



## **GISBORNE DISTRICT COUNCIL**

**Application for a Resource Consent by the  
Rivers & Land Drainage Department of the  
Gisborne District Council**

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**COMMISSIONERS' REPORT AND DECISION**

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## **DECISION ON APPLICATION BY GISBORNE DISTRICT COUNCIL RIVERS & LAND DRAINAGE DEPARTMENT**

### **1. APPOINTMENT OF COMMISSIONERS**

- 1.1 By a resolution of the Gisborne District Council ("the Council"), Commissioners John Matthews (Chair), Ross Muir, Craig Bauld and Jim Dahm were appointed pursuant to Section 34 A (i) of the Resource Management Act 1991 ("the Act").
- 1.2 The Commissioners had delegated the functions, powers, and duty of the Council under the Act to determine the application for a coastal permit for protection work and regional and district level land use consents at Wainui Beach, and any other matters ancillary or related to the coastal permit/land use application.
- 1.3 Mr Dahm was the appointee of the Minister of Conservation, and Mr Bauld of the Council.

### **2. THE APPLICATION**

- 2.1 The Rivers & Land Drainage Department of the Gisborne District Council (the Council being a Unitary Authority combining both regional and territorial responsibilities) applied for a coastal permit to deposit substances on the foreshore, disturb the foreshore, erect and place a structure fixed in, on or over the foreshore, to occupy the coastal marine area, and for a further land use consent to excavate and deposit beach materials, and place a structure within Coastal Hazard Overlay 1 (Extreme Risk Zone) above Mean High Water Springs at Wainui Beach, Gisborne.
- 2.2 Those permits would allow for the removal of a rail iron/piled log wall and replacement with a sloping rock revetment between the concrete groyne south of the Tuahine access way and the Wainui Stream at Wainui Beach, Gisborne.
- 2.3 Wainui Beach is located on the east coast approximately seven kilometres from the centre of Gisborne. The beach comprises a long sweeping sandy bay terminating at the southern end by Tuahine Point. The northern end of the beach terminates at Makarori Headland. The back of the beach features a low foredune extending the length of the bay and a swathe of residential development along the coastal strip making up the settlement of Wainui.
- 2.4 The area concerned is an intensely developed beachfront with a long history of protection works dating back to 1920, and a modified foredune and foreshore as a consequence.
- 2.5 There are 21 dwellings located in the vicinity of the subject site, with six of those dwellings towards the beach frontage which are considered to be at risk from erosion in terms of the application.
- 2.6 The present physical features of the foreshore subjected to the application are as follows:
  - a. There is an existing rail iron piled/log wall extending 160 metres from the concrete groyne adjacent to Tuahine Crescent to 52 Murphy Road.

- b. From 52 Murphy Road to Lloyd George Road access steps there is a 70 metre length of sloping rock revetment supported with rails at its base.
  - c. From Lloyd George Road North to old groyne 22 there is 85 metres containing a rail and rock wall.
  - d. From the old groyne 22 north to Walnut Stream there are rock-filled gabion baskets backed with timber walls.
- 2.7 The proposed sloping rock revetment is proposed to be constructed out of either limestone riprap or sandstone boulders sloped at approximately 1:3 with the crest at a height of 3 metres (following an amendment to the original application) above Mean Sea Level.
- 2.8 The proposed works for both above and below the Coastal Marine Area ("CMA") envisages the top of the revetment will be required to be located within private property and reserve land in some places.
- 2.9 The application sets out a timeframe construction methodology, including:
- a. Works commencing at the southern end removing existing rail and log structures in blocks of 50 metres;
  - b. The construction to be carried out where possible when beach sand levels are reduced. It is anticipated that sand will cover a part of the revetment due to the dynamic nature of the beach.

### 3. THE SITE AND HISTORY

- 3.1 The application states that the beach is a "dynamic" beach which is subject to wide fluctuations in beach profile which affect coverage of sand.
- 3.2 Severe storms in 1990 made the issue of construction of protection structures more contentious. Litigation took place which prevented the proposed works gaining consent but during mediation a working party was formed to develop a Wainui Beach Management Strategy ("WBMS").
- 3.3 The WBMS was adopted by the Gisborne District Council in August 2003. The strategy was formulated by a committee facilitated by the Council and included representatives from property owners, other residents, iwi/hapu, the Department of Conservation, and surfing interests. The WBMS is now seven years old.
- 3.4 In 2003 a peer review of the WBMS was undertaken by a Consulting Oceanographer, Dr Paul Komar. The application appeared to the Commissioners, and from the evidence, to have its genesis from a consideration of that peer review and the WBMS Strategy.
- 3.5 The history of beach protection structures to deal with periodic violent storm events backdates for some 90 years. The evidence of failed and partially successful efforts to deal with erosion are evident on the beach, including to the south of the concrete groyne at Tuahine Crescent a major rock revetment generally of similar construction to that proposed in this application.

3.6 The Commissioners undertook two visits to the site, the second visit with Mr Peacock, the engineering witness for the Applicant. The second visit was only to ascertain the distance from the top of the proposed rock revetments to the toe, and to enable a consideration of its effect on the natural character and the degree of protection that was proposed to be provided by the structures.

#### 4. PRINCIPAL ISSUES IN CONTENTION

- The extent of protection provided by the 3:1 protection structures;
- The protection of the natural character of the beach;
- Provision of access to the beach;
- Removal or retention of the existing rail/log structure;
- The amenity features of the revetment;
- Consequential effects on the beach from the revetment;
- Encroachment and loss of use by the public of the sandy beach;
- Consistency with previous structures south of the proposal;
- Concerns about entrenching into the papa shelf;
- Uncertainty about the effects of climate change;
- Whether the works are intended primarily to protect the beach, or private property.

4.1 The above issues arise both from the application and from submitters for and against the proposal.

#### 5. REPORTS

5.1 Because the Council is the receiving party for the application, three reports were prepared.

5.2 A report was received from the Water Conservation Department of the Council (Mr Crone). That report considers the coastal permit and restricted coastal activity aspects of the structure. The recommendation of the reporter was that the application to remove the existing structures and install new rock protection works within the CMA be granted.

5.3 The next report was from the Soil Conservation Department of the Council (Mr Burkett). That report considers the land disturbance and deposition of material associated with the excavation of material from the landward side of the Mean High Water Springs ("MHWS). Again the report recommends the granting of the application.

5.4 The third report was from the Development Control Planner (Ms Callis) dealing with the planning and other issues of the proposal. Again that report recommends granting the application.

5.5 The Commissioners were aware of the difficulty of different departments within the Council dealing both with making the application and with reporting, and accepts that to the best of their ability the reports were prepared to give independent reviews of the application notwithstanding the nature of the unified Council. Mr Peacock, who gave evidence for the Applicant, was formerly a member of the Council staff and has extensive knowledge of various protection works and the history of Wainui Beach generally over many years. His evidence was valuable and his assistance in providing a background to the application was appreciated by the Commissioners.

5.6 Mr Peacock's evidence confirmed that the design of the rock revetments were for "partial" protection of the foredune. He considered it was neither affordable nor desirable to provide full protection and confirmed, both in his evidence and to questions put by the Commissioners, that major storms will overtop the crest of the proposed revetment.

## 6. EVIDENCE ON BEHALF OF THE SUBMITTERS

6.1 Submitters in support of the application were Mr Weatherhead, Mr Ford (by lodging written evidence), Simon Cave and Mr Calcott.

6.2 Mr Weatherhead, a beachfront resident in Tuahine Crescent, provided evidence which made the following points:

- Protection has been part of Wainui Beach for 90 years, becoming an issue involving Councils and other bodies following the 1955 storms.
- He considers that the community based response by the frontages to Wainui Beach is a feature and the WBMS approach is a reflection of the community.
- The colour of the rock revetment fits in with the natural colours of the sand, papa, clay and cliffs, and he considered it natural. He confirmed that people south of the concrete groyne still had access over and around the toe of the rocks. He noted that users of the beach generally timed their walks to coincide with lower tide levels.
- As a surfer he confirmed that the main surf breaks were in the northern area of the beach and did not consider the proposal would have any effect on surf breaks. He made a point that if the rock revetments were built, the Council must continue to maintain the rocks.
- He also made comments regarding equitable ways of funding the protection work, including national assistance.

6.3 Mr Ford's brief further evidence supported his original submission and was tabled. He supports the WBMS approach.

6.4 Mr Calcott's submissions were extensive and were made on behalf of the WBMS Committee. Mr Calcott is himself a beachfront resident. His evidence confirmed:

- That the WBMS was ratified by the Council in 2003 and the rock revetment south of the concrete groyne and native tree replanting on the Tuahine Headland are a result of that strategy.

- The application for Section 3 of the WBMS contained in this application is the next stage and is supported by reports obtained from Dr Komar, Dr Gibb, Mr Peacock (already mentioned) and Dr Patterson, all prominent experts.
- He placed particular reliance on Dr Komar's peer review in 2003, and we quote from Dr Komar's report:

"The use of a rock revetment is appropriate for shore protection in Sections 2 and 3 and with its proposed uniform construction should offer improved protection over the piecemeal coverage of structures that were used in the past. Details of the proposed rock revetment are not contained in the WBMS, other than the crest elevations that range from 3.0 to 3.5 metres and with a face slope of 3:1. It is recognised in the WBMS that elevations of 4.0 to 6.0 metres would be necessary for full protection, but that would be expensive so a revetment having the lower elevations is considered to be more viable."

- 6.5 The Komar report and the attached appendices to Mr Calcott's submissions recognised that top elevations of 4-6 metres will be necessary for full protection but that would be expensive. To some extent the Commissioners felt that this proposal was driven by economic factors and was a partial solution which would not deal with the effects of overlapping of the revetment and the protection of the few houses that appear to be in the Extreme Risk Zone.
- 6.6 The Commissioners felt it was understandable, after seven years of discussion with the community and consideration of the reports, that Mr Calcott should put forward the evidence which had been gathered by his Committee and supported by the Council Department's own application and acknowledged the careful nature of his submission and evidence.
- 6.7 Mr Calcott also referred to 80% of support for the strategy by the entire Wainui Beach population, and a 75% support by Wainui beachfront residents. However the Commissioners felt some doubt was raised during the hearing as to the validity of those statistics. Indeed some of those most affected were not represented in the polls.
- 6.8 Mr Calcott noted that some of the houses at most risk (i.e. within the Extreme Risk Zone) were on properties with limited depth and landward relocation on those sections was not a practical option.
- 6.9 Mr Cave was of the view that the WBMS process was a very robust and credible process with extensive consultation. He also reinforced that the beach can be subject to "unbelievable" erosion noting in particular major storm events in the 1950's and early 1990's.
- 6.10 Mr Cave and Mr Calcott's understanding, based on previous technical reports was that the headland being protected was important for stability of the whole beach. However, later in the hearing Mr Peacock clarified that this headland was less significant in that respect and that property protection was the primary purpose of the works.

## 7. EVIDENCE ON BEHALF OF SUBMITTERS IN OPPOSITION

- 7.1 Ms Benacek, Dr Dunn, Ms Lautmann, Mr Craft, Mr Suttor and Dr Briant all attended the hearing and gave evidence in support of their submissions in opposition.

7.2 Dr Briant made the following points in evidence:

- She questioned whether climate change has been effectively considered in the technical reports.
- The application she considers is not dealing with the "whole" beach and there was no evidence of the effects that she considered could happen to the northern part of the beach past the Wainui Stream.
- She considers that sand was drifting to the north of the stream and this proposal may exacerbate that position. She questioned why the reduction from 3.5 to 3 metres was justified on other than cost considerations.
- She made a particular point regarding the uncertainty of the look of the finished product and how it will impact on the beach and cliffs. She was concerned the wall would impact on beach values and could result in beach loss.
- She referred to Section 6(d) of the Act, and in general considered that the proposed work will be another in a long line of failures in an ineffective bid to stem the effects of nature and will further litter the beach.
- She observed that the WBMS has an emphasis on property, rather than beach protection. While a beachfront property owner herself and within the area of the proposed works, she favoured living with natural processes rather than acting to hold the shoreline.

7.3 Mr Craft referred to a concern about the precedent effect of allowing the application in terms of encouraging other similar proposals at other parts of Wainui Beach, particularly the area north of the Wainui Stream. He expressed concern at the impact of the proposed works on the beach and that this would effectively "steal" beach from other users. He noted that his primary concern was aesthetics and particularly the structure coming forward onto the beach. He argued that if protection was required it should be further landward rather than intrude out onto the beach.

7.4 Ms Benacek a beachfront property owner in the area of the proposed works made the following points:

- Community support for the WBMS is now outdated. She noted that a meeting was held in November 2007 to try and stop this second stage and that a number of the property owners who were to be protected did not want the structure.
- She argued that this was further illustrated by the recent Council poll of October 2009 canvassing the affected property owners, which showed less than a majority of support to continue implementation. She emphasized that the 75-80% community support figure quoted by others does not apply in this area. The Commissioners requested Council to provide details of this poll.
- She noted expert view that end effects were inevitably associated with such works and expressed concern at the potential impact of the revetment north of the area, particularly with increased outflow of water through the Wainui Stream from the recent subdivisional works.
- There was concern by residents about the cost which has doubled in the seven years this matter has taken to come to a consent hearing.

- The principle of appropriate planting behind the beach was supported. She noted that this would largely be on private land given the nature of local titles.
- The New Zealand Coastal Policy Statement 2008 ("NZCPS") was raised. The Chair pointed out that that was a proposed policy which was not yet available to be considered and the current NZCPS was the guiding document.
- She questioned whether the proposed works would create a precedent for further works north of the Wainui Stream.
- She questioned the amount of protection above the reduced level of 3 metres which she considered would defeat the purpose the revetment was designed for. She also echoed other concerns in respect to increased erosion of the shelf underlying sand in this area of the beach – noting that this shelf was composed of estuarine clays along much of the area rather than the less erodible papa.
- She was concerned that the proposed works would both narrow and shorten the length of beach between the concrete groyne and the stream entrance.
- Ms Benacek expressed concern in regard to inadequate detail on the proposed works and their impact and the inability of Council to provide such details when approached. She indicated that she was still very confused about the detail of the proposed works and was of the view that many others shared similar concerns.

7.5 Ms Lautmann, a front beach property owner in the area of the proposed works made the following points:

- She was concerned the undercutting into the underlying papa or estuarine silt raised issues similar to scar tissue without sufficient information. She was also concerned about the intention to deposit the mined estuarine silt on the beach and the adverse effect this would have on water quality.
- She considered the cobble berm facing the revetment and recommended by Dr Komar should be installed and the application was too vague in that area. She commented that the applicant's revised design should be further reviewed by Dr Komar. She wished no action to be taken but if it proceeded it must be with the cobble berm as recommended.
- Ms Lautmann argued that the design had been so modified it would create a false sense of security but would not be effective in preventing erosion at the proposed 3 metre height. She considered that the works will be ineffectual in providing even a partial defense against coastal erosion and will lead to pressure for more extensive works in the future. She argued that this will lead to the profile of the wall being increased over time with increasingly significant adverse effects. She was also concerned that the present sandy beach will be lost more quickly with the rock wall.
- She questioned the lack of detailed design for public access.
- She lacked confidence in the design in relation to climate change.
- She observed that several landowners to the north of the stream desired similar protection to that proposed and expressed concern that consenting of the works would lead to "planning creep" and further such works to the north of the area. She



was of the view that the concrete groyne (immediately south of the proposed works) was the appropriate location to stop the shoreline armouring.

7.6 Mr Suttor had lived at the beach since 1957 and gave the Commissioners an extensive background as to the storm conditions and the various attempts at beach protection that had taken place. He made the following points:

- He does not believe the beach has experienced any significant retreat since the 1960's and argued that the sand simply comes and goes, similar to the view expressed by Dr Dunn. In this respect, he noted that the severe storms of 1992 exposed iron piling and old tyres in front of 50 Murphy Road that he was told had been placed in 1947 and had not been seen previously since that date. He noted that the beach fully recovered from the severe erosion of 1992.
- He expressed similar concerns in regard to other submitters in opposition in respect to beach loss associated with the structure and increased scouring/erosion of the shelf to seaward. He noted that the natural character of the beach was a white strip of sand backed by a vegetated bank and he felt the proposed rock structure would degrade this natural character.
- The existing gabions appear to be working and when exposed remain in good condition in the more northerly area of the proposed site.
- Continued tinkering with protection structures that are not really necessary was inappropriate. However, he expressed the view that protection could potentially be useful if limited to the southern third of the area where the exposed railway iron occurs, provided it did not extend too far out onto the beach.

7.7 Dr Dunn's submission was of interest to the Commissioners as she confirmed she had just finished a PhD degree in Earth Sciences specializing in coastal oceanography and had earlier completed her Masters Thesis specifically on coastal erosion at Wainui Beach. The Commissioners accorded her evidence further weight because of her technical background.

7.8 Dr Dunn pointed out the following:

- She wondered what "partial protection" means and how effective this large structure was in terms of coastal protection; particularly given that previous Council reports indicated the need for a more extensive protection structure than proposed under the application. She considered that the applicant was taking an inconsistent approach to property protection at Wainui Beach. In questioning, she agreed that a higher structure would have a larger footprint and more significant adverse effects on the beach and recognized that the engineers were attempting to balance property protection against these wider factors.
- She pointed out the dynamic revetment design of Dr Komar is not contained in the application and there are considerable details missing in the design drawings.
- She pointed out that Dr Komar suggested without a fronting cobble beach the wave reflection could be expected to increase the rate of down-cutting to the papa deepening the water so higher waves could impact the revetment, possibly leading to its failure.

- She considered insufficient detail had been given on public access. She reminded the Commissioners that this was a matter of national importance under the Act and she considered the issue should have been more thoroughly addressed in the application.
- Dr Dunn questioned whether the numerous beach protection works formed part of the natural character and are now accepted features along the Wainui Beach. She emphasized that it was her opinion that the natural character of the beach was the natural beach and dunes, not protection structures.
- Dr Dunn also referred to research that she had conducted on coastal erosion at Wainui Beach as part of her Masters thesis – subsequent to the work by Dr Gibb, Dr Komar and others involved in the WBMS. It was her firm view that the beach was not undergoing long term retreat/erosion. She argued that the erosion at Wainui was primarily episodic storm erosion from which the beach would naturally recover. In response to questioning on the existing hazard zones, Dr Dunn indicated that she thought there was presently inadequate information to reliably estimate the potential erosion associated with coastal storms.
- In response to questioning, Dr Dunn agreed that the absence of appropriate sand trapping species (i.e. spinifex and pingao) on the seaward dune face hindered natural post-storm recovery of the dune. She indicated support for appropriate dune planting.
- She questioned whether the full structure would be visible only for June and July months of the year, and considered that the recovery after storms was a slow process and exposure of the full structure would extend well beyond that period.
- She questioned whether the average summer and winter beach levels provided are deceptive. The Commissioners note that they required further beach profiles and levels which were provided in the right of reply.

## 8. THE DEPARTMENT OF CONSERVATION

8.1 Mr Staite gave a submission on behalf of the Department which provided conditional support subject to:

- Restoration of the natural character;
- Maintenance and enhancement of public access to and along the CMA;
- Avoidance of adverse effects on indigenous wildlife;
- Future planning for a more permanent solution at the end of the consent terms.

8.2 Wildlife protection was accepted as being possible by the use of a condition or conditions.

8.3 The first two issues however would be more difficult to satisfy in terms of this proposal. Mr Staite noted the proposal was only an interim rather than a long term solution and also was not prepared to acknowledge it as the best practical option for the time period of the consent being sought.

- 8.4 Future planning and the meaning of "interim" was discussed with the submitter and it was accepted that review conditions could be used to achieve that result. It was still not clear as to the Department's view of appropriate timing of a permanent solution. However, in view of the seven years since the Komar report it was suggested that the time for a review may be now.

9. **RELEVANT PROVISIONS CONSIDERED IN TERMS OF SECTION 104 OF THE ACT**

**The National Coastal Policy Statement**

- 9.1 Reference was made by submitters in particular to 3.4.6 which provides:

"Where existing subdivision, use or development is threatened by a coastal hazard, coastal protection work should be permitted only where they are the best practicable option for the future. The abandonment or relocation of existing structures should be considered among the options. Where coastal protection works are the best practicable option, they should be located and designed so as to avoid adverse environmental effects to the extent practicable."

- 9.2 The Commissioners considered that policy of particular importance in reaching a decision. Other policies which the Commissioners considered relevant in making their decision were:

- 9.2.1 Policy 1.1.1(b) which provides that it is a national priority to preserve the natural character of the coastal environment by:

"Taking into account the potential effects of subdivision, use or development on the values relating to the natural character of the coastal environment, both within and outside the immediate location."

- 9.2.2 Policy 3.2.2

"Adverse effects of subdivision, use or development in the coastal environment should as far as practicable be avoided. Where complete avoidance is not practicable, the adverse effects should be mitigated and provision made for remedying those effects, to the extent practicable".

- 9.2.3 Policy 3.44

"In relation to future subdivision, use and development, policy statements and plans should recognise that some natural features may migrate inland as the result of dynamic coastal processes (including sea level rise)".

- 9.2.4 Policy 3.4.3 which provides:

"The ability of natural features such as beaches, sand dunes, mangroves, wetlands and barrier islands, to protect subdivision, use, or development should be recognised and maintained, and where appropriate, steps should be required to enhance that ability."

- 9.2.5 Policy 3.3.1 which provides for the adoption of a precautionary approach to activities with unknown but potentially significant adverse effects.

- 9.2.6 Policy 1.1.4 makes it a national priority to preserve the natural character of the coastal environment in terms of the dynamic processes arising from the natural movement of water.
- 9.3 While none of the above do more than indicate a balance is to be drawn between natural processes and character and "hard" structures, they are the starting point for consideration by the Commissioners in making this decision. The Commissioners felt that they had not been given sufficient prominence and responded to in the application, reports and evidence of the Applicant.
- 9.4 In addition, Mr Peacock, in response to questions from the Commissioners, confirmed there was no certainty after, or indeed during, the proposed consent period that the proposed work would continue to provide partial protection and/or not disturb the natural processes. The Applicant also confirmed that next year it was proposed to review the 2003 reviews by experts taking into account current knowledge and climate change issues.
- 9.5 We were also mindful of the concerns expressed by submitters that the compromises made in the design of the partial protection to achieve a better balance with environmental values might be exposed by future storms – potentially leading to pressure for a larger revelment with significant adverse effects.
- 9.6 The Commissioners felt a precautionary approach was appropriate in regard to potential impact of the proposal on the natural processes and features and on the natural character and landscape of the beach.

### **The Regional Policy Statement**

- 9.7 The RPS provides broad level objectives and policies promoting sustainable management of natural and physical resources. The provisions relevant to the application and which were considered by the Commissioners are discussed as follows:

#### **2.1.2 Policies**

- "2. To discourage land uses and management practices which cause or maintain accelerated soil erosion;"

- 9.8 Section 2.3 deals with the avoidance or mitigation of the effects of natural hazards, including coastal erosion. Wainui Beach is identified as one area where development is known to be at risk. The RPS notes the need to account for the possibility of sea level rise, and increased storms due to climate change which could lead to increases in coastal erosion or sea flooding.

#### **Policy 2.3.2**

- "1. To encourage and facilitate changes, over time, to patterns of human settlement, development and activities which are not affected by natural hazards and which do not induce or worsen the impacts of natural processes, and which recognise and allow for some natural features to migrate inland as a result of dynamic coastal processes.
2. To recognise the limitations of attempts to control natural processes by physical work and limit such attempts to appropriate situations where they are:
- a) needed to protect existing development, or waahi tapu or new public infrastructure such as ports, roads, bridges; and

- b) have a favourable benefit to cost ratio; and
  - c) will not have significant adverse effects on the natural character of the coastal environment, or other adverse environmental effects; and
  - d) will not cause or worsen hazards to other lands/waters; and
  - e) can be designed with confidence of long-term effective performance; and
  - f) are the only practical alternative.
3. To maintain a strong commitment to researching, recording and publicising information about natural hazards.
  4. To recognise that natural systems and features may provide a defence against natural hazards and that the integrity of such natural systems should be protected and enhanced where appropriate.
  5. To recognise the possibility of sea level rise and the likelihood of changes to the frequency and impacts of some natural hazards due to climate change and sea-level rise.
  6. To encourage participation by the affected communities in managing the risks of natural hazards."

9.9 Policy 2.7.2 relates to public access to and along the margins of the coastal marine area. Sub policy 2 is to:

"Ensure, when planning for and making decisions on new subdivision, use, and development, that:

- a) There is no reduction in the quality of existing legal access to and along water bodies, unless that reduction is consistent with policy 2.7.2(1) above and;
- b) Opportunities for access to and along water bodies, or parts of water bodies, not restricted by policy 2.7.2(1) above, which are considered by Council to be of benefit to the local community for their conservation, recreational, cultural, scenic, spiritual or other amenity values are recognised and provided for."

Criteria that could be considered by Council to achieve this include:

*"Access to and along water body margins will be a priority for all the coast and rivers that connect the coast to Crown or Council reserves, or rivers that connect residential development to the coast, or main roads following the coast to the coast."*

9.10 Section 6.3 addresses activities in the coastal environment can inhibit natural processes and degrade the ability of natural features and resources to sustain life. Objective 6.3.1 is:

- \*1. Protection of outstanding natural features, areas of significant indigenous vegetation and significant habitats of indigenous fauna in the coastal environment;

2. The protection of the integrity, functioning, resilience and quality of natural coastal processes, natural physical resources and biological communities in the coastal environment.
3. Restoration and rehabilitation of areas of the coastal environment where the integrity, functioning, resilience and quality of natural coastal processes, natural physical resources and biological communities has been degraded and appropriate remedial action can be taken."

9.11 Relevant Policies at section 6.3.2 include;

- "1. To avoid, remedy or mitigate the effects of activities which have an adverse effect on biological diversity and ecosystem integrity.
2. To encourage activities which could rehabilitate or enhance degraded ecosystems, coastal processes and natural physical resources including water.
3. To encourage subdivision, use and development which takes into account the integrity and resilience of natural processes and recognises that natural features provide buffers against natural processes that might damage an activity."

#### **The proposed Regional Coastal Environment Plan for the Gisborne Region**

9.12 The PRCEP includes three Management Areas. The proposed works would fall partly within the Protection Management Area and mostly within the General Management Area. The Protection Management Area accounts for the presence of the identification of an Outstanding Landscape Unit (Unit 15 Wainui/Tuahine).

The associated objectives and policies reflect the provisions of the New Zealand Coastal Policy Statement and the RPS and were comprehensively documented in Appendix II to Mr Crone's report. The Commissioners note that all of the officers' reports placed some emphasis on the WBMS as a means to demonstrate that the applicant's proposal is consistent with the objective and policies of the PRCEP and indeed the other relevant planning instruments. The Commissioners noted that the WBMS is becoming due for review and were not convinced that its recommendations are necessarily consistent with the policies and objectives that are relevant to the application.

9.13 The application triggers a number of resource consents under the provisions of section 12 of the Act (Restrictions on use of Coastal Marine Area) by virtue of the provisions the proposed Regional Coastal Environment Plan (PRCEP). In summary:

- Rule 4.3.8 E provides that occupation of space within the Protection Management Area is a Discretionary Activity
- Rule 4.3.9 F provides that activities which disturb the foreshore and seabed (including any removal of sand or shingle) is a discretionary activity subject to standards and terms. The disturbance is at a level sufficient to require a coastal permit but is below the threshold for a restricted coastal activity.
- Rule 4.3.11A sets out average and maximum noise levels for activities in the Coastal Marine Area of a Protection Management Area. The Commissioners were advised that the noise standards within the CMA would be breached in relation to the construction of the rock revetment. The rule provides that in this event the consent status changes to a non-complying activity for that component

within the CMA adjacent to numbers 4 and 6 Tuahine Crescent. The Commissioners believe that the works within the CMA are integral and therefore should be bundled for consideration in terms of the most stringent consent classification, being a non-complying activity. We note that the reports refer to this as a discretionary activity.

- Rule 4.5.6I provides that the removal or demolition of existing protection structures in the General Management Area of the CMA is a controlled activity provided that the associated Standards and Terms are met. The Commissioners note that the rule deals with the removal of structures only and are satisfied that the proposal will comply with the associated Standards and Terms.
- Rule 4.5.6 J provides that the erection or placement of any structures in the CMA which has a predominant purpose of avoiding, remedying or mitigating the effects of natural coastal processes on human property or life is a Discretionary Activity subject to compliance with the associated Standards and Terms. The proposed works (being approximately parallel to the coast) would exceed 300 metres in length and therefore is to be assessed as a Discretionary Activity and a Restricted Coastal Activity.

## 10. THE PART OPERATIVE COMBINED REGIONAL LAND AND DISTRICT PLAN

10.1 The District Plan is a combined Plan incorporating regional and district level provisions, and has a number of chapters and rules which affect directly the application.

10.2 Some or all of the land is covered by overlays which include an outstanding landscape area affecting all properties including and south of 4 Tuahine Crescent and coastal hazard lines shown on the Plan which were presented to the hearing and are based on the work of Dr Gibb. Those coastal hazard line classifications are of importance in considering this decision and they provide for an Extreme Risk area (in which some six dwellings near Lloyd George Road are contained in part), a High Risk area, a Moderate Risk area, and a safety buffer. Whether those coastal hazard zone classifications are appropriate in 2010 is a question that the Commissioners put to Mr Peacock. In his opinion they were still appropriate.

10.3 The District Plan Rules that are relevant are:

### Chapter 3

The works are proposed within the Heritage Alert Overlay. Rule 3.13 provides that heritage matters may be considered for Discretionary or non-complying activities involving land disturbance. The Commissioners noted that the Officers' reports recommended conditions or advice notes which adequately addressed the applicant's responsibilities in the event that buried archaeological material was exposed in the course of associated land disturbance activities.

### Chapter 4

The disturbance of land above MHWS and within the Outstanding Environment Overlay will exceed 10m<sup>2</sup> in any 3 month period and therefore is a Restricted Discretionary Activity.

Pursuant to Rule 4.7.3.4 erection of new structures or alteration or additions to existing structures on land that is not within a residential zone, but is

located within the Outstanding Landscape overlay, provided that the structure exceeds 2.5m in height; or cannot be contained within a volume of  $25\text{m}^3$ , is a *Restricted Discretionary Activity*. The activity does not meet this requirement as the part of the structure that is located within the Outstanding Landscape Overlay (Unit 15 Wainui/Tuahine) exceeds 2.5m in height and will exceed a volume of  $25\text{m}^3$ .

The part of the wall that will be located in the Outstanding Landscape Area is located south of and including 4 Tuahine Crescent (two properties).

The entire wall is located within the Coastal Environment Overlay. The Commissioners note that the proposal will expose more than  $50\text{m}^2$  of earth as measured in a vertical plane, and which disturbs more than  $50\text{m}^3$  of earth all in any 3 month period, within land zoned Amenity Reserve and which is included within the Coastal Environment Overlay. The status of this activity is *Restricted Discretionary* under Rule 4.8.3.2.

Pursuant to Rule 4.8.4.1, vegetation clearance, land disturbance and structures within 200m of MHWS and located within the Coastal Environment Overlay, on land that is outside any residential zone are *Discretionary Activities*.

The entire wall is located within the Riparian Management Area. The proposal will involve the exposure and disturbance of more than  $10\text{m}^2$  per contiguous 100m of Riparian Management Area and more than  $10\text{m}^2$  [sic] of earth over any 24 month period. The consent status is *Restricted Discretionary* under rule 4.10.3.2.

Pursuant to Rule 4.10.3.3., the erection of new structures or alteration or additions to existing structures is a *Restricted Discretionary* activity in the Riparian Management Area.

## Chapter 5

Pursuant to Rule 5.30.1.1 the installation or alteration of works in the Coastal Hazard Overlay 1 (Extreme Risk Area) which are intended to mitigate the effects of coastal hazards are *Discretionary Activities*.

Pursuant to rule 5.30.1.3, any activity, including earthworks, which alters the natural dune landform is a *Discretionary Activity*.

Pursuant to Rule 5.30.1.4 the removal of any works designed to mitigate the effects of coastal hazards is a *Discretionary Activity*.

The activity involves both the removal of and installation of works designed to mitigate the effects of coastal hazards.

## Chapter 6

The rules are expressed in terms of four separate overlays identified on the planning maps, being Overlays 1, 2, 3 and 3A. Land Overlay 3 applies to the proposed works. Rule 6.9.3.2 requires a resource consent for a *Restricted Discretionary Activity* because the proposal involves side cutting greater than 0.5 metres deep over a contiguous length greater than 20 metres in any 3 month period or will disturb more than  $10\text{m}^3$  of soil in any 3 month period.

General Regional Rules 6.6.1 – 6.6.6 specifically apply to permitted land disturbance and vegetation clearance activities. These rules provided further assessment criteria to assist the Commissioners in the consideration of the application.



## Chapter 11

During the hearing Ms Callis confirmed that the activities associated with the construction of the revetment will not comply with construction noise, and possibly construction vibration rules for the General Residential and Amenity Reserve zones. Consents are therefore required under:

- Rule 17.19.1(a) (vibration)- General Residential zone (Restricted Discretionary Activity);
- Rule 17.20.1 (noise) – General Residential zone (Discretionary Activity);
- Rule 22.10.4.1 (vibration and noise) – Amenity Reserve Zone (Non-Complying Activity).

## Chapter 17

That part of the structure proposed to be erected on land zoned General residential is considered to be a residential accessory structure. Accessory structures are a permitted activity pursuant to Rule 17.17.4 but the wall will be built right up to property boundaries in some places. Pursuant to Rule 17.19.1, construction of accessory structures which do not comply with the rules for Permitted Activities in respect of h) yard distances and f) height shall be *Restricted Discretionary* activities.

## Chapter 22

No provision is made for beach protection works under the rules of this chapter. The works are therefore a *Non-Complying* activity pursuant to Rule 22.10.4.1. The activity also does not comply with General Rule 22.6.4 Yard Distances or in some instances rule 22.6.3 (height); however the Commissioners note that these rules are expressed to apply to permitted activities only.'

10.4 Because of the bundling rules the activities proposed within the CMA and the terrestrial components of the Coastal Environment are therefore non-complying activities and require consideration of Section 104 (D).

10.5 The relevant objectives and policies in the District Plan were described in some detail in the reports by Mr Burkett and Ms Callis. Without repeating that detail the Commissioners were satisfied that the relevant objectives and policies were addressed in sufficient detail to enable an adequate assessment of the application to be made in terms of these provisions.

## 11. **STATUTORY ASSESSMENT**

11.1 The matters that must be considered by the Commissioners under the Act are set out in Section 104. Before considering this application for a non-complying activity, the Commissioners are required to consider whether it passes through one of the two gateways under Section 104 (D).

### The First Gateway

- 11.2 The First Gateway in Section 104 (D) (i)(a) requires the Commissioners to be satisfied "that the adverse effects of the activity on the environment .... will be minor".
- 11.3 The Applicant and the Reporters (Callis, Burkett and Crone) all considered that the effects of the rock revetment were minor. It is accepted using the test in *Bethwaite v Christchurch CC* CO85-93 that there may be some adverse effects but the effects may still be minor. However, the Commissioners in consideration of the potential effects on natural character, access, and other issues which will be expanded on in this decision, and the requirements of the precautionary approach, , could not agree with the Reporters and the Applicant that the effects were minor. They took into consideration whether imposing conditions could alter that view. It was considered that the basic premise of the application as a whole did not allow for the imposition of conditions to correct the effects which they considered more than minor and which will be expanded on in terms of Section 104 generally. If the countervailing benefits had been established to the satisfaction of the Commissioners in terms of *Telecom NZ Limited v Christchurch CC* W165/93 and a number of other cases, the position may have been different. However, because of the "partial" protection that was offered they did not consider that the countervailing benefit outweighed the major issues relating to the character of Wainui Beach, and the conditions relating to the first gateway were not satisfied.

### The Second Gateway

- 11.4 The Second Gateway provides that the Commissioners needed to be satisfied "the application is for an activity that will not be contrary to the objectives and policies of ... and the relevant proposed plan."
- 11.5 There are a number of objectives and policies in the District Plan which are relevant to consideration of the Second Gateway.
- 11.6 Chapter 4 – Natural Heritage *inter alia* requires an applicant "to avoid, remedy, or mitigate the adverse effects of activities on areas of outstanding landscape". Regard to the following will be had when preparing plans or considering applications for plan changes, resource consents or designations with Outstanding Landscape Areas:
- Effect of the activity on the natural landform characteristics;
  - Visual contrasts between the activity and the landscape;
  - Existing protection mechanisms
- 11.7 Part of the proposed site is within the Outstanding Landscape Area. However the Commissioners in general considered that the effects on the southern end of the beach near the concrete groyne contained within that area, while on the face of it contrary to Chapter 4, could be balanced against other objectives.
- 11.8 One of those objectives in Chapter 5, under 5.3 has the general Objective as follows:
- "1. A pattern of human settlement that;
- Provides a high level of personal safety from natural hazards for its inhabitants;

- Avoids or mitigates a risk to property and infrastructure of natural hazards; and
- Does not accelerate or worsen the adverse effects of natural hazards upon the natural and physical environment.

3. The protection of natural features that could lessen the impact of natural hazards."

11.9 This general Objective relates to the hazard zones we have already mentioned along Wainui Beach. However of particular interest were General Policies 5.4.5-5.4.9 inclusive as follows:

"5. To recognize the limits of attempts to control natural processes by physical work and restrict such attempts to appropriate situations where they are:

- needed to protect existing development, or waahi tapu or new public infrastructure such as ports, roads and bridges; and
- have a favourable benefit to cost ratio; and
- will have no more than a minor adverse effect on the natural character of the coastal environment, lakes and rivers and their margins, or areas / features of natural or cultural significance, or other adverse environmental effects; and
- will not cause or worsen hazards to other lands or waters; and
- are the best practical alternative.

6. Mitigation works shall be designed and constructed in sympathy with the environment recognising:

- the dynamic, complex and interdependent nature of biological and physical processes;
- effect on amenity values;
- effects on the landscape and natural features of the locality;
- any effect on public access.

7. A precautionary approach should be adopted where activities with unknown or little understood effects are proposed, or the effects on natural processes are difficult to assess.

8. In carrying out hazard assessments or considering resource consent applications the possibility and implications of climate change are to be recognised. In particular the likelihood of the following matters should be considered:

- a change in sea level;
- altering of coastal processes;
- increased inundation of low lying estuarine areas;
- higher local temperatures;
- changes in rainfall patterns;
- increase in cyclonic storms.

9. The integrity of natural systems and features that provide a defence against natural hazards should be recognised and protected. These include:

- the capacity of foredunes to act as natural protection against inundation and erosion;
- wetlands;
- margins of estuaries."

11.10 While the Planner's Report suggest the proposal demonstrates a method of providing protection of natural features that could lessen the impact of natural hazards, the Commissioners do not agree the activity will have no more than a minor adverse effect on the natural character of the coastal environment. However the application could not be said by the Commissioners to be contrary to those provisions of the District Plan, although they are relevant in making a final determination under the general provisions of Section 104.

11.11 On balance the Commissioners consider the application passes the Second Gateway test by a narrow margin and therefore falls to be considered under Section 104 (1)(a). This section of the Act provides the Commissioners must have regard to "any actual and potential effects on the environment in allowing the activity".

11.12 In making the assessment required under Section 104, the Commissioners considered the following issues:

#### Effects on Coastal Hazards

11.13 The Reporters considered that as part of the WBMS protection of this area will retain the long-term shape of the beach and reduce the risk of landslide further south of the subject area. To some extent the Commissioners would accept that proposition but to deal with erosion features near the concrete groyne would not require a full rock revetment through to the Wainui Stream. In its right of reply, the applicant clearly dispelled any suggestion that the works were for the greater good of the beach, but instead were intended to protect private property.

11.14 In respect to the risk to existing dwellings, we note the following:

- a. The application relied on the hazard zones developed by Dr Gibb and peer reviewed by a number of experienced practitioners during the WBMS process. The WBMS is due for review next year.
- b. In response to questions raised in respect to the existing hazard zones, Mr Peacock outlined in some detail the serious erosion experienced during storms in the early 1990's. He was firmly of the view, having seen these impacts first hand, that the Extreme Risk zone as defined by Dr Gibb was realistic based on best present information. The Commissioners are mindful of the need to adopt a precautionary approach in assessing such risk and accept Mr Peacock's carefully considered views on this matter. Therefore on the basis of existing information and the requirements of the precautionary approach, the Commissioners agree that it is appropriate to regard houses within the Extreme Risk zone as potentially vulnerable to extreme storm erosion. Nonetheless, we are also mindful of the views of Dr Dunn and the need to update Dr Gibb's assessment based on more recent work and any improvements in hazard assessment methodologies.
- c. The Commissioners were less convinced that the beach is presently experiencing any long term trend for retreat. The opinions of Dr Dunn based on the most recent research; together with the reports to the hearing from long term residents tend to suggest dynamic shoreline fluctuations rather than a trend for long term trend for retreat. It appeared to the Commissioners from the evidence

presented to the hearing that, at present, the primary risk is from episodic storm erosion. This has implications for the existing hazard zones and further suggests the need for review.

- d. The Commissioners accept that the beach is likely to experience some net retreat in the face of projected climate change – as indicated in the hazard zones prepared by Dr Gibb (no evidence was given in respect to climate change but, in response to request from the Commissioners, the Applicant provided extracts outlining these hazard zones). However, in view of the time since the WBMS was prepared, the potential impact of climate change should be reviewed in the light of more recent projections for future climate change.

11.15 In view of the above and the comments by Dr Dunn, the Commissioners believe it would be useful as part of the upcoming review of the WBMS to review the hazard assessment for this site - taking into account more recent research and any improvements in hazard assessment methodologies. A proper understanding of the potential risk is critical to selection and design of the most appropriate management approaches as well as to the assessment of potential effects of any measures in the both the short and longer term.

11.16 While the Commissioners accept the view of Mr Peacock in respect to the risk to houses within the Extreme Risk zone, we are not convinced that the proposed works are the most practical and appropriate measure to address this risk as:

- a. The houses assessed as being potentially at risk lie towards the northern and southern ends of the area. There is a significant length of shoreline between these areas in which houses are not at immediate risk. We were not convinced that the proposed structure was the best practicable option for this area. It was also clear that several beachfront owners were not supportive of the proposed structure.
- b. We were not convinced that the proposed structure would minimise adverse effects on coastal processes and features, particularly in regard to seaward extent of the structure.
- c. We were not satisfied that the partial protection proposed would prove adequate to manage the risk posed by severe storms, given the potential for overtopping. We appreciate the effort made by the Applicant to balance protection against impact on environmental values. However, we were concerned that the design compromise may lead to demand for enlargement of the structure over time with the potential for more severe adverse effects on the beach and associated values (including natural character, public access along the CMA and beach amenity).
- d. We were not satisfied that the matter of climate change had been adequately addressed. We agree with the Applicant in respect to the longer term uncertainties but believe that sufficient information exists to provide an indicative assessment. For instance, the hazard zones prepared by Dr Gibb, while probably requiring updating, do provide some indication of likely future change. This information could have been used to assess both the adequacy and the likely adverse effects of the proposed structure in response to climate change. We believe such an assessment would have highlighted some of the longer term issues that appear to have lain at the heart of the Department of Conservation's somewhat ambivalent position on the proposal.

- 11.17 In addition, it is clear from evidence given to the hearing by both the Applicant and submitters that episodic storm erosion is the primary source of existing erosion risk at this site. Accordingly, there would appear to be a role for restoration of appropriate sand trapping vegetation to aid natural post-storm dune repair at this site – as acknowledged by Dr Dunn in response to questions. In view of national policy emphasizing the restoration of natural features that provide protection against erosion, we were surprised this aspect was not considered as a part of the total solution.
- 11.18 Nonetheless, as outlined above, the Commissioners do accept there is potential risk to some dwellings based on best present information. We also accept the evidence of Mr Calcott that there is insufficient space on some of these properties to relocate dwellings further landward. Accordingly, had the application been for more limited works focused on these properties, we may well have reached a different decision – particularly if we could have been convinced that the works had been designed and located to both appropriately address the risk and to minimise adverse effects on this popular and important beach.
- 11.19 The Commissioners also agree that the removal of the existing foreshore protection works being the log and rail areas would improve the appearance of the beach and was desirable.
- 11.20 The Commissioners are acutely aware of the difficulties faced by the Applicant and the effort made to find a balanced solution. We also understand the emphasis given to the WBMS in formulating the present proposal and commend the Applicant for attempting to address the apparent risk to several (6) dwellings in the Extreme Risk zone. However, we believe the WBMS is due for review and that the matters outlined above need to be more fully addressed in developing any strategy for management of erosion in this area.

#### **Effects on Natural Character**

- 11.21 The Commissioners do not believe that the effects on natural character as already stated are minor or less than minor. In Chapter 5.4.5 the policy requires us “to recognise the limits of attempts to control natural process by physical work”. It also requires works to have a favourable benefit to costs ratio. Although in questioning by the Commissioners, prospects for alternatives were suggested, the application and the evidence from the Applicant and Reporting Officers did not provide a consideration of alternatives in terms of that policy. We have already stated, that in our opinion, the attempt to control the natural process by the physical work will have more than a minor adverse effect on the natural character of the coastal environment and in view of the limited protection provided may not be the best practical alternative, or in terms of the NZCPS, the best practical option.
- 11.22 In addition under policy 5.4.6, mitigation work shall be designed and constructed in sympathy with the environment. The rocks are not in sympathy with a beach when exposed even though we acknowledge the attempt of the Applicant to use materials of a colour and formation that blend with the beach. The use of options more sympathetic to the environment and to beach amenity such as geotextile containers could also have been considered.
- 11.23 In addition under policy 5.4.7, the precautionary approach enshrined in the NZCPS is confirmed. As previously discussed, there are a number of uncertainties in respect to the effects of the works in the short and longer term. These include uncertainties in respect

to future enlargement of the structure should it not prove adequate protection in the face of severe storms or (longer term) climate change.

- 11.24 The Commissioners did not feel that sufficient information had been given to them. Following the provision of profiles during the hearing which they would have expected to have been provided with the application, they still could not assess accurately the effects of the structure in response to natural variations in beach level and width. There was also no attempt to address the effects that may occur in the longer term in response to climate change.
- 11.25 The Commissioners also referred to 5.4.9 *"the integrity of natural systems and features that provide a defence against natural hazards should be recognised and protected. These include the capacity of foredunes to act as natural protection against inundation and erosion."* The dunes at this site are seriously degraded and largely lack the native sand trapping vegetation (i.e. spinifex and pingao) required to facilitate natural dune building and repair following major storms. The absence of any significant dune restoration in the proposed works does not appear to us to be consistent with this policy. In some areas (e.g. where houses are not directly at risk), it appears to us that dune restoration alone may be quite adequate. A number of submissions considered that the foredunes were sufficient to deal with the dynamic changes without the need for "hard" systems which may affect natural character, public access and beach amenity in the short or longer term. In the areas where hard structures may be required to protect houses at serious risk with limited alternative options, we would have hoped to see these structures appropriately designed and located to, where practical, facilitate dune restoration (e.g. the backstop wall concept discussed by some submitters) and minimise adverse effects.

#### **Effects on Public Access**

- 11.26 The maintenance and enhancement of public access to and along the Coastal Marine Area is a matter of National Importance in the RMA 1991. Accordingly, the Commissioners would have expected serious consideration of this issue in the application.
- 11.27 For instance, that detailed designs for public accessways would have been provided which was not the case. The issue of beach accessways from private properties was also initially a matter of concern to some submitters – who were concerned that private accessways disrupted by the works would not be reinstated. Little consideration was given to the effect of extending the public and private accessways over rocks and further encroaching on the beach – with various submitters and the Commissioners left with concerns in respect to these matters. The effect of the structures encroaching within the tidal zone further restricts public access along the beach at times when the tide is higher. The effects on access also led to further disruption of beach amenity for both beachfront owners and, potentially, for beach users.
- 11.28 However, during submissions and questioning and the right of reply, the position was somewhat clarified by the provisions of the Wainui Beach Reserves Management Plan 4.3.7 – private stairs over public reserve to access Wainui Beach - and a commitment by the Applicant to reinstate existing accessways. The design guidelines contained in that management plan are appropriate subject to the requirements being met by both the public and the private access stairs.

- 11.29 It is noted that the stairs nearest to the southern end of the beach are in bad repair. The Commissioners assume that regardless of this decision those stairs will be replaced by the Council in terms of their own guidelines.

## 12. PART II OF THE ACT

### Section 5

- 12.1 The overarching requirement of all decision-making under the Act is enshrined in Section 5. The section provides "the purpose of the Act is to promote the sustainable management of natural and physical resources. In the Act "sustainable management" means managing the use, development and protection of natural and physical resources in a way and at a rate, which enables people and communities to provide for their social, economic and cultural well-being, and for health and safety while:

- Sustaining the use and potential of natural and physical resources excluding "minerals" to meet the reasonably foreseeable needs of future generations; and
- Safeguarding the life supporting capacity of air, water, soil and ecosystems; and
- Avoiding, remedying or mitigating any adverse effects of activities on the environment.

The Commissioners do not agree the activity will have a minimal effect on the sustainability of natural and physical resources. While it could be argued that the six houses who may need protection are in themselves "physical resources", it is not apparent to the Commissioners the proposed rock revetment along the whole of this section of Wainui Beach will enable people and the community, other than the six houses directly affected, to provide for their social and economic well-being and health and safety. In particular, the Commissioners do not believe the adverse effects of the activities proposed will be avoided or can be remedied or mitigated by the proposal as put forward.

### Section 6

- 12.2 There are three matters of importance under Section 6:

- "The preservation of the natural character of the coastal environment (including the coastal marine area ... and the protection of them from an inappropriate subdivision use and developments;
- The protection of outstanding natural features and landscapes from inappropriate subdivision use and development;
- The maintenance and enhancement of public access to and along the coastal marine area ...".

- 12.3 It is not clear to the Commissioners that the natural character would be preserved, notwithstanding the existing works on the beach. The proposed works are clearly a man-made engineering structure and will diminish the natural values and character of the beach – particularly in areas and conditions when the structure is extensively visible. The structure is more extensive and will generally be more visible than existing structures when natural sand levels are low. The placement of the proposed revetment will not protect the outstanding natural features and landscape that is the beach itself,



being works designed to protect property. While the maintenance of public access from the properties and road ends can be dealt with by conditions and the proposals put forward by the Applicant, the enhancement or maintenance of public access along the foreshore is not apparent to the Commissioners. Indeed public access will likely be impeded at certain times of the year, particularly occasions when beach width and sand cover are naturally low.

## Section 7

12.4 The Commissioners considered the following matters under this section:

- The maintenance and enhancement of amenity values;
- The finite characteristics of natural and physical resources;
- The effects of climate change.

12.5 It is difficult to see how the proposed works would enhance amenity values, being rather more likely to cause adverse effects on amenity through impacts on the character of the beach and on public access, particularly when natural beach and sand levels are low.

12.6 It is clear from the most recent assessment of the Intergovernmental Panel on Climate Change (IPCC) and from the Ministry for Environment Guidelines developed in respect to these matters for local government that climate change is a significant consideration for coastal settings – particularly in the medium to longer term (say 50-100 years) and beyond.

12.7 For instance, the hazard zones developed by Dr Gibb clearly envisage very significant erosion at Wainui Beach in response to projected sea level rise. The Commissioners would have expected a more explicit consideration of the effects of climate change in respect to this proposal. For example, how adequate the protection is likely to prove in the longer term and how the changes are likely to impact on the environmental effects of the structure.

12.8 We accept the uncertainties around these matters but, as noted earlier, believe there is sufficient information at this site to have provided some comment on these matters. Dr Gibb's hazard lines could also readily have been updated to reflect more recent assessments of sea level rise. In spite of uncertainties, a precautionary approach is appropriate in relation to the effects of climate change. It seems to us that the partial protection given by the structures is unlikely to provide effective erosion protection in the face of projected climate change over the next 50-100 years. For instance, the current MfE Guidelines based on the most recent IPCC assessment and advice from New Zealand climate scientists recommends consideration of the potential effects of a rise in sea level of at least 0.9m over the next 100 years (i.e. to 2110). Judging by Dr Gibb's hazard lines, it would seem likely that the serious erosion is likely to accompany such sea level rise and that such erosion would seriously aggravate the adverse effects of the proposed structure, with potential for very significant beach loss.

## 13. MAIN FINDINGS

13.1 On the issues that were identified for determination and which were in contention between the Applicant and the Submitters, the Commissioners find as follows:

- The proposal will not protect the natural character of the beach and is likely to diminish it, particularly during periods when beach widths and sand levels are naturally low;
- Issues in respect to public access were not adequately addressed. It is acknowledged that access to the beach can be provided though access along the beach may be reduced during periods when beach widths and sand levels are naturally low;
- There is up to 10 metres encroachment onto the sandy beach at the lowest level of sand, although it is accepted that for a large part in the summer the rocks may be covered;
- There is uncertainty as to the performance of the erosion protection during severe storms due to the lowered crest elevation adopted to reduce environmental effects. This could also lead to pressure for enlargement of the structure and more significant adverse effects.
- We are not convinced that the proposed structure is necessary or the best practicable option along the full length of the area, even though there does appear to be a case for protection in areas where houses lie within the Identified Extreme Risk hazard zone;
- Removal of the existing rail/log structure is advantageous but this benefit does not outweigh the potential adverse effects identified;
- There is uncertainty in respect to potential end effects erosion immediately further north of the stream. "Planning creep" (i.e. use of the wall to justify further such works along the beach) was a concern as identified by one submitter.
- The development may be consistent with previous structures built south of this proposal but those structures themselves are more inappropriate north of the concrete groyne;
- The proposal does comply with the WBMS but that strategy is seven years old and is due for review;
- The effects of digging into the papa shelf are not fully known and on a precautionary basis should be carefully monitored and considered if the proposal proceeded;
- The effects of climate change are not adequately addressed, including effectiveness of the structures and the only partial protection provided as well as the potential adverse environmental effects.

## 14. ALTERNATIVES

- 14.1 The Commissioners were mindful of the risk to the six dwellings within the Extreme Risk area along Wainui Beach. The Council should be encouraged to consult and assist those particular owners with proposals for individual protection measures if appropriate. However the Commissioners do not feel that the protection of those six homes justifies

the scale of the works proposed in view of the adverse effects on the section of the beach as a whole.

- 14.2 The Commissioners considered the existing log/rail structure to be unsightly and would encourage its removal. The Commissioners put to the Applicant that a restricted proposal of a rock revetment from the concrete groyne in the most southern part of the beach ending in a Council reserve could be considered as an amendment to the application. While that may have had end effects, it would enable the most unsightly part of the protection measures to be removed, the southern part most at risk to be protected, and for the sea levels and sand deposits to be judged on an adaptive management basis over a period while a review of the WBMS was conducted. The Applicant was not prepared to amend the proposal as put forward and required the application to be considered and a decision made as presented. The Commissioners encourage the Council and the Committee to update and review what is now a seven year old proposal in light of alternatives, climate change knowledge, and other adaptive and sustainable management techniques for this part of the beach.

## 15. DECISION

- 15.1 Pursuant to Sections 104 and 104 (D) of the Resource Management Act 1991, the notified application for resource consent by the Gisborne District Council (Rivers & Land Drainage Department) for a coastal permit to deposit substances on the foreshore, disturb the foreshore, erect and place a structure fixed in, on and over the foreshore, and to occupy the coastal marine area, and for a land use consent to excavate and deposit beach materials, and place a structure within the Coastal Hazard 1 (Extreme Risk), Outstanding Landscape, Coastal Environment and Riparian Management Overlays and within the General Residential and Amenity Reserve zones above mean high water springs at Wainui Beach, Gisborne and the area identified in the WBMS as Section 3, and to dispense with the requirements relating to construction noise, construction vibration, yard and height requirements, is refused resource consent.

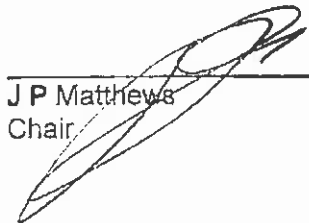
### Reasons for the Decision

- 15.2 Pursuant to Section 113 of the Resource Management Act, the reasons for this decision are as follows:
- a. The actual and potential effects of the proposal are likely to adversely affect the existing and natural character of Wainui Beach.
  - b. The proposal does not accord with the New Zealand Coastal Policy Statement, and in particular Sections 1.1.1, 1.1.4, 3.3.2, 3.3.1, 3.4.3, 3.44 and 3.4.6 in that a precautionary approach on the information supplied with the application would require refusal of the proposal as presented.
  - c. The proposal is in conflict with, although not necessarily contrary to in terms of Section 104 (D), to the general policies in 5.4.6 to 5.4.9 of the District Plan.
  - d. The integrity of the natural and existing structures and features that are providing a defence against natural hazards has not been sufficiently recognised and included.
  - e. Alternatives in both size, location and best practical options have not been considered and put forward.

- f. The proposal does not avoid, remedy or mitigate the adverse effects of the use and development of the beach environment.
- g. The proposed development does not preserve the natural character of the coastal environment or protect and enhance public access to or along the CMA in terms of Section 6.
- h. The proposal does not maintain and enhance amenity values and assess fully the effects of climate change.

15.3 The decision is the unanimous decision of the Commissioners.

Signed by:

  
\_\_\_\_\_  
J P Matthews  
Chair

DATED: 2nd July 2010