

Before Commissioner(s)
Delegated by Western Bay of Plenty District Council

RC14513L

Under	the Resource Management Act 1991
In the matter of	an application for a land use consent for the construction of a coastal protection structure and associated activities at 95 Seaforth Road and 12 Glen Isla Place, Waihi Beach.
By	Glen Isla Protection Society Incorporated Applicant

OPENING LEGAL SUBMISSIONS FOR THE APPLICANT
6 AUGUST 2025

Counsel Acting
M J Slyfield
Stout Street Chambers

(04) 915 9277
morgan.slyfield@stoutstreet.co.nz
PO Box 117, Wellington

INTRODUCTION

1. These submissions are made on behalf of the Glen Isla Protection Society Inc (**GIPS**), which has applied for a land use consent to establish a buried coastal protection structure on dune land in front of the waterfront properties at Glen Isla Place, Waihi Beach. The project incorporates dune re-shaping, and revegetation. Broadly speaking the intent of the project is to protect the reserve land and adjacent properties from further coastal erosion for at least the next 30-50 years.
2. A number of submitters oppose the application, and Council's Reporting Officers¹ have recommended that the consent be declined. Despite this, GIPS will maintain that the consent is appropriate to grant (subject to conditions). These submissions aim to identify and address the key reasons for these differences of position.
3. For the sake of efficiency, these submissions do not repeat descriptions of the site, the project or the relevant history of previous erosion protection at Waihi Beach, all of which are covered in detail in GIPS' application documents and evidence. However, it may be useful to highlight the following aspects at the outset:
 - (a) The proposal is not for "just" a wall. It is to be a combination of both 'hard' and 'soft' protection: the hard structure being entirely buried within the dunes and comprehensively replanted with native dune species.
 - (b) All the wall structure and re-shaped dunes will be well landward of the current line of mean high water springs (**MHWS**), and therefore outside the coastal marine area (**CMA**).
 - (c) This means a land use consent is required from the Western Bay of Plenty District Council (**Council** or **WBOPDC**).
 - (d) The only activity associated with the project that will occur within the CMA is the use of vehicles to access the site during construction.

¹ The report identifies at [6] that it has been prepared by Bevan Hudson (Team Lead Consent Planning), Anna Price (Principal Planner) and Jade McKean (Consultant Planner).

- (e) GIPS has obtained consent from the Bay of Plenty Regional Council (**BOPRC**) for that activity, and also for earthworks and vegetation clearance including dune enhancement in the coastal environment.
 - (f) The structure will be almost entirely within the reserve owned by WBOPDC, with a small section on land owned by a member of GIPS.
 - (g) In its capacity as landowner, WBOPDC has given in-principle agreement to the project, subject to resource consent requirements, funding of the project by GIPS, and agreement being reached on operational costs and responsibilities.
 - (h) GIPS will cover the full costs of establishing the wall, the dune re-shaping, and the replanting until it has successfully established. GIPS has offered to cover the costs of Council's subsequent maintenance of the wall for as long as the wall remains.
4. In the sections that follow, these submissions will:
- (a) Outline the statutory framework for the assessment and determination of the application;
 - (b) Outline how that statutory framework applies in the particular circumstances of this case; and
 - (c) Identify and respond to any legal issues arising from the Officer's Report or submissions in opposition that have not been covered by the foregoing sections.

STATUTORY FRAMEWORK

5. The project is for a discretionary activity. This means all of the project's effects are to be assessed, and the Panel has discretion to grant or decline consent. If consent is granted, conditions may be imposed.²
6. Any such conditions must be :
- (a) Directly connected to an adverse effect of the activity on the environment, or

² Section 104B RMA.

- (b) Relate to the administrative matters that are essential for the efficient implementation of the consent,
or must otherwise be agreed by the applicant.³
7. When determining an application, an assessment must be undertaken in accordance with s 104 of the Resource Management Act 1991 (**RMA**), which requires the Panel to 'have regard' to a number of listed matters.
8. To 'have regard' to the listed matters means to consider each of them as part of the assessment process, but does not mean that any of them has to be 'given effect to'. Further, by applying the same standard across all the matters listed, s 104 does not give any of those matters primacy over any other matter.
9. The first matter to which regard must be had is the actual and potential effects on the environment of allowing the project.⁴
10. Given the broad definition of effects in the RMA this includes effects that are temporary or permanent, cumulative effects, and potential effects of low probability with high potential impact.⁵
11. The assessment is, however, limited to effects on the existing environment. The existing environment has been defined by caselaw to include the future state of the environment as it might be modified by the utilisation of rights to carry out permitted activity, and includes the environment as it might be modified by the implementation of resource consents which have been granted, where it appears those consents will be implemented⁶. Given the broad definition of effects, it will also be relevant in this instance to consider effects that may arise over time due to dynamic natural processes, including effects related to potential sea level rise.
12. Relevantly, the RMA also provides that the Panel must disregard any effect on a person who has given written approval to the application. In this case,

³ Section 108AA RMA.

⁴ Section 104(1)(a) RMA.

⁵ Section 3 RMA.

⁶ *Queenstown Lakes District Council v Hawthorn Estate Ltd* [2006] NZRMA 424 (CA).

that means all effects on the Glen Isla Place waterfront properties (at numbers 9, 11, 12, 13, 14, 15 and 16).

13. The second matter to which regard must be had⁷ are any relevant provisions in the national, regional and district planning documents.⁸ Parliament has provided for a hierarchy of planning documents the purpose of which is to flesh out the principles in s 5 and the remainder of Part 2 in a manner that is increasingly detailed both as to content and location.⁹
14. For present purposes it is relevant that regional policy statements,¹⁰ regional plans¹¹ and district plans¹² must give effect to the New Zealand Coastal Policy Statement 2010 (**NZCPS**).

EFFECTS

15. The potential effects of the project have been assessed for GIPS by a range of experts, as summarised in the evidence before the Panel.
16. They have also been assessed by independent experts engaged by WBOPDC to inform the Reporting Officers.
17. For many of the potential effects, the experts are agreed the effects of the project can be adequately mitigated by conditions and/or the effects are sufficiently minor so as to be reasonable or acceptable. It may be useful to group the effects-based considerations into matters that are agreed and those that are not.

⁷ It is noted that s 104(1)(ab) provides for considerations regarding measures to offset or compensate for adverse effects, but as GIPS is not proposing any such measures (on the basis that such measures are not warranted given the low level of effects) this provision is not considered relevant.

⁸ Section 104(1)(b) RMA.

⁹ *Environmental Defence Society v New Zealand King Salmon Company* [2014] NZSC 38 ("King Salmon") at [150]

¹⁰ Section 62(3) RMA.

¹¹ Section 67(3)(b) RMA.

¹² Section 75(3)(b) RMA.

Agreed matters

18. To outline the matters agreed (using the same subject-matter sequence as the s 42A report):
- (a) Construction noise and vibration effects have been assessed by Mr Whitlock (for GIPS), and Mr Exeter and Mr Styles (for Council) all of whom agree that the effects can be adequately managed by conditions and will be compliant with District Plan standards and other appropriate standards and will be less than minor.
 - (b) Construction transport and access effects have been addressed in the main application, and have been assessed for Council by Ms Browne, who concludes all transportation and access effects can be controlled by conditions to be reasonable.
 - (c) Ecological effects have been assessed by Dr Keesing and Dr Bull (for GIPS), and Mr Shaw and Mr Goldwater (for Council), who are agreed that ecological effects can be managed to an acceptable level through appropriate consent conditions. (They do not agree on the content of those conditions, so that is addressed below.)
 - (d) Landscape, natural character and visual effects have been assessed by Mr Coombs (for GIPS) and Mr Gumbley (for Council). While their assessments differ—Mr Coombs having assessed the effects as being more positive than Mr Gumbley—both support the grant of consent. (They do not agree on a condition requiring a Sand, Vegetation and Management Plan (**SVMP**), as addressed below.)
 - (e) Coastal processes and hazards have been assessed by Mr Davis for GIPS (whose work has been peer reviewed for GIPS by Mr Clarke) and Mr Davidson for Council. Regarding the northern end of the wall (the “Type 2” section) they all agree there will be no adverse effects on coastal processes following construction, given the northern end will be near permanently buried. Regarding the southern end (the “Type 1”) section, they agree there is a need for the structure, and the design is sound (and their differing views on alignment/location are addressed below).
 - (f) Effects on the reserve and public access have been addressed by Mr Watson (on behalf of Council as landowner), the Reporting Officers

and Mr Faithfull (for GIPS). The Reporting Officers and Mr Faithfull agree that effects on public access and the reserve will be appropriately managed by conditions.

- (g) Regarding cultural matters the application describes GIPS' multiple invitations to engage with iwi and hapu representatives, which were not taken up, and the Officers Report describes the Council's notification of relevant parties/groups, which elicited no submissions. In those circumstances there are no cultural matters to address, and the Reporting Officers and Mr Faithfull agree it is appropriate to impose a standard accidental discovery protocol condition.

Matters not agreed

Coastal process effects

- 19. The only effects-based issue to resolve in relation to coastal processes concerns the effects of the Type 1 section of the wall (i.e. the southern end).¹³
- 20. Mr Davidson, on behalf of Council, considers the wall will have end-wall (i.e. scouring) effects on the reserve land to the south, and these could be delayed by locating the wall further landward (against the private property boundaries). He also considers once the wall becomes exposed over time, it would cause localised beach lowering, and locating the wall further landward would delay this too.
- 21. Though it is not explicit, Mr Davidson's conclusion appears to be that he could support the grant of consent for the southern section if the wall were located against the private property boundaries (rather than off-set from those boundaries by 5m as proposed). None of Council's other experts have commented on this possibility.
- 22. Mr Davis agrees that if the structure were located more landward then it would interact less with beach processes in the short term, but he disagrees there will be any end-wall effects on land to the south until the beach

¹³ Mr Davidson raises another issue regarding the need or justification for the northern/Type 2 section – but that is not an effects-based concern (he considers the effects of the northern/Type 2 section on coastal processes are negligible), and is addressed below at [48](b) in relation to the NZCPS.

significantly retreats, at which stage scour in the order of 2-5m landward and 5-15m shore-parallel may occur. However, he considers this will only occur when there is significant storm damage to the whole dune front of the land to the south, and this will tend to repair by natural processes, as has been seen since the 2023 Gabrielle/Hale event.

23. Further, Mr Davis identifies some benefits in constructing the wall 5m off the boundary: having a naturally planted area at the top of the wall will enhance the dune's natural recovery after storm events and may provide a meaningful back shore space for other uses (e.g. access) long into the future.
24. For those reasons he considers the proposed location is preferable, but he considers the wall *could* be relocated anywhere from 5m to 1.5m off the boundaries (but should be no closer than 1.5m to allow for construction and a minimum area of backshore planting/future access).
25. Mr Davis' preference is shared by a number of GIPS' other experts:
 - (a) Dr Keesing considers the differences are minor (he could support either option) but a move inland would cause more of the pohuehue-knobly club rush to be removed, and provide less width for dune revegetation, so is less ecologically beneficial due to reduction of replanting space in the IBDA. (Dr Keesing also responds in part to Mr Davidson's concern about end wall effects on the reserve land to the south. He says the dune system to the south has low vegetation value, is responsive to disturbance, and rapidly rebounds in the event of disturbance.)
 - (b) Relying on Mr Davis' and Dr Keesing's evidence, Mr Coombs considers the natural character and landscape effects of erosion to the south would be negligible, if detectable at all. However, he has assessed the effects of locating the wall up to 1.5m from the private boundaries, and while he can support either location, he assesses the 5m-offset as having preferable natural character, landscape and visual effects.
 - (c) Mr Whitlock considers that constructing the wall as close as 1.5m from the boundaries would still comply with District Plan noise standards and appropriate vibration standards at all dwellings that have not

provided written approvals, but noise levels and vibrations would be marginally higher for all dwellings, so the original location is preferred.

26. Consistent with these expert views, GIPS maintains that a 5m offset from the boundary for the Type 1 section of wall is appropriate; but should the Panel conclude that a smaller offset (down to 1.5m) is preferable, and if council agrees as landowner, GIPS would accept that outcome.

Ecology

27. GIPS relies on Dr Keesing's and Dr Bull's responses to all the matters of detail proposed by Messrs Shaw and Goldwater for the management of ecological effects, but two are significant enough to address here.
28. First, as mentioned above, Dr Keesing considers the dune system to the south of the wall has low value (from an ecological standpoint) and rapidly rebounds if disturbed. In light of this, he does not support a condition requiring any form of mitigation from GIPS (which Messrs Shaw and Goldwater have proposed should take the form of a planting obligation along as much as 100m of the dune to the south).
29. Second, Dr Keesing does not support a condition requiring perpetual maintenance of vegetation on the dunes in the vicinity of the wall. He supports a condition to ensure the revegetation exercise is successful, but once that occurs (stable 80% vegetation cover, or after 2 years) he considers the obligations of the consent holder in terms of maintaining planting should come to an end.
30. It is submitted that Dr Keesing's position on both these matters is consistent with the legal requirement in s 108AA for conditions to be directly connected to an adverse effect of the activity. On Dr Keesing's evidence (which relies in part on Mr Davis' evidence) a condition requiring revegetation of the duneland south of the wall cannot be justified, as any scour effect will be very small, and will recover naturally — i.e. there is no material adverse effect to address. In that context, it is submitted that Mr Shaw's position (that there be a condition requiring revegetation for a distance of 100m along the dunes to the south) would be demonstrably invalid.
31. Likewise, a condition to maintain the vegetation that is to be restored (following construction) on the dunes in front of Glen Isla Place, must have a

temporal limit in order to avoid the same invalidity. Requiring the consent holder to maintain such planting in perpetuity, would be to require the consent holder to mitigate effects that are not in any way caused by the consented activity.

Landscape, Natural Character and Visual Amenity

32. The two material matters of disagreement are: how positive the landscape, natural character and visual amenity effects may be; and whether a sand and vegetation management plan is required for the life of the structure.
33. In terms of positive effects, GIPS relies on Mr Coombs' evidence, and will say that the positive effects as he has assessed them are one of the public benefits of the project, which is one of the matters relevant to Policy 27 of the NZCPS, addressed below.
34. As for Mr Gumbley's support for Messrs Shaw and Goldwater's sand and vegetation management plan, Mr Coombs considers this unnecessary. In his view sand will accrete through natural processes if an erosion event occurs, as has been experienced since Gabrielle. It is submitted that this is consistent both with Dr Keesing's evidence, and the requirements in s 108AA addressed above.

Conclusion on effects

35. It is submitted that most of the effects-based matters are agreed between the relevant experts. Those that are not agreed are readily capable of resolution, for the reasons outlined above. Based on the matters outlined above, it is submitted that the Panel is likely to be able to conclude (once all the evidence has been heard and evaluated) that the project is appropriate for a grant of consent when considered in relation to its potential effects.
36. In the absence of the Reporting Officers providing conditions, the applicant has produced a set which capture the recommendations of Council's technical advisors to the extent those have been agreed, and the further amendments proposed by GIPS. The conditions also provide for the wider construction, reinstatement and monitoring and management elements of the project, and are filed together with these submissions.

37. The position on effects, summarised above, brings into focus that the more significant differences of opinion between the experts are less to do with effects, and more to do with the “fit” of the project with the policies of applicable planning instruments, which is addressed in the next section.

RELEVANT PLAN PROVISIONS

38. The Reporting Officers conclude that the proposal is inconsistent with some of the directly relevant provisions of the NZCPS, Regional Coastal Environment Plan (**RCEP**) and Regional Policy Statement (**RPS**).
39. These matters are addressed in detail in Mr Faithfull’s evidence (and in the application documents), and Mr Faithfull disagrees with the Reporting Officers’ assessment. He concludes that the proposal is consistent with the higher-order policy documents.
40. In addition to the detailed analysis of provisions set out in the application documents and Mr Faithfull’s evidence, it is submitted that there are three broader reasons why Mr Faithfull’s conclusion is more robust and should be preferred over that of the Reporting Officers.

The Reporting Officers’ make inconsistent findings

41. The Officers find that the proposal will be consistent with the objectives and policies of the District Plan,¹⁴ including the particular objectives and policies regarding coastal hazards.¹⁵ They also acknowledge that the Plan has been reviewed specifically to give effect to the requirements of the NZCPS and RPS regarding coastal hazards.¹⁶ They proceed on the basis that the District Plan has given effect to those requirements.
42. As mentioned above¹⁷ the planning hierarchy required under the RMA moves from the general to the specific. This means a District Plan, properly formulated to give effect to the higher order instruments, is the most detailed

¹⁴ At [297] of the Officers’ Report, concluding the section from [265] – [296].

¹⁵ At [277]-[288].

¹⁶ At [277].

¹⁷ At [13].

guide for any specific issue in any specific district.¹⁸ However, in this instance the Reporting Officers conclude the proposal is inconsistent with the higher order policy framework despite finding the project is consistent with the district policy framework that has 'given effect' to the higher order framework. This is contradictory. The Reporting Officers' conclusions cannot be reconciled unless it is suggested that the District Plan has in fact failed to give effect to the higher order provisions (which is the opposite of the Officers' explicit findings).

43. Given this contradiction, it is submitted that Mr Faithfull's approach should be preferred.

Weighting/emphasis within NZCPS Policies about hard protection structures

44. A core difference between Mr Faithfull's views and the views of Reporting Officers regarding the NZCPS Policies arises from the weighting or emphasis they have placed on elements within the policies that address hard protection structures.
45. The provisions of the NZCPS are expressed in deliberately different ways. These differences matter.¹⁹ Careful attention must be paid to the way they are expressed, as those expressed in more directive terms will carry greater weight than those expressed in less directive terms.²⁰
46. For present purposes, the focus is on those provisions that provide guidance in relation to hard protection structures, namely Policy 25(e), 27(1)(c) and (d), 27(2)(a), 27(3) and 27(4). None of them is directive in the way that an "avoidance" policy is directive. On the contrary:
- (a) The policies "discourage" hard protection structures.²¹
 - (b) The policies explicitly provide for hard protection structures to be one option for assessment in areas of significant existing development.²²

¹⁸ This is supported by another seawall case, *Auckland Council v Auckland Council* [2020] NZEnvC 070, where the expert planning witnesses did not present evidence on the NZCPS provisions on the basis that the Unitary Plan gave effect to the NZCPS with no inconsistencies. The Environment Court endorsed that approach, at [44].

¹⁹ *King Salmon* above n 9 at [127].

²⁰ *King Salmon* above n 9 at [129].

²¹ Policy 27(e)

²² Policy 27(1).

“Significant existing development” is not defined by the NZCPS, but the Department of Conservation’s 2010 Guidance on the coastal hazards policies says areas of significant existing development may include areas of residential development.

- (c) If considering hard protection structures, the policies state the assessment should ‘recognise’ and ‘consider’ the environmental and social costs of permitting such structures to protect private property.²³
- (d) The policies require that:
 - i. the evaluation should focus on approaches that reduce the need for hard protection structures;²⁴
 - ii. where hard protection structures are necessary, their form and location should be designed to minimise adverse effects on the coastal environment;²⁵ and
 - iii. where they are necessary to protect private assets, they should not be located on public land unless there is a significant public benefit in doing so.²⁶

47. While these policies establish some clear requirements that need to be satisfied, the existence of those requirements innately demonstrates that there are circumstances where hard protection structures can be permitted, consistent with the policies.

48. It is submitted that Mr Faithfull has carefully addressed each of these requirements, and (relying where appropriate on the evidence of other experts for GIPS) he reaches a robust conclusion that the proposal is consistent with every aspect. Based on this evidence GIPS submits:

- (a) There are no other options for addressing the erosion hazard posed by storm cut.²⁷ This means a hard protection structure is necessary.
- (b) The point above addresses Mr Davidson’s view that there is no ‘need’ or ‘justification’ for at least some of the northern end/Type 2 wall — a

²³ Policy 27(1)(d).

²⁴ Policy 27(2)(a).

²⁵ Policy 27(3).

²⁶ Policy 27(4).

²⁷ Storm cut is described in detail section 7 of Mr Davis’ evidence.

view with which both Mr Davis and Mr Clarke disagree. Mr Davis' evidence is that storm cut in a 1% AEP event could extend well into private properties and threaten residential structures, so he supports building all of the wall now to address these risks, and both he and Mr Clarke consider it inappropriate to place reliance on the continued presence of the groynes at Three Mile Creek, given that is subject to re-consenting, and therefore uncertain.

- (c) Related to this, GIPS understands that WBOPDC is considering seeking consent from BOPRC for future sand push-ups along Waihi Beach. However, it is not yet known whether that application will be made or whether it will be granted. Even if it is granted there is no reason to think future sand push ups would protect the Glen Isla dune and the properties behind it any better than did the soft protection undertaken in 2010-2011 (which failed after only a few weeks and has never been reinstated).²⁸
- (d) The environmental and social costs of the proposed structure have been assessed in detail. Such costs have been found to be minor and/or acceptable.
- (e) The form and location of the structure has been designed to minimise adverse effects on the coastal environment.²⁹
- (f) There are in fact significant public benefits to locating the structure on public land, including
 - i. protection of a Council strategic asset and a rare ecological environment,
 - ii. improved ecological outcomes from new planting,
 - iii. mitigation of the erosion effects of Three Mile Creek,
 - iv. better landscape/natural character and visual amenity effects as a result, and
 - v. securing the possibility of future access behind the wall.

²⁸ Andrew Fraser's evidence at [3.5]-[3.10], supported by the Officers' Report at [34].

²⁹ Noting that GIPS is open to the southern end of the wall being relocated back towards the private properties (down to 1.5m from the boundaries) if the Panel concludes that this will further minimise any adverse effects, and is warranted despite the other advantages of siting the wall 5m off the boundaries, and Council as landowner agrees. Above at [26].

Managed Retreat

49. The conclusion of the Reporting Officers that the proposal is inconsistent with the higher order policy framework seems to rely heavily on “managed retreat”.³⁰ However the Officers’ approach is not supported by the NZCPS or the reality of the situation.
50. The NZCPS requires managed retreat to be considered as one of the potential responses to address coastal hazard risks for existing development. This is expressly stated in Objective 5, reflected in Policy 25(c) and (implicitly) in the options-based assessment required by Policy 27. None of this precludes the consideration of other potential responses, or accords primacy to managed retreat over other options, in a way that would make an alternative option ‘inconsistent’ with the provisions. Given the extensive guidance in the policies that address the possibility of hard protection structures, it cannot be that a hard protection structure is innately ‘inconsistent’ with the NZCPS’s provisions regarding managed retreat.
51. In the present case, the factor that seems to have been overlooked by the Reporting Officers is that the proposal in no way precludes managed retreat into the future as an option for reducing risk.³¹ The proposal does not introduce or expand any existing residential activity on the GIPS properties, and the possibility of managed retreat in the future remains an option. The proposal does not make that option any more difficult than it already is (and some of those difficulties are addressed in Mr Fraser’s and Mr Faithfull’s evidence).
52. The Officers also misdescribe the true effect of the existing/past resource consents on the GIPS properties. They say:

“Past resource consents require a managed retreat if coastal erosion advances to a trigger distance.”³²

“The developed area has already been established and the dwellings are required (by Deed of Covenant) to relocate or be removed from the site as the

³⁰ For example, see the passages quoted at [52] below.

³¹ It is noted the Officers Report seems to acknowledge that the project and managed retreat are not necessarily exclusive at [284] as part of the District Plan assessment, but this is not reflected in the later parts of the Report addressing national and regional policies.

³² At [24]

dune retreats closer to the dwellings. This ensures that as the coastal erosion occurs over time there are requirements for managed retreat..."³³

"...managed retreat (as an option) is in place for most of the GIPS properties"³⁴

"... managed retreat is in place for all but one of these properties..."³⁵

"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...."³⁶

"... Objective 5 ... promotes managed retreat for existing developments (and this is in place for all but one of the GIPS properties)."37

"... managed retreat is in place for all but one of the GIPS properties"³⁸

"... managed retreat is in place for these properties..."³⁹

"Managed retreat is in place for most of the GIPS properties"⁴⁰

53. Every one of the above statements is factually incorrect. The actual position is this:

- (a) There are seven GIPS properties. The Reporting Officers have identified eleven consents they have relied on across those properties.
- (b) Only three of the properties have consents that make explicit provision for moving or removing structures when an identified trigger occurs.⁴¹
- (c) So, contrary to the assertion that "most" or "all but one" require managed retreat, it is in fact only three of the seven that have conditions of that sort.
- (d) Further, what those conditions actually require is not relocation/removal of the entire dwellings on those three properties,

³³ At [282].

³⁴ At [328].

³⁵ At [346].

³⁶ At [351].

³⁷ At [351].

³⁸ At [351].

³⁹ At [352].

⁴⁰ At [355].

⁴¹ 12 Glen Isla Place (RC3441L, RC3838L, RC11035L), 11 Glen Isla Place (RC402063L) and 9 Glen Isla Place (RC401668L).

but only the particular additions or alterations that are the subject of the specific consents. These are: the additions at number 9 authorised by consent RC401668L, the additions at number 11 authorised by consent RC4020603L, the addition at number 12 authorised by consent RC11035L.

- (e) Those specific requirements are formalised in Deeds of Covenant registered on the three properties.
 - (f) There are no other Deeds of Covenant (or similar mechanisms) on any of the other four properties that address managed retreat, and no firm managed retreat requirements on any of those properties.
54. Given these limitations, it is submitted that the Officers have relied far more than is warranted on past conditions of consent for the GIPS properties: in simple terms, they do not mandate managed retreat in any comprehensive way.
55. It is submitted that the far more limited approach to managed retreat that the consents in fact disclose, is reflective of the legal difficulties inherent in forcing residents to relocate or abandon dwellings that have existing use rights. In at least one decision the Environment Court has proceeded on the understanding that District Council's lack the legal authority to remove such rights.⁴²
56. Further, none of the existing consents, on any of the GIPS properties (whether for additions/accessory buildings or other land uses), precludes any of the owners from taking other lawful steps to address erosion risks, such as by pursuing the present consent application.
57. At the risk of repetition, the proposal and managed retreat are not mutually exclusive. Among other things, the proposal addresses an immediate need to protect the properties, and the reserve land itself, from the severe risks of storm cut. In the absence of the proposal the GIPS owners already face the risks of a storm cut so severe that it would entirely destroy the reserve land and threaten extensive areas of the private properties, including parts occupied by their homes. Conversely, the Officers' seem to treat managed

⁴² *Awatarariki Residents Incorporated v Bay of Plenty Regional Council* [2020] NZEnvC 215 at [10].

retreat as if it will be something required at some time in the future, but unless effective measures are implemented now to protect the dune and the GIPS properties from existing risks of storm cut, then the risks are not being addressed at all.

58. What the proposal seeks to do is put in place an interim measure to ensure that existing coastal residences can continue to be occupied safely for at least the next 30-50 years, until such time as managed retreat may become the next course of action, if sea level rise / climate change impacts are realised to the forecasted extent.

Conclusion on objectives and policies

59. For the above reasons, and the additional reasons set out in Mr Faithfull's detailed planning analysis, it is submitted that the proposal is consistent with both the higher order policies (NZCPS, RPS, RCEP) and the lower order policies (District Plan) regarding management of coastal hazards.

OTHER ISSUES

60. This section responds to a number of issues that have not been captured in the foregoing sections. Some of these issues are raised by submitters, and are addressed to ensure there is a formal record of GIPS' response. By providing a response to some of these matters it should not be inferred that GIPS considers these are likely to have any real bearing on the outcome of the Commissioners' assessment.

WBOPDC's in-principle agreement as landowner

61. Some submitters raise issues about WBOPDC, as landowner, having already given its agreement in principle to the project (subject to conditions). It is variously asserted that the Council should not have given its agreement, that the way in which it did so breached the Local Government Act 2004, and that formal agreement should be finalised before this consent is decided.
62. It is submitted that Council's position as landowner of the reserve is entirely distinct from its role as consent authority. Its agreement as landowner is plainly required in order for the project to be implemented, but does not in any way influence the processing or determination of the consent.

63. As for the alleged breach of the Local Government Act, it is submitted that is not a matter over which the Commissioners have any jurisdiction, and nor should those concerns be taken into account in this forum. Those are matters the submitters may pursue elsewhere if they have legitimate concerns.
64. As for the suggestion that formal agreement should be finalised before the consent is decided, that would have been GIPS' preference also, and GIPS has attempted to achieve that. However, as that has not been achieved, and as the project cannot be implemented until agreement is finalised, it is proposed that this be captured in the consent conditions, and GIPS volunteers a draft condition (condition 5) to that effect. Landowner agreement is not strictly an RMA requirement, so this condition has been volunteered partly to respond to submitter concerns (and is offered on an *Augier* basis).

Term

65. GIPS has not sought a term of consent, but Mr Watson (on behalf of the Council as landowner) promotes the inclusion of a term. GIPS understands this is primarily to ensure there is clarity around the duration for which the wall will be maintained (at GIPS' cost) into the future.
66. It is unusual for a land use consent in a district council jurisdiction to contain a term, and for reasons set out in Mr Fraser's evidence, GIPS considers the Council's concern as landowner is better addressed outside the resource consent. There is ample scope for the formal agreement with Council (to be finalised prior to consent implementation, as proposed above) to cover duration in a way that ensures Council can be relieved of any maintenance burden when the appropriate time comes (which, for GIPS, means when the wall is either no longer able to serve its intended purpose). GIPS has proposed in its draft conditions that the agreement with Council will require GIPS to assign the consent to Council (once the establishment works are completed). Subject to the terms of the agreement, this means Council would be able to surrender the consent at a time of its choosing.

The owners should accept the risk of being on the coast

67. Some submitters suggest the members of GIPS should accept the risk of erosion, as a consequence of their coastal location.

68. This overlooks that most of the owners bought their properties prior to 2011, when there was a seawall in place, and some — like Mr Fraser’s family — were opposed to that seawall being replaced with soft dune enhancements. Having had the protection of a seawall formerly, and having had it replaced with soft dune enhancements which failed in short order, it is not unreasonable for the GIPS members to seek to restore some more reliable protection; especially when no material adverse effects will arise from the project, there will be benefits to the public, and it will be at GIPS’ members’ expense.

The wall will increase flood risk up Three Mile Creek

69. Some submitters say the wall will increase the risk of flooding up Three Mile Creek.
70. That has been considered, and rejected, by Mr Davis,⁴³ Mr Clarke⁴⁴ and Mr Davidson.⁴⁵

There is no “need” for the wall

71. Some submitters assert there is no “need” for the wall because sand will naturally continue to accrete to the Glen Isla dunes.
72. As addressed above, this fails to recognise the present-day risks posed by storm events.⁴⁶ However, the submitters’ recognition that sand naturally accretes to the dunes (with which GIPS’ experts agree) suggests the same submitters ought not to have any concerns about the effects of the wall, because it will remain buried and out of sight (until or unless there is a significant storm cut). Even if the absence of storms means the wall is never relied upon, the project will provide tangible benefits to the dune from native planting.

⁴³ Statement of Evidence, p30.

⁴⁴ Mr Clarke’s summary report dated 24 July 2025, p7.

⁴⁵ Coastal Engineering Review, p5.

⁴⁶ Above at [48](a) and (b).

Independence of experts

- 73. Some submitters have expressed concern that experts engaged by GIPS cannot be relied on as having acted with due independence.
- 74. It is submitted that RMA consenting almost always relies on expert opinions, and there are well-established protocols for an applicant's experts to explicitly acknowledge and agree to abide by the Environment Court's Code of Conduct for Expert Witnesses. Beyond that, the credibility of any given expert (whether they are called by the Council, the applicant or submitters) is a matter for the Commissioners to evaluate. The process facilitates submitters engaging experts of their own if they wish.

Precedent effects

- 75. Some submitters are concerned that granting consent for this proposal would set a precedent for future applications for protection structures.
- 76. Strictly speaking, a consent decision for one project cannot set a precedent for future applications, and in any event, the principle that 'like' cases should be treated 'alike' in the interests of natural justice, relies on two cases being sufficiently alike to activate the principle. Further, consistency in decision-making is not inherently problematic unless the decisions being made are poor decisions, and cases in which precedent has been treated as a legitimate consideration relate to non-complying activities (where it is said that the granting of consent may undermine the very integrity of the relevant Plan).
- 77. Given the discretionary status of the project, its lack of adverse effects, and its positive outcomes (including benefits for the public), it is submitted that precedent concerns should not influence the Commissioners' decision.

Misalignment with GIPS' purpose

- 78. Some submitters assert that GIPS' application is somehow at odds with the purposes for which GIPS has been incorporated.
- 79. However, one of the explicit purposes of GIPS is to design, obtain permissions and approvals for, and construct coastal protection measures to protect the natural and coastal environment in the vicinity of Glen Isla Place, Three Mile

Creek and the Island View Reserve. It is submitted this self-evidently aligns with the current proposal.

80. Further, it should be said that GIPS' conformity with its constitution is not a matter over which the Commissioners have any jurisdiction, and not a matter of any relevance to determining the consent. If submitters wish to pursue such allegations, they need to do so elsewhere.

Potential for damage to nearby properties

81. Some submitters raise concerns that construction of the project will cause damage to nearby properties through vibration, and they make reference to another seawall project in 2010-11 that allegedly caused property damage (or other seawall projects generally).
82. These concerns do not reflect:
- (a) the differences in construction methodology between this project and the 2010-11 project, which are addressed in the evidence of Mr Boyd, and Mr Davis;
 - (b) the testing conducted by Mr Whitlock, using vehicles, materials and methods similar or identical to those proposed, which found noise and vibrations to be well within appropriate standards;
 - (c) the agreement of Mr Whitlock and Mr Styles that vibration will be at a level well below the level for cosmetic, let alone structural, damage.
83. As a further safeguard, a condition is proposed that will require vibration monitoring when the work commences, to ensure compliance with the standards is being achieved; and both GIPS and the contractor will have insurance to cover any unforeseen outcomes including due to vibration.
84. In all these circumstances, and in the absence of any expert assessment that contests Mr Whitlock and Mr Styles' assessments, it is submitted that there is no rational basis for submitter concerns.
85. One submitter, Mr Fell, has requested (outside this forum) that GIPS provide a 'guarantee' in respect of any damage to his property at 7 Glen Isla Place. For all the reasons outlined above GIPS considers this is unnecessary, and

adds that a condition could not be imposed to address this given the lack of evidence to support Mr Fell's concern.

GIPS has already damaged 7 Glen Isla Place

86. Mr Fell's submission asserts that damage has already been done to his property by GIPS' noise and vibration testing. That is not a matter for the Commissioners to resolve, but there is no reliable evidence to substantiate that assertion.
87. The reasons for the testing, the methodology that was employed, and the results of it, are all covered in the evidence of Mr Whitlock. As Mr Fell had already expressed concerns about potential damage to his house, the *testing specifically measured vibrations at his boundary, and based on those measurements* Mr Whitlock assessed that the testing readily complied with the most stringent standards (producing vibrations of 0.7 mm/s PPV and 0/6 mm/s PPV), when the most stringent limit for avoiding cosmetic (let alone structural) damage to buildings is 5 mm/s PPV.

Additional assertions of Mr Fell

88. Mr Fraser, in his evidence, has addressed some of Mr Fell's further assertions..

Maintenance costs

89. Some submitters contend that GIPS should be liable for the maintenance of the wall, if the project proceeds
90. These submitters have not understood the extent of the commitment GIPS is offering in terms of maintenance. GIPS has offered to cover the costs of maintenance. GIPS is already subject to a targeted rate that applies to all properties fronting the 2010 dune enhancement. GIPS is proposing that any costs to Council for maintaining the structure (or the planting) that exceed the amounts recovered by Council under the targeted rate, will be met by the members of GIPS. That is a matter that is subject to Council's agreement (though GIPS cannot foresee any logical reason why the Council would not agree to this).

Need for a joint hearing with BOPRC

91. Some submitters consider this application should have been the subject of a joint hearing along with the consent GIPS has already obtained from BOPRC.
92. The only activities related to the project that fall within BOPRC's jurisdiction are short-term activities associated with construction of the project, namely some earthworks, vegetation clearance and planting within the dunes, and construction-related vehicles traversing parts of the CMA.
93. BOPRC was satisfied that these matters could be dealt with on a non-notified basis, and that consent was appropriate with a robust suite of conditions to address effects.
94. There is no mechanism for 'undoing' that process and requiring that the matters in the regional council's jurisdiction are re-determined collectively with the matters in WBOPDC's jurisdiction; and even if that were possible, there is no need. This forum provides ample opportunity for issues associated with the project to be tested and evaluated.

GIPS did not consult with the community as much as it should have

95. Some submitters suggest GIPS did not consult with the community of Waihi Beach as much as it should have.
96. GIPS actively sought the views of all nearby residents (being all the residents of Glen Isla Place beyond the membership of GIPS). GIPS also extended multiple invitations to engage to relevant iwi, hapu and marae, and engaged with both WBOPDC and BOPRC prior to making its applications.
97. It was clear from some of the feedback from nearby residents, and also from the contentious history of other coastal protection works at Waihi Beach generally, that GIPS' project would face opposition.
98. In those circumstances GIPS took the responsible step of requesting full public notification of the application, thereby eliminating any risk that parties who wished to express concerns might not get that opportunity, and the result is this hearing.
99. For all these reasons it is submitted that GIPS has acted entirely properly in relation to consultation.

CONCLUSION

100. You will hear evidence from a team of experts engaged by GIPS to address every significant aspect of this application. By subject, they will cover:
- (a) Construction methods and practicability (Mr Boyd)
 - (b) Terrestrial ecology (Dr Keesing)
 - (c) Bird ecology (Dr Bull)
 - (d) Noise and vibration (Mr Whitlock)
 - (e) Landscape and visual amenity (Mr Coombs)
 - (f) Coastal processes and engineering (Mr Davis and Mr Clarke)
 - (g) Planning (Mr Faithfull).
101. GIPS will rely on the evidence of these experts, and the additional factual evidence to be given by Mr Fraser (a member of and spokesperson for GIPS). On the totality of this evidence GIPS will contend that this consent should be granted, subject to appropriate conditions.

M J Slyfield

Counsel for Glen Isla Protection Society Inc

6 August 2025