acknowledge the position expressed by the reporting officer in the Council's decision report on the EUR application that:

“Control”, in my view, does not mean that a resource consent is required, but merely that the land use is the subject of regional plan regulation. In my view, it is therefore not relevant for present purposes whether the “control” takes the form of the permitted activity rules above, or whether a resource consent is required for the activity.’

My understanding, however, based on legal advice from Mr. Cameron, is that in this context, the word 'control' is not to be interpreted in this way and requires a resource consent application before the works can be treated as being 'controlled' for the purposes of section 30(1)(c). Therefore, on the basis of this advice, I understand the proposal is not excluded from section 10 existing use rights by way of section 10(4)(a). This issue will be fully discussed in the legal submissions.

- (g) The works are not excluded from section 10 existing use rights by way of section 10(4)(b) as the use is not restricted under section 12 (coastal marine area) of the RMA. The structure is not located within the CMA, with case law⁵ having determined that, due to the dynamic nature of the coastline at Wainui beach, the jurisdictional boundary between the CMA and 'land' is the seaward face of the existing foredune protective structures. Access to the structure for the purpose of undertaking the works will be along the foreshore. In my opinion, this does not constitute a disturbance of the foreshore for the purposes of section 12 RMA, with any disturbance of sand being significantly less than could be expected to occur through natural coastal processes and being transitory in nature, limited to the duration of construction works (which are expected to take 6-8 weeks to complete), remedied through sand sweeping following the removal of machinery from the works area and otherwise dissipated through one or two successive tidal cycles.

7. THE BASIS FOR THE RESOURCE CONSENT APPLICATION

7.1 In terms of the consent triggers applying to the RC application, as identified in section 5.5. of my evidence, I agree with Mr Whittaker that the works require district landuse consents under:

- (a) Rule DD1.6.1(32) – non-complying activity consent required for works to an existing coastal protection structure, which is an activity not otherwise provided for in the residential zones, and
- (b) Rule C9.1.6(12) – restricted discretionary activity consent for land disturbance in excess of 10m³ in an Outstanding Landscape Area Overlay, resulting from the drilling of holes to install the new timber piles.

7.2 As detailed in section 5 of my evidence, it is my opinion that the works are permitted under the following regional rules:

⁵ *Gisborne District Council v Falkner* A082/94 (attached at **Appendix J**).

- (a) Rule C7.1.6(25), which permits the maintenance and repair of lawfully established structures (excluding network utility structures) in the Land Overlay 3 area.
- (b) Rule C8.1.6(4), which permits the maintenance and minor upgrading of legally established existing structures in all natural hazard overlays.

7.3 In the event that the Hearings Commissioner does not agree with my interpretation of the works as comprising 'minor upgrading' for the purposes of Rule C8.1.6(4), I record my opinion that the works would fall to be assessed as an alteration of works designed to mitigate the effects of coastal hazards in the Coastal Hazard 1 Overlay. This is a discretionary activity under Rule C8.5.7(1). For the reasons set out in section 5 of my evidence, I do not agree with Mr Whittaker that the works should be considered collectively as subject to all three rules (being Rules C8.5.7(3), C8.5.7(4) and Rule C8.5.7(1)) associated with physical works on coastal protection structures along the dune system.

7.4 Irrespective of whether Rules C8.5.7(1), C8.5.7(3) and C8.5.7(4) are engaged, consent is required, overall, for a non-complying activity, such that the Council's discretion in considering the actual and potential adverse effects of the works is not limited.

7.5 Of relevance to the key matter of contention relating to the duration of any resource consent issued for the works, I record that all regional rules that are potentially engaged by the works are regional *land use* rules, and do not relate to a coastal permit or an activity that would otherwise contravene section 13 of the RMA relating to the use of beds of lakes and rivers.

8. ACTUAL OR POTENTIAL EFFECTS

8.1 In this section of my evidence I consider the actual or potential effects of the works in the context of the relevant section 10 RMA tests for existing use rights and those set by section 104 of the RMA in relation to the assessment of resource consent applications. I also consider the actual or potential effects of the works in the context of determining whether or not the works meet the TRMP definition of 'minor upgrading'.

Section 10 RMA

8.2 In order for an activity to continue under section 10 of the RMA, the effects of the land use must be the same or similar in character, intensity or scale to those that existed before the rule became operative or the proposed plan was notified. Based on section A1.2 of the TRMP it is my understanding that the relevant rules became operative in 2006.

Section 104 RMA

8.3 Under Section 104 of the RMA, when considering an application for resource consent, the consent authority must, subject to Part 2, have regard to:

- (a) Any actual and potential effects on the environment of allowing the activity; and
- (b) Any relevant provisions of –
 - (i) a national policy statement;
 - (ii) a New Zealand coastal policy statement;
 - (iii) a regional or proposed regional policy statement;
 - (iv) a plan or proposed plan; and
- (c) Any other matter considered relevant and reasonably necessary to determine the application.

8.4 When assessing the adverse effects of an activity for the purposes of s104 RMA, the effects associated with the existing environment must be disregarded. For the purposes of assessing the current RC application, the existing environment is considered to comprise the existing lawfully established coastal protection structure as it currently exists, along with its associated effects. That includes in relation to its existing impact on natural character, landscape and amenity values, coastal processes, public access, biodiversity and ecological values. The assessment of effects of the works, as subject to the RC application, therefore, focuses on the actual and potential effects of the Proposal over and above those already generated by the existing structure.

TRMP definition of ‘Minor Upgrading’

8.5 Key to the EUR application and of relevance to the RC application is the ability of the works to meet the TRMP definition of ‘minor upgrading’. This provides that the capacity of a structure may be expanded provided the effects resulting from the process are the same or similar in character, scale and intensity as those that existed at 20 November 1997. This will determine whether or not the works meet the definition of ‘minor upgrading’ under the TRMP and can be considered as permitted maintenance and minor upgrading of an existing lawfully established structure in a natural hazard overlay and will inform whether or not existing use rights are available to the application in terms of the extent to which the works are ‘controlled’ by a regional rule relating to the control of natural hazards and/or the scope of resource consents required under the RC application.

Assessment

8.6 In the following paragraphs, the proposal is assessed in relation to its effects on the environment in terms of section 10 (1)(b)(ii), section 104(a) of the RMA and the TRMP definition of ‘minor upgrading’. An assessment of the works in relation to the objectives

and policies of NZCPS and the Tairāwhiti Regional Plan is provided in section 9 of my evidence below.

8.7 To summarise, relying on the evidence of the coastal and landscape experts for Mr Cave, it is my opinion that the effects of the works will be:

- (a) The same or similar in character, scale and intensity as those which existed prior to November 1997, such that they can be considered 'minor upgrading' for the purpose of the TRMP.
- (b) The same or similar in character, scale and intensity as those which existed prior to the relevant TRMP rules becoming operative in 2006, such that they could continue to occur under section 10 of the RMA in contravention of the relevant district level rules.
- (c) No more than minor for the purposes of the section 104 assessment of the RC application. While the s42A report concludes that effects will be minor and would therefore pass the effects limb of the gateway test under section 104D(1)(a) of the RMA, the s42a addendum report explains that that conclusion was based on an expectation that the duration of consent would be limited to 2042 to align with the term of the consent applying to the revetment wall to the south of the site. It is clear from the s42A addendum report that Mr Whittaker considers the absence of a consent term to be significant in terms of the overall assessment and determination of the application. However, there does not appear to be anything in his comments to indicate he considers a consent term fundamental to the ability of the application to pass the effects limb of the gateway test. Rather, the concern appears to be directed at the ability or otherwise for the works to meet the relevant policy framework and, by proxy, the policy limb of the gateway test under section 104D(1)(b). For completeness, I note that my evidence also concludes that the proposed activity will not be contrary to the objectives and policies of the relevant plan.

8.8 The need to consider effects in the context of s10 RMA, s104 RMA and the TRMP definition of 'minor upgrading' suggests three different benchmarks against which the works must be assessed i.e. as they existed in 1997, 2006 and the current day.

8.9 The existing structure has deteriorated over time since it was first constructed, and hence the need for the works currently proposed. This means its appearance will have altered since it was first constructed and at the specific dates of 1997, 2006 and the current day. Changes will have included weathering and settling of rock, the loss of rock and timber logs from behind the railway irons and rusting of the railway irons. In addition, I understand some maintenance work has occurred over time with additional rock being

placed in the area. Notwithstanding that changes have occurred to elements of the structure, I note that there has been no change to the overall function and purpose of the structure, which is to provide protection to adjoining residential property from the effects of coastal erosion.

- 8.10** The dynamic nature of the coastal environment and fluctuating sand levels over time also mean the extent of the structure that is visible above the level of the sand has and will continue to change over time. A previous slip above the structure is visible and this is currently colonized with weed species. This highlights that the environment in which the structure is located is also subject to change.
- 8.11** In an overall sense it is, therefore, my opinion that despite changes to elements of the structure and the landscape since the structure was first established, the effects of the structure have remained generally the same or similar in character, scale and intensity. This is supported by the assessment of effects below including where I rely on the evidence of Mr Morgan and Ms Cray in this regard.
- 8.12** In my opinion, there is the potential for the proposal to generate actual or potential effects with respect to:
- (a) Coastal processes and coastal hazard effects;
 - (b) Visual amenity, landscape values and natural character;
 - (c) Public access;
 - (d) Residential character and amenity;
 - (e) Biodiversity and ecological values, including on little blue penguin; and
 - (f) Construction activities.

Coastal Processes and Coastal Hazard Effects

- 8.13** Mr. Morgan's evidence explains the proposed repair and maintenance works and the potential effects on the coastal setting and coastal processes. Mr. Morgan concludes that given the proposed maintenance works will not extend further into the coastal environment and are able to be tied into existing structures and natural features at either end, the potential effects on local coastal processes will be insignificant in the context of the receiving environment and will be the same or similar in character, scale and intensity as has been experienced over time.
- 8.14** Mr Morgan does not identify any coastal processes or natural hazards based reasons to limit the term of the consent to 20 years or to link it to that of the adjoining coastal protection structure to the south. However, he does note that the degree of uncertainty associated with climate change and sea-level rise beyond the next 50 years makes it

problematic to assign a design life beyond this. Further, he advises this affects the level of certainty associated with assessing the effects of such structures beyond this timeframe. On the basis of this evidence, I accept that a 50 year limit on the duration of the consent is appropriate.

- 8.15** Conditions of consent have been proposed to ensure the works are established in a manner that avoids or mitigates potential adverse effects on coastal processes, including end effects. In his evidence, Mr Morgan identifies some minor edits to condition 7, to ensure that local ground conditions identified during the works period are taken into account in determining the optimal way of tying the works into the existing structures. This is in recognition that it will be difficult for a suitably qualified and experienced professional to certify design plans as being able to avoid end effects, prior to that information being known. As-built plans and certification would then be provided following completion of the work. I support the rationale for those changes and the wording suggested and have incorporated this into the conditions in **Attachment A**.
- 8.16** Mr. Morgan also opposes Condition 18 and recommends that it be deleted. I support the rationale for deleting that condition as set out in his evidence and have incorporated this change into the track change version of the conditions in **Attachment A**.

Visual Amenity, Landscape Values and Natural Character

- 8.17** Detailed assessment of the landscape, natural character and visual amenity effects of the works has been undertaken by Rebecca Cray (formerly of 4Sight) in relation to both the RC and EUR applications.
- 8.18** Ms. Cray observes that the work required to repair the rock revetment has been designed with visual connectivity and appearance in mind. Ms. Cray concludes that the proposed planting will help integrate the upper reaches of the structure into the background cliff vegetation; locally sourced rock of a lighter colour (as specified) together with the existing rock will be readily assimilated into the environment (particularly when viewed from a distance) while the use of timber posts as a replacement for the existing railway irons, will immediately reduce the prominence of these vertical structures. She notes that while the proposed structure will sit higher than the existing rock revetment at its crest, the timber posts will sit approximately 0.7m lower than the railway irons. This will reduce the dominance of the leading edge of the structure and assist in integrating the structure within the coastal edge environment.
- 8.19** Ms. Cray identifies two differences in design between the existing wall and works proposed i.e. the increased crest height and the replacement of the railway irons with timber posts. Notwithstanding those differences, Ms. Cray concludes that in terms of

visual amenity, the effects of the works will be the 'same or similar' as the existing structure because:

- (a) The use of the same rock types will provide for a replication of the existing rock material used;
- (b) The colour tones of the existing rocks, particularly the lighter ones, provide for a more natural continuation of the sandy coastal tones and colours;
- (c) The massing is of a similar scale and intensity to the originally lawfully established rock revetment design;
- (d) The timber posts will be less visually noticeable than the existing iron bars;
- (e) The rock revetment will continue to provide for the preservation of the coastal landform and its vegetation and will naturally accrue driftwood over time. This will aid its visual assimilation into the receiving coastal environment as the profile of the rock wall appears to naturally transition into the coastal cliff landform;
- (f) The repaired rock revetment will appear visually contiguous with existing rock revetment treatment south of the groyne, particularly in views south along Wainui Beach.

8.20 In relation to landscape effects, Ms. Cray observes that the backdrop and skyline view is not affected by the proposed work. She notes the site will transition from a degraded washed-out and visually prominent iron bar structure to a rock revetment structure softened by the use of timber which more readily assimilates into the coastal environment.

8.21 Ms. Cray concludes that the creation of continuity in treatment, removal of degraded iron bars and material replication in rock type will enable the repaired rock revetment to sit within the receiving landscape in a similar way to the originally authorised rock wall design. The repaired rock revetment is anticipated to generate landscape effects that are the same or similar to the original lawfully established design.

8.22 In his evidence, Mr Morgan suggests, some minor edits to condition 23 to provide for submission of a detailed planting plan following completion of the works, rather than prior to works commencing to allow the full extent of land remediation required to be better understood and refinement of the planting required. This is consistent with the recommendations of the Landscape Assessments for both the RC and EUR applications, which note that the extent of the clear planting area will not be known until construction is undertaken. Further, that a determination will need to be made as to the appropriate method of site preparation in light of risk of further contribution to erosion and instability of the former clay slip above the wall. This may also affect the extent of the clear planting area available on completion of the works.

- 8.23** The exception to this is clause ii of the condition which relates to rehabilitation of any areas within the CMA that have been affected by the construction works, including all access routes to and along the CMA. Methodologies to achieve this should be identified in the Construction Management Plan so they can be implemented at the time the works are completed and machinery is removed from the beach. Mr. Morgan has suggested incorporating this clause into Condition 10 relating to the Construction Management Plan.
- 8.24** I support the rationale for those changes and the wording suggested and have incorporated these into the conditions in **Attachment A**.

Effects of the Structure (Use) on Public Access

- 8.25** Notwithstanding that the existing structure and the beach immediately in front of it are on private land, the area is readily accessible to the public. The works will remain entirely within the footprint of the existing seawall structure with no encroachment into the CMA. This will enable continued public access to the same area of foreshore from other parts of Wainui Beach.
- 8.26** Mr. Morgans' coastal processes assessments confirm that the effects on coastal processes, including in terms of end effects, will be the same or similar as the existing structure. On this basis, any current tide-based restrictions on public access to this area will remain the same or similar to that presently experienced.
- 8.27** Replacement of the existing railway irons with timber piles and repair of the rip-rap structure will ensure the existing structure does not become a public safety hazard. This will occur if that structure is left to further deteriorate over time and is considered to be a positive effect.
- 8.28** In summary, the effects of the repaired structure on public access are considered to be the same in character, intensity, and scale to those of the existing seawall and less than minor.

Residential Character and Amenity

- 8.29** The proposed repair and maintenance works will result in some visible changes to the existing seawall. However, the location of the structure at the base of the cliff means it is largely screened from view of surrounding residential properties and effects of the works on residential character and amenity are expected to remain consistent in character, intensity, and scale with those of the existing structure. Specifically:
- (a) the seawall enables the continued use of these properties for residential purposes and this purpose will remain unchanged;

- (b) the repairs have been designed to ensure continuity of the existing hybrid type design solution and will ensure the works remain within the footprint of the existing structure;
- (c) the predominant material forming the repaired structure remains locally sourced. Over time, maturing of planting and natural accumulation of driftwood will further integrate the seawall with the shore and beach environment.

8.30 These factors, together with the coastal location of the properties, ensures the repaired structure will not adversely impact on the residential character or amenity of the existing environment; rather it will ensure the efficacy of the protection work is appropriately maintained for the purpose/use initially established.

8.31 In summary, the effects of the repaired structure on residential character and amenity will be the same or similar in character, intensity, and scale to that of the existing structure and less than minor.

8.32 Conditions of consent relating to landscape planting (as identified in paras 8.21 to 8.23 above) will assist in maintaining effects on residential character at their current level.

Biodiversity and Ecological Values

8.33 The structure is not located within an area identified as containing any significant conservation, biodiversity, or ecological values.

8.34 The existing environment is a highly modified coastal environment and the repaired structure will be within the footprint and on an identical alignment as the existing structure.

8.35 The repaired seawall will not alter any existing impacts on benthic and terrestrial macrofauna in the area.

8.36 As detailed in Mr. Murphy's technical memo on Blue Penguin there have been studies and reporting of Blue Penguin habitat around Gisborne Port and the coastal margin to the south of the subject site.

8.37 I'm not aware of any evidence to indicate the structure currently contains any active penguin nests or burrows in or adjacent to the area of works. However, in order to avoid effects on penguins, a pre-construction inspection will be undertaken to identify any active Little Blue Penguin nest or burrows or evidence of former use by penguins. In addition to this, a management plan will be prepared, and implemented to identify construction protocols to ensure adverse effects on blue penguin habitat are mitigated or avoided. Such protocols may include restrictions on work during nesting and molting seasons when the birds are most vulnerable; protocols for works during and outside any restricted construction periods; ensuring accessibility to the foreshore for birds; and the provision of alternative refuge sites in the event that any existing nests are destroyed.

- 8.38 Mr Whittaker has provided draft consent conditions as part of his addendum Section 42a report and I am comfortable with the wording proposed.

Construction Effects

- 8.39 The period over which site preparation and construction effects will be generated is relatively brief and any resultant short-term effects on any other party, including members of the public using this section of beach, will be managed to ensure they are no more than minor and within tolerance levels.

- 8.40 All works undertaken on site will be in accordance with a Construction Management Plan (CMP) designed to minimise disturbance to the coastal environment to the extent practicable, including in terms of noise, sedimentation and public health and safety, and to minimise any risk of discharging contaminants from machinery. Compliance with this CMP should ensure that works are completed in a safe and efficient manner, with the least possible disruption. Conditions of consent have been proposed to ensure the preparation and implementation of a suitable CMP for the works along with a number of specific parameters within which construction activities must occur (Conditions 10-22 in **Attachment A**). Mr Whittaker and I have agreed on these conditions.

Summary Comment

- 8.41 In my opinion, the effects of the proposal will be the same or similar in character, intensity and scale as those of the existing structure as it existed in 1997 and 2006; and no more than minor in relation to the structure as it currently exists.

9. THE NEW ZEALAND COASTAL POLICY STATEMENT

- 9.1 In the original s42A Report, Mr Whittaker concluded that while the proposal falls short of being consistent with the NZCPS, he did not consider it to be contrary to the NZCPS. This was on the basis of the works being on private property, that the wall was effectively replacing an existing wall and that there was a defined term to be applied to any consent.

- 9.2 In the addendum s42A Report, Mr Whittaker identifies that in the absence of a limit on the duration of the consent, he considers the proposal to be inconsistent with and contrary to the NZCPS, particularly Policies 25 and 27, which discourage the use of hard protection structures and promote consideration of alternatives.

- 9.3 With respect, I do not agree with Mr Whittaker's position that placing a limit on the term of a consent relating to a hard protection structure is definitive of the ability or otherwise for such a structure to be considered consistent with the policy direction in the NZCPS. Nor do I agree with elements of the remainder of his assessment of the policy direction set by the NZCPS, including his conclusion at para 117 of the original s42A Report that the provisions '*promote managed retreat as the most appropriate strategic response to*

coastal hazard mitigation [emphasis added]’ with the benefits of the revetment wall to the property owners to be balanced against that.

- 9.4** Objective 5 of the NZCPS is ‘*to ensure that coastal hazard risks taking account of climate change, are managed by... considering responses, including managed retreat, for existing development in this situation [emphasis added]*’. While Objective 5 sets a clear expectation that consideration is to be given to the option of managed retreat at a strategic level, I do not agree that it suggests managed retreat will necessarily be the most appropriate strategic response. This recognises that the best response will be highly contextual to the nature of development and coastal hazard involved.
- 9.5** This is reflected in NZCPS Policy 25(c), which specifies that in areas potentially affected by coastal hazards over at least the next 100 years, redevelopment, or change in land use should be encouraged ‘*where that would reduce the risk of adverse effects from coastal hazards, including managed retreat by relocation or removal of existing structures or their abandonment in extreme circumstances, and designing for relocatability or recoverability from hazard events [emphasis added]*’. Again, while there is direction to consider managed retreat, it is only one of the options identified.
- 9.6** While Policy 25(e), discourages the use of hard protection structures to manage natural hazard risk, and promotes the use of alternatives, it does not convey a directive requirement to avoid the use of hard protection structures or to remove existing hard protection structures, including over time.
- 9.7** Policy 27 promotes a strategic approach to managing coastal hazard risks in areas of significant existing development. Policy 27(1) and (2) direct a range of actions to assess and evaluate strategic response options, while Policy 27(3) and (4) require particular consideration of alternative responses before hard protection structures are used.
- 9.8** I understand that GDC has initiated investigation into a dynamic adaptive planning programme (DAPP⁶) for the management of coastal hazard risk at Wainui Beach, consistent with its obligations to develop a long-term strategic response to the risk.
- 9.9** Given the early stage of this process it is unclear what that long-term strategy will involve. If managed retreat is identified as the preferred approach, significant work, including engagement with the local community, will be needed to implement such an approach over a period of time.
- 9.10** It is my understanding that the intent of limiting the term of the consent, as proposed by Mr Whittaker, is primarily to address that long-term uncertainty. There does not appear to be any suggestion that retention of a hard protection structure in this location in the

⁶ The DAPP approach is set out in the 2017 Ministry for the Environment publication titled ‘Preparing for Coastal Change - A Summary of Coastal Hazards and Climate Change Guidance for Local Government’

short to medium term, is inappropriate. That is supported by Mr Whittaker's comments and recommendations across both the original and supplementary s42A reports around approving the consent application subject to a limited term of 20 years. Also by the Council's existing Wainui Beach Erosion Management Strategy 2014, (notwithstanding that that document does not have any statutory weight).

- 9.11** While I acknowledge that the time frame suggested for this consent (through to 2042) is linked to the duration of consent associated with the existing seawall to the south, it does not necessarily align in any way with the timeframe over which the council may seek to implement any future adaptive management strategies, as that is not yet known.
- 9.12** Rather it places an onus on the property owners protected by the coastal erosion structure to go through a re consenting process at, in this strategic policy context, an arbitrary point in time and to carry the burden of the monetary cost, time and uncertainty associated with that.
- 9.13** Taking into account the history of establishment of coastal protection works along Wainui Beach (as set out in the GDC chronology referenced above), it is my understanding that many sections of the existing coastal protection structures (including the groyne at the southern extent of the proposed works) are not subject to existing resource consents, and that GDC has allowed maintenance and upgrade of structures on other parts of the beach to be undertaken.
- 9.14** In this context and at such time in the future that GDC may seek to implement a long-term adaptive management strategy (potentially including managed retreat requiring the removal of existing protection works), it will likely need to apply mechanisms other than limited consent terms for any individual consents to effectively address such an initiative. In my opinion, this will primarily require a planning framework which extinguishes existing use rights and/or formally requires removal of existing protection structures at Wainui Beach generally.
- 9.15** In my opinion, a consent term of 50 years does not foreclose GDC's ability to give effect to any future adaptive management programme. I note that we are proposing a review condition that would enable GDC to review the consent in the event the evidence of the coastal experts supporting the proposed 50 year consent term proves to be inaccurate and to have materially influenced the decision.
- 9.16** For the reasons set out above, while I acknowledge that hard protection structures are not the preferred option promoted by the NZCPS (particularly for new work), I do not consider the work currently proposed to be contrary to the NZCPS, or that a limit of 20 years on the duration of consent is required on the evidence in order to ensure that is the case.

10. THE OBJECTIVES AND POLICIES OF THE TAIRAWHITI RESOURCE MANAGEMENT PLAN

- 10.1** The objectives and policies of the TRMP as they relate to natural hazards are broadly consistent with the direction set in the NZCPS and do not appear to introduce any additional considerations to those I have discussed in relation to the NZCPS.
- 10.2** In the addendum s42A report, Mr Whittaker identifies that in the absence of a limited consent term, he would consider the works to be contrary to Regional Policy Statement Policy B5.1.3 and regional Policy C8.2.2.18.
- 10.3** In relation to Policy B5.1.3 he notes that the works do not appear to be the only practical alternative, as the options of retaining the existing seawall or including a term as part of the conditions on any new consent are also available. In my opinion, and based on the evidence of Mr. Morgan, leaving the existing seawall to continue to deteriorate is not a viable option as it will likely result in public health and safety risks associated with the ongoing rusting of the railway irons and the loss of large rocks onto the beach as the railway irons lose their ability to contain the rock behind. For the reasons set out above, I do not consider a consent term limited to 20 years to be either effects based or determinative of an ability to comply with the policy framework.
- 10.4** In relation to Policy C8.2.2.18, Mr. Whittaker notes that a consent that provides for the wall to remain in perpetuity will likely preclude other options, such as adaptive / managed retreat and does not therefore accord with the policy direction that revetment walls proposed to protect existing development should be allowed only where they are the best practicable option *for the future*. As detailed in my evidence relating to the NZCPS, I do not agree that the absence of a limit on the duration of the consent would foreclose the GDC's ability to give effect to any future adaptive management programme. Notwithstanding this, a consent duration of 50-years is now proposed on the basis of the evidence of Mr. Morgan.

11. CONSENT DURATION

- 11.1** As previously identified, and notwithstanding any disagreement between myself and Mr. Whittaker around the specific TRMP rules triggered by the proposed works, any consents required will be district and regional level land-use consents. The works are located entirely above the level of MHWS and do not attract a requirement for coastal permits.
- 11.2** While coastal permits are limited to a maximum consent duration of 35 years under section 123 of the RMA, no such limit applies to district and regional level land-use consents. The placement of a limit on the duration of such consents is not precluded by

section 123. However, they are not ordinarily applied. On the topic of 'Limiting the Duration of Consent' the Quality Planning website identifies that⁷:

'The duration of consent is often used as a method to address uncertainty about adverse effects for consents other than land use or subdivision consents and coastal permits for reclamation (which have unlimited duration).'

- 11.3** Based on the evidence of Mr. Morgan, there does not appear to be any effects-based coastal processes or natural hazards reasons to limit the duration of consent to 20 years.
- 11.4** I acknowledge the suggested consent duration of 20 years relates to the duration of the consent for the existing seawall to the south and appreciate that in the event that wall was to be removed at the expiry of the consent, there would likely be a need to consider actual and potential effects on coastal processes, and specifically end effects that may result from the removal. I understand from Mr. Morgan that it may be appropriate to undertake alterations to the structure subject to this current consent process, in order to appropriately avoid, remedy or mitigate such effects.
- 11.5** While there is clearly a link between the effects of the two structures on coastal processes as a whole, I do not understand there to be any suggestion that they are reliant on one another to the extent that if one is removed, the other must also necessarily be removed.
- 11.6** On that basis, I do not consider it appropriate to impose the costs of a fresh consenting process on the owner of one structure, where an adjoining structure is removed and where any decisions around that removal are outside the control of the other owner.
- 11.7** While I do not consider it appropriate to tie the duration of the consent now sought to that in place for the structure to the south, I acknowledge that consideration of actual and potential coastal processes effects will likely be appropriate if that adjoining structure is removed. I consider the appropriate way of addressing this would be by way of a review condition and I have included wording to this effect in the draft consent set in **Attachment A**.
- 11.8** In addition, I understand and have noted that a review condition can be triggered if effects arise which have not been contemplated by the application (there is an inaccuracy), which materially influenced the recommendations of the Commissioner. I also accept this may even extend to the cancellation of a consent pursuant to s132(4) where the decision and/or conditions clearly include an advice note that the consent (including its term) was granted on the basis of specific information / advice which subsequently proves to be

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[https://www.qualityplanning.org.nz/node/922#:~:text=The%20basic%20consent%20duration%20provisions%20are%20specified%20in%20s123.&text=The%20duration%20of%20consent%20is,\(which%20have%20unlimited%20duration\).](https://www.qualityplanning.org.nz/node/922#:~:text=The%20basic%20consent%20duration%20provisions%20are%20specified%20in%20s123.&text=The%20duration%20of%20consent%20is,(which%20have%20unlimited%20duration).)

inaccurate and there are significant adverse effects on the environment resulting from the ongoing exercise of the consent⁸.

- 11.9** In my opinion, such a review condition would provide the management mechanism of concern to Mr Whittaker, without the need to limit the duration to 20 years. I have included wording to this effect in the draft consent set out in **Attachment A**.
- 11.10** For completeness, I also record that at the time the coastal protection structure to the south was consented, it was treated as extending below the level of MHWS and subject to a coastal permit. I have reviewed the s104 decision report associated with that consent, and observed that no discussion is provided on the issue of consent term, it simply appears to have been granted for the maximum term available (35 years taking it to 2042), with no specific consideration given to how it would interface with any future strategic response to coastal hazard risk at Wainui Beach as a whole. Also, it does not include the existing groyne located between the subject works and those to the south, the establishment of which is referenced in the GDC chronology.
- 11.11** In summary, I do not consider it necessary or appropriate to set a specific time limit on the duration of the RC consent currently sought.

12. DECOMMISSIONING OF WORKS

- 12.1** The addendum s42A report contains a consent condition (Condition 26) relating to the decommissioning of works at the expiry of the consent. As set out in Section 9 of my evidence, relating to the NZCPS, it is my understanding that at such time in the future that GDC may seek to implement a long-term adaptive management strategy, it will likely need to apply mechanisms other than limited consent terms for any individual consents to effectively address such an initiative. In my opinion, this will primarily require a planning framework which extinguishes existing use rights and/or formally requires removal of existing protection structures at Wainui Beach generally, with that direction being informed by coastal monitoring data for the system as a whole. For this reason, I do not consider it appropriate or necessary to impose a consent condition relating to the decommissioning of the works at the expiry of an individual consent. Further, under the current planning framework a consent is required to remove existing coastal protection structures. The basis on which that might be pursued is a matter for the applicant at the time. As such I do not support Condition 26 and consider it should be deleted. This is reflected in the track change version of the conditions in **Attachment A** to my evidence.

13. SECTION 104D “THRESHOLD TEST”

⁸ I am advised this will be further discussed in Mr Cameron’s legal submissions.

- 13.1** As a non-complying activity, the ‘threshold tests’ of section 104D apply. Under section 104D, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either:
- (a) The adverse effects of the activity on the environment will be minor; or
 - (b) The application is for an activity that will not be contrary to the objectives and policies of the relevant plan.
- 13.2** As set out in Section 8.7(c) of my evidence I consider the RC application meets both threshold effects. Specifically, the adverse effects of the activity on the environment will be less than minor; and the activity will not be contrary to the objectives and policies of the relevant plan.

14. OTHER MATTERS TO BE CONSIDERED

Part II RMA

- 14.1** As identified by Mr Whittaker in the original s42A report, the TRMP significantly predates the 2010 NZCPS. While the TRMP does establish a clear planning framework regarding coastal protection structures and went through a lengthy plan making process under Schedule 1 of the RMA, which would have been subject to an analysis of the Part II RMA provisions as they existed at the time, I share Mr Whittakers’ reservation that it may be considered incomplete in the sense referred to by the Court of Appeal⁹. Therefore, for the avoidance of any doubt, an assessment against Part II is included below.
- 14.2** In achieving the purpose of the RMA, the matters of national importance in Section 6 must be recognised and provided for, and the matters in Section 7 must be given particular regard to.
- 14.3** In terms of Section 6, in accordance with my earlier evidence, I consider that:
- (a) The natural character of the coastal environment and outstanding landscape values of Wainui Beach will be appropriately protected. Coastal protection structures are a long-standing feature along the length of Wainui Beach and a part of the existing character and landscape in this location. The works proposed are limited to maintenance and minor upgrading of an existing lawfully established structure and any adverse effects on natural character and outstanding landscape values will be the same or similar in character, intensity and scale as those associated with the existing structure.

⁹ R J Davidson Family Trust v Marlborough District Council [2018] NZCA 316, paras 74 and 75

- (b) The works will maintain and enhance public access along the CMA. The works will remain entirely within the footprint of the existing structure and coastal processes effects be the same or similar in character, intensity and scale as those associated with the existing structure. The maintenance and minor upgrade works will ensure the wall does not deteriorate further and to a point that it becomes a public safety hazard, due to rusting railway irons and rock spilling onto the beach.
- (c) The works appropriately manage significant risks from natural hazards to adjoining residential property, by maintaining and making good an existing coastal protection structure. The works will not exacerbate natural hazard risk or effects and will have effects on coastal processes that are the same or similar in character, intensity and scale as those associated with the existing structure

14.4 In terms of Section 7, in accordance with my earlier evidence, I consider that:

- (a) The proposal represents an efficient use of the land and existing physical resources. The works will enable the continued use of existing residential property protected by the seawall and involve reinvestment and repair of an existing degraded coastal protection structure. They will not enable additional residential development to occur in this location, as such development in the High Erosion Risk Zone is tightly controlled by the TRMP. Nor will the works compromise the efficient use of adjoining land. The works have been altered slightly to address concerns raised in relation to end effects and to minimize the potential for scour or increased erosion on adjoining properties. The neighbour who originally raised these concerns is supportive of the change.
- (b) Amenity values will be maintained. The works proposed are limited to maintenance and minor upgrading of an existing coastal protection structure, which forms an established part of the landscape, and will maintain amenity values at the same or similar level to existing. The removal of weed species and enhancement planting at the crest of the wall will serve to enhance the amenity of the wall.
- (c) The works have been designed to be resilient to climate change over a design period of at least 50 years.

14.5 Section 8 requires that when managing the use, development and protection of natural and physical resources, account be taken of the principles of the Treaty of Waitangi. The land use application is not known to raise any Treaty of Waitangi issues, noting also that the works are located entirely above the level of MHWS and are, therefore, outside the area subject to applications for recognition of customary rights under the Marine and Coastal Area (Takutai Moana) Act 2011.

- 14.6** Overall, I consider the application to be consistent with the relevant provisions of Part II of the RMA, as expressed through the objectives, policies and rules assessed earlier in my evidence. Given that consistency, I consider that the proposal achieves the purposes of sustainable management set out by section 5 of the RMA.

Wainui Beach Erosion Management Strategy (WBEMS)

- 14.7** The WBEMS is not a statutory planning instrument prepared in accordance with the requirements of the First Schedule of the Resource Management Act. While such strategies can assist (noting that it is a community document which has included stakeholder input), that should only be to the extent that they may inform how to apply the regulatory framework. Such documents cannot 'replace or augment' the planning/statutory framework. Here, the WBEMS acknowledges the need for ongoing protection at this location but any comments regarding consenting requirements and related considerations cannot assist.

15. CONCLUSION

- 15.1** In terms of the EUR application, it is my opinion that the works meet the definition of 'minor upgrading' for the purposes of the TRMP and can therefore be considered as permitted maintenance and minor upgrading within an area identified as at risk of natural hazards. Based on legal advice from Mr. Cameron, I understand the proposal is not excluded from section 10 existing use rights by way of section 10(4)(a).
- 15.2** The works are required to maintain the ongoing effectiveness of the structure in protecting adjoining residential property from coastal erosion risk. Taking into account the evidence of the coastal and landscape specialists, it is my opinion that the effects of the structure on completion of the works will remain broadly the same or similar in character, intensity and scale as those that existed when the works were originally established as well as in 1997 and 2006. In my opinion, the works meet all other relevant s10 existing use rights tests.
- 15.3** In relation to the RC application and discounting the effects of the existing lawfully established structure (the existing environment), the works proposed would generate effects that would be less than minor in scale and would not be contrary to the objectives and policies of the NZCPS or TRMP.
- 15.4** Any long-term adaptive management strategy that GDC may seek to implement at Wainui Beach in future will need to be supported by a planning framework that extinguishes existing use rights and/or formally requires removal of existing protection structures at Wainui Beach generally, with that direction being informed by coastal monitoring data for the system as a whole. A limited consent duration of 20 years is not necessary to enable that to occur.

15.5 In my opinion, the works would promote the sustainable management of natural and physical resources.

Attachment A: Proposed Conditions

ATTACHMENT A

Proposed Conditions based on those included in the S42A Addendum Report dated 27 September 2022

(Additions underlined; deletions in strikethrough)

General Conditions

1. The design of the structures and construction works shall be undertaken in general in accordance with the following documents and material;
 - The Resource Consent Application and AEE Report prepared by 4sight Consulting dated April 2019 (Ref LU 2019-108876-00),
 - The further Information response dated 21 June 2019,
 - ~~The letter dated 5 September 2019 (provision of a consent term),~~
 - LDE Drawings 'Seawall Renewal 4-8 Tuahine Crescent' Drw 14608 CO1 Sheets 1 to 4 Rev 3, and 2, and 14608 CO2 Sheet 1 and 2,
 - [Material new/relevant material from hearing]unless otherwise amended by the following conditions of consent.
2. The consent holder shall pay the Gisborne District Council any administration, inspection or monitoring charges fixed in accordance with S36(1) of the Resource Management Act 1991.
3. Where a conflict arises between any conditions of this consent and the application, the conditions of this consent will prevail.
4. All works and structures relating to this resource consent shall be designed and constructed to conform to the best engineering practices and at all times maintained to a safe and serviceable standard.

Term of Consent

5. The consent shall expire 50 years from the commencement of consent ~~on 11 April 2042.~~

Cultural Protocols Archaeological Site Conditions

6. In the event of any archaeological site, waahi tapu, taonga or koiwi being discovered during the works authorised by this consent, the Consent Holder shall immediately cease work in the immediate vicinity (at least 20m from the site of the discovery) and secure the area. The Consent Holder shall contact the Council to obtain contact details of the relevant hapu and /or marae. The consent holder shall then consult with the appropriate tribal entities and Heritage New Zealand Pouhere Taonga, and appropriate protocols (tikanga) must be observed. If the discovery is of human remains, the New Zealand Police shall also be informed. Works in the area of the discovery shall not recommence until the steps set out above have been followed and commencement of works approved by Council.

Final Wall Design and End Effects

7. ~~At least 1 month prior to the works commencing, final design plans for the revetment wall shall be certified in writing by a suitably qualified and experienced coastal engineer, as~~

Attachment A: Proposed Conditions

~~being able to appropriately avoid or mitigate potential end effects from the revetment wall on adjoining properties. The final design plans shall be in general accordance with the LDE Drawings 'Seawall Renewal 4-8 Tuahine Crescent' Drw 14608 CO1 Sheet 1 and 2, and 14608 CO2 Sheet 1 and 2. A copy of the certification shall be submitted to the Consents Manager, Gisborne District Council prior to commencement of construction of the revetment wall.~~

Physical works shall be supervised by a suitably qualified and experienced professional to determine an appropriate tie off for the structure in order to appropriately avoid or mitigate potential end effects from the revetment wall. One month following the completion of works, as-built plans and documentation confirming the nature of this work shall be provided to the Consents Manager, Gisborne District Council.

Little Blue Penguin (Kororā) management protocols and plan

8. A survey of the proposed works area shall be undertaken by a suitably experienced and qualified expert to ascertain whether there is any blue penguin habitat within the proposed works area. A survey report shall be submitted to Gisborne District Council at least 2 months prior to construction for certification.
9. In addition to the survey report required by condition 8, the consent holder shall submit a management plan to specifically identify the construction protocols that shall apply for the period of construction works to ensure that any effects on blue penguin habitat are mitigated or avoided. These shall include, but not be limited to;
 - Periods of the year when works should be avoided,
 - Protocols for works within and outside any restricted construction periods,
 - Access pathways to the foreshore for any areas where penguin habitats have been identified within or adjacent to the works area,
 - Provision of additional artificial refuge sites where any existing penguin habitat sites are compromised,

The management plan shall be submitted to Gisborne District Council at least 2 months prior to construction for certification and all works shall be thereafter undertaken in accordance with the certified plan.

Construction Management Plan (CMP)

10. At least 1 month prior to the works commencing, the Consent Holder shall submit to the Consents Manager, Gisborne District Council, for certification, a Construction Management Plan (CMP) prepared by a suitably qualified and experienced person(s). The purpose of the CMP shall be to outline the environmental management and monitoring measures to be installed prior to and maintained during construction works to maintain compliance with the conditions of this consent and to ensure that any potential adverse environmental effects are minimised over the period of works. The finalised CMP shall include, but not be limited to the following;
 - Compliance with all consent conditions, and specifically conditions 9, and 11 – 21,
 - Sediment and erosion control measures and water quality management
 - Management and stabilisation of works in relation to tide and weather conditions
 - Machinery and truck refueling and maintenance

Attachment A: Proposed Conditions

- Contingency plans
 - Stockpile management
 - Waste management and disposal
 - Vehicle and machinery access management within the coastal marine area
 - Public notice information and signage
 - Public health and safety measures
 - Vigilant attention to weather forecasting to prevent commencing work close to the arrival of coastal storms or extreme weather events, and undertaking construction in discrete stages
 - Measures to rehabilitate any areas within the CMA which have been affected by the construction works including all access routes to and along the CMA.
11. Prior to commencing any works a copy of this consent and the CMP shall be given to all person(s) undertaking activities authorised by this consent.
12. The Consent Holder may amend the CMP provided under condition 8, by submitting the amended plan to the Consents Manager, Gisborne District Council, for certification. Construction activities subject to the amendment shall not commence until the amendment has been certified by the Manager, Gisborne District Council.

Construction Methodology and Conditions

13. The consent holder shall notify the Gisborne District Council Monitoring and Compliance Team of the intention to begin works at least 3 working days prior to the exercise of this consent. Where works are to be undertaken again having been discontinued for more than seven consecutive working days Council shall be re-notified.

Note: Reporting, notification and submission of records required by conditions of this consent should be directed to Compliance.Admin@gdc.govt.nz or (in writing) to the Monitoring, Compliance and Enforcement Manager, Gisborne District Council, PO Box 747, Gisborne 4040, this notification shall include the consent number LU-2019-108876-00.

14. All noise from construction shall comply with the following criteria for long term construction activities at the boundary of any residential site:

<i>Time period</i>	<i>Average Maximum Noise Level (dBA)</i>		
	<i>L₉₅</i>	<i>L₁₀</i>	<i>L_{MAX}</i>
<i>Monday – Saturday 0600 – 1800 hours</i>	<i>60</i>	<i>75</i>	<i>90</i>
<i>Monday - Saturday at all other times</i>	<i>60</i>	<i>75</i>	<i>90</i>

Sound levels shall be measured in accordance with New Zealand Standard NZS6801:1999 “Acoustics: Measurements of Environmental Sound” and assessed in accordance with NZS6802:1991 “Assessment of Environmental Sound”.

15. All vibration from construction shall comply with the following vibration criteria:

Attachment A: Proposed Conditions

The maximum weighted vibration level (Wb or Wd) arising from construction, when measured at or within the boundary of any site, or the notional boundary of any adjacent dwelling shall not exceed the following limits:

General vibration	Time	Maximum Weighted Vibration Level (Wb or Wd)
	0600- 1800 hours Monday to Saturday	45mm/s ²
Construction Vibration	Time	Maximum Weighted Vibration Level (Wb or Wd)
	0600-1800 hrs Monday – Saturday	60mm/s ²
	At all other times	15mm/s ²

16. All vehicles involved in the exercise of this consent shall be inspected daily prior to entering the coastal marine area for leaks or other sources of contaminants. Evidence of this inspection shall be recorded in a log book and shall be made available to the consenting authority on request.
17. Works shall only occur during low tidal conditions, three hours either side of low tide. This time restriction does not apply to planting works landward of the upper extent of the revetment wall.
18. Works shall not cause erosion of the ~~dune face~~ coastal cliff face in front of 4, 6 & 8 Tuahine Crescent.
19. Sediment may be discharged only in conditions and to a degree that does not visibly alter the turbidity of the sea after reasonable mixing.
20. All waste material shall be removed from the coastal marine area as well as the works area above MHWS and disposed of appropriately.
21. The consent holder shall arrange a site visit during operations to demonstrate compliance with all consent conditions. The site visit shall be attended by representatives of the Gisborne District Council Monitoring and Compliance Team the contractor(s) and consent holder.
22. All maintenance and refuelling activities shall be undertaken outside of the coastal marine area. Refuelling and maintenance to extraction and transport machinery must be carried out off to site to ensure that any contaminants (such as oil, diesel and petrol) used during the exercise of this consent cannot enter any watercourse.

Finished Site Works and Planting Plan

23. ~~No more than~~ At least 1 month following completion of the works, prior to the works commencing, the Consent Holder shall submit to the Consents Manager, Gisborne District Council, for certification, a Finished Site Works and Planting Plan which shall;
 - (i) Be in general accordance with the 4Sight Visual and Landscape Assessment dated April 2019,

Attachment A: Proposed Conditions

- (ii) Provide details of landscape and stabilisation planting/works to be completed along the top of the rock armour and the proposed work areas and the timeframe for when the works shall be completed,
 - (ii) ~~Provide measures to rehabilitate any areas within the CMA which have been affected by the construction works including all access routes to and along the CMA,~~
 - (iii) Provide details of ongoing maintenance of any landscape and stabilisation planting/works which shall be undertaken during the term of the consent.
24. The Consent Holder shall be responsible for undertaking the approved planting and rehabilitation works within the timeframes set out in the finalised Finished Site Works and Planting Plan and thereafter shall maintain the site and works for the term of the consent.

Recording and Notifications

25. A daily photographic record of the proposed work sites shall be taken prior to, during the works and at completion showing work progress and control measures. These photos shall be provided regularly to the consent authority throughout the works.

Expiry of Consent/Decommissioning of Works

26. ~~At least 1 year prior to the expiry of the consent, the consent holder shall provide details to the Consents Manager, Gisborne District Council that set out the consent holder's intention with regards to;~~
- ~~• Whether a re consenting process will be commenced to provide for the retention of the revetment wall,~~
 - ~~• If a re consenting process is not proposed, the consenting process and proposed works which will be undertaken to decommission the works approved under this consent,~~
 - ~~• If a re consenting process is not proposed, what structures or final escarpment profile is proposed with an assessment of how this will respond to on-going coastal erosion processes.~~

Review Condition

27. The Gisborne District Council may serve notice on the consent holder pursuant to S128 of the Resource Management Act 1991 of its intention to review the conditions of the consent at the following times:
- (i) The date of expiry of resource consent RC206095 applying to the rock revetment wall located to the south of the consented works, being 31st December 2042; or
 - (ii) At such time as it becomes apparent that the information made available to the consent authority by the applicant for the consent and Dr De Lange as advisor on coastal process issues for the Council contained inaccuracies which materially influenced the decision made on the application and the significant adverse effects of the exercise of

Attachment A: Proposed Conditions

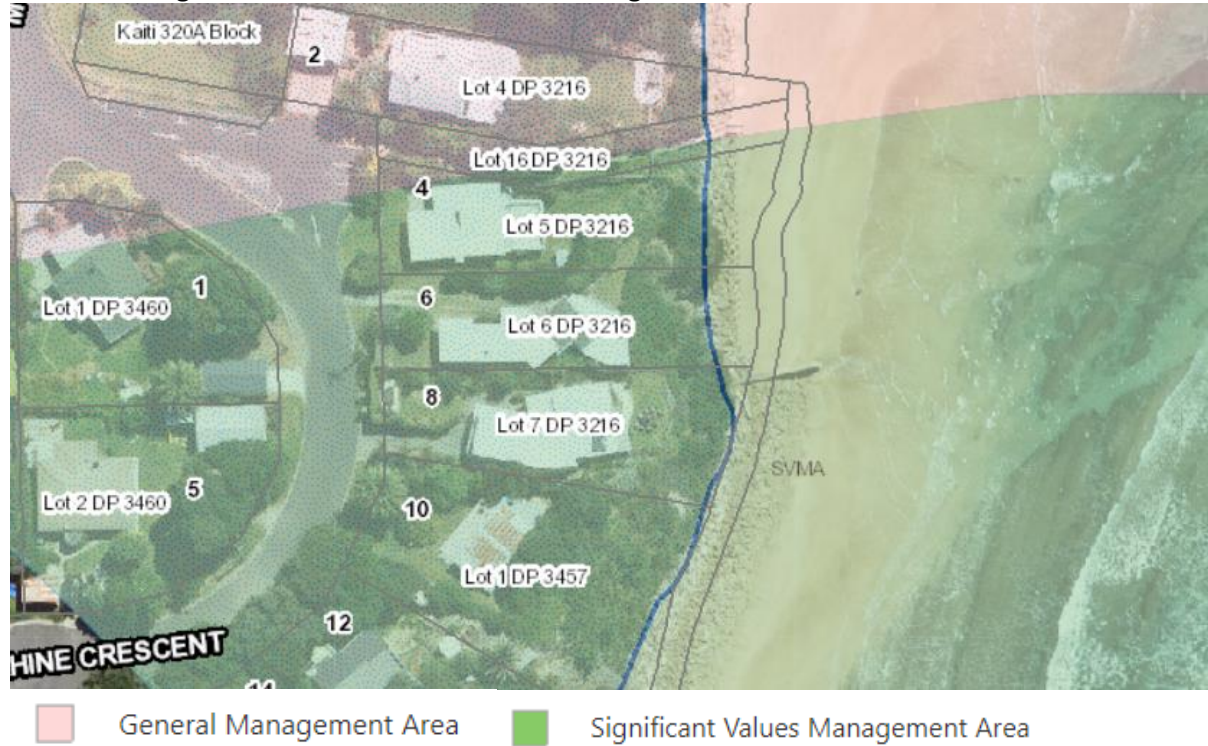
the consent are such that it is necessary to apply more appropriate conditions.

Any such review of the conditions of consent shall be for the following purposes:

- (i) To address any adverse effects on the environment (including the ongoing security of the applicants protection works) that have arisen as a result of the exercise of this consent that were not anticipated at the time of granting this consent, including as a result of the expiry of resource consent RC206095 applying to the rock revetment wall located to the south of the consented works.
- (ii) To deal with any significant adverse effect on the environment which may arise from the exercise of the consent and which it is appropriate to deal with at a later stage.

Attachment B – TRMP Regional Overall at 4-8 Tuahine Crescent, Wainui

Coastal Management – Coastal Environment Management Areas

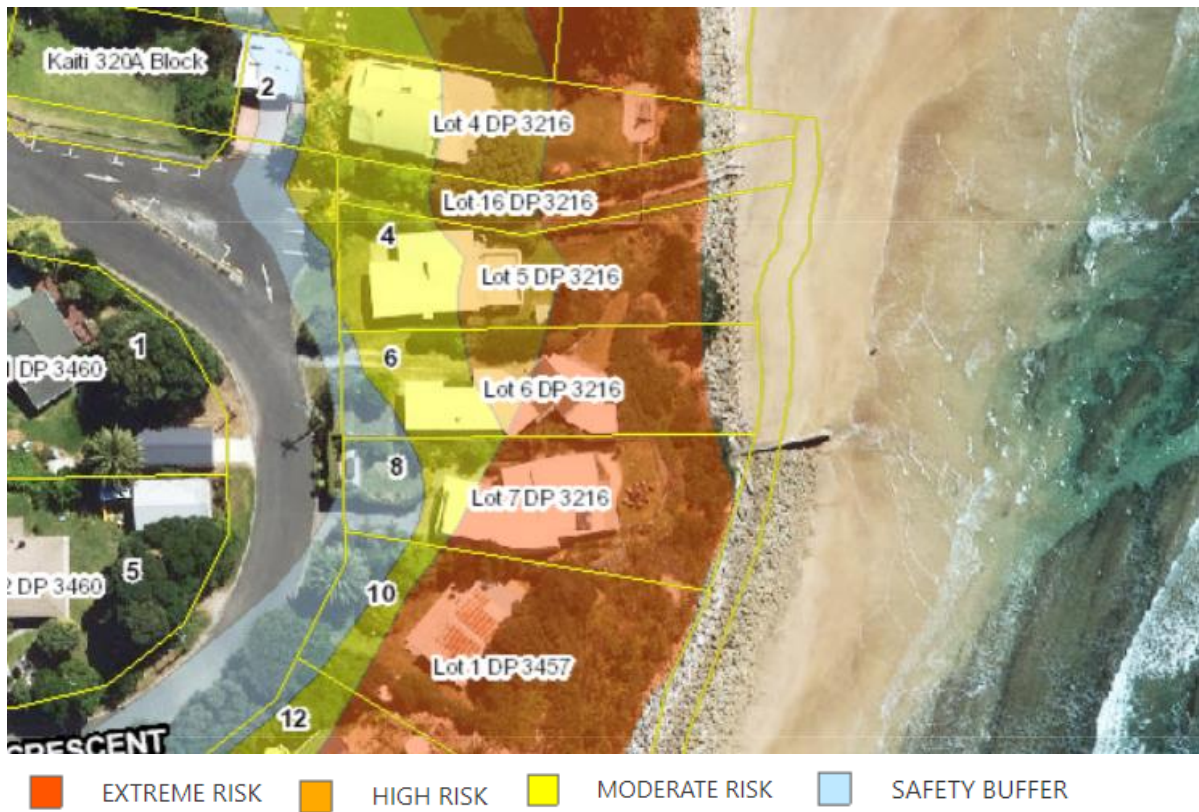


Natural Hazards – Stability Alert



Natural Hazards - Coastal Hazard Overlay

Attachment B – TRMP Regional Overlays at 4-8 Tuahine Crescent, Wainui



Land Management – Land Overlays 1-3

