

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 ROSS McPHAIL MUIR
FOR SIMON CAVE**

PLANNING

Dated: 4 October 2022

1. INTRODUCTION

1.1 My full name is Ross McPhail Muir. I have 39 years' experience in the field of resource management and planning in New Zealand. I hold a Bachelor of Regional Planning (Hons) degree from Massey University.

1.2 I am an independent planning consultant and the Director of Insight (2022) Limited which operates from Gisborne and Wanaka and which I established in 2002. Before that, I was employed by the Gisborne City Council and more recently, the Gisborne District Council. My association with the Council's planning section began in 1980, firstly towards the fulfilment of the practical experience requirements of my degree during university holiday periods and then in a permanent capacity from 1983 onwards.

2.0 CODE OF CONDUCT

2.1 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.

3. BACKGROUND

3.1 Whilst employed by the Council I worked in both the policy development and plan implementation sections. My consultancy work primarily involves preparing applications on behalf of private clients and I have, or am currently working on, a number of applications for residential redevelopment proposals involving beachfront properties at Pare Street, Murphy Road and Wairere Road, Wainui. I have a good understanding of the Gisborne District and the local planning environment and the Council's district and regional plans.

3.2 Relevantly, in July 1996 I prepared the Officer's report for a resource consent application¹ submitted on behalf of the Wainui Property Protection Committee (WPPC). The application was for five non-contiguous private property protection works in the southern area of the beach between 2A Lloyd George Road to the south and 15 Wairere Road to the north. The intent was that the proposed works would link with existing private protection structures.

3.3 The application responded to coastal erosion effects on a number of private residential beachfront properties caused by a series of significant storm events between May to November 1992.

3.4 The intervening time period between the storm events and the 1996 Hearing can be explained by an aborted initial Hearing process, legal proceedings brought jointly by the Gisborne

¹ Incorporating 5 separate landuse consents

District Council, the Minister of Conservation and WPPC seeking declarations by the Environment Court and an unsuccessful appeal subsequently to the High Court lodged by WPPC. These proceedings are commonly referred to as “the Falkner decision”.

- 3.5 The WPPC application was heard in 1996 by a “Special Hearings Committee” comprising Gisborne District Council Hearings Committee members and Independent Commissioners. The Committee resolved to decline the application.
- 3.6 In May 2004, I presented planning evidence before the Environment Court on behalf of the Gisborne District Council following a Reference² by the Wainui Beach Protection Society (WBPS) concerning provisions of the Proposed Gisborne Regional Coastal Environment Plan. The Court dismissed the appeal and confirmed the provisions, which have now been incorporated into the Tairāwhiti Resource Management Plan (TRMP).
- 3.7 In June 2010, as an Accredited Independent Commissioner, I was appointed by the Gisborne District Council together with other Commissioners to hear an application by the Rivers and Land Drainage Department of the Council to remove a rail iron/piled log wall and to replace it with a sloping rock revetment between the concrete groyne south of the Tuahine access way and the Wainui Stream at Wainui Beach. The works covered in the application included a section adjacent to numbers 4, 6 and 8 Tuahine Crescent. The decision was to decline the application.
- 3.8 Wainui Beach has a long history of public beach protection works, principally constructed by the former East Cape Catchment Board. Relic structures include retaining walls, sheet pile groynes, railway irons and gabion baskets. Virtually all these structures are in a state of disrepair or dilapidation or have effectively been destroyed or partly removed. Gabion baskets are evident along the southern sections of Wainui Beach and in most conditions these structures are covered by sand. The gabions are understood to be approximately 40 - 50 years old and have been repaired on a number of occasions.

4. SCOPE OF EVIDENCE

- 4.1 With respect to the current application for resource consents, I have been requested to comment on my involvement with a proposal in 2020 to replace a seawall across the coastal frontages of numbers 22 to 26 Pare Street. The remainder of my evidence discusses the background to the proposal, my planning assessment and the position taken by Gisborne District Council planning staff with respect to the matter.

² Wainui Beach Protection Society v Gisborne District Council [RMA 762/00] A113/2004

5. PROPERTY PROTECTION WORKS 22 – 26 PARE STREET

- 5.1 John and Carol Nelson reside at 24 Pare Street, Wainui, approximately 513 metres north of Mr. Cave's property at 6 Tuahine Crescent. A location plan is attached as Appendix 1 to my evidence. As with the Cave property, the Nelson property is located on the coastal margin and can suffer episodic erosion of the frontal dune system.
- 5.2 Number 26 Pare Street adjoins the Nelson property to the south. It is presently owned by Wainui Beach Limited (WBL). At some point, possibly up to 50 years ago, a discrete timber wall (the original wall) was erected across the coastal frontages of both 24 and 26 Pare Street to stabilise the toe of the foredune. Gabion baskets were also constructed at the base of the wall, possibly in conjunction with the project but more likely as part of a wider, publicly funded property protection scheme.
- 5.3 Number 22 Pare Street adjoins to the north. It also featured a timber wall similar in scale, design and appearance. The property is owned by Nicola McCartney.
- 5.4 24 Pare Street accommodates a substantial split storey, plaster clad dwelling located at the western side of the property and approximately 12.5 m back from the crest of the foredune as defined by the original seawall. A patio area extends from the seaward façade of the dwelling and is covered by a pergola supported on concrete columns. Concrete steps provide access from the patio to the retaining wall. The property is more or less fully developed. It is not possible to relocate the existing dwelling within the property.
- 5.5 The 24-26 Street retaining wall incorporated steel soldier piles up to 1.9 m in height, erected parallel to coastline with timber backboards and steel strand tiebacks. Two tiers of gabion baskets were set seaward of the wall but still within the site.
- 5.6 Between the 4th and 7th September 2019, a storm event, coinciding with a spring tide, occurred along the east coast of the North Island. The event further lowered the beach and destroyed the upper tier of the gabion baskets. The timber lagging of a significant section of the 24-26 Pare Street wall was dislodged or misaligned. The wall at 22 Pare street was damaged also, but not to the same extent. Wave surges behind the wall evacuated 6 metres of the frontward dune scarp and created localised land slippage, particularly on the Nelsons property and to a lesser extent on the 26 and 22 Pare Street properties. Additional property damage included:
- The undermining of the concrete staircase and cracking of concrete pavers (Nelson property);
 - The exposure and damage of a 100 mm diameter PVC storm water pipe (Nelson property);
 - The damage of a 5.7 m length of a nova coil stormwater drainage pipe (Nelson property);
 - Increased risk to a domestic wastewater treatment and land application system (WBL property).

- 5.7 The dune crest receded to a position approximately 5m from the house at 24 Pare Street and 6m from the septic tank at 22 Pare Street. Images of the wall before and after the storm event are included in Appendix 3 to my evidence.

6. GDC EMERGENCY WORKS

- 6.1 In response, Gisborne District Council arranged for the construction of a rock boulder revetment to stabilise the toe of the foredune across the coastal frontages of 22 – 26 Pare street). The rock revetment was 39 metres long and 1.7 metres high. The structure was purposely fully located within the properties and was founded on the lower tier of the existing gabion baskets. The revetment was backfilled with sand.
- 6.2 These works were undertaken on the 7th and 8th of September 2019 pursuant to the emergency works provisions of Section 330 of the Resource Management Act 1991 (“the Act”). A resource consent application s330A(2) of the Act to authorise the work was lodged with Gisborne District Council on 10 October 2019.
- 6.3 The resource consent application included measures to improve the performance of the structure. The intent as described in the application was to allow sufficient time for longer term practical solutions regarding the erosion effects to be identified for Numbers 22-26 Pare Street. It gave no indication of what those solutions might be or that the timeframes would be sufficient (a limited term of consent of 3 years was sought).

7. THE REPLACEMENT SEA WALL

- 7.1 The Nelsons and WBL collaborated in efforts to reinstate a contiguous wall across the coastal frontages of 24 and 26 Pare Street. Later, the owner of the property to the north of the Nelsons site (22 Pare Street) joined the parties to effect repairs to her sea wall. My understanding that the three owners independently assumed responsibility for the costs of the wall within their respective properties. The wall itself was reinstated as one project. Photographic images of the completed wall are reproduced in Appendix 4.
- 7.2 The reinstated wall has a 1.9m retained height consistent with the height of the original wall and it was constructed in the same position. The design allows for surcharge slope loads above the wall and the sloping beach profile below the wall. A building consent for the section of the wall within the Nelson property was issued by the Gisborne District Council (subject to section 72 of the Building Act) on 17 January 2020.
- 7.3 The Council’s initial planning assessment was that any work to reinstate the Nelson wall would require a resource consent. It underscored this approach by issuing the Nelson’s with an abatement notice on 8 November 2019 requiring the cessation of works to shore up the coastal frontage and damaged infrastructure and the further modification of the dune system. These works are evident on the photographic Images at Appendix 3 and were motivated by a

concern that further heavy swells would cause the concrete steps to fail and would lead to further retreat of the dune crest toward the Nelson's dwelling.

- 7.4 In December 2019 the Gisborne District Council issued itself an abatement notice for works to replace a timber pile wall at the confluence of the Wainui Stream (30 Pare Street).
- 7.5 For the reasons discussed at section 9.0 of my evidence, the abatement notice issued to the Nelsons was cancelled by Gisborne District Council on 21 April 2020.

8. PLANNING ASSESSMENT

- 8.1 Acknowledging that the works were entirely within the terrestrial component of the Coastal Environment, my initial planning assessment was that the proposed reinstatement of the wall along all or parts of numbers 22-28 Pare Street was a permitted activity in terms of TRMP rule C8.1.6(4) "*the maintenance and minor upgrading of legally established existing structures*". This is a catch-all rule applying to all Natural Hazard Overlays. In forming this view I had the benefit of discussing the TRMP planning controls at some length with the planning consultant acting for WBL (26 Pare Street), Mr Paul Thomas of Thomas Consulting Limited.
- 8.2 In the alternative, I considered that the works may have an existing right status based on my research of the history of erosion protection works undertaken at Wainui Beach. A chronology of those works was included in my 1996 report on the WPPC resource consent application and is attached as Appendix 5 of my evidence. The chronology was developed following a reasonably comprehensive review of the files (where available) of the Cook County Council and the East Cape/Poverty Bay Catchment Boards.
- 8.3 Based on my research of the history of coastal protection works at Wainui, I was satisfied that the works adjacent to the Nelson properties were legally authorised, and given the style of construction consistent with other protection works at the Beach, would most likely have been constructed at least in part by public authorities.
- 8.4 In response to my views, Council planning staff sought an in-house legal opinion. The outcome was that planning staff considered that the Nelson works amounted to more than minor upgrading and (while not a matter covered in the legal opinion) that existing use rights did not apply. This position was primarily influenced by the extent of damage to the Nelson's sea wall. For the property at 26 Pare Street, the position differed, in that the planning staff considered³ the reinstatement of that part of the wall was permitted under Rule C8.1.6(4) because the extent of damage (and therefore extent of the reinstatement works) was less.
- 8.5 In further discussions with Council, it became apparent to me (and as reinforced by the legal opinion referred to above) that planning staff were viewing the property protection structures as discrete components relative to the properties they were protecting notwithstanding that the wall along numbers 22 – 28 Pare Street was in effect a contiguous integrated structure that

³ GDC email 3 April 2020

was built for the purpose of providing protection to all three properties. In this regard it is noted that the Nelson and WBL walls had consistent dimensions and structural elements and had aged uniformly indicating it was probably erected as a single project. To assist the staff's understanding of my position I prepared and presented the schematic image of the entire wall which I attach as Appendix 6 to my evidence.

8.6 At that juncture, the assistance of Mr Cameron was enlisted. He confirmed the position, particularly the existing use rights issue in a letter to the Council dated 9 April 2020.

9. REVISED GDC POSITION

9.1 Following the consideration of Mr. Cameron's communication, Council staff responded by confirming a revised position that the Nelson's proposal was a deemed permitted activity pursuant to section 87BB of the Act. The rationale of the decision is set out in a letter from the Gisborne District Council addressed to Mr. and Mrs. Nelson and dated 21 April 2020 and is attached as Appendix 7.

9.2 Although not explicitly stated in the correspondence, my understanding is that planning staff acknowledged that it would view the wall across the coastal frontages of 22-26 Pare Street as a single structure, rather than 3 separate components.

9.3 However, for the purpose of Rule C8.1.6(4), planning staff considered that it had not been proven that the wall had been lawfully established, and therefore did not meet the test in the rule. The inference is that compliance with the other relevant rules were considered to have been met because the only matter referred to in the notice was the matter of lawful establishment. My preliminary assessment was that there were no additional district level rules that were infringed, however some regional rules relating to land disturbance warranted, in my view, further assessment.

9.4 I recall my surprise at the time, that an opportunity was never given to explore the matter of the lawfulness of the wall further as my view was that an existing use/permitted activity classification would have been a more correct approach. Nevertheless, the outcome was to enable the Nelsons and their neighbours to implement the necessary upgrade to the wall and accordingly the matter was not pursued.

9.5 As noted, the works have now been given effect to. Photographs of the completed wall (taken in August this year) are attached as Appendix 4.

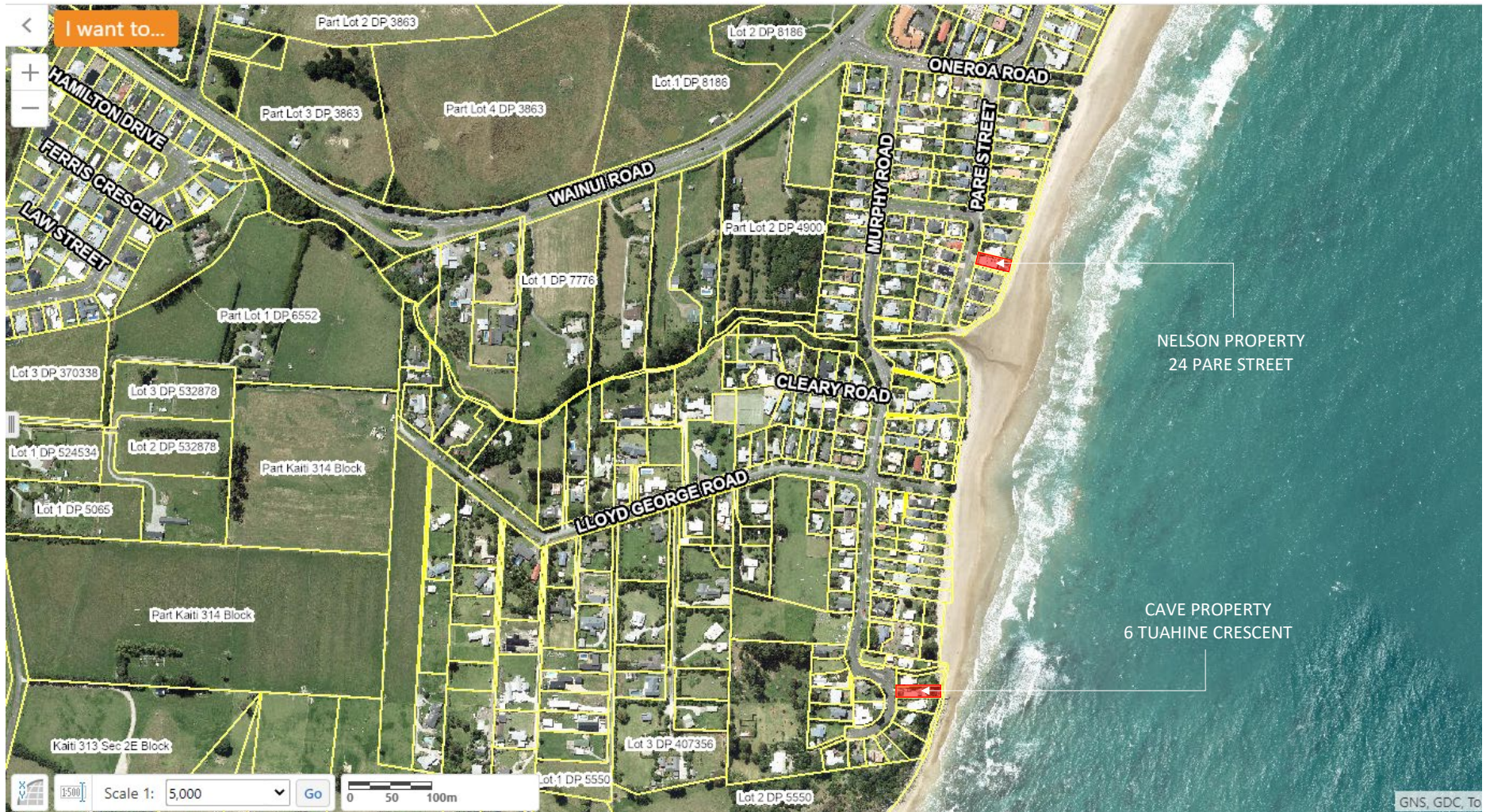
10. WORK WITHIN THE CMA

- 10.1 Although the seawall is confined entirely landward of Mean High Water Springs (adopting the authority set out by the High Court in the Falkner decision) in the course of constructing the wall, access to the site by construction machinery and equipment and the temporary placement of construction materials extended over parts of the foreshore within the CMA. On behalf of the Nelsons, I set out a number of commitments, guidelines and procedures to regulate these operations and activities in a manner that I believed would not trigger a resource consent process. Council staff considered and approved these matters in an email dated 23 April 2020 which I include in Appendix 8.

Ross Muir
4 October 2022

APPENDIX 1

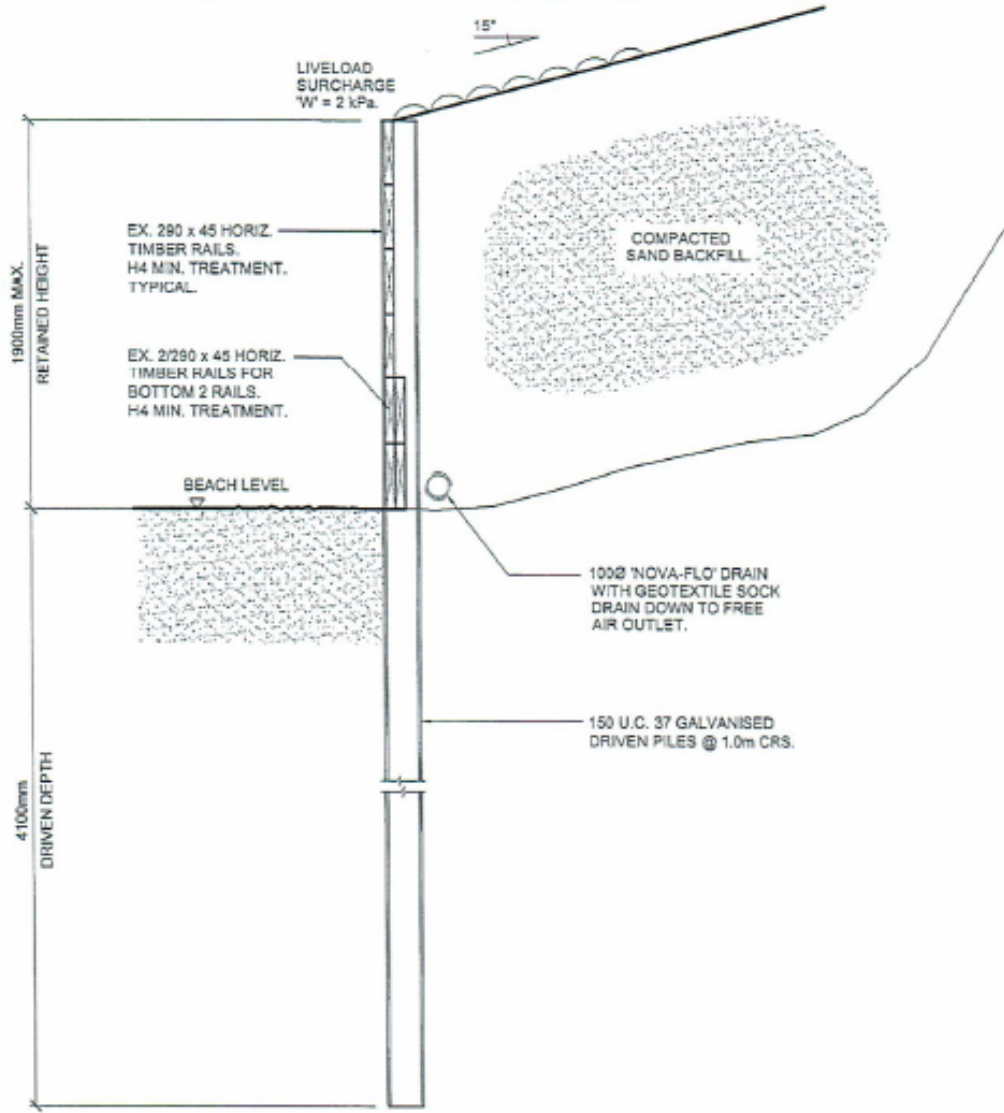
LOCATION PLAN



LOCATION PLAN DEPICTING CAVE AND NELSON PROPERTIES: WAINUI BEACH


APPENDIX 2

CROSS SECTION OF NELSON SEAWALL



TIMBER RETAINING WALL DETAIL.

1/20

 Mitchell Vanjes	
Graham T. Russell Street, Graham, Auckland 1021 P.O. Box 201 Papanui, Christchurch, P.O. Box 11-770 Papanui Auckland 2014 P.O. Box 100	
Job Title: PROPOSED RETAINING WALL AT 24 PARE STREET GISBORNE JOHN NELSON	
Draw Title: RETAINING WALL DETAIL	
Scale:	Job No:
1:20 (A3)	19070
DATE:	Draw No:
DEC. 2019	S.1
DRAWN:	Checked:
K.R.M.	S. Moore

APPENDIX 3

PHOTOGRAPHS OF SEA WALL BEFORE AND AFTER 2019 STORM EVENT



TYPICAL VIEW OF RETAINING WALL ON NUMBERS 24 & 26 PARE STREET (PRIOR TO 2019 STORM EVENT)



VIEW OF RETAINING WALL ON 22 PARE STREET (PRIOR TO 2019 STORM EVENT)





DAMAGE TO SEAWALL ACROSS 22-26 PARE STREET (source: GDC resource consent application)

APPENDIX 4

PHOTOGRAPHS OF REINSTATED SEA WALL (AUGUST 2022)



IMAGES OF REINSTATED SEAWALL 22-26 PARE STREET (August 2022)



APPENDIX 5

CHRONOLOGY OF PROPERTY PROTECTION WORKS AT SOUTHERN WAINUI BEACH

CHRONOLOGY
FORESHORE PROTECTION WORKS - WAINUI

ca 1942

Private concrete seawall built opposite Oneroa Road to protect the property currently owned by the Krzanich family

1955

Private willow branch fence and fascines built at toe of foredune midway Wairere Road. Stone filled tar drums placed behind

1955

Severe storm - several houses endangered by erosion prompting a demand for some scheme to protect the foreshore.

1959

Former Cook County Council ('CCC') initiated a request to Government for financial assistance to protect foreshore - approval given to protect the beach south of the Hamanatua Stream.

1960

Private railway iron and timber seawall built at toe of foredune opposite Tuahine Crescent

1961-62

28 Sheet pile spur groynes built by CCC.

1962

Longitudinal railway irons thatched with manuka fascines constructed adjacent to Tuahine Crescent

1966

Longitudinal protection in the form of a double row of railway irons driven into the basement material with "piled manuka 'fascining' tied between" was added at the southern end of the beach and extended to south of Lloyd George Road.

Area between the manuka and dunes backfilled with sand.

1974

Severe storms.

Aug 1974-Mar 1976

CCC adopted four resolutions to be used as guidelines for the control of building and development on beach frontages.

1975-77

Works carried out in three stages, in accordance with the degree of urgency. As each section was prepared, property owners in that section were given formal notice in accordance with section 11, 1948 Amendment to Soil Conservation and Rivers Control Act 1941.

1975

Damaged spur groyne at southern end replaced. Groynes 1 and 27 strengthened and lengthened with timber and concrete respectively

Feb 1975

East Cape Catchment Board (then Poverty Bay Catchment Board) assumed responsibility for the promotion of a longitudinal protection scheme for the whole area, under agreement with CCC with that authority retaining responsibility for repayment of the loan for the original work.

24/02/75

Board held public meeting. Request to the Board for works under section 11 of the 1948 amendment to the Soil Conservation & River Control Act 1941 made.

29/10/75

Approval of Scheme and subsidy received by Board from the Soil Conservation and Rivers Control Council.

Dec 1975

Gabion protection works between old groyne position 22 and 24 constructed.

1976-77

Longitudinal works were constructed.
Gabion baskets were placed in position to replace the spur groynes.

1977-78

Some failure of gabion protection over a 40m length.

1980

Most spur groynes removed

Dec 1980

CCC commissioned a study from Dr Gibb to assess a Coastal Hazard Zone for Wainui Beach.

1980-81

Gabion protective works from Oneroa Road south to Tuahine Crescent (Groynes 17 to 27) were subject to minor changes due to maintenance after storm damage, and extension of the gabions north of Groyne 21 and adjacent to the mouth of Wainui Stream in 1987

July 1981

Dr Gibb's report received by CCC and later adopted.

Oct 1981

East Cape Catchment Board adopted recommendations that a unified rating district be formed covering all properties affected by the hazard Line.

Dec 1991

Replacement of gabion baskets between Groynes 23 and 24.

09/01/82

East Cape Catchment Board adopted the classification of the Wainui Beach Foreshore Protection Scheme - s.102 Soil Conservation and Rivers Control Act (1941)

Works extend from Groyne 28 south of Tuahine Crescent; to Groyne 1 adjacent to Hamamatua Stream and incorporate longitudinal gabion or timber wall protection to the toe of the foreshore and four spur groynes extending seawards from this protection. Associated with these structures are the space between them and the foreshore, provided as a splash zone to dissipate wave energy, and the material contained in the seaward 15m of foreshore regarded as a buffer to accommodate extraordinary storm events.

Classification recognised that no property could be treated in isolation along the foreshore and individual property protection could only be effective when the integrity of the whole scheme was assured.

1982-92

Contributions based on capital value paid annually to maintain the protection works.

1982-84

Rock placed behind the log rail longitudinal protection (groynes 24 to 28).

Storm damage in this area required driving in new rails, tying loose logs in place and topping up rock between the logs and the dune or cliff face.

Early May 1992

Section between Groynes 23 and 24 under heavy wave attack - sections of gabion destroyed.

13/05/92

Gabion repair and strengthening. Appears to relate only to 6-18 Pare Street.

05/06/92

Rock placed to fit the gap created in early May - by Council.

11/06/92

D H Peacock: "Possible Options for Pare Street Properties Following Storms of May-June 1992".

19/06/92

Meeting - Wainui Foreshore Protection Scheme contributors. Replacement of gabions with rock considered to be "emergency maintenance" only.

From June 1992

Rock placed in gaps in gabion wall vicinity Lloyd George Road - by Council. Further rock and filter material placed privately between Groynes 23 and 24.

June-Sept 1992

Log rail wall between Groynes 26 and 24 seriously damaged.

The dune sustained damage during the storm of May 1992 due to waves breaking over the gabions and eroding the toe of the steep sand face. Residents placed rock behind the gabion wall as a temporary measure at the end of August 1992 to protect properties.

27-30/07/92

Lloyd George Road works undertaken by residents - essentially completion of works covered by application

30/07/92 (or) 31/07/92)

Lloyd George Road works halted. By 20/08/92 Council determined works restricted coastal activity.

Aug 1992 Rock placed behind gabion wall frontage 6-18 Pare Street - by residents.

Winter 1992

Council work to replace destroyed gabions with rock and railway iron piles between groynes 21 and 26 (work for which Council seeks consent).

In May and June 1992 parts of the gabion wall collapsed. As an immediate measure rocks were placed in the gaps from June 1992. Most of gabions were destroyed late June and subsequently three square metres of rock per linear metre of beach placed along this section by the Council. In addition, further rock and filter material was placed privately between Groynes 23 and 24 - not completed

24/11/92

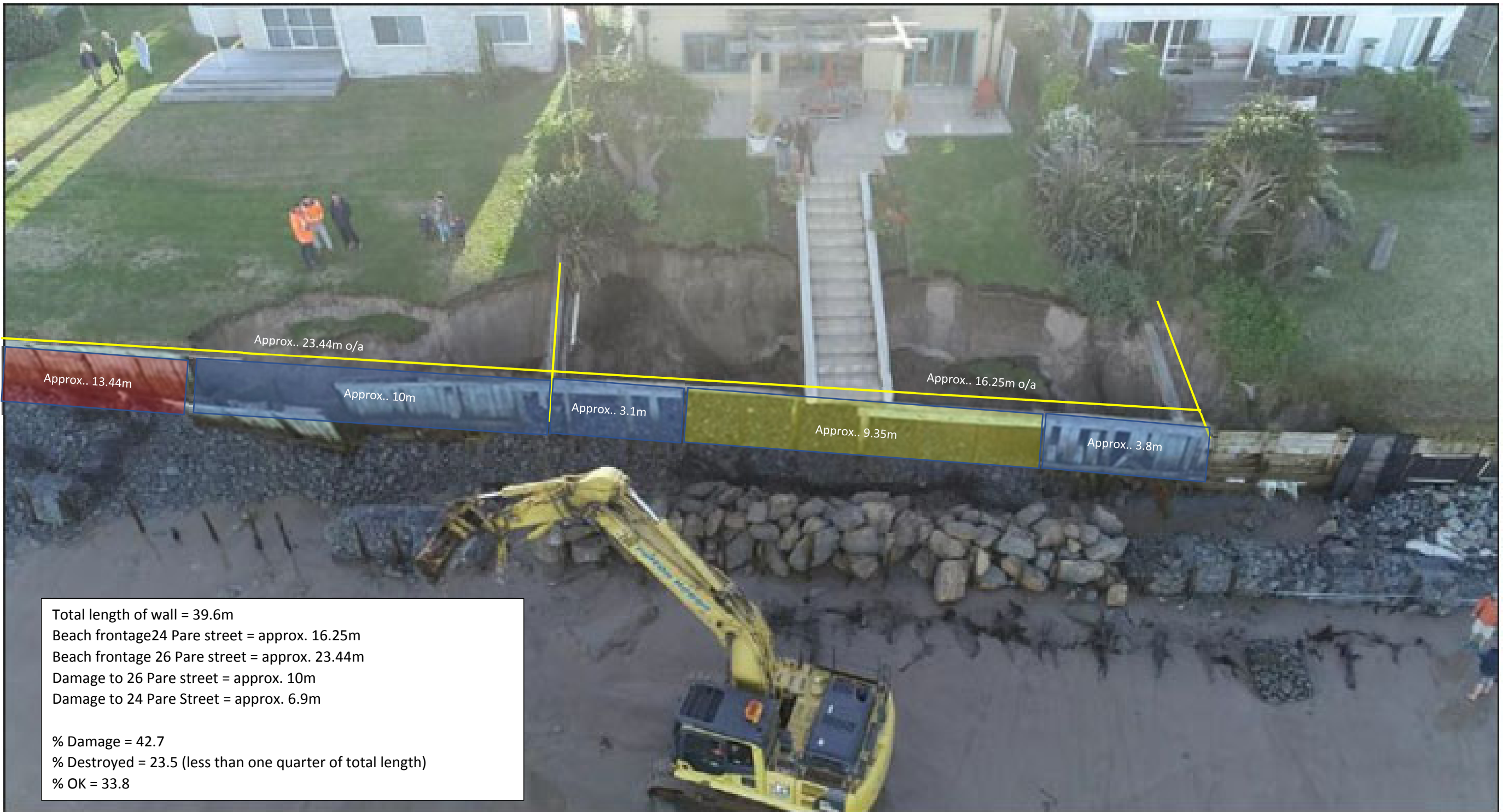
Meeting held with members of the Wainui Foreshore Protection Scheme to advise them that the scheme was no longer able to be maintained as originally envisaged.

17/12/92

Gisborne District Council resolved to "discontinue all beach works within the framework of the Wainui Beach Foreshore Protection Scheme.

APPENDIX 6

DRONE SHOT OF DAMAGED SEA WALL





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I want to...

Tools

PARE STREET
Road

Lot 1 DP 8845

Lot 2 DP 3224

General Residential

Lot 9 DP 3028

Lot 13 DP 3028

Lot 10 DP 3028

39.69 m

Total: 39.69 m

0 3 6m

28

GDC

APPENDIX 7

GDC DEEMED PERMITTED ACTIVITY NOTICE

21 April 2020



John and Carol Nelson
24 Pare Street
Wainui
Gisborne

Dear John and Carol

CONFIRMATION LETTER FOR DEEMED PERMITTED MARGINAL OR TEMPORARY ACTIVITY

Application number(s): BC 20213
Applicant: John William and Carol Mary Nelson
Address: 24 Pare Street, Wainui, Gisborne
Proposed activity(s): To repair an existing retaining wall

Gisborne District Council's Environmental Services and Protection – Resource Consents Unit has reviewed your building consent application to ensure the proposed activity meets the requirements under the Resource Management Act 1991 (RMA) and the District Plan. The proposed activity does not meet the following Regional Plan rules: The activity triggers Rule 8.1.6(4); however the rule requires the existing structure to be lawfully established, which has not been explicitly determined. In normal circumstances, any non-compliance with rules and requirements under the RMA or a planning document will trigger the need for a resource consent. However, pursuant to section 87BB of the RMA, the Council has discretion to waive the resource consent requirements for the proposed activity on your site. We have determined your application BC 20213 meets these tests and is therefore permitted under this section and does not require resource consent.

A copy of the notice, which confirms the activity is a deemed permitted marginal or temporary activity under section 87BB of the RMA, is attached.

This notice describes the proposed activity and location, relevant details of the site, the relevant information the Council relied on to make our decision, and outlines the Council's reasons for considering the activity meets the relevant criteria of Section 87BB of the Act.

Please note any changes to the activity, as described in the notice, may trigger the requirement for a new resource management approval from the consent authority.

Please note that, in terms of the s. 37 certificate imposed on the Building Consent, Council is treating the deemed permitted notice as superseding the s.37 certificate requirement for resource consent, and that building works can commence upon issue of the deemed permitted notice.

Please note that given the urgency of the matter Council has issued this notice without requiring a fee for the service. The actual and reasonable costs will be determined and an invoice for those costs will be sent to you in the near future.

It is important to note a notice given under subsection 1(d) lapses 5 years after the date of the notice unless the activity permitted by the notice is given effect to. If you have any queries, please contact me on phone number and quote the application number above.

Yours sincerely

A handwritten signature in black ink, appearing to read "Ian Petty". The signature is written in a cursive style with a large initial "I" and a stylized "P".

Ian Petty
Consents Manager (Acting)



Written Notice of Deemed Permitted Marginal or Temporary Activity

*Section 87BB
Resource Management Act 1991*

To: John William and Carol Mary Nelson

The Site: 24 Pare Street, Wainui, Gisborne, being Lot 1 DP 8845

Activity: to repair a retaining wall

The Gisborne District Council has decided that the activity described above is a permitted activity under section 87BB of the Resource Management Act 1991 (the Act).

The consent authority's reasons for considering that the activity meets the criteria in section 87BB(1) of the Act are:

Departure from the requirement to determine that the pre-existing structure was legally established is considered to be a technical non-compliance with the rule. The works do not extend the character, scale and intensity of the existing wall, and the written consent of the affected parties have been obtained.

The information relied on by the consent authority in making this decision is:

The information provided with Building Consent 20213, including:

Documents:	Prepared by:	Reference No:	Version:	Date:
S1: Proposed Retaining Wall at 24 Pare Street, Gisborne, John Nelson: Retaining Wall Detail(including annotations)	Mitchell Vranjes	19/070		Dec 2019
24 Pare Street, Gisborne – Geotechnical Investigation Plan	Land Development and Engineering Ltd	16971		27 November 2019
View from Wainui Beach of Proposed Retaining Wall Reinstatement Location 24 Pare Street, Wainui	Land Development and Engineering Ltd	16971		27 November 2019

Geotechnical Investigation Report for Proposed Retaining Wall – 24 Pare Street, Wainui Gisborne	Land Development and Engineering Ltd	16971		23 November 2019
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The information provided in the emails dated 17 April 2020 and 20 April 2020 to Shane McGhie from Andrew Cameron of Cameron Law, which included:

- (1) Confirmation that *the work will be carried out in accordance with the building consent issued by Council in respect of the Nelson's property, there will be no alteration to the height of the wall (i.e. it will be exactly the same as the structures to the immediate north and south) and there will be no alteration to the dune contour (i.e. it will be reinstated to the same level that was present prior to the emergency event of last September).*

- (2) The written approvals of the owners and occupiers of 22 and 26 Pare Street, Wainui.



Ian Petty
Consents Manager (Acting)

21 April 2020

ADVICE NOTES

- This notice will lapse 5 years after the date it is given unless the activity permitted by this notice is undertaken.
- This notice is valid only for the activity described above and shown on signed plans referenced. If the activity changes, a resource consent may be required.
- A certificate of compliance (under section 139 of the Act) cannot be applied for in respect of this activity.

APPENDIX 8

REGULATION OF CONSTRUCTION ACTIVITIES WITHIN THE CMA

From: [Ian Petty](#)
To: "A.Cameron@cameronlaw.co.nz"; [Ross Muir](#)
Subject: FW: CMA construction activity
Date: Thursday, 23 April 2020 3:15:49 pm
Attachments: [image002.png](#)

Hi Andrew & Ross

Please see response from both Shane and I below. Note that I have added a new bullet point in regard to refuelling machinery or vehicles on the beach. I have also added another one in regard to effluent disposal lines.

Regards

Ian

From: Shane McGhie <Shane.McGhie@gdc.govt.nz>
Sent: Thursday, 23 April 2020 12:57 PM
To: Ian Petty <Ian.Petty@gdc.govt.nz>
Subject: RE: CMA construction activity

Hi Ian

Sorry I missed your call. Yes what Ross is proposing in terms of controls on the activity in the CMA seem sensible.

Regards

Shane

From: Ian Petty <Ian.Petty@gdc.govt.nz>
Sent: Thursday, 23 April 2020 7:41 AM
To: Shane McGhie <Shane.McGhie@gdc.govt.nz>
Subject: FW: CMA construction activity

Hi Shane

Ross' controls all look eminently sensible to me. However I have added a refuelling one in blue.

Regards

Ian

From: Ross Muir <ross@insightgis.nz>
Sent: Wednesday, 22 April 2020 3:03 PM
To: Ian Petty <Ian.Petty@gdc.govt.nz>
Cc: Andrew Cameron <A.Cameron@cameronlaw.co.nz>; Paul Thomas <paul@thomasplanning.co.nz>
Subject: FW: CMA construction activity

Hi Ian

We have been considering matters relating to the temporary use of the CMA for construction

activities associated with the repair of the wall fronting all or parts of 22-26 Pare Street. Access to this area will be required as a consequence of site developments and the need to work on the seaward face of the wall. Schedule 1 of the Navigation and Safety Bylaw excludes Wainui Beach from the controls set out in it. We understand that there is no other Bylaw that would apply.

Accordingly we have considered the provisions of the TRMP. In our view the activity can be undertaken without the need for resource consent provided following matters are addressed. If you concur, these matters will be included in the instructions issued to contractors as part of the works specifications and will apply to the works covering the frontages of 22-26 Pare Street.

The edge of the existing wall for practical purposes delineates the CMA boundary. The new structure is therefore within the terrestrial component but construction activity will include use of CMA. Materials will be delivered by access formed off the end of Pare Street and transported along the beach to positions adjacent to works site.

The site is within the General Management Area of the CMA (section DC2 of the TRMP).

Rule C2.6.1(3) does not apply (the structure is not within the CMA), but the associated standards and terms serve as a useful guide, as does the CEMP submitted for the GDC rock revetment. Principal Reason2 of the TRMP explains that “without maintenance many structures deteriorate. Minor alteration will have minimal adverse effects”. There appears to be acknowledgement in the TRMP that there will be a need to access the CMA to undertake some maintenance/repair work.

It is assumed that there will be no temporary support structures (bracing etc) erected therefore rule C2.6.1(7) does not apply (note this permitted activity rule requires consultation with Maori). However, this notwithstanding the extent of such temporary works would be so minor they are probably de-minimise in terms of the matters the rule is intended to address.

The only references to temporary occupation of the CMA are to military or civil defence exercises or recreational/cultural activities.

Construction vehicles are likely to include hydraulic excavators, trucks, trade vehicles. Materials for construction will be temporarily placed on the beach.

Unlike the terrestrial component, the rules for noise in the General Management Area do not distinguish between construction/on-going noise emissions. The requirements are set out in Figure C11.16 and are reasonably onerous. Technically the noise limits for General Residential and Amenity Reserve zone applies. Care will need to be taken regards operational hours/days to reduce potential for noise complaints. No vibration rules appear to apply

The following guidelines will help minimise/avoid adverse impacts:

- Beach not to be used as a sand borrow area (this will require consent);
- The physical dimensions of the structure are not altered;
- The alteration or maintenance results in no more disturbance to the foreshore or bed than can be removed by two tide cycles.

Temporary stored material to be clear of swash zone;

- There is no adverse effect on public safety and navigation safety;
- Public access to and enjoyment of the Coastal Marine Area is not (materially) decreased. Construction area demarcated to ensure public safety. (Works site seaward of wall might be within private property boundaries in any event but parts of access route will be within seabed);
- Gisborne District Council given prior advice of start date of the works, a plan of the proposed access route and a plan showing the extent of the demarcated works site;
- Undertaking construction works during low tide cycles may help reduce restriction on public access;
- Contaminants are not disposed of into the coastal environment. Plant and equipment should be in good working order and maintained to avoid discharges of fuels/oils with service history records available if requested;
- Plant & equipment arriving at work site fully fuelled;
 - No machinery (regardless of size) or vehicles shall be refuelled on the beach.
 - Care shall be taken not to impact the effluent disposal lines of any of the dwellings including 22 Pare if that repair should commence before the building consent is issued. To facilitate this the effluent disposal lines should be located and marked with dazle if they are closer than 5m to the edge of the proposed excavations.
- Fill material should be of a nature and managed to ensure no sediment deposition on adjacent beach;
- Dust management measures should be conceived and implemented (as necessary);
- Consideration to whether traffic management measures may be required for delivery of materials at end of Pare Street;
- Care taken around remedial works in vicinity of septic tank/discharge lines to ensure no accidental discharge onto beach.

Would you please confirm if your understanding of the matters is consistent with ours.

Rgds

Ross



Ross Muir

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