BEFORE THE WESTERN BAY OF PLENTY DISTRICT COUNCIL

IN THE MATTER OF	of the Resource Management Act 1991
AND	of a resource consent application by Glen Isla Protection Society Inc.
IN THE MATTER OF	section 88 of the Resource Management Act 1991 for the activities associated with the construction and use of a coastal protection structure.

STATEMENT OF EVIDENCE BY LUKE CHRISTOPHER JAMES FAITHFULL - PLANNING

25 JULY 2025

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1. INTRODUCTIONS

QUALIFICATIONS AND EXPERIENCE

1.1 My name is Luke Christopher James Faithfull.

1.2 I am a Partner with Mitchell Daysh Limited ("**Mitchell Daysh**"), an environmental consulting practice with offices in eight locations around New Zealand. Mitchell Daysh was formed through the merger of Mitchell Partnerships Limited and Environmental Management Services Limited in 2016. I have been working with Mitchell Daysh and, previously, Mitchell Partnerships for 13 years. Previously, I held various consent planner positions at Bay of Plenty, Greater Wellington and Otago Regional Councils for a period of approximately 8 years.

1.3 I hold a Bachelor of Science (Geography and Environmental Science) from the University of Auckland. I am a member of the Resource Management Law Association and an Associate Member of the New Zealand Planning Institute.

1.4 I have practised in the resource management field for approximately 20 years, and I have had a lead resource management role in many significant projects throughout New Zealand during that time under the Resource Management Act 1991 ("**RMA**"), the Exclusive Economic Zone Act 2012 and the various iterations of the Fast Track legislation. As part of my role, I provide resource management advice to the private and public sectors, facilitate public consultation processes, undertake planning analyses, manage and lead resource consent acquisition projects, and develop resource consent conditions.

INVOLVEMENT IN THE PROJECT

1.5 In early 2024, Mitchell Daysh were engaged by the Glen Isla Protection Society Incorporated ("**GIPS**") in relation to the advancement of a coastal protection proposal for beachfront properties at Glen Isla Place, Waihī ("**the project**"). My role has been the planning lead on behalf of Mitchell Daysh and has included:

1.5.1 Multiple site visits with the applicant, technical advisors and the Western Bay of Plenty District Council (“**the Council or WBOPDC**”) representatives during 2024 and 2025;

1.5.2 Participation in an initial option assessment workshop in February 2024;

1.5.3 Briefing the technical consultants engaged to support the application and reviewing their technical reports prepared to support the resource consent application package;

1.5.4 Assistance with consultation with mana whenua and Marine and Coastal Area (Takutai Moana) Act 2011 applicants; and

1.5.5 Co-authoring the Assessment of Environmental Effects (“**AEE**”) resource consent applications to WBOPDC and BOPRC with one of my colleagues at Mitchell Daysh.[1]

1.6 Following lodgement of the applications, I have liaised with technical experts and WBOPDC and BOPRC staff to respond to two requests for further information from WBOPDC, under s92 of the RMA, in respect to the WBOPDC application. These responses were also co-authored by my colleague, Ms Robotham.

CODE OF CONDUCT

1.7 I confirm I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023. My evidence has been prepared in compliance with that Code and I agree to follow it when presenting evidence to the Hearing Panel.

1.8 I confirm that my evidence is within my area of expertise except where I state that I am relying upon the specified evidence of another person and I have not omitted to consider material facts known to me that might alter or detract from my expressed opinions.

[1] The AEE was co-authored by Ellen Robotham, Associate, at Mitchell Daysh. Ellen has 7 years planning and resource management experience.

2. SCOPE OF EVIDENCE

2.1 In my evidence, I provide the following:

2.1.1 A description of the site and existing environment;

2.1.2 An overview of the proposal and the consent requirements;

2.1.3 A summary of the key potential environmental effects associated with the proposal including responses to the Council's section 42A Report ("**the section 42A report**") on the application;

2.1.4 A response to the submission received;

2.1.5 An assessment against the statutory planning requirements that apply to the proposal and responses to the matters raised in the section 42A report;

2.1.6 Provide comments on the alternative structure location proposed by the Council's Engineer;

2.1.7 My analysis of the requirements under section 104 of the RMA; and

2.1.8 Proposed consent conditions.

2.2 As it covers much of that in the section 42A report, my evidence focuses on those matters where I disagree with the conclusion(s) or statement(s) in that report, or which are fundamental to my analysis.

2.3 In preparing this evidence, I have relied upon:

2.3.1 The Application and its appendices and the two further information responses (dated 6 December 2024 and 15 May 2025);

2.3.2 The submissions received on the application;

2.3.3 The section 42A Report, prepared by Bevan Hudson, Anna Price and Jade McKean ("**the reporting officers**"), dated 18 July 2025 and supporting technical attachments; and

2.3.4 The statements of evidence of other expert witnesses prepared on behalf of GIPS.

2.4 My evidence should be read in conjunction with the documents and evidence cited above, in particular the technical expert evidence provided on behalf of GIPS.

3. SITE DESCRIPTION

3.1 A detailed description of the site and surrounds is set out in Section 3 of the AEE, which has been expanded on in the two responses to the Council's further information requests. I note that Section 3 of the section 42A report describes the site and locality. I am comfortable that those descriptions are complete and accurate and consistent. Of particular relevance to this evidence, I note that:

3.1.1 The Site is primarily located on land owned by WBOPDC. The use of the land is subject to a separate agreement with WBOPDC Reserves & Facilities Team outside of the RMA process. Subject to the granting of consent and upon completion of works and any enduring consent conditions, the structure will be vested to WBOPDC for ongoing management and maintenance.

3.1.2 Under the District Plan, the Site is:

- Zoned *Rural*, with the exception of 12 Glen Isla Place, which is zoned *Residential*.
- Located within the *Coastal Erosion Area – Primary Risk*, *Coastal Erosion Area – Rural*, and *Coastal Inundation Area*.
- Located within *Outstanding Natural Landscape Feature S24 - Open Coastal Landward Edge Protection Yard* ("**ONLF S24**")[2].

[2] The overlay is defined as containing "all land adjoining the open coastline, zoned Rural and within 100m of MHWS". No other specific characteristics or values are identified in the District Plan for ONLF S24

3.1.3 The Site is located within Indigenous Biodiversity Area B – B1 Central Waihī Beach ("**IBDA-B1**") under the Bay of Plenty Regional Coastal Environment Plan ("**RCEP**").

3.1.4 The Site is located landward of the Coastal Marine Area ("**CMA**")[3].

3.2 The site is subject to dynamic coastal processes and will be increasingly impacted into the future. A summary of historic investigation into and implementation of coastal erosion protections at Waihī Beach is included in Section 2 of the AEE, and a more detailed review of historic beach changes at the site is set out in the Coastal Processes Assessment submitted alongside the AEE[4] and summarised in the evidence of Mr Craig Davis.

4. OVERVIEW OF THE APPLICATION

4.1 In essence, GIPS seeks to establish a buried coastal protection structure on dune land in front of the waterfront properties at Glen Isla Place. Section 4 of the AEE and Section 5 of the section 42A report provide detailed descriptions of the proposal. In summary:

4.1.1 The coastal protection structure will be a buried rock revetment, approximately 200m long running generally parallel to the landward residential site boundaries.

4.1.2 The structure is setback from residential property boundaries by between 5 m - 7.6 m and is located outside the CMA.

4.1.3 The structure will be constructed out of Andesite sourced from a local quarry at Waihī Beach. To the extent practicable, rocks with a weathered appearance and a variety of sizes will be selected to ensure a more naturalistic appearance to the revetment should the structure become exposed.

[3] As set out in Section 3.3 of the Assessment of Environmental Effects.

[4] Appendix B to the AEE.

4.2 While subject to detailed design, the structure will be designed in accordance with accepted design guidelines (CIRIA C683)[5] and includes design features as follows:

4.2.1 The crest level is to be approximately RL 3.5 and the base of the structure is proposed to be constructed at approximately RL 0.0.

4.2.2 The entire structure will be buried under at least 0.5m of sand, sourced from the footprint of the structure, and recontoured to mimic natural dune form.

4.2.3 Construction and vehicle movements will be contained within the identified construction footprint.

4.2.4 An area of high value dune habitat will be fenced and avoided throughout all construction.

4.2.5 All disturbed areas will be revegetated with indigenous dune plant species, as directed by a Restoration Planting Plan.

5. RESOURCE CONSENTS REQUIRED

5.1 Section 5 of the AEE, and Section 7 of the section 42A report, identify the resource consents required under the WBOPDP. These assessments concur that:

5.1.1 Coastal protection works including seawalls in the Coastal Erosion Area – Primary Risk and Rural require resource consent as a discretionary activity under Rule 8.3.4.a.iv.

5.1.2 Buildings/structures, earthworks with a vertical face of greater than 1.5m, and clearance of native vegetation within Identified Natural Feature and Landscape S24 – Open Coastal landscape Landward Edge Protection Yard require resource consent as restricted discretionary activities under Rule 6.4.3.1.b., c., and d.

[5] Refer to Section 9 of Mr Davis' evidence.

5.1.3 Earthworks associated with an activity requiring resource consent as a discretionary activity also require resource consent under Rule 4A.5.b.

5.1.4 Transport, noise and signs are permitted activities and may occur without resource consent under Rules 4B.4.1, 4B.4.4, 4B.4.5, 4B.4.6, 4B.4.7, 4C.1.3.1, 4D.4.1.4, and 4D.5.1.[6]

5.2 In addition, the section 42A report identifies the following resource consents are required under:

5.2.1 Rule 8.3.3.c.i, ii., and iii. regarding activities within Floodable Areas and Coastal inundation Areas, namely buildings/structures not within an Approved Building Site – Natural Hazards, earthworks over 5m^3, and closed board fences, retaining walls, raised gardens, concrete and block walls (Restricted Discretionary);

5.2.2 Rule 8.3.4.a.i regarding Buildings/Structures not within an Approved Building Site – Natural Hazards in the Coastal Erosion Areas – Primary Risk and Rural (Discretionary);

5.2.3 Rule 13.4.1.c.ii regarding buildings/structures that do not meet permitted standards for rear and side yards in the Residential Zone (Restricted Discretionary);and

5.2.4 Rule 18.4.1.c.ii regarding buildings/structures that do not meet permitted standards for rear and side yards in the Residential Zone (Restricted Discretionary).

5.3 I agree that those additional rules are triggered, though in my opinion this does not alter the assessment requirements, or any aspect of the assessment that has been undertaken. Regardless of these additional rules, the proposal is a discretionary activity (such that all relevant issues are to be considered) and all relevant effects have been considered.

6 Refer to paragraph 84 of the s42A Report.

6. OTHER RELEVANT RESOURCE CONSENTS

6.1 GIPS has sought, and was subsequently granted in May 2025, resource consent (#RM24-0537-LC.01) from the Bay of Plenty Regional Council ("**BOPRC**") for earthworks and vegetation clearance in the Glen Isla dune under section 9(2) of the RMA, and disturbance of the CMA by vehicles and machinery accessing the site under section 12(1)(c) of the RMA. A copy of BOPRC granted consent conditions was provided to WBOPDC as part of the 2nd further information response package dated 16 May 2025.

6.2 The section 42A report[7] also identifies a number of existing resource consents which WBOPDC consider relevant to the assessment of the existing environment. For the benefit of the Panel, and to provide further clarity regarding the relevance of the listed resource consents, I provide further commentary below.

6.3 WBOPDC hold (and BOPRC exercise) a resource consent (#RM19-0613) which authorises maintenance works for Three Mile Creek. The consent provides for the removal of accumulated sediment and sand material from the bed of Three Mile Creek and for deposition of the material in the adjacent CMA for the purpose of preventing closure of the stream mouth and potential flooding. As referenced in the evidence of Mr Dennis Boyd[8] on behalf of the Applicant, who is also the contractor who undertakes this work, this consent is exercised on an as-required basis, but typically multiple times each year, including following a storm event. Dredged material can be placed seaward of the dunes in front of 9 Glen Isla Place. The WBOPDC held consent expires on 31 December 2039.

6.4 The first table at paragraph 31 of the section 42A report lists land use consents for residential activities, primarily residential additions/alterations at the GIPS properties, (being 9, 11, 12, 13, 14, 15 and 16 Glen Isla Place). These have been identified as relevant by the Council as they are each subject to conditions that contemplate moving or removing buildings or parts of

[7] Refer to paragraphs 30 – 31 of the s42A report.

[8] Refer to paragraph 3.1 of Mr Boyd's evidence.

buildings. While the requirements of these consents will be summarised as part of the Legal Submissions to be prepared on behalf of the Applicant, I understand that these 'managed retreat' provisions are not as clear, complete or directive as the reporting officers seem to suggest in the section 42A report.

6.5 Managed retreat is often promoted as a long-term, sustainable response to coastal hazards and climate change in New Zealand. However, its practical implementation remains highly challenging. While conceptually aligned with the New Zealand Coastal policy Statement ("**NZCPS**") and climate adaptation policy, in practice, managed retreat faces significant barriers, including:

6.5.1 High social and political resistance due to impacts on private property rights, community identity, and intergenerational equity.

6.5.2 Lack of clear legislative and funding mechanisms for acquiring property, relocating infrastructure, and supporting affected communities.

6.5.3 Institutional complexity, with responsibilities fragmented across local and central government, making coordinated action difficult.

6.5.4 Legal uncertainty and precedent-setting risks, particularly under the RMA, which complicates implementation at scale.

6.6 I understand that there are a small number of notable examples where forms of managed retreat have been implemented in New Zealand to date, though they are limited in scale and have been reactive rather than strategic. These include (with a brief summary):

6.6.1 Matatā (Bay of Plenty) – triggered by a debris flow which resulted in several properties being deemed unsafe. Whakatāne District Council pursued a managed retreat by rezoning land and not permitting rebuilding. After more than a decade of legal, financial, and community challenges, the Crown offered to buy out affected homeowners in 2020. The process highlighted the legal, planning, and equity challenges of implementing managed retreat under existing legislation.

6.6.2 Southshore & South New Brighton (Christchurch) – triggered by post-earthquake land damage and sea level rise risks in coastal suburbs. Some 8,000 households were forced to relocate. Christchurch City Council and central government considered retreat options, including voluntary buyouts and restrictions on rebuilding. The process stalled amid public opposition and uncertainty about responsibilities and funding. However, it spurred significant community debate and policy exploration around adaptation and retreat.

6.6.3 West Coast / Buller (Granity, Hector) - Severe coastal erosion is threatening homes and infrastructure. Managed retreat has been proposed as an option in long-term coastal hazard assessments. To date, retreat has not been implemented; community and political pushback has favored protection works instead.

6.7 While the above examples have not been related to requirements on resource consents, managed retreat in New Zealand has not yet been implemented at scale or proactively, and most cases have required significant central government involvement. The examples demonstrate the practical, legal, and social complexities of managed retreat under current frameworks.

6.8 Based on the above, I do not consider that managed retreat is a realistic or practicable hazard response in the context of Waihī Beach or the current proposal, particularly under the existing planning and legislative framework.

6.9 While higher-order policy direction (which I discuss in further detail later in my evidence), including Policy 27 of the NZCPS, promotes the consideration of managed retreat as a long-term option, I do not consider it a reasonable or relevant consideration in this case given the physical constraints, the nature of existing development, and the absence of any strategic planning or enabling mechanisms that would support its implementation. Accordingly, I do not consider the managed retreat requirements under the current land use consents to form part of the existing environment nor can it be considered as a feasible alternative that should inform the assessment of this application.

7. ASSESSMENT OF EFFECTS

7.1 With regard to the assessment of actual and potential effects, Section 104(1) of the RMA requires consent authorities to have regard to:

> *(a) any actual and potential effects on the environment of allowing the activity; and*
>
> *(ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*

7.2 The RMA does not require that there are no adverse effects, and anticipates that applicants may undertake additional measures to ensure positive effects on the environment. Additionally, s104(2) of the RMA states:

> *(2) When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.*

7.3 I agree with the reporting officers that there is no applicable permitted baseline given structures in the coastal hazard overlays typically require resource consent.[9]

7.4 An assessment of the actual and potential effects of the proposal is provided in the original AEE,[10] and further responded to in the two further information responses provided to the WBOPDC. With the exception of effects on coastal processes, the reporting officers generally adopt this assessment. The section 42A report, and accompanying technical reviews, provide further analysis of the actual and potential effects associated with the proposal.[11]

7.5 The evidence of the expert technical witnesses on behalf of the Applicant also provide comprehensive, independent assessments of the potential effects of

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9 Refer to paragraphs 103-104 of the s42A report.

10 Refer to Section 6 of the AEE.

11 Refer to paragraph 113 of the s42A report.

the proposal and respond to matters raised by the section 42A report, technical reviews and submissions.

7.6 For the Panel's convenience, I adopt the headings used in the section 42A report, but have elevated the discussion on coastal processes and hazards, as follows:

- Coastal Processes and Hazards;
- Construction Activities including noise and vibration, and transport and access;
- Ecological effects, including terrestrial ecology and avifauna;
- Landscape, Natural and Visual Character;
- Reserves and Public Access;
- Cultural; and
- Positive effects.

7.7 I provide below a summary and analysis of the potential effects of the proposal in the context of the expectations that it sets for the management of these actual and potential effects. My analysis does not seek to repeat the evidence provided by other witnesses – but rather to consider their key conclusions and, identified points of agreement / disagreement.

7.8 Potential adverse effects on 9, 11, 12, 13, 14, 15 and 16 Glen Isla Place have not been considered given that written approval has been provided for these properties. This is supported by the reporting officers[12].

COASTAL PROCESSES AND HAZARDS

7.9 The section 42A report relies on an assessment by Adam Davidson, Beca, and focuses on the following;[13]

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12 Refer to paragraphs 76-77 of the s42A report.

13 Refer to the 'Conclusion' of Attachment 15 to the s42A report (Coastal Engineering Review).

- Protection afforded by the Three Mile Creek groynes and justification for the Type 2 extent of the structure; and

- Alignment of the proposed structure, particularly the Type 1 extent of the structure.

7.10 For clarity, the Type 1 alignment relates to that part of the proposed structure in front of 12, 14 and 16 Glen Isla Place, while the Type 2 alignment refers to that part of the proposed structure extending northward in front of 9, 11, 13, 15 and 16 Glen Isla Place as shown in **Figure 1**.

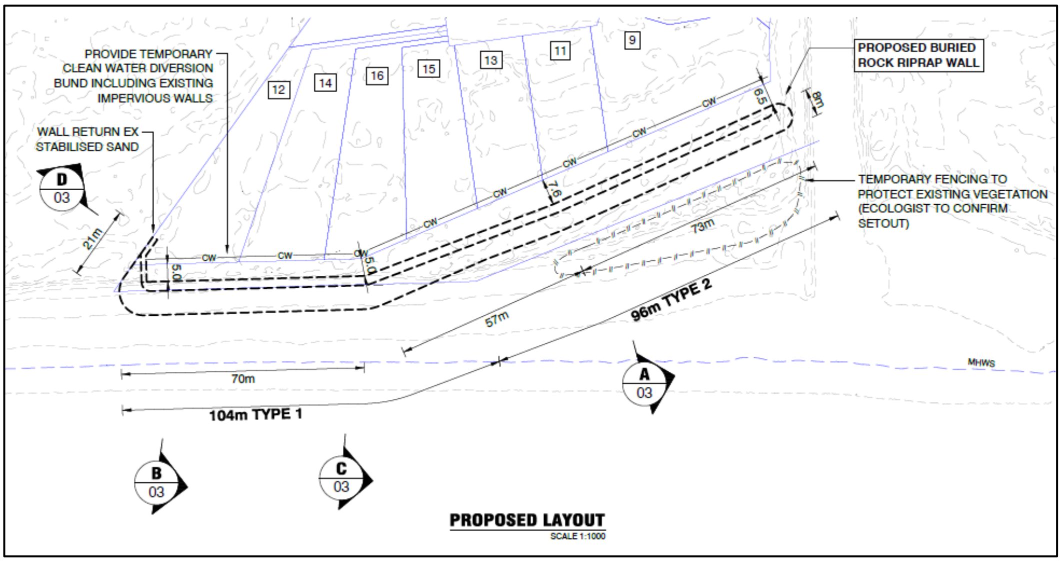

Figure 1: Proposed layout of coastal protection structure at Glen Isla Place, Waihī Beach (Source: Davis Coastal)

7.11 With regard to coastal processes and the associated effects, Mr Davis on behalf of GIPS, finds that:

7.11.1 Sea level rise assumptions adopted in the AEE and Mr Davis' evidence are conservative and reflect the "worst case scenario", which is appropriate for engineering design but should be considered unlikely and over predictive of negative exposure for assessing actual and potential future effects.[14]

[14] Refer to paragraphs 6.18-6.19 of Mr Davis' evidence.

7.11.2 Over a 100-year return period, the GIPS properties are subject to significant storm cut risk.[15]

7.11.3 The proposed structure will become increasingly necessary to protect the backshore, and the natural function of the dune in front will become less effective.[16]

7.11.4 It is appropriate to incorporate soft protection measures into the proposal; however, a soft engineering solution alone will not address erosion such as the Gabrielle /Hale events and those with more significant storm cut.[17]

7.11.5 With regard to potential end effects at the southern end, some scouring (in the order of 2-5 m landward and 5-15 m in length) may occur once the proposed structure is interacting significantly with wave uprush and the adjacent shore line has retreated behind the crest of the rock wall by 2-5m. The entire dune front, including the scour area will tend to repair by natural processes as part of natural dune building during calmer periods.[18]

7.11.6 With regard to potential end effects at the northern end, by the time it becomes relevant whether the groyne is in place, the beach will have retreated some 20-30m and the groynes will have become untenable or have been upgraded.[19]

7.12 Of the effects identified above, there seems to be agreement between Mr Davis and the Council that the Type 1 structure is justified[20], and given it will be predominantly buried, the effects of the Type 2 wall (in relation to coastal processes and hazards) are negligible.[21] They also agree that incorporation of

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[15] Refer to Section 7 of Mr Davis' evidence.

[16] Refer to paragraphs 8.8 and 8.9 of Mr Davis' evidence.

[17] Refer paragraph 9.17 of Mr Davis' evidence.

[18] Refer paragraphs 11.6-11.9 of Mr Davis' evidence.

[19] Refer to paragraphs 11.14-11.15 of Mr Davis' evidence.

[20] Refer to the 'Conclusion' of Attachment 15 to the s42A report (Coastal Engineering Review).

[21] Refer paragraphs 14.10 of Mr Davis' evidence, and page 4 of Attachment 15 to the s42A report (Coastal Engineering Review).

soft protection methods, through protection and revegetation of the foredune in front of the Type 2 frontage, is appropriate.[22]

7.13 The main areas of contention, as I understand it, relate to:[23]

7.13.1 The alignment of the Type 1 extent of the structure;

7.13.2 The extent of the structure, particularly the necessity of the Type 2 extent; and

7.13.3 End effects and beach lowering effects.

7.14 Regarding the location of the Type 1 wall, Mr Davis considers retention of the 5m offset is appropriate when taking into account the range of effects associated with the proposal and the available mitigation and managements to provide for any effects associated with coastal process.[24]

7.15 Regarding the extent of the proposed coastal protection, in his assessment of erosion effects Mr Davis has used a baseline which does not consider the presence of the Three Mile Creek groynes. It is his position that, for this specific location, the Coastal Erosion Hazard Zone is not a valid assessment for the risk associated with these properties as the existing defenses are ignored.[25] Mr Davis does not agree with the approach by the Council's engineer as, in his view, it is normal practice not to rely on a structure subject to resource consent processes.[26]

7.16 Regarding end effects and beach lowering, Mr Davis does not think there will be appreciable end effects (magnitude of this scour is likely to be in the order of 2-5m landward and 5-15m parallel[27]) due to interruption of sediment transport and notes that Mr Davidson provides no particular analysis of this[28].

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22 Refer paragraphs 14.11 of Mr Davis' evidence.

23 Refer to Section 14 of Mr Davis' evidence.

24 Refer paragraph 14.14 & 14.15 of Mr Davis' evidence.

25 Refer to pages 2-3 of Attachment 15 to the s42A report (Coastal Engineering Review).

26 Refer paragraph 14.8 & 14.9 of Mr Davis' evidence.

27 Refer paragraph 11.8 of Mr Davis' evidence.

28 Refer paragraph 14.19 of Mr Davis' evidence.

7.17 The Applicant engaged Mr Johnathan Clarke to provide a peer review of Mr Davis's technical assessment and documents. Mr Clarke has provided an evidence brief to support this review which concludes[29]:

7.17.1 The findings of the CPA and Engineering Report attached to the AEE are generally supported;

7.17.2 The erosion risk assessment used as a basis for the report to assess likely retreat rates has been updated in 2024 and includes slightly greater setbacks. Mr Davis is confident that the sea level rise projections in his assessment are consistent with latest science[30];

7.17.3 The Type 2 extent of the structure should be constructed;

7.17.4 Design elements of the proposal are supported, however, the rock to be used should be tested as a matter of quality control; and

7.17.5 The geotextile base of the wall should be extended across the RL 2.0 to address overtopping. While this matter can be resolved in detailed design, Mr Davis and Mr Clarke have developed and agreed a preliminary design which incorporates this recommendation.[31]

7.18 While I address the matter of the alternative location of the structure later in my evidence (Refer to Section 17), it is my opinion that the location of the structure as set out in the application documents is appropriate and fit for purpose. I consider that the proposed consent conditions, which will be provided with the Applicant's Legal Submissions (Refer to Section 19 of this brief), focused on certification of detailed engineering design, and avoidance and mitigation of effects on dune vegetation which provides coastal protection will be sufficient to conservatively ensure the proposal, including its location

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29 Refer paragraph Coastal Processes Peer Review Attachment to Mr Clarke's evidence.

30 Refer to paragraph 15.4-5 of Mr Davis' evidence.

31 Refer to paragraph 15.6 of Mr Davis' evidence.

within the Glen Isla dune system, will be undertaken in a manner that appropriately manages actual and potential effects on coastal processes both in the short and long-term.

CONSTRUCTION ACTIVITIES

Noise and Vibration

7.19 The section 42A report relies on an assessment by Jamie Exeter and John Styles, Styles Group, and focuses on the following effects;

- Likelihood of unacceptable construction noise; and
- The tipping of large rocks onto the sand as per the Applicant's Construction Management Plan.

7.20 Mr Whitlock, on behalf of the Applicant, has addressed these matters in his evidence.

7.21 The noise experts are largely in agreement, with only minor matters of disagreement remaining. In summary, there is agreement that:

7.21.1 The noise and vibration assessments have been undertaken in accordance with the relevant standards, and are robust and reliable;[32]

7.21.2 Predicted noise from machinery movements and rock dropping would comply with the District Plan standards;

7.21.3 There are no standards for vibration in the District Plan, however, predicted vibration effects would comply with the conservative German Standard DIN 4150-3.[33] While vibration may be perceivable, experts agree that it is highly unlikely to cause building damage;

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[32] Refer to page 2 of Attachment 11 to the s42A report (Acoustic Review).

[33] Section 5 of Mr Whitlock's evidence explains that there are no New Zealand vibration standards that relate to building damage, and this standard is commonly used throughout New Zealand. Messrs Exeter and Styles support adoption of this standard at page 3 of Attachment 11 to the s42A report (Acoustic Review).

7.21.4 Mr Whitlock agrees with the proposed conditions set out in the Council's Acoustics Review memo including the conditions to prepare and comply with a Construction Noise and Vibration Management Plan ("**CNVMP**") and to measure and manage vibration and noise during the works are appropriate, notification of works and application of noise standards;[34]

7.21.5 Mr Whitlock proposes one minor amendment to proposed condition 3, which refers to the construction hours as 07:30 – 17:00, rather than 07:30 – 18:00 (as contained in the Application and NZ Construction Noise Standard NZS 6803:1999). Mr Whitlock considers that it may have been a typo because the WBOPDC Acoustic Review memo refers to 18:00 in other sections, including proposed condition 4, and does not mention it as a proposed change anywhere in the memo.[35]

7.22 Overall, I consider the adoption of these conditions will ensure that construction noise and vibration effects will continue to be managed in accordance with permitted standards. The proposed consent conditions, noting the one amendment, provide for conditions of this nature.

Transport

7.23 The section 42A report relies on a review of the application undertaken by Ms Browne, WBOPDC's Road Safety Engineer, and focuses on the following effects:[36]

- The effects during the construction activity; and
- The ongoing and future maintenance of the sea wall.

[34] Refer to Section 4 of Attachment 11 to the s42A report (Acoustic Review) and Section 8 of Mr Whitlock's evidence.

[35] Mr Whitlock provides modified wording at paragraph 8.4 of his evidence.

[36] Refer to Section 4 of Attachment 12 to the s42A Report (Transport Memorandum).

7.24 Overall, Ms Browne concludes that traffic effects are reasonable, with the adoption of consent conditions relating to:[37]

7.24.1 Restricting the time for heavy vehicle movement;

7.24.2 The use of a Construction Travel Management Plan ("**CTMP**");

7.24.3 Repair of damaged roads directly associated to the heavy vehicle movements; and

7.24.4 Allowance for future maintenance requiring a CTMP.

7.25 The consent conditions proposed by Ms Browne are, in my opinion, appropriate and will ensure that effects arising from traffic movements will be appropriately managed. I recommend those conditions are adopted with minor amendments to the wording suggested by Ms Browne to improve clarity and consistency with the wider suite of conditions to be provided as part of the Legal Submissions.

ECOLOGICAL EFFECTS

Terrestrial Ecology

7.26 The section 42A report relies on an assessment by William Shaw (Wildlands Ecology) and, with regard to terrestrial ecology, focuses on the following effects;[38]

- Structural integrity of the foredune and ongoing maintenance;
- Effects on herpetofauna (lizards), if present;
- Effects on invertebrates (particularly kātipo), if present; and
- Potential effects on the Long Island Reserve, to the south.

[37] Refer to Sections 8 and 10 of Attachment 12 to the s42A Report (Transport Memorandum).

[38] Refer to Section 10.1 of Attachment 13 to the s42A report (Review of Ecological Effects).

7.27 With regard to effects on terrestrial ecology, Mr Keesing on behalf of the Applicant, has included an assessment of the proposal and finds that:[39]

7.27.1 There are three vegetation assemblages:

- The spinifex foredune has high ecological value, is considered significant and NZCPS Policy 11(a)(i) and (iii) and (b)(i) and (iii) apply;
- Exotic vegetation on the central terrace and hind dune terrace has negligible ecological value, is not significant and NZCPS Policy 11 does not apply; and
- The southern Pohuehue terrace has low ecological value but is considered significant and NZCPS Policy 11(b)(i) and (iii) apply.

7.27.2 Under the proposal, any adverse effects on the spinifex foredune will be avoided through the design and proposed construction methodology;

7.27.3 Approximately 70m^2 of the southern Pohuehue assemblage will be removed during construction. Mr Keesing considers the adverse effects on the Pohuehue terrace will be very low and recommends remediation at a 2:1 ratio (i.e., replanting of double the area of southern Pohuehue lost). The proposed remedy and mitigation measures are consistent with the effects management hierarchy under the NPS-IB;[40]

7.27.4 Overall, adverse effects of the proposal will be very low and the proposed remediation/mitigation solution recommended will result in a net ecological benefit at a local scale.

7.28 Of the effects identified above, there seems to be agreement between Mr Keesing and Mr Shaw that ecological effects can be appropriately managed

[39] Refer to Section 6 of Mr Keesing's evidence.

[40] Refer paragraph 9.26 of Mr Keesing's evidence.

through the adoption of controls via consent conditions. Mr Shaw discusses potential consent conditions in Section 10 of his report, and Mr Keesing provides his view of those conditions in Section 10 of his evidence. In summary:

7.28.1 Mr Shaw is concerned regarding the structural integrity of the foredune and seeks that sand is replaced and vegetation cover maintained in perpetuity. Mr Keesing considers that, once vegetation is established and stable, future coastal erosion of dune vegetation is an expected natural coastal process which would not otherwise be managed and therefore does not require management in perpetuity.

7.28.2 Mr Shaw recommends an integrated vegetation management programme must be provided for the ‘Landscape Area’ and the ‘Reinstatement Area’ for the entire project site and this is to be provided for through a management plan approach. As a part of the application, the Applicant has offered a condition of consent regarding a Remedial Planting Plan that addresses these recommendations, which Mr Keesing supports. I note that this also formed part of the BOPRC consent conditions.

7.28.3 Mr Shaw recommends a Lizard Management Plan and notes Wildlife Act authority would be required to salvage lizards, if present. Mr Keesing agrees that any salvage would require a Wildlife Act authorisation and notes that a Lizard Management Plan would be required as part of the Wildlife Act authority. Mr Keesing considers it appropriate to apply for that approval and develop a Lizard Management Plan should the detailed pre-works survey reveal lizards are present, with the survey and development of a management plan to be provided for as a condition of consent (as per the BOPRC conditions of the same).

7.28.4 Mr Shaw recommends measures to avoid or minimise effects on invertebrates should be identified but does not provide specific recommendations. Mr Keesing considers that proposed conditions regarding detailed pre-works survey, which can be provided for as a condition of consent (as per the BOPRC conditions of the same) appropriately address effects on invertebrates. Mr Keesing also notes that Wildlife Act approval is only required where certain invertebrate species are present, which Mr Keesing considers highly unlikely.

7.28.5 Mr Shaw recommends that potential erosion south of the project area should be addressed. Mr Keesing considers that the loss of largely exotic weeds on the area that may be subject to erosion would have a negligible to low effect and does not require any form of ecological mitigation or remedy[41].

7.28.6 Mr Shaw and Mr Keesing agree that a management programme to address the above requirements is required. Mr Keesing considers these matters to be well covered by the condition of consent regarding a Remedial Planting Plan, which also forms part of the BOPRC consent.

7.28.7 Mr Shaw seeks active dune management of the dune for the life of the structure, however, as summarised above, Mr Keesing considers active management is only necessary to the point where there is stable vegetation cover achieved, which Mr Keesing considers is (80% vegetation cover over the entire area as an average per m^2), at which point management of dune vegetation can revert to normal.

7.28.8 Mr Shaw recommends that the responsibilities and costs for the above requirements sit with the Applicant. While Mr Keesing considers this matter beyond the scope of his expertise, he acknowledges the need to ensure remedial ecology works are established. I note that the commentary from Mr Waston (WBOPDC Reserves and Facilities Manager)[42] identifies that the

[41] Refer paragraph 9.18-9.22 of Mr Keesing's evidence.

[42] Refer to Row 1 in the table in Attachment 16 (WBOPDC Reserves and Facilities Manager Comments) to the s42A Report

agreement between Council and the GIPS property owners to use the reserve land includes provision whereas Council will pay all costs of keeping and maintaining the Coastal Protection to the extent they are covered by any targeted rate applied to the waterfront properties at Glen Isla Place. Mr Fraser's brief (on behalf of GIPS as the Applicant) clarifies that residents will pay any maintenance costs not covered by the targeted rate.[43]

7.28.9 Mr Shaw and Mr Keesing agree that monitoring and reporting is required.

7.29 Based on the assessment by Mr Keesing, and subject to the adoption of the proposed consent conditions (which will be consistent with those provided for in the BOPRC Consent which essentially control the same activities and seek to achieve the same outcomes and address the amendments discussed above), I consider the potential and actual effects on local and wider dune environment vegetation and terrestrial ecology will be appropriately protected regardless of the final location of the structure.

Avifauna

7.30 Mr Shaw, on behalf of Council, appears to generally accept the proposed approach to managing effects on avifauna through avoidance of the spinifex foredune and exclusion zone around nesting birds (if present), and recommends that the proposed Avifauna Management Plan ("**AMP**") also include measures to protect any hatchlings until they have fledged and left the site.[44]

7.31 Regarding the avifauna effects of the proposal, Dr Bull on behalf of the Applicant states:

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[43] Refer to paragraph 4.25 of Mr Fraser's evidence.

[44] Refer Section 10.3 of Attachment 13 to the s42A report (Review of Ecological Effects).

7.31.1 Northern NZ dotterel is the only species that has been reported breeding adjacent to the project site. Nesting habitat for this species generally occurs on low, flat areas devoid of vegetation.[45]

7.31.2 The proposed design, construction method and reinstatement works associated with the proposed coastal erosion protection at Glen Isla Place seeks to avoid both direct and indirect impacts on avifauna, including northern NZ dotterel.[46]

7.31.3 This has been achieved through the avoidance of permanent habitat loss, and the inclusion of consent conditions to ensure implementation of appropriate mitigation measures should construction occur during the breeding season (noting the intent is to undertake works outside the breeding season).

7.31.4 Regarding fledging and breeding, chicks have not fledged in either season, with the latest attempt in 2022/23 failing due to the nest being washed away by the storms of Cyclones Hale and Gabrielle. Furthermore, it is understood that dotterel have not bred at this location in the subsequent two breeding seasons (2023/24 and 2024/25).[47]

7.32 There is agreement between Dr Bull and Mr Shaw that avifauna effects can be appropriately managed through the preparation and implementation of an AMP. The plan is the appropriate mechanism to ensure the avoidance of potential effects relating to construction disturbance, as well as mortalities and / or injuries of nesting birds. Dr Bull recommends that conditions requiring an AMP should include specific reference to Threatened and At Risk species and measures to protect nest sites and hatchlings.[48]

7.33 I consider that the provision of a consent condition requiring an AMP (as per the BOPRC conditions of the same with an amendment to address fledgling

[45] Refer paragraph 6.3 of Dr Bull's evidence.

[46] Refer paragraph 8.3 of Dr Bull's evidence.

[47] Refer to paragraphs 6.4 - 6.5 of Dr Bull's evidence.

[48] Refer to paragraph 9.2 of Dr Bull's evidence.

chicks and Threatened and At Risk species specifically), are sufficient to ensure construction works associated with the proposal will be undertaken in a manner that appropriately manages actual and potential effects on avifauna and that this approach is consistent with that set in the BOPRC consent.

LANDSCAPE AND VISUAL AMENITY EFFECTS

7.34 The section 42A report relies on an assessment by Will Gumbley, Beca, and focuses on the following effects;[49]

- Natural character;
- Landscape character;
- Visual amenity; and
- Construction (temporary).

7.35 With regard to landscape and visual amenity and the associated effects of the proposal, Mr Coombs in his evidence on behalf of the Applicant, identifies the following of particular relevance:

7.35.1 Although the site is captured by ONLF S24, which applies to the wider Waihī Beach coastal area and is generic in nature, the existing landscape and natural values of the site are not high;[50]

7.35.2 The erosion protection structure has been designed to be integrated into the remnant dune system as far as is possible, with the structure entirely buried after construction, with the potential for exposure of one end after high energy erosion events.

7.35.3 The Glen Isla Place erosion protection structure is consistent with and in some respects is a better outcome in natural character and

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[49] Refer to the 'Re-Evaluation of the Proposal' section of Attachment 14 to the s42A report (Landscape and Visual Effects – Peer Review Summary and Expert Re-Evaluation).

[50] Refer paragraphs 3.7-3.8 and 3.18 of Mr Coombs' evidence.

landscape terms than other erosion protection works at Waihī Beach;[51]

7.35.4 The erosion protection structure at Glen Isla Place can be developed to ensure that it protects the natural character and landscape values of the beach and protects the reserve and adjacent properties, leading to positive overall natural character, landscape and visual amenity effects[52];

7.35.5 Temporary effects from construction will be low adverse, due to the timing, construction methodology and temporary nature of the works[53];

7.35.6 Natural character and landscape effects associated with scour at the southern end of the proposal would be negligible, if detectable at all[54]; and

7.35.7 A 5m setback is the preferred location for the structure from a landscape, natural character and visual effects perspective.[55]

7.36 Mr Coombs notes that the main area of disagreement in relation to the effects of the coastal protection structure are in relation to natural character and landscape effects. Mr Coombs considers that this difference may arise from differences in opinion regarding the naturalness of the site's formation and appearance.[56]

7.37 Despite differences in relation to the scale of effects, there seems to be agreement between Mr Coombs and Mr Gumbley that landscape and visual

[51] Refer paragraph 3.24 of Mr Coombs' evidence.

[52] Refer paragraphs 3.22, 3.28 and 3.32 of Mr Coombs' evidence.

[53] Refer paragraph 3.35 of Mr Coombs' evidence.

[54] Refer paragraphs 5.10-5.113 of Mr Coombs' evidence.

[55] Refer to paragraphs 5.17-5.18 of Mr Coombs' evidence.

[56] Refer to paragraph 5.6 of Mr Coombs' evidence.

amenity effects of the proposal will not result in effects more adverse than if no coastal protection structure were implemented.[57]

7.38 Mr Coombs and Mr Gumbley disagree that implementation of a Sand and Vegetation Management Plan is required for the recovering of the protection structure with sand from a landscape or visual amenity perspective[58]. Mr Coombs considers that, based on the evidence of Mr Davis, natural accretion processes will sufficiently address landscape or visual amenity effects of erosion events..

7.39 Based on the assessment by Mr Coombs, and the proposed consent condition which will be provided with the Applicant's Legal Submissions and are consistent with those authorised by BOPRC in their consent, I consider the actual and potential effects on landscape and visual amenity will be appropriately managed and no more than minor.

RESERVES AND PUBLIC ACCESS

7.40 Regarding the use of the reserve and the impacts of the proposal, the section 42A report relies on commentary from Mr Peter Watson, the Council's Reserves and Facilities Manager, and highlights the following;

7.40.1 Reserve land at Three Mile Creek is considered a 'strategic asset' with regard to Council's Coastal Erosion Response Policy 2017;[59]

7.40.2 The proposal is not totally inconsistent with Council's Erosion Responses Policy 2017 and provides long-term benefits as it will prevent further loss of the rear dune;[60]

7.40.3 There is no significant adverse effect on Three Mile Creek from an aesthetic or functional perspective;[61]

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57 Refer page 8 of Attachment 14 to the s42A report (Landscape and Visual Effects – Peer Review Summary and Expert Re-Evaluation).

58 Refer to paragraphs 5.8-5.9 of Mr Coombs' evidence.

59 Refer to paragraph 237 of the s42A report.

60 Refer to page 4, Attachment 16 to the s42A Report (WBOPDC Reserves and Facilities Manager Comments).

61 Refer to page 10, Attachment 16 to the s42A Report (WBOPDC Reserves and Facilities Manager Comments).

7.40.4 Council have provided approval in principle for the structure to be located within the reserve, subject to obtaining consent, funding of construction, and an agreement between Council and the property owners on operational costs and responsibilities.[62]

7.40.5 It is unlikely that a formal accessway would be developed in this area because there is no clear demand for public access in this location.[63] In addition, there are other alternative public access points available should public access become restricted in the future;[64]

7.40.6 Consideration of pedestrian access can be again considered at the time the structure is partially or fully within the CMA and requires additional resource consents;[65]

7.40.7 Mr Watson accepts that there are ongoing management and consenting requirements and these are accounted for through targeted rates and an agreement between Council and GIPS property owners;[66]

7.40.8 Mr Watson recommends a condition of consent requiring the agreement between GIPS landowners and the Council is finalised before construction commences.[67]

7.41 I agree with the reporting officers that a condition to the effect proposed by Mr Watson is appropriate. Based on the assessment by Mr Watson, and adoption of the proposed consent conditions, I consider the potential and actual effects on public access and management of the reserve will be appropriately

[62] Refer to paragraph 239 of the s42A report.

[63] Refer to pages 6-7, Attachment 16 to the s42A Report (WBOPDC Reserves and Facilities Manager Comments).

[64] Refer to paragraph 233 of the s42A report.

[65] Refer to paragraph 234 of the s42A report.

[66] Refer to pages 1-4, Attachment 16 to the s42A Report (WBOPDC Reserves and Facilities Manager Comments).

[67] Refer to page 2, Attachment 16 to the s42A Report (WBOPDC Reserves and Facilities Manager Comments).

managed and that the proposal will in fact provide protection of the Strategic Council asset and, in my opinion, will be positive or, at worst, neutral.

CULTURAL EFFECTS

7.42 No submissions regarding potential effects of the proposal on cultural values have been received, however, Heritage New Zealand Pouhere Taonga support the use of an Accidental Discovery Protocol ("**ADP**").

7.43 Based on the summary set out in the section 42A report,[68] and adoption of proposed consent conditions, which include an ADP, I consider the potential and actual effects on cultural values are no more than minor.

POSITIVE EFFECTS

7.44 The Reporting officers note that positive effects are relevant and are identified in section 6.1 of the AEE and addressed through technical assessments and peer reviews.[69]

7.45 In my view, the positive effects of the proposal can be summarised as follows:

7.45.1 The proposal protects Three Mile Creek Reserve land, including ecological values associated with the vegetated sand dune and public amenity values associated with the future opportunity for Council to provide pedestrian access (should they wish to do so);

7.45.2 The proposal protects adjacent existing residential development from coastal erosion; and

7.45.3 The proposal will result in predominantly Moderate-High positive effects on natural character, landscape, and visual amenity.

SUMMARY

7.46 In respect of noise and vibration, avifauna, ecology, coastal process and landscape and amenity effects, the opinions of the Applicant's technical experts, and those of Council, seem to be aligned, such that undertaking the proposed activity in accordance with the proposed conditions of consent

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[68] Refer to paragraphs 254-261 of the s42A report.

[69] Refer to paragraph 262 of the s42A report.

(noting the proposed amendments from the Applicant's experts) will ensure that adverse environmental effects on these matters will be no more than minor.

7.47 The key matter of difference remaining pertains to the proposed alignment of the Type 1 extent of the structure. I note that it is the position of the Applicant that the 5m distance is appropriate when balancing the effects of the proposal. I address the matter of the alternative location later in my evidence (Refer to Section 17 below).

7.48 Notwithstanding, the Applicant's engineer has considered the potential effects of an alternative alignment and as such, is of the opinion that whether located 1.5m or 5m from the boundary, or some distance between, the effects of the proposed structure will be appropriately provided for through the same set of consent conditions. This is also supported by the other technical experts on behalf of the Applicant.

7.49 Overall, subject to the adoption of the proposed consent conditions (to be provided as part of the Legal Submissions on behalf of the Applicant in advance of the hearing), I consider that the effects of the proposal are no more than minor and acceptable.

8. RESPONSE TO SUBMISSIONS

8.1 I have reviewed all submissions received on the application and agree with the summary of the key matters as provided in Section 6 of the section 42A report.

8.2 It is clear from the submissions in opposition to this resource consent application, that there is concern regarding the proposal. I acknowledge that these views are genuinely held. I also note that concern does not in itself constitute an environmental effect.

8.3 By way of summary, I note that:

8.3.1 The potential effects of the proposal on coastal processes, in particular end effects, erosion and flooding, was a matter raised in almost all submissions.

8.3.2 The potential effects of the proposal on the transport network, and the use of alternative access points to the site were matters raised in submissions[70].

8.3.3 The potential effects of the proposal as a result of noise and vibration, was a matter raised in many submissions[71].

8.3.4 The potential effects of the proposal on terrestrial ecology, in particular native dune vegetation, was a matter raised in many submissions[72].

8.3.5 The potential effects of the proposal on avifauna, in particular dotterels, was a matter raised in many submissions[73], most notably, the submission by Dot Watch (Submitter 14) and Royal Forest and Bird Protection Society of New Zealand Inc ("**Forest and Bird**")(Submitter 20).

8.3.6 The potential effects of the proposal on landscape and visual amenity, was a matter raised in many submissions[74].

8.3.7 The potential effects of the proposal on public access and the appropriateness of locating the proposal within a public reserve were matters raised in a number of submissions[75].

8.4 I acknowledge the more substantive submissions of the Department of Conservation, Forest and Bird, Dot Watch Waihī Beach, and Waihī Beach Environment Society which address a broad range of matters.

8.5 Where submitters raised concerns in respect of the different effects of the proposal, these have been addressed in the expert evidence of Mr Keesing, Ms Bull, Mr Davis, Mr Coombs, and Mr Whitlock. Additionally, responses to these matters, where directly relevant to the proposal, are captured in my

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70 Including Submitters 7, 10 and 23.

71 Including Submitters 3, 5, 6, 7, 10, and 23.

72 Including Submitters 1, 2, 4, 6, 8, 9, 11, 13, 14, 16, 17, 19, 20, 21, 23, 24, 25, 26, and 29.

73 Including Submitters 1, 2, 4, 6, 8, 9, 11, 13, 14, 16, 17, 19, 20, 21, 23, 24, 25, 26, and 29.

74 Including Submitters 12, 13, 14, 15, 16, 17, 19, 20, 23, 24, 25, 26, 29.

75 Including Submitters 3, 4, 5, 10, 11, 12, 13, 14, 15, 17, 19, 20, 24, 26, and 29.

commentary on the effects of the proposal earlier in this evidence (where I have relied on the expert technical evidence provided the independent specialists retained by the Applicant).

8.6 Notwithstanding the differing position on coastal processes, in respect of different effects identified above, the opinions of the Applicant's respective experts, and those of Council, seem to be generally aligned, such that undertaking the proposed activity in accordance with the proposed consent conditions will ensure that adverse environmental effects on these matters will be no more than minor.

8.7 Regarding those submissions[76] which raise the issue of alternative access for construction, I respond as follows. In developing the application, alternative access points via Mako Avenue or the southern end of Broadway, were investigated but disregarded as the approach was to minimise disruption to residences and minimise effects on pedestrian beach access and amenity, and on the wider CMA and coastal environment.

8.8 Mako Avenue is located at the southern end of the Island View Reserve, some 800m from Three Mile Creek, and provides for only pedestrian access to the beach. I note that the existing entrance off Broadway Road (approximately 2kms from Glen Isla), south of Mako Avenue provides vehicle access to the beach. I note that provision of vehicle and machinery access from these locations would require vehicle and machinery to travel a significantly greater distance along the beach, within the CMA, in a manner which is not provided for by resource consent RM24-0537-LC.01. In addition, widening of existing pedestrian access (at Mako Ave) to accommodate access for vehicle and machinery would require additional disturbance of vegetation, result in disruption to residents and existing public access and increase potential for adverse effects on the amenity of beach users.

[76] Including Submitters 7 and 10

8.9 In my view, any of the alternative access points would give rise to additional adverse effects, many which are not within WBOPDC's jurisdiction and which are already consented.

8.10 In that regard, the use of vehicles in the CMA to access the proposed works site from the existing vehicle access north of Three Mile Creek has been granted resource consent from BOPRC and this is also the access point for the Three Mile Creek management works authorised under resource consent RM19-0613.

8.11 I understand that this location is also used multiple times throughout the year by WBOPDC contractors to provide heavy machinery access for the clearing of sediment from Three Mile Creek.

8.12 Based on the above, I consider the vehicle and machinery access to the site via the existing vehicle access north of Three Mile Creek is appropriate and any effects will be negligible.

8.13 A number of submissions also raised concerns that the proposal was inconsistent with the NZCPS, the objectives and policies of the District Plan, the Bay of Plenty Regional Policy Statement. I have broadly responded to these matters in my commentary on the statutory provisions below. As will become apparent, I am of the view that the proposal sits comfortably within the relevant statutory framework.

9. STATUTORY ASSESSMENT

Introduction

9.1 The proposal is located on land, above MHWS, at Waihī Beach, within the jurisdiction of the District Council.

9.2 The primary relevant planning document is District Plan 20. In accordance with section 75(3) of the Resource Management Act 1991 ("**RMA**") the District Plan is required to "give effect to" the NZCPS and the Bay of Plenty Regional Policy Statement ("**RPS**").

9.3 While the NZCPS remains a mandatory consideration for councils during plan-making processes, its direct application in resource consent assessments is generally unnecessary because the operative district plan (and operative regional plans and regional policy statements)is required to have given effect to it. It is well-established planning practice that reference back to the higher-order planning documents in resource consent processes is only required where the plan in question is silent on a relevant issue, ambiguous, or inconsistent, or where conflict arises between plans.

9.4 In this case, the District Plan contains clear and direct provisions that reflect and implement the outcomes sought by key NZCPS policies—particularly Policies 6, 13, 15, and 24 to 27. These include:

9.4.1 NZCPS Policy 6 – promoting appropriate use and development in the coastal environment – is reflected in Objective 5.4.1 and Policy 5.4.1(a), which require that subdivision, use, and development in the Coastal Protection Zone be managed to preserve natural character and avoid inappropriate development.

9.4.2 NZCPS Policy 13, which seeks to preserve the natural character of the coastal environment, is implemented through Policy 5.4.1(b). This requires that adverse effects on areas of high natural character be avoided where practicable. The District Plan provides performance standards limiting vegetation clearance and landform modification in the Coastal Protection Zone, thereby preventing cumulative degradation of character.

9.4.3 NZCPS Policy 15, which provides for the protection of natural features and landscapes, is given effect through the identification and mapping of Outstanding Natural Features and Landscapes (ONFLs). Policy 6.2.1(b) requires that development within ONFLs be sympathetic to their values, with land use controls designed to minimise adverse visual and landscape effects.

9.4.4 NZCPS Policies 24–27, relating to the management of coastal hazard risks, are addressed through the District Plan’s coastal hazard overlays, which apply setback requirements, minimum floor levels, and activity status restrictions in high-risk areas. Policy 8.2.1(c) discourages reliance on hard protection structures, instead promoting softer, adaptive management approaches consistent with national policy direction.

9.5 It is clear that the District Plan effectively operationalises the intent and direction of the NZCPS, providing a comprehensive framework for managing development in the coastal environment. It includes spatial controls, regulatory mechanisms, and assessment criteria that collectively address natural character, landscape protection, coastal hazard resilience, and sustainable development.

9.6 As the District Plan is both operative and directive with respect to the key issues raised by this proposal, and in my opinion, there is no ambiguity, gap, or conflict with the higher-order policy instruments, the statutory assessment can be focused on the provisions of the District Plan.

9.7 In my opinion, this position is shared by the reporting officers as the section 42A report explicitly acknowledges that the District Plan gives effects to the requirements of the NZCPS and the RPS in multiple locations.[77]

9.8 Further to the above, it is notable that in identifying relevant provisions in accordance with s104(b) of the RMA, I took into account:

9.8.1 The application is made to the WBOPDC, and the District Plan assists the WBOPDC to carry out their functions in order to achieve the purpose of the RMA;[78]

9.8.2 The AEE includes an assessment against the relevant provisions of the RPS, which both the District Plan and RCEP give effect to;

9.8.3 The proposed coastal erosion structure is <u>not located</u> in the CMA; and

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[77] Refer to paragraphs 277, 288 and 331 of the s42A report.

[78] Section 72 of the RMA.

9.8.4 A separate application for the requisite BOPRC resource consents was made, and has now been granted, which included an assessment of the relevant RCEP provisions.

10. DISTRICT PLAN ANALYSIS

10.1 As the primary planning instrument in this case, I provided a detailed analysis of the proposal against the most relevant provisions of the District Plan in Section 8.7 of the AEE. In addition, the response to the second section 92 request provided an assessment against additional provisions of Chapter 5 – Natural Environment and Chapter 8 – Residential of the District Plan. This analysis was informed by the comprehensive technical assessments undertaken on behalf of the Applicant by a range of experienced independent specialists which include a range of measures to address the actual and potential adverse effects of the proposal. I do not repeat this analysis in detail here.

10.2 As concluded in that assessment, I found the proposal to be consistent with the relevant provisions of the District Plan. I note that the section 42A report[79] concurs with this position and states:

In considering the relevant objectives and policies in full, it is my opinion that, overall, the application will be consistent with the objectives and policies of the Western Bay of Plenty Operative District Plan 2012.

10.3 Regarding the section 42A report summary:[80]

10.3.1 I agree that the policies and rule framework do not require avoidance of hard protection structures. While I addressed managed retreat earlier in this evidence[81], I generally agree with the section 42A report that the proposed coastal protection structure does not preclude consideration of managed retreat as a mechanism that <u>could</u>, if

[79] Refer to paragraph 297 of the s42A report.

[80] Refer paragraph 278 of the s42A report.

[81] Refer to paragraph 6.4-6.9 of this evidence

required, be relied upon in the future as one tool in a suite of hazard mitigation responses.[82]

10.3.2 In my view, the reporting officers' assessment against the relevant District Plan provisions underplay:

- The significance of the restoration and enhancement benefits associated with the proposal. Notably, ecologists agree that the site is recognised as IBDA-B1 under the RCEP, contains significant indigenous biodiversity values, and Policy 11 of the NZCPS applies – therefore, there is benefit associated with the enhancement of this area post construction; and
- The significance of the reserve area noting Mr Watson's (District Council Reserves and Facilities Manager) response to the reporting officers comments identifies that, in accordance with the Reserves Act 1977, reserves are 'strategic assets'.

10.4 Based on the consideration of options that is described in the AEE, it is my opinion that:

10.4.1 The Applicant has considered a number of options for protection at the site and the proposed coastal protection structure with mitigation measures is considered the best practicable option;

10.4.2 The design of the proposal has been refined over several iterations to avoid adverse effects on the natural environment such that potential adverse effects are considered to be appropriately avoided, remedied or mitigated, with ecological benefit and predominantly positive natural character, landscape and visual amenity effects.

10.4.3 Given the presence of existing residential development there is no available space for the dunes to migrate, and the proposal seeks to enhance the natural defence afforded by the dunes by undertaking enhancement planting.

[82] Refer paragraph 282 of the s42A report.

11. NEW ZEALAND COASTAL POLICY STATEMENT (NZCPS)

11.1 For the sake of completeness, and to respond to matters raised in the section 42A report and submissions, I set out below my assessment of the NZCPS in the context of this application, noting again that the NZCPS is of limited relevance to decision making as the District Plan postdates the NZCPS, is a statutorily mature document and gives effect to it. Decision makers would only need to refer back to it if the District Plan were considered to be incomplete or inaccurate, which, in my opinion, it is not.

11.2 A detailed assessment of the proposal against the relevant NZCPS provisions has been provided in Section 8 of the AEE and further analysis was provided as part of the responses to the s92 further information requests. I have not repeated that analysis here but note that I concluded that the proposal was consistent with the objectives and policies. I remain of that opinion.

11.3 The section 42A report[83] provides an assessment of the proposal against the NZCPS and identifies a number of provisions which the proposal is deemed to be inconsistent with being:

11.3.1 Policy 6 – Activities in the coastal environment[84]; and

11.3.2 Objective 5 and Policies 24, 25, 26 and 27[85] – coastal hazard risks.

11.4 I disagree with that assessment, including in respect of its relevance, and note the following.

NZCPS - Policy 6

11.5 Policy 6 has two distinct elements, one focused on the coastal environment (Policy 6(1)) and one focused on the CMA (Policy 6(2)). When considering the coastal environment provisions, Policy (1)(a) – (j), I consider that those provisions have a very limited relevance to the proposal as they are focused on activities including infrastructure, built development, urban growth, tangata whenua needs, and renewable resources matters. Furthermore, there is no

83 Refer to paragraph 331 – 354 of the s42A report.

84 Refer to paragraph 345-346 of the s42A report.

85 Refer to paragraph 347-351 of the s42A report.

specific provisions which speak to coastal hazard management in the coastal environment.

11.6 In the commentary on Policy 6, the section 42A report[86], states "*Before avoiding hard protection structures on public land there should be evidence that alternatives such as managed retreat or soft engineering are not practical, and that the structure is the most appropriate method for addressing the hazard.*"

11.7 I disagree that Policy 6(1) requires an assessment of alternatives for activities in the coastal environment as all provisions are silent on any such test. In any case, a number of options have been thoroughly assessed, and the proposal is considered the best practicable option.

11.8 In the commentary on Policy 6, the section 42A report[87], also states *"In this case (and as further discussed to follow), the proposal will benefit only a few (seven) private residential properties, there is no significant cultural, public or environmental benefit, managed retreat is in place for all but one of these properties and the Council's specialist highlights alternatives. In this context the proposal is not supported by Policy 6."*

11.9 I do not consider that Policy 6 requires demonstration of a 'benefit' for an activity in the coastal environment. Whilst Policy 6(2) does refer to considerations that could be categorized as "benefits" (such as "contributions to social, economic and cultural wellbeing") that provision only applies to activities in the CMA and is therefore not relevant here. Despite this, and as set out in the Applicant's supporting technical evidence and referenced earlier in my evidence, the proposal:

11.9.1 Provides for protection of Policy 11(a) species within the Glen Isla dune system and results in a wider ecological benefit through the removal of pest plants and the proposed mitigation planting and management of the disturbed dune area. This will positively

[86] Refer to paragraph 346 of the s42A report.

[87] Refer to paragraph 346 of the s42A report.

contribute to the biodiversity of the dune area and neighbouring reserve which both sit within the IBDA-B overlay under the RCEP.

11.9.2 Provides a stabilised environment behind and on top of the structure which would provide the option for future public access in the event that sea level rise and climate change render the existing open coast area impassable and protects the reserve area which the District Council considers to be a 'strategic asset'.

11.9.3 Will not result in any adverse impacts on landscape, natural character or historic heritage.

11.9.4 Has a functional need to be located in the coastal environment in order to protect Council reserve land and the vegetation it supports, as well as the existing residential development adjacent to the dune from coastal erosion and sea level rise impacts.

11.9.5 Does not seek to enable further urban development but provides protection for that which is already lawfully present.

11.9.6 Recognises that managed retreat is not a requirement but part of a wider tool box of options which could be used in response to natural hazards in a broader context for the coastal environment.

11.10 Overall, to the extent that it is relevant, I consider that the proposal is consistent with Policy 6(1). Furthermore, Policy 6(2) is not relevant.

NZCPS - Objective 5 and Policies 24, 25, 26 and 27

11.11 I consider the proposal aligns with both elements of Objective 5 as it is a direct response to an identified coastal hazard and the proposal incorporates natural defences through soft engineering, including a buried structure and dune replanting using native species for stability.

11.12 I disagree with the reporting officers' emphasis[88] that Objective 5 *'promotes (but does not mandate) managed retreat for existing developments'*.

11.13 In my view, the wording of Objective 5—particularly the phrase *"including managed retreat"*—suggests that managed retreat is one of several available hazard response options. It is not presented as a priority or default tool to be used in isolation of other hazard response tools.

11.14 As set out earlier in my evidence, I consider that the reporting officers have overemphasized the relevance and practicality of managed retreat as a hazard response tool at Waihī Beach.

11.15 I agree with the reporting officers that Objective 5 is implemented through Policies 24–27. However, I disagree with the conclusion in the section 42A report[89] that these provisions discourage hard protection structures in this location and that the proposal is inconsistent with these policies. I respond to the policy commentary focused on the inconsistencies raised by the reporting officers[90] below, noting first that despite the conclusion expressed by the reporting officers, the section 42A report does not in fact identify any specific inconsistency with Policy 24:

"The Council's specialist coastal engineer has identified other viable options including natural defences (Policy 25(e)), Policy 26))."

11.15.1 For existing development at Glen Isla Place, the opportunity to avoid coastal hazard risk by relying on natural defences has passed. The Applicant's coastal engineer has determined, through an options-analysis process, that a hard protection structure, supported by soft engineering measures (buried structure and dune replanting), is the only practical and effective response. Historical efforts to use soft options alone have proven unsuccessful. Policy 25(e) uses the words "discourage" and "promote" rather than directive language such as "avoid". In my opinion, this does not preclude hard protection and

[88] Refer to paragraph 347 of the s42A report.

[89] Refer to paragraph 351 of the s42A report.

[90] Refer to paragraph 351 of the s42A report.

enables a site-specific assessment and response to coastal hazards, which has been undertaken as part of this proposal and has identified this proposal as appropriate.

"The proposal increases the risk of adverse effects, in particular end of wall effects, scouring, loss of dry beach (Policy 27(1)(d)). These adverse effects and their mitigation are to be discussed further at the hearing and include adverse social costs (Policy 27(1)(d)."

11.15.2 I note that both the Applicant and Council coastal engineers agree that a hard structure is justified along the Type 1 section of the Glen Isla dunes. While there is disagreement on the structure's extent, the proposed location and design have been developed to minimise environmental and amenity effects. In my opinion, Policy 27(1)(d) is not about avoiding, or even minimising effects, but about 'recognising' and 'considering' them, i.e. thoroughly assessing environmental and social costs, and it is really concerned with those costs where they are the result of protecting private property. In this case, the proposal seeks to protect public assets, in the form of the 'strategic asset' being the reserve, and the Applicant has thoroughly considered environmental and social costs associated with the proposed coastal protection.

11.15.3 The analysis against the policy in the section 42A report, focuses exclusively on 'coastal process' effects, which unduly compartmentalises the assessment of the proposal, ignoring the environmental and social benefits associated with the proposal.

"The seven residential properties that would benefit from the hard protection structure are not extensive or permanent, they can be removed / relocated via the managed retreat that is in place for all but one of these properties (Policy 25(b), Policy 27(a)). Managed retreat is a transitional mechanism and timeframe for moving to more sustainable approaches which aligns with Policy 27(1(e))."

11.15.4 I consider that while some ancillary buildings might be relocatable, the suggestion that the primary dwellings can simply be removed or relocated is unrealistic. Additionally, as previously outlined, managed retreat imposes social and financial consequences and has limited precedent as an effective hazard response therefore, it is not a realistic hazard response tool in this instance. I understand that the assertion by the reporting officers is that "managed retreat is in place" however, this is an overstatement of the provisions in the consents on the relevant properties, and this will be addressed in Legal Submissions on behalf of the Applicant.

"A public reserve does not automatically qualify for hard structure protection, unless it is significant (context dependent) based on public use, infrastructure, coastal values and status and at significant risk from erosion/ inundation. The public reserve land behind the structure, although a Council strategic asset, is not so 'significant' under this policy that it warrants protection as public use is very low and is discouraged to protect the dunes, despite this being part of a Council managed reserve (Policy 27(1)(c)). This public land does not contain infrastructure, nor does it serve as a community gathering place or public thoroughfare to the DOC land, and natural environment considerations aside, the benefits of its preservation is limited to seven residential properties."

11.15.5 I acknowledge the Council reserve may not be of national or regional significance under Policy 27(1)(c), but its broader ecological and future access value is being underplayed. The reserve is part of the wider IBDA-B1 area and supports several indigenous species referenced under Policy 11(a). Additionally, over time and if sea level rise predictions are realised, this dune area (a Council 'strategic asset' reserve) may become a critical public access route, and the protection as a result of the structure should be viewed through a longer-term lens. The benefits of providing for the structure and preserving this area extend beyond the coastal hazard protection of the adjacent residential properties and extend to the Council in protection of their assets which would otherwise be lost.

"Whilst NZCPS policy 11(a) and 11(b) items are identified and offered mitigation as part of the suite of conditions from the Council's specialist (ecology), the proposal is not for the protection of notable taxa or existing infrastructure of national or regional importance. The residential properties are relocatable (policy 27(c))."

11.15.6 In response, I note the reference should be to Policy 25(c), not 27(c). I have addressed both the ecological benefits of the proposal and the practical limitations of managed retreat. For these reasons, I disagree with the reporting officers conclusion.

"A structure on public land to protect private property is inconsistent with Objective 5, which promotes managed retreat for existing developments (and this is in place for all but one of the GIPS properties). (Policy 27(1)(b)), Policy 25(e))."

11.15.7 In response, the Applicant has evaluated a wide range of options, including the "do nothing" scenario, as detailed in both the AEE and Appendix F (Engineering Design Report). The analysis demonstrates that intervention is needed. In my opinion, Objective 5 is implemented by Policy 27(4) (among others), and Policy 27(4) clearly anticipates structures on public land, provided they are "necessary" and provide significant benefit — so a structure that is supported under this policy cannot be 'inconsistent' with the objective.

"While the coastal protection structure may offer short-term dune enhancement, it is likely to undermine natural coastal defences and resilience over time (Policy 27(a)), Policy 26)."

11.15.8 I consider that the reference should be to Policy 25(a), as there is no Policy 27(a). The hazard risk is already established for this location, and the preferred design—incorporating soft and hard measures—provides a long-term solution while minimising environmental and amenity impacts. In my opinion, the proposal supports rather than undermines the resilience of the coastline.

"As a hard protection structure to protect the land behind the proposal is limited in its benefit, in the context of the NZCPS 2010, and in this regard is not a strategic option relative to the option of 'do noting' as managed retreat is in place for all but one of the GIPS properties (Policy 27(b))."

11.15.9 In response, I note there may be an error here in that the reference to Policy 27(b) may be a reference to Policy 27(1)(b). As noted, the Applicant has robustly considered alternatives, including managed retreat and "do nothing," and concluded that a physical intervention is required. This approach is consistent with the policy's emphasis on evaluating the full range of options.

11.16 In my view, the proposal is consistent with Objective 5 and associated Policies 24–27 of the NZCPS. It represents a carefully considered and site-specific response to an existing and ongoing coastal hazard risk affecting reserve land and established residential development. While managed retreat is identified in Objective 5 as one possible tool, it is not prescribed as the default or sole response. The proposed structure incorporates both hard and soft engineering measures—specifically, a buried wall with dune restoration and planting—demonstrating a clear preference for minimising adverse environmental and visual effects while enhancing the natural resilience of the dune system over time.

11.17 In my opinion, in their assessment, the reporting officers treat the NZCPS as only supporting hard protection structures if they are intended to protect nationally or regionally significant infrastructure but that is not the case. I consider there is no policy 'block' on hard protection to protect 'lesser' resources.

11.18 Further, the policies clearly acknowledge that hard protection might be considered to protect private property, with the key considerations being that the options analysis should focus on reducing hard protection (27(2)(a)), but hard protection may be appropriate if it is "necessary" (27(3)), designed to minimise adverse effects (27(3)), and - in the case of using public land - will provide significant public/environmental benefit (27(4)).

11.19 The proposal reflects a practical and balanced approach that takes into account the existing residential development at Glen Isla Place (which has been authorised by the Council), the limited feasibility of retreat in this location, and the need to protect both private property and public reserve land. The optioneering and technical assessments underpinning the proposal show that it is necessary from a coastal hazards protection perspective (which is also supported by the Council's engineer as previously stated), the most effective and least environmentally damaging solution available. For these reasons, I consider the proposal gives effect to Objective 5 and is consistent with the intent and direction of Policies 24 to 27 of the NZCPS.

11.20 Regarding the need for a pre-cautionary approach (Policy 3), the section 42A report[91] considers that the proposal *'does not give effect to / align with the intent of an integrated and strategic precautionary planning approach allowing for natural adjustments for coastal processes'*.

11.21 An assessment against this Policy 3 was provided in the second s92 response.

11.22 In summary, I considered that a precautionary approach need not be adopted in this circumstance because the Application is supported by detailed technical information such that the adverse effects of the proposal on the coastal environment are not *'uncertain, unknown, or little understood, but potentially significantly adverse'*, as such, it follows that a precautionary approach in relation to this proposal is not necessary.

11.23 In the event that a 'precautionary approach' was required, in my opinion, the proposal itself would be consistent with Policy 3(2)(a) – (c) as the proposal:

11.23.1 Will protect the properties and Council reserve area which is located behind structure;

11.23.2 Is located sufficiently back from the CMA to allow coastal processes to continue and the structure will enable the dune environment (including flora and fauna) to be retained; and

[91] Refer to paragraph 354 of the s42A report.

11.23.3 The stabilisation and protection of the dune environment will provide for natural character and landscape values and amenity (including provision for access in the longterm) in the area surrounding the works.

11.24 Based on the above, I disagree with the reporting officers assessment and I consider that it is not appropriate to look at the single provision of 'allowing for natural adjustments' to be sufficient grounds for making a determination on inconsistency of Policy 3 as a whole.

NZCPS Summary

11.25 While I accept that managed retreat is a policy / response option under the NZCPS—it is one of many coastal hazard response options, and in any event, is not mandatory. The Applicant has assessed all options in line with Policy 27(1)(b), and technical evidence supports the need for intervention thus confirms that the proposed structure is 'necessary'. Without protection, there is a credible risk of coastal hazards and erosion impacts affecting private property and the Council's reserve which is a strategic asset and also sits within an IBDA-B area so has recognised ecological values.

11.26 The Three Mile Creek groynes[92] do not protect this site and cannot be relied on to mitigate long-term hazard risks, especially given the effects of climate change and sea level rise are the primary driver for erosion at the Glen Isla dune.

11.27 Managed retreat remains largely untested in New Zealand and presents significant social and economic challenges. In this context, the proposed buried wall with dune restoration offers a low-impact, practical response that protects existing development while maintaining natural character and providing protection of the Council reserve and the values associated with it.

[92] Refer paragraph 7.3 of Mr Davis' evidence.

11.28 It is my opinion that the proposal is consistent not only with Objective 5 and Policies 24–27, but also with the broader NZCPS focus on resilience, natural character, and site-specific hazard management.

11.29 Overall, I consider that the coastal protection wall located within the Glen Isla dune environment is consistent with the NZCPS.

12. REGIONAL POLICY STATEMENT (RPS)

12.1 Noting my earlier comments on the primary planning instrument being the District Plan, as it gives effects to the higher order documents , the relevant provisions of the RPS are assessed in Section 8.6 of the AEE and further assessment against selected provisions was provided in response to the WBOPDC's second s92 request. My overall conclusions are the proposal is consistent with the relevant provisions of the RPS.

12.2 As set out in the section 42A report[93], the assessment against the relevant RPS polices differs from mine primarily on the basis of promoting the use of natural defences against coastal hazards and discouraging hard protection structures.

12.3 In the interests of brevity I do not provide further commentary here, because I have already addressed those same issues when assessing the NZCPS.

12.4 I remain of the opinion that:

12.4.1 Proposed dune enhancement and replanting as part of the proposal will protect and restore the capacity of the sand dunes to provide existing development with a protective buffer from coastal erosion.[94]

12.4.2 The proposal has considered a range of options, as set out in Section 4.3 of the AEE, it incorporates both hard and soft engineering options and does not constitute an "inappropriate" hazard mitigation that must be avoided.[95]

93 Refer to paragraph 327 – 330 of the s42A report.

94 Policy CE 4A of the RPS

95 Policy CE 12B of the RPS.

12.4.3 The proposal has been designed and located to be consistent with the other relevant policies of the coastal environment chapter.[96]

12.4.4 The proposal will not affect public access 'to and along the CMA' in the future as it will provide a stabilised and protected dune environment within the Council's reserve area which can be used for future access routes and connects to existing accessways in the vicinity of Glen Isla Place.

13. REGIONAL COASTAL ENVIRONMENT PLAN (RCEP)

13.1 The primary assessment of the relevant provisions of the RCEP was undertaken as part of the Regional Council application process. This assessment was the basis for the request from the District Council, in the second section 92 request for further information, which sought an assessment of the proposal against relevant provisions of the RCEP, with particular focus on integrated management, natural heritage, iwi resource management and coastal hazards.

13.2 As set out in that assessment, I consider the proposal to be generally consistent with the relevant provisions of the RCEP. While there is agreement in some areas, I note that the section 42A report does not wholly concur with this position. I respond to the matters of disagreement that are considered most relevant below.

13.3 Regarding a 'functional need' for the structure[97], I disagree that the structure does not have a functional need to be located within the coastal environment given the intention of the structure is to protect against coastal hazards and erosion and that the proposed structure design, including the soft engineering elements, have been determined through an options assessment process. As previously discussed, while the location from the property boundary is debated, the Council's engineer acknowledges that a hard structure is justified for coastal protection along the Type 1 section, and that the structure

[96] Policies CE 2B, 4A, 6B, 8B, 9B, and 10B of the RPS.

[97] Refer to paragraph 305 of the s42A report.

is appropriately designed. In my opinion, this further supports the position that there is a functional need for a protection structure at the Glen Isla dunes.

13.4 Overall, I consider the proposal has a functional need to locate in the coastal environment, is an appropriate form, scale and design to be compatible with the existing sand dune environment and will not adversely affect the natural processes or ecological functioning of the CMA and therefore is consistent with Policy NH1.

13.5 Regarding the commentary on the coastal hazards objectives and policies, I note the primary disagreements are driven by the differing positions between the Council's engineer and the Applicant's engineer with respect to design parameters, location and alternative solutions. These aspects have been responded to in the evidence of Mr Davis on behalf of GIPS with the key conclusions being discussed in Section 7 (Coastal Processes and Hazards) above.

13.6 Acknowledging the above and regardless of agreement on any final location of the structure, in my opinion, the proposal sits comfortably within the decision-making framework for new hard protection structures in the coastal environment, as set out in Policies CH 9 and CH 10. Of particular relevance, the proposal:

13.6.1 As assessed in preceding sections of this evidence, is supported by technical evidence and has been developed in accordance with the relevant policies of the NZCPS and RPS;

13.6.2 Recognises the importance of soft protection methods, where practicable, and incorporates these into the design methodology through dune reinstatement and planting;

13.6.3 Is the best practicable option when considering the historic erosion and modelling of future coastal erosion / hazard scenarios. Therefore, it is designed and located to withstand coastal processes which have been projected in accordance with accepted best practice[98], and to avoid significant adverse end effects on neighbouring properties; and

13.6.4 Has benefited from the input of suitably qualified and experienced ecological, landscape architects and coastal engineering professionals who have designed the structure itself and the mitigation and management package which supports the proposal;

13.6.5 While located on public land, it gives rise to broader benefits associated with the protection of vegetated sand dunes from coastal erosion processes. It is also acknowledged that this protected reserve land could, at the WBOPDC's discretion, be used for public access in future; and

13.6.6 Is located landward of the CMA and the construction works will not result in any CMA impacts; and

13.6.7 Will be subject to a separate agreement (outside of the RMA process) with the WBOPDC Reserves and Facilities as the 'landowner', which will formalise long-term responsibilities for the structure, including anticipated maintenance methods, timing and funding over the design life of the structure, and the thresholds for any adaptation actions that may be required into the future.

13.7 For the reasons set out above, and based on the assessments that the proposal is not inconsistent with the relevant NZCPS, RPS and District Plan provisions, I disagree with the concluding statement in the section 42A report that:

13.7.1 That the proposed coastal protection is inconsistent with the overarching policy direction at the regional and national level and the outcomes are not supported[99]; and

98 Note, Council engineer agrees that structural design is appropriate.

99 Refer to paragraph 324 of the s42A report.

13.7.2 As a new hard coastal protection structure on public land to protect private property, the proposal does not align with the regional policy direction for coastal hazard response and is inconsistent in this regard.[100]

14. RESPONSE TO PLANNER'S OVERALL CONCLUSION ON ALIGNMENT WITH REGIONAL AND NATIONAL COASTAL ENVIRONMENT/ MANAGEMENT POLICIES

14.1 Paragraphs 355 and 356 of the section 42A report set out the reporting officers' conclusion of the proposal against the regional and national direction / outcomes for the management of coastal hazard inundation with sea level rise.

14.2 I accept that the NZCPS, RPS, and RCEP establish a strong policy preference for avoiding hard protection structures where soft options are viable, and where risk to development can be managed through retreat or non-structural responses. However, I disagree with the conclusion that the proposal is inconsistent with this direction when properly considered in context. My reasons are set out below:

14.2.1 **Functional Need & Alternatives** - Soft protection measures have been trialed and found ineffective at this location. A full optioneering process has confirmed the combined hard and soft approach as the most effective response. The Council's engineer agrees a structure is warranted on the Type 1 frontage.

14.2.2 **Use of Public Land** - The structure protects not only private property but also Council-managed reserve land that has future ecological and access value. It does not enable further development and is consistent with existing land use. That is exactly the situation that the Environment Court considered when approving a new seawall at Orewa Beach. [101]

[100] Refer to paragraph 325 of the s42A report.

[101] Environment Court Case number - ENV-2017-AKL-00075.

14.2.3 **Ecological & Public Benefits** - The dune restoration and replanting will enhance indigenous biodiversity and improve resilience. These benefits extend beyond those realised at the GIPS properties and align with NZCPS Policy 11 and the RCEP's natural heritage provisions.

14.2.4 **Managed Retreat** - Retreat is one of several tools under NZCPS Objective 5—it is not mandatory. Its practical limitations, including cost and social impact, make it unsuitable in this context (at this time).

14.2.5 **Natural Processes & Beach Function** - The structure is landward of the CMA and allows for ongoing coastal processes. Mitigation, including planting and, if considered necessary, sand replenishment, will minimise any long-term effects on beach form or access.

14.2.6 **Localised Hazard Response** - This is a targeted intervention approach addressing a specific erosion risk at the Glen Isla dunes. Whole-of-catchment approaches are not required for site-specific hazard management under the NZCPS or RCEP.

14.2.7 **Precautionary Approach** - The effects of the proposal are well understood and supported by detailed technical input. Even if a precautionary lens were applied, the design promotes resilience and avoids significant adverse effects.

14.3 Overall, it is my opinion that the proposal reflects a balanced, site-specific response that incorporates both hard and soft protection, informed by detailed technical input and consistent with the NZCPS, RPS, and RCEP when read as a whole. While the policy framework includes managed retreat and soft options, it does not prohibit hard structures where justified. In this case, the structure is necessary to protect both private property and Council-owned land, supports ecological resilience, and has been carefully designed to minimise long-term impacts. The relevant statutory provisions recognise that, particularly with regard to protection from natural hazards, there are competing outcomes to be achieved in the coastal environment.

14.4 Accordingly, I do not agree that the proposal is inconsistent with regional or national direction. Rather, it is an example of a pragmatic, well-integrated hazard response consistent with Objective 5 of the NZCPS and the relevant provisions of the RPS and RCEP.

15. NATIONAL POLICY STATEMENT FOR INDIGENOUS BIODIVERSITY (NPS-IB)

15.1 I note there is no disagreement identified in the section 42A report[102] on the assessment of the proposal against the NPS-IB, as such, I have not duplicated the analysis provided in the Section 8.5 of the AEE or provided any further commentary here.

16. OTHER RELEVANT MATTERS

16.1 Section 13 of the section 42A report identifies the 'other relevant matters' in accordance with s104(1)(c) and these include:

16.1.1 Landowner Approval;

16.1.2 The Tauranga Moana Iwi Management Plan;

16.1.3 Western Bay of Plenty Coastal Erosion Response Policy 2017;

16.1.4 Katikati - Waihī Beach Ward Reserve Management Plan 2018;

16.1.5 Marine and Coastal Area (Takutai Moana) Act 2011.

16.2 I am in general agreement with the reporting officers in terms of their conclusions against each of the above and I do not repeat the key elements here.

[102] Refer to paragraph 357 – 362 of the s42A Report

17. COUNCIL'S SUGGESTED ALTERNATIVE LOCATION

17.1 In the review of the proposal by the Council's engineer, their conclusion states:[103]

> *We acknowledge that a hard structure is justified for coastal protection along the Type 1 section, and that the structure is appropriately designed. However we consider that its alignment should be adjusted to comply with the NZ Coastal Policy Statement in that hard structures should be designed to "minimise adverse effects on the coastal environment". Locating the structure at least 5m landward to the property boundary would reduce the impact that the hard structure has on the beach, coastal environment, and end effects on the area to the south.*
>
> *This can be achieved by removing the 5m corridor behind the structure where fronting properties 12, 14 and 16 to align the back of the structure with the property boundary as shown by the red line in the figure below.*

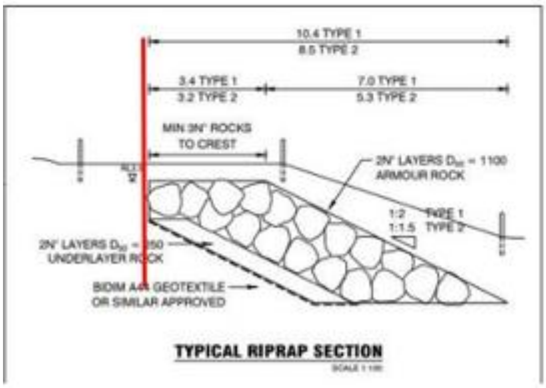

Figure 2: Alternative Structure location by the Council's Engineer (Source: Attachment 15 (Coastal Engineering Review) to the section 42A report).

[103] Refer to Attachment 15 to the section 42A Report.

17.2 In response to this proposal, the Applicant's engineer, Mr Davis, reviewed this option and has proposed an alternative setback, with the Type 1 extent of the structure located 1.5m from the boundaries of 12, 14 and 16 Glen Isla Place, and the Type 2 alignment remaining as proposed in the AEE. The alternative alignment is shown in **Figure 3** below.

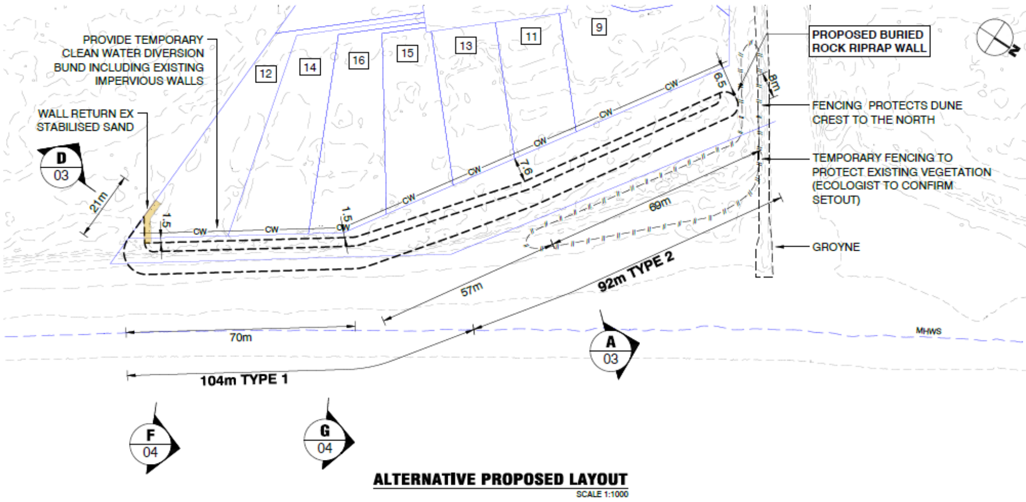

Figure 3: Alternative Alignment - 1.5m from the boundary

17.3 Mr Davis considers the main benefit from a design and coastal process perspective are a temporal change to the exposure scenarios for the wall (a reduction in likelihood of timescale of seeing the wall over time) and a reduction in any southern end effects.

17.4 Mr Davis agrees that a more recessed structure would interact less with coastal processes in the short-term, however there is a trade-off of siting the wall further back and protecting the backshore area.[104] I note that the Applicant considers a setback of at least 1.5m is required to preserve some of the remaining dune (which is a rare natural ecosystem) and the reserve land (which is a strategic asset of the Council), to enable emergency access and future public access if required, to enable dune plants behind the wall to assist with natural sand accretion, and to enable construction. [105]

[104] Refer paragraph 14.15 of Mr Davis' evidence.

[105] Refer paragraph 4.19 of Mr Fraser's evidence.

17.5 The wider effects of the alternative alignment are addressed in technical evidence on behalf of the Applicant and summarised below. I note that, other than the Council's engineer, none of the other Council technical reviewers provided any assessment of the broader impacts of locating the structure on the GIPS property boundaries.

17.6 Regarding terrestrial ecology effects, Mr Keesing on behalf of the Applicant, has included an assessment of the alternative alignment put forward. He finds that under the alternative alignment, approximately 280m^2 of the southern Pohuehue assemblage would be removed, this is still considered a very low adverse effect and triggers the same ratio of remediation (2:1 ratio).

17.7 Regarding avifauna effects, Dr Bull on behalf of the Applicant, concluded that the avifauna effects and mitigation in the form of the AMP, are the same regardless of the location of the structure.

17.8 Regarding landscape and visual amenity effects, Mr Coombs, on behalf of the Applicant, concluded reduced off set of anywhere between 1.5m – 5m would be an acceptable outcome from a landscape, natural character and visual effects perspective. Mr Coombs' considers the original proposal of a 5m setback is preferred noting the subtle differences in his effects conclusions which overall are immaterial to his final conclusions on the appropriateness of the proposal.[106]

17.9 Regarding noise and vibration effects, Mr Whitlock on behalf of the Applicant, concludes that siting the structure at the alternative location would result in a marginal increase of noise and vibration effects on the receivers, however, these increases would still comply with the relevant permitted standard, noting that the closest receivers are those who have provided their written approvals to the proposal.

17.10 Based on the comparative effects of the alternative alignment, it is concluded that any effects associated with a change in the location of the Type 1 extent of the structure will be generally consistent with the extent of effects assessed

[106] Refer paragraphs 5.17-5.18 of Mr Coombs' evidence.

as part of the original proposal. Therefore, in my opinion, any subsequent change to the location will be within the scope of the assessment of effects already undertaken in support of the proposal.

17.11 Notwithstanding, as set out in my summary of effects commentary, I consider retention of the 5m offset is appropriate when taking into account the range of effects associated with the proposal.

17.12 In the event that it is deemed necessary by the Panel, based on a balance of temporal exposure effects and end effect benefits against loss of dune environment / habitat / vegetation and reserve area as a result of moving the wall further towards the property boundary, and subject to agreement with the WBOPDC Reserves and Facilities department (as the 'landowner'), the Applicant has confirmed that they would accept the location of the Type 1 structure anywhere between a distance of 1.5m and 5m from the 12, 14 and 16 Glen Isla Place boundaries.

18. SECTION104 EVALUATION

Actual and potential Effects

18.1 Section 104(1)(a) requires a consent authority to have regard to the actual and potential effects on the environment of allowing the activity. The actual and potential effects of the proposed erosion protection structure on the environment have been given detailed consideration as part of the resource consent application, the two further information responses, and the evidence prepared by technical experts on behalf of the Applicant. The reviews that form part of the section 42A report have also addressed the relevant matters to be had regard to when considering the application under section 104 of the RMA.

18.2 My evidence has provided a summary of the key actual and potential effects of the proposal on the environment, as well as the matters of disagreement between the various parties, in the context of the statutory planning framework that applies. I also provide comment on the measures that are proposed by the Applicant, under the direction of their technical experts, in order to avoid, remedy or mitigate the actual and potential effects of the proposal on the environment and have recommended that these are adopted as consent conditions (refer to Section 18 of my evidence below).

18.3 I agree with the reporting officers that the proposal will give rise to positive effects[107].

18.4 Overall, it is my opinion that the proposed coastal protection structure located within the Glen Isla dune system, regardless of the final location, is appropriate given the coastal context of the site and its exposure to coastal hazards, and subject to a suite of proposed consent conditions, will ensure that any potential adverse effects on the environment will be no more than minor and in some cases (dune ecology) positive.

Relevant Planning Documents

18.5 I have provided my assessment of the relevant statutory planning documents earlier in this evidence where I conclude that the proposal aligns well with the provisions of the NZCPS, NPSIB, the RPS, the RCEP and the District Plan.

Section 104 Conclusion

18.6 My overall conclusion is that the proposal sits comfortably within the regime established by the relevant statutory documents, has effects that are acceptable, and will be subject to appropriate consent conditions (refer to Section 19), such that there is no planning reason why consent cannot be granted.

19. CONSENT CONDITIONS

19.1 I note that the section 42A report did not provide a set of draft consent conditions but states *'Should the Independent Commissioners decide to the grant consent a full set of draft conditions will be provided prior to the close of the hearing.'*[108]

19.2 I note that the Technical Review documents for the Council contain a number of recommended consent conditions. Throughout Section 9 of the section 42A

[107] Refer to paragraph 262 of the s42A report.

[108] Refer to 'Recommendation' in the Executive Summary of the s42A Report

report, the reporting officers support the adoption of these conditions and concludes ‘effects will be less than minor’.

19.3 Given this statement, I would have expected the reporting officers to provide a draft set of consent conditions for consideration and response by the Applicant, submitters and the Panel ahead of commencement of the hearing.

19.4 In absence of a draft set of consent conditions being provided by the District Council:

19.4.1 I generally support the recommendations for consent conditions proposed in the s42A report, subject to the amendments set out in the respective subject areas discussed previously (Refer to Section 7 – Assessment of Effects) in this brief.

19.4.2 I note that the BOPRC consent conditions (RM24-0537-LC.01), provide a number of conditions which control effects of the same elements of the proposal including activities associated with the vegetation disturbance and earthworks in the dune environment.

19.4.3 Regarding the comments on the term of consent from Mr Waston (refer to Attachment 16), he recommends an expiry of consent based on the structural integrity and damage beyond economic repair or a fixed term of the consent should it be granted. He further states that Council’s agreement with the Applicant is applicable for the term of the consent e.g. 30 years and /or the in the event of a force majeure event that damaged the wall beyond economic repair. I understand that GIPS support the proposed term of 30 yrs, however, consider that the land use consent from the District Council should be provided for without expiry date as any agreement between GIPS and the District Council for use of the land, which will sit outside of the consent framework, will include provisions and directions which address when the structure comes to the end of life and what should happen. In my view, it is unusual for a land use consent to have a fixed term, and given the inability to predict with any certainty when the structure may become functionally defunct[109], it would be difficult to justify any precise fixed term.

19.5 The Applicant acknowledges that preparing evidence in response to a recommendation to decline the GIPS application has involved significantly more time and complexity than would have been required had the recommendation been to grant consent. Therefore, given the section 42A report was only received one week ago, there has not been sufficient time to finalise a set of proposed consent conditions. However, the Applicant is committed to providing a full set of proposed conditions as part of the Legal Submissions to be lodged on 6 August 2025.

19.6 As stated throughout this evidence, the proposed consent conditions will provide a robust and comprehensive set of construction controls, management, monitoring, and reporting requirements that will be sufficient to ensure the proposal will be undertaken in accordance with the direction provided by the relevant statutory planning documents, while ensuring potential and actual adverse effects are no more than minor.

20. CONCLUSION

20.1 The proposal has been developed with appropriate consideration of:

20.1.1 Coastal hazards over a 100-year timeframe, in accordance with best practice;

20.1.2 An assessment of alternatives which found this proposal to be the best practicable option;

20.1.3 Effects on coastal processes and the wider coast and dune environment;

20.1.4 Effects on significant values of the project site, including significant indigenous biodiversity values; and

109 Refer to Section 6 and paragraph 8.6 of Mr Davis' evidence for discussion regarding sea level rise and erosion predictions.

20.1.5 Impacts on the public and private land areas behind the proposed structure.

20.2 The RMA does not require a proposal have no effects on the environment. In the instances where the statutory framework directs that adverse effects be avoided, the proposal has been designed to avoid those adverse effects. In all other aspects, the proposal includes mitigation measures which appropriately avoid, remedy or mitigate adverse effects in a manner consistent with the relevant statutory provisions.

20.3 Overall, I consider that resource consent can be granted for the proposal and that the proposed conditions (inclusive of the amendments) appropriately address the relevant policy directions while mitigating the effects of the project.