



5 May 2017

PPL Ref: 130/041

Thames-Coromandel District Council
Private Bag
Thames

Attn: Michael Jones

Waikato Regional Council
Private Bag 3038
Waikato Mail Centre
Hamilton 3240

Attn: Suzanne O'Rourke

Dear Michael and Suzanne

**Re: Buffalo Beach Homeowners Association – Coastal Defence Structure
Buffalo Beach Road, Whitianga**

The resource consent application from the Buffalo Beach Homeowners Association is attached to this letter (two copies for each authority). I would like to thank you for ensuring a consent processing planner is available to process the resource consent.

Given that this is a combined consent, there are obviously synergies and a cost saving if only one of the consenting authorities utilise a coastal expert (if required) such as the Waikato Regional Council's in-house coastal experts rather than engaging externals. In my opinion, the Thames-Coromandel District Council should be able to rely on WRC's experts. However, I will leave this in your capable hands to co-ordinate. It would also be useful if the two processing officers discuss the application between themselves to ensure they are clear in terms of their jurisdiction. I am sure that this will not be an issue.

The applicant is undertaking consultation with Joe Davis from Ngati Hei iwi authority and when I receive the local iwi authorities' comments, I will forward them to you both. I have also sent correspondence to the Department of Conservation on 16 March, 29 March and 4 May 2017 and have not yet received a response. I assume they have no concerns with the application otherwise they would make contact.

It would be useful if the consent processing officers let me know when they intend to undertake a site visit as it would be useful if I or the applicant could meet on-site to discuss the proposal.

The application fee for WRC is attached to this letter and the TCDC application fee has been paid directly at the TCDC Whitianga Office.

If you have any questions, please call me.

Yours sincerely
Planners Plus Limited



David Lamason
Director



**COMBINED THAMES-COROMANDEL DISTRICT COUNCIL AND
WAIKATO REGIONAL COUNCIL RESOURCE CONSENT TO
CONTINUE TO USE AND UNDERTAKE IMPROVEMENTS
TO AN EXISTING COASTAL DEFENCE STRUCTURE
BUFFALO BEACH ROAD, WHITIANGA**

PLANNING ASSESSMENT

**PREPARED FOR
BUFFALO BEACH HOMEOWNERS ASSOCIATION**

5 May 2017

PREPARED BY

PLANNERS PLUS LIMITED

**PO BOX 218
WHITIANGA**

PPL REF: 130/041

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1. INTRODUCTION

- 1.1 This planning assessment is submitted in support of the application lodged on behalf of the Buffalo Beach Homeowners Association (the Applicant), seeking a combined resource consent from the Waikato Regional Council and Thames-Coromandel District Council to undertake appropriate improvements and continue to use an existing coastal defence structure. The coastal defence structure is located on or in the beachfront of the following properties at 107, 109A and B, 111, 113, 115, 117, 119, 121, 123, 125, 127, 129, 131, 133, 135, 137, 139A and 139B Buffalo Beach Road, Whitianga.
- 1.2 This planning assessment is prepared in accordance with the requirements of Section 88 and the Fourth Schedule of the Resource Management Act 1991. It is intended to provide the necessary information for a full understanding of the proposal and any actual or potential effects that the activity may have on the environment.
- 1.3 This planning assessment contains the following information:
- A description of the site and the surrounding locality;
 - A description of the activity;
 - An analysis of the provisions of the Waikato Regional Council and Thames-Coromandel District Plans, which are relevant to the application;
 - An analysis of the statutory requirements, which are relevant to the application;
 - An assessment of the effects of the activity on the environment;
 - An assessment against the relevant objectives and policies of the Thames-Coromandel Proposed District Plan and the Waikato Regional Council's Regional Policy Statement and the New Zealand Coastal Policy Statement (2010); and
 - A statement regarding non-notification of the application.

2. BACKGROUND, SITE AND LOCATION

- 2.1 The location of the existing coastal defence structure has been illustrated on the topographical survey undertaken by RMS Surveyors Limited (**Attachment "A"**). There are a number of residential properties located in this area, on the seaward side of Buffalo Beach Road, lying between the reserve abutting the Te Waiti Stream in the north and the Yacht Club reserve to the south.
- 2.2 A number of the affected properties contain existing substantial residential dwellings, accommodation facilities and accessory buildings. A narrow foreshore reserve vested as recreation reserve lies along the seaward margin of the properties. It should be noted that the adjoining northern residential property's

coastal defence structure that directly adjoins the northern reserve does not form part of this application (i.e. 139 Buffalo Beach Road).

- 2.3 The subdivision proposal that created the residential allotments occurred between 1955 and 1961.
- 2.4 The coastal defence structure is located on several properties as follows:
- Lots 7 to 10 DPS 3542 (Private Properties);
 - Lot 35 DPS 3542 (Recreation Reserve); and
 - Lot 9 DPS 7101 (Recreation Reserve).

The Certificates of Title are attached (**Attachment “B”**).

- 2.5 The existing coastal defence structure was originally established under emergency works in April/May 2000 and subsequent resource consents from the Waikato Regional and Thames Coromandel District Councils were obtained in October 2003. The consent holder appealed the decision to the Environment Court, which was resolved by mediation. The Minister of Conservation signed off the decision to grant the coastal permit (authorisation 107307) on 16 September 2005. The TCDC and WRC resource consent decisions are attached (**Attachment “C”**). A further resource consent to authorise beach nourishment of up to 1000 cubic metres per year for 3 years in the CMA at Buffalo Beach was also obtained on 28 March 2002.
- 2.6 The applicant has undertaken consultation with the Thames-Coromandel District Council’s (TCDC) Project Engineer; the TCDC Area Manager; Local Iwi Authority; DOC and neighbouring property owners. The applicant has also met with the TCDC and WRC planning staff to discuss the proposal.
- 2.7 Lot 35 DPS 3542 and Lot 9 DPS 7101 also contain a Reserve Management Plan, which details the objectives and policies of the reserve. Please refer to **Attachment “D”** for a full copy of the Buffalo Beach – Central Beach Reserve Management Plan.
- 2.8 A majority of the existing coastal defence structure is located on reserve land. The reserve land is located within the Central Beach Reserve Management Plan which confirms that coastal erosion is a reserve issue. Further assessment of the Reserve Management Plan has been undertaken in Section 9 of this report.
- 2.9 A plan showing the location of the site and colour aerial is attached as **Attachment “E”** to the application.

3. THE PROPOSAL

- 3.1 The applicant proposes to continue to use the existing coastal defence structure and undertake improvements to the existing coastal defence structure in accordance with the Tonkin and Taylor engineering report (**Attachment “F”**).
- 3.2 The existing coastal defence structure is at an elevation between RL3.1 and 3.6 AVD-46, with most surveyed levels at RL3.3m or above. The proposal is to undertake improvements to the existing structure to achieve a minimum RL level of 3.5 (AVD46).
- 3.3 It is proposed that the majority of the coastal defence structure would remain in the same position as its current position. However, the existing southern end of the defence structure is proposed to be reconstructed approximately 20 metres inland (i.e. western direction) and buried within the sand dune system. The layout of the coastal defence structure will be constructed in accordance with Sketch SK04.
- 3.4 It is proposed that the existing coastal defence structure be retained, but place new armour rock to achieve a minimum RL level of 3.5 (AVD46); and extend new armour rock and place additional geotextile underneath the new rock armour in accordance with Option A – Sheet No. SK02. The layout plan and typical sections are intended to provide a concept of the proposed works. A detailed design process will confirm more specific details and appropriate conditions of consent are expected.
- 3.5 The proposed coastal defence structure has been designed to withstand a 1 in 100 year return period storm (1% AEP) event allowing for storm surge and predicted sea level rise over the next 40 to 50 years (i.e. a future potential sea level rise of 0.4m over a 40 to 50 year timeframe).
- 3.6 The applicant is seeking a 35 year consent term for the ongoing occupation and maintenance of the coastal defence structure and any public access structures. It is proposed that Thames-Coromandel District Council would establish and maintain their infrastructure (i.e. public access structures). There may be a requirement to undertake maintenance of the coastal defence structure after major storm events. It is therefore important that provision be made to ensure maintenance and repairs be undertaken throughout the term of the consent.
- 3.7 It is proposed to undertake these works over a 4 year period from the issuing of any resource consent decisions.
- 3.8 Tonkin and Taylor has been engaged to evaluate various options to protect the existing residential dwellings from coastal erosion. There are various reasons to undertake works in accordance with Option A – Sheet No. SK02 such as economics (i.e. costs); less construction works than other options; the knowledge

for property owners that the existing structure has ‘done its job’ and therefore have confidence with the coastal defence structure; and basically limited other options available. A full copy of the Tonkin and Taylor engineering report is attached (**Attachment “F”**).

4. ZONING; REGIONAL AND DISTRICT PLAN RULES

Thames-Coromandel District Operative and Proposed District Plan Requirements:

Operative District Plan

- 4.1 Under the Operative District Plan the coastal defence structure is located within the Open Space Zone and Housing Zone (Outside All Policy Areas). Resource consent is required for the following:
- Pursuant to Rule 452.5.1, coastal defence structures require resource consent for a **Non-Complying Activity**.
 - Pursuant to Section 412.4.1 where two or more earthwork standards are not able to be met, the works shall be assessed as a **Discretionary Activity**. The volume of cut and fill proposed to establish the upgraded coastal defence structure exceeds the 50m³ volume standard and will be greater in area than 150m².
 - Coastal defence structures are not an activity listed in the Open Space Zone. In accordance with Section 6.5.6.1.5 of the Operative District Plan activities not listed are a **Non-Complying Activity**.

Proposed District Plan

- 4.2 Under the Proposed District Plan the coastal defence structure would be located within the Recreation Passive Zone and Residential Zone. The coastal defence structure would also be located within the Current and Future Coastal Process Lines. Resource consent is required for the following:
- Section 34.11 – Rule 11.1, a coastal defence structure is a **Non-Complying Activity**.
 - Section 34.13 – Rule 20.1, a coastal defence structure is a **Non-Complying Activity**.
 - Section 53.6 – Rule 15.1, an activity not listed within the Recreation Passive Zone’s activity table at the beginning of Section 53, and not listed in the Activity Summary Table (in Section 1.8) is a **Discretionary Activity**.
 - Section 54.6 – Rule 23.1, an activity not listed within the Residential Zone’s activity table at the beginning of Section 54, and not listed in the Activity Summary Table (in Section 1.8) is a **Discretionary Activity**.

Waikato Regional Council's Regional and Coastal Plan Requirements:

Regional Plan

- 4.3 Rule 5.1.4.15 of the Waikato Regional Plan requires land use consent to undertake earthworks within a High Risk Erosion Area as a **Discretionary Activity**.

Coastal Plan

- 4.4 Rule 16.6.3 of the Waikato Regional Plan states that the use of motorised vehicles on the foreshore or seabed of the CMA for the purpose of ongoing maintenance which does not comply with the conditions for a permitted activity in Rule 16.6.2 is a **Discretionary Activity** subject to compliance with the standards and terms contained within that rule.
- 4.5 Rule 16.4.24 of the Regional Coastal Plan confirms that any erection, placement, use of, occupation of space by, extension, reconstruction, alteration, removal or demolition of a structure in the CMA is a **Discretionary Activity**.
- 4.6 Rule 16.4.26 of the Coastal Plan confirms that occupation of space in the CMA by the coastal defence structure is a **Discretionary Activity**.

Conclusion (District and Region)

- 4.7 Overall, resource consents as a Non-Complying Activity from the Thames-Coromandel District Council and as a Discretionary Activity from the Waikato Regional Council are required for the continued use and associated improvements to the existing coastal defence structure.

5. STATUTORY PROVISIONS

- 5.1 A resource consent for a non-complying activity is pursuant to Sections 104, 104B, 104D, 108 and Part II of the Resource Management Act 1991 (the Act).
- 5.2 Consideration of the above matters is subject to Part II of the Act, which encompasses Sections 5, 6, 7 and 8 of the Act. Part II of the Act embodies the purpose and principles of the Act. In relation to the current proposal, the main components of Part II include:-
- (a) *sustaining the potential of... physical resources...to meet the reasonably foreseeable needs of future generations: and*
 - (c) *avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

- 5.3 In achieving the purpose of the Act, Section 6(a), (d) and (e) (Matters of national importance) the Council shall recognise and provide for the following:
- (a) *The preservation of the natural character of the coastal environment ... and the protection of them from inappropriate subdivision, use, and development.*
 - (d) *The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers.*
 - (e) *The relationship of Maori and their culture and traditions with their ancestral lands, water...*
- 5.4 In achieving the purpose of the Act, Section 7(b), (c) and (f) direct the Council to have particular regard to:
- (b) *The efficient use and development of natural and physical resources.*
 - (c) *The maintenance and enhancement of amenity values.*
 - (f) *Maintenance and enhancement of the quality of the environment.*
- 5.5 Section 104 sets out the matters that the Council shall have regard to in assessing the proposal. Briefly, the relevant matters are:
- (a) *Any actual or potential effects on the environment of allowing the activity.*
 - (b) *Any relevant provisions of a plan or proposed plan.*
 - (c) *Any other matter the consent authority considers relevant and reasonably necessary to determine the application.*
- 5.6 For a non-complying activity, Section 104D of the Act explains that the Council may grant a resource consent for a non-complying activity only if it is satisfied that either the adverse effects of the activity will be minor **or** the proposal will not be contrary to the objectives and policies of the Regional and District Plans. To avoid doubt, Section 104(2) can be applied to the determination of an application for a non-complying activity. When forming an opinion on any actual and potential effects on the environment a consent authority may disregard an adverse effect of the activity if the plan permits an activity with that effect.
- 5.7 Assessment against Section 5 of the Act requires an overall broad judgement of whether the proposal will promote the sustainable management of natural and physical resources. In this particular situation the proposal is consistent with the

purpose of the Act in being an efficient use of the natural and physical resources. The proposal would maintain, as far as practical, the amenity values of the area. In my opinion, the recommended measures and design of the proposed coastal defence structure would certainly maintain amenity of the local modified environment.

- 5.8 The proposal would meet the reasonably foreseeable needs of future generations, and at the same time mitigate any potential adverse effects of the activities on the environment. In my opinion, the proposal would not be contrary to, and indeed be consistent with, Part II matters of the Resource Management Act 1991.

6. HAURAKI GULF MARINE PARK ACT 2000 (“HGMPA”)

- 6.1 The proposal is considered to be within the catchment of the Hauraki Gulf and therefore the HGMPA applies. Consent authorities are required to have regard to the purpose of the HGMPA (Section 3) and, in particular, Sections 7 and 8, which are deemed to constitute a New Zealand Coastal Policy Statement. Section 7 recognises the national significance of the life-supporting capacity of the environment of the Hauraki Gulf and its catchments, as defined in that Act. Section 8 states objectives, which include the protection of the natural and physical resources of the Hauraki Gulf and its catchments.
- 6.2 In my opinion, the proposal would have minimal effects on the HGMPA given that the local environment already contains several coastal defence structures at Mercury Bay.

7. NEW ZEALAND COASTAL POLICY STATEMENT 2010 (“NZCPS”)

- 7.1 The purpose of the NZCPS is set out in Section 56 of the RMA, which states:
“The purpose of a New Zealand Coastal Policy Statement is to state policies in order to achieve the purpose of this Act in relation to the coastal environment of New Zealand.”
- 7.2 The following policies of the NZCPS are also considered relevant to this application: -
- 7.3 Objective 2
“To preserve the natural character of the coastal environment and protect natural features and landscape values through:

- ***Recognizing the characteristics and qualities that contribute to natural character, natural features and landscape values and their location and distribution;***
- *Identifying those areas where various forms of subdivision, use and development would be inappropriate and protecting them from such activities; and*
- *Encouraging restoration of the coastal environment."*

*Bold for emphasis

Comment:

7.4 In this particular situation, subdivision and development has already occurred and the options available to the land owners are limited. Mercury Bay is no longer a pristine environment with high natural character. The characteristics of Mercury Bay are residential dwellings; roading infrastructure; non-residential facilities such as toilet facilities and the yacht club building; and existing hard coastal defence structures situated at various locations. The proposed improvements to the existing coastal defence structure would not significantly alter the character of Mercury Bay and I am satisfied that the proposal will not be contrary to Objective 2.

7.5 Objective 4

"To maintain and enhance the public open space qualities and recreation opportunities of the coastal environment by:

- ...
- *Maintaining and enhancing public walking access to and along the coastal marine area without charge, and where there is exceptional reasons that mean this is not practicable providing alternative linking access close to the coastal marine area; and*
- *Recognising the potential for coastal processes, including those likely to be affected by climate change, to restrict access to the coastal environment and the need to ensure that public access is maintained even when the coastal marine area advances inland."*

Comment:

7.6 Maintaining public walking access along the coastal marine area is obviously important. I have attached various photographs (**Attachment "G"**) of the high tide mark, which provides an indication that access along the beach at high tide is available on a calm day. It is acknowledged that during storm events and king tides associated with a low means there would be restricted access, especially at

high tide. However, for the majority of the time (i.e. either side of high tide) access along the beach is available.

7.7 It should be recognised that the Buffalo Beach application is a far superior outcome compared to the Cooks Beach seawall at high tide. Please refer to the photos of the Cooks Beach 'Backstop Wall' (**Attachment "H"**).

7.8 It should be acknowledged that during storm events access will be restricted. However, access during storm events generally restricts access along several sections of Buffalo Beach. The applicant has noted that the general public does not walk along the beach during stormy weather. As an alternative, pedestrian and vehicle access is available along Buffalo Beach Road to the adjoining reserves to the south and north of the proposed coastal defence structure. On balance, the proposal is not contrary to Objective 4 of the NZCPS as access along the coast is not overly restrictive and alternative access linking to the northern and southern reserves and to the CMA is available.

7.9 Objective 5

"To ensure that coastal hazard risks taking account of climate change, are managed by:

- *Locating new development away from areas prone to such risks;*
- *Considering responses, including managed retreat, for existing development in this situation; and*
- *Protecting or restoring natural defences to coastal hazards.*

Comment:

7.10 When the properties were originally established in 1955, I assume that climate change and sea level rise was not treated with the same scrutiny as the current policy regime and therefore we are reactively dealing with coastal erosion and climate change as practical as possible. The Tonkin and Taylor report has taken into account climate change; sea level rise and sea surge for certain storm events. The applicant accepts that the level of protection of the upgraded coastal defence structure negates the need for any other responses such as managed retreat.

7.11 The applicant has very little option available to them in terms of restoring natural defences and has attempted the soft approach with beach nourishment in the past. However, the applicant has confirmed to me that the beach nourishment only lasted several weeks (i.e. until the first storm event). The applicant has considered alternatives to the current proposal and is the best practical scenario in this particular situation. On balance, the proposal is therefore not contrary to Objective 5 of the NZCPS as the proposal is protecting 'existing' development and has considered other methods such as designing

buildings for relocation and establishing any building additions to the western rear portion of their properties where feasible.

7.12 Policy 24 – Identification of coastal hazards

Policy 24 of the NZCPS requires assessment of effects of climate change; storm frequency; intensity and surges; and cumulative effects of sea level rise, storm surge and wave height under storm conditions. The applicant's engineering consultant has addressed all these matters within their report and the proposed coastal defence structure has been designed to meet climate change and sea level rise. It should also be noted that the consent term is only 35 years and the WRC has further opportunities to reassess the design of the coastal defence structure in the future. The proposal is therefore not contrary to Policy 24.

7.13 Policy 25 - Subdivision, use and development in areas of coastal hazard risk

"In areas potentially affected by coastal hazards over at least the next 100 years:

- (a) ...;*
- (b) Avoid redevelopment, or change in land use, that would increase the risk of adverse effects from coastal hazards;*
- (c) Encourage redevelopment, or change in land use, where that would reduce the risk of adverse effects from coastal hazards, including managed retreat by relocation or removal of existing structures or their abandonment **in extreme circumstances**, and designing for relocatability or recoverability from hazard events;*
- (d) ...*
- (e) Discourage hard protection structures and promote the use of alternatives to them, including natural defences; and*
- (f) ..."*

**bold for emphasis*

7.14 Policy 27 – Strategies for protecting significant existing development from coastal hazard risk.

*"(1) In areas of **significant existing development** likely to be affected by coastal erosion hazards, **the range of options for reducing coastal hazard risk** that should be assessed includes:*

- (a) Promoting and identifying long-term sustainable risk reduction approaches including the relocation or removal of existing development or structures at risk;*
- (b) Identifying the consequences of potential strategic options relative to the option of 'do nothing';*

- (c) **Recognizing that hard protection structures may be the only practical means to protect existing infrastructure of national or regional importance, to sustain the potential of built physical resources to meet the reasonably foreseeable needs of future generations;**
 - (d) *Recognizing and considering the environmental and social costs of permitting hard protection structures to protect private property; and*
 - (e) *Identifying and planning for transition mechanisms and timeframes for moving to more sustainable approaches;*
- (2) *In evaluating options under (1):*
- (a) *Focus on approaches to risk management that reduce the need for hard protection structures and similar engineering interventions;*
 - (b) *Take into account the nature of the coastal hazard risk and how it might change over at least a 100 year timeframe, including the expected effects of climate change; and*
 - (c) *Evaluate the likely costs and benefits of any proposed coastal hazard risk reduction options.*
- (3) *Where hard protection structures are considered to be necessary, ensure that the form and location of any structure are designed to minimise adverse effects on the coastal environment.*
- (4) *Hard protection structures, where considered necessary to protect private assets, should not be located on public land if there is no significant public or environmental benefit in doing so.*

*Bold for emphasis

Comment:

7.15 Policy 25 does not mention 'new' development, but the policy is basically written for new development and not 'existing' development. Policy 27 addresses strategies for protecting significant 'existing development'. Policy 25(e) *discourages* hard protection structures, but does not prohibit these type of structures. A majority of the recently constructed residential dwellings are required to be relocatable under the Thames-Coromandel District Council's policy for new buildings and building additions. Likewise, a majority of new builds or building additions are undertaken towards the western rear portions of the residential properties and away from the CMA. The proposal is not contrary to Policy 25 and the applicant's position is that 'extreme circumstances' is not apparent.

- 7.16 This is a unique situation given that the proposal is to utilise the existing coastal defence structure, which would be subject to improvements to take into account climate change. The existing structure is already located partially on public land. There is a serious cost to the land owners to relocate the existing coastal defence structure who have already spent considerable funds establishing the existing facility. The public benefit is that the existing reserve land at the southern end of the existing coastal defence structure would most likely not exist without it.
- 7.17 The benefit of utilising the existing structure's location is that the applicant and the Council are reasonably aware of the key ongoing effects of the existing structure (i.e. the end wall effects), which have been mitigated over the last 14 odd years by sand push-ups after significant storm events.
- 7.18 Early on, it was recognised by the land owners that the hard protection structure is the only practical means of protecting the existing residential properties. Policy 27 does not rule out the use of hard protection structures. Policy 25 also confirms that managed retreat and relocation of existing structures would occur in 'extreme circumstances'. Based on the Tonkin and Taylor engineering assessment, the applicant's proposal would ensure the existing residential structures would be protected for the next 35 years. On balance and given the circumstances, the proposal to utilise the existing structure and undertake improvements, would not be contrary to Policy 27, which does not rule out hard protection structures.

Conclusion (NZCPS 2010)

- 7.19 I have carefully reviewed all the objectives and policies of the NZCPS (2010) and due to the uniqueness of this particular situation and reasonable success of the existing defence structure, I am more than satisfied that the proposal will not be contrary to those relevant objectives and policies. Regard has been given to these provisions of the NZCPS in planning the improvement of the coastal defence structure.

8. WAIKATO REGIONAL COUNCIL PLANS

- 8.1 In my opinion, the provisions of the Waikato Regional Policy Statement (28 April 2016), including the Coastal and Regional Plans, have been addressed via the assessment of the NZCPS 2010 above. After reviewing these policy statements, I am also satisfied that the proposal will not be contrary to the Regional Policy Statement.

- 8.2 In particular, Issue 1.2 (Effects of Climate Change) has been fully addressed in the overall design of the coastal defence structure. Issue 1.2 (Explanation) states:

*“Over the long term, climate change and sea level rise is likely to increase risks to coastal properties due to increased coastal flooding and erosion. Although sea level rise will happen gradually, we need to make **responsible decisions** today about the nature of development in coastal areas if we are to minimise risks to our communities.”*

*Bold for emphasis

- 8.3 The proposal is reacting to increased risks to coastal properties in the most responsible way and in response to the existing circumstances and risk to existing coastal properties.
- 8.4 Policy 6.2.4 (Coastal development setback (existing development) requires regional plans to identify the circumstances when it is appropriate to require existing development along the coast to be relocated. To my knowledge none of the existing residential properties have been identified by the regional plans. The proposal in most cases will meet Policy 6.2.4 given that natural character values of Mercury Bay beach has already been highly modified by other consent coastal defence structures and therefore natural character values will be maintained. Based on the supporting engineering report, the proposal will avoid natural hazards for at least another 35 years. As already discussed, public access to and along the beach will be maintained. On balance the proposal is not contrary to Policy 6.2.4.
- 8.5 Policy 12.2 (Preserve natural character) requires assurance that activities within the coastal environment are appropriate in relation to the level of natural character. The policy is reasonably strict on preserving natural character of ‘pristine’ or ‘outstanding’ coastal environments. The proposal is not located in a ‘pristine’ or ‘outstanding’ coastal environment (i.e. has not been identified by the Proposed District Plan or Regional Policy Statement as outstanding).
- 8.6 Policy 12.3.2(e) (Amenity value of the coastal environment) states:

*“recognising that some areas derive their particular character and amenity value from a **predominance of structures, modifications or activities**, and providing for their appropriate management.”*

*Bold for emphasis

Comment:

- 8.7 Maintenance and the enhancement of amenity values is certainly an important consideration. However, in terms of implementation methods, the policy does confirm that some areas are dominated by a predominance of structures and a

highly modified environment. In my opinion, a practical assessment of amenity values is required for a modified environment, and an environment that is no longer pristine or outstanding. It is my opinion that the coastal defence structure is able to be improved due to the practical nature of Policy 12.3.2(e).

- 8.8 The renewal of the coastal defence structure is not contrary to Policy 13.1(d) (Natural hazard risk management approach) as the engineering report confirms that the mitigation measures reduce intolerable risk to tolerable or acceptable levels for at least the next 35 years and beyond. The applicant's engineers have designed the coastal defence structure for this outcome. It is acknowledged that the Policy *prefers* natural features over manmade structures as defences against natural hazards. The policy *prefers* this outcome, but not all circumstances allow for natural features against natural hazards. At this time, the proposal is the best available practice as demonstrated by the various coastal defence structures located at Buffalo Beach and Cooks Beach.
- 8.9 There is a combination of methods that have been used by the applicant and TCDC to reduce the natural hazard risk such as the requirement for relocatable buildings under the building code and building additions undertaken towards the rear (western boundary) of the residential properties. The proposed coastal defence structure is another method to manage the natural hazard risk to an acceptable level. The proposal is therefore not contrary to Policy 13.2 (Manage activities to reduce the risks from natural hazards).

Conclusion:

- 8.10 I have carefully reviewed a number of Policies of the RPS (April 2016), and the majority of the policies relate to new development and limited policies relate to existing development and therefore do not apply to this situation. For example; Policy 6.2 (Planning for development in the coastal environment) sets policy for new development that has the ability for development setbacks from the CMA that takes account of natural hazard risk.
- 8.11 I am more than satisfied that the proposal will not be contrary to the relevant policies contained within the RPS and in certain circumstances where there is limited opportunity for natural defences, a coastal defence structure is not ruled out or prohibited.

9. ASSESSMENT OF EFFECTS ON THE ENVIRONMENT

9.1 Section 88 and the Fourth Schedule of the Resource Management Act 1991 sets out the matters to be considered when preparing an assessment of effects on the environment. In this case it is considered that the principal areas of potential effects of the proposed development relate to the following matters:

- Design Recommendations and Coastal Processes;
- Natural Character and Amenity Values;
- Cultural and Iwi Consultation;
- Consistency with the Buffalo Beach – Central Beach Reserve Management Plan;
- Ecological Effects;
- Water Quality Effects;
- Public Access Effects; and
- Positive Effects.

Design Recommendations and Coastal Processes

9.2 The Tonkin and Taylor report has undertaken an assessment of the existing coastal defence structure. In terms of the existing defence structure, the applicant's engineers confirm the following:

"There is no apparent displacement of rock into the intertidal zone which indicates a general stability of the rock."

9.3 The applicant's engineers also confirm that the limited rock size (particularly on the upper slope) and given the predicted sea level rise, the existing defence is unlikely to provide acceptable protection long term unless improvements are implemented. The applicant's engineers have assumed beach levels in front of the seawall at historic low levels of -0.5m AVD-46, and have considered a 1%AEP storm and allowed for predicted sea level rise of 0.4m over the next 40 to 50 years, which exceeds the term of the consent timeframe. The key improvements recommended by the applicant's engineers are as follows:

- Placement of additional larger armour rock over the outer face of the existing defence;
- A rock crest elevation of 3.5m RL, which would require a slight height increase to the existing defence in some places. The crest height will be similar or slightly above existing property levels;
- Approximately 18 metres of the southern end of the existing seawall is to be oriented inland (westerly direction) and is buried well into the backshore dune area; and
- It is expected that the Thames-Coromandel District Council will continue with the ongoing beach dune management at the southern end of the seawall and beyond.

Full details of the proposed improvements/recommendations to the existing coastal defence structure have been discussed within the Tonkin and Taylor report. It is also recommended that a suitable condition of consent be imposed requiring final design details to be prepared in accordance with the recommendations prior to any works being undertaken.

- 9.4 A detailed study of the coastal processes has not been undertaken as part of the renewal of the existing coastal defence structure. The existing defence has been in place for over 15 years and the ongoing effects are well known by the applicant and local authority. However, there have been many studies of the coastal processes by Dalm (1983 and 1999); Dalm and Munro (2000); Smith (1980); Hume and Hicks (1996); and Healy and Dell (1982). A full assessment of the coastal processes for the existing defence was undertaken by Meritec, which provides a useful assessment of the shoreline change and coastal processes (Please refer to **Attachment "I"** for a copy of this assessment).

Natural Character and Amenity Values

- 9.5 As already addressed within the NZCPS 2010 and Regional Policy Statement assessment of the natural character in Sections 7 and 8 above, the proposed coastal defence structure is located within an area of high modification and the coastal environment is not pristine or identified as high or outstanding natural character. One benefit of the proposal is the improvements to the southern end of the existing defence will be relocated inland and buried within the dune system. I am satisfied that Buffalo Beach has been transformed and highly modified over the years and that the proposal would maintain the changing character of the beach. The proposal is not for a 'new' structure but improvement to the existing structure. The potential adverse effects on natural character and amenity values will be no more than minor.

Cultural and Iwi Consultation

- 9.6 The applicant is undertaking consultation with the local iwi authority (Ngati Hei) and their comments/assessment of the proposal will be provided as soon as possible.
- 9.7 There are no recorded archaeological sites within the vicinity of the coastal defence structure and highly unlikely that any disturbance of unrecorded archaeological site(s) would be discovered due to the location of the proposed works and the natural and manmade disturbance to the area. Any new discoveries of unrecorded archaeological sites will follow agreed mitigation and Ngati Hei Tikanga and cultural practice.

Reserve Management Plan

- 9.8 Please refer to **Attachment “D”** for a copy of the Buffalo Beach – Central Beach Reserve Management Plan. The Central Beach Reserve Management Policy 9.5.2.5 confirms that any ‘new’ structures to protect private property will not be built on reserve land. It should be acknowledged that the proposal is not for a ‘new’ structure and therefore the policy does not apply.

Ecological Effects

- 9.9 An ecological assessment of the existing defence structure was undertaken by Dr Brian Coffey and concludes that the study area was typical of an exposed sand beach in northern New Zealand which is typically low in biodiversity. There are limited numbers of animals which are adapted to cope with the mobile substrate associated with wave action (and at times strong winds).
- 9.10 Another resource consent application for the Macrocarpa Reserve to the north of the site confirms the following:

“The foreshore has a relatively wide intertidal sand flat with low tide mark located approximately 120m offshore from the dune crest. Thus the potential to disturb shellfish beds and aquatic vegetation during construction of the groyne is negligible, as these resources are typically limited to the area seaward of the low water mark.”

Comment:

Based on this assessment, the ecological effects of the proposed improvements to the coastal defence structure is also negligible.

- 9.11 A full copy of the previous ecological assessment is attached (**Attachment “J”**). Based on the previous ecological assessment, it is considered that the potential adverse effects of the improved coastal defence structure on ecological matters will be minor.

Water Quality Effects

- 9.12 The proposed works to establish the improved coastal defence structure is located adjacent to and on the foreshore and may result in a small discharge of sediment into the marine area. This may result in a temporary discolouration of the seawater and most likely a far less effect than discolouring during a natural storm or rainfall event. It is recommended that any works are undertaken during and around low tides or when the area is not inundated by seawater and a condition of consent would be acceptable to the applicant.

Public Access

- 9.13 Public access forms a key aspect in the policies of the NZCPS and RPS. A full assessment of the public access is contained within section 7 of this report. There may be short durations at high tides and during storm events when access along the beach is restricted. However, this is for a short period of time. For the majority of the time, access along the beach is uninterrupted. When access is potentially restricted, there are other existing options to gain access to the beach via existing reserves to the north and south of the coastal defence structure. Based on the short duration when access may be restricted; storm events when the general public does not walk along the beach; and other public access options available, the potential adverse effects of the proposal on public access will be minor.
- 9.14 It should be acknowledged that the proposal is a far superior outcome compared to the Cooks Beach seawall (refer to **Attachment “H”** photos) and other coastal defence structures located towards the southern end of the beach nearer to the Whitianga town centre, which were all processed on a non-notified basis by both Councils.
- 9.15 The applicant has met with the local Thames-Coromandel District Council staff with regard to the possibility of establishing a walkway on top of the coastal defence structure. However, after perusing the Reserve Management Plan for the Central Beach Reserves (**Attachment “D”**) and the supporting concept plan prepared by Soul (Area B – Buffalo Beach North), there is no requirement or future plan for any type of walkway to be established for 139 or 139B Buffalo Beach Road (the Reserve). Likewise, Policy 4.5.2.1 and 4.5.2.2 confirms the following:
- Policy 4.5.2.1-
- “Where **possible** provide walking track facilities through reserve areas that:*
- a. Are suitable to a range of people’s abilities.*
 - b. Provide linkages between reserves.”*
- Policy 4.5.2.2-
- “Develop a coastal walkway track with linkages. **This may not follow the coastline.**”*
- *Bold for emphasis.
- 9.16 The reserve management plan policy confirms that ‘*where possible*’ provide a walking track and that ‘*this may not follow the coastline*’. There are several difficulties establishing a walkway on top of the coastal defence structure such as cost; ongoing maintenance of the structure after storm events; potential liability concerns; private land ownership matters; and the desirability of a walking track adjacent to the living areas of private property (i.e. there would be minimal

separation distance). A walking track is also contrary to the Central Beach Reserve Management Plan that promotes access to the beach only via reserve accessways and no provision for a walkway. In short, there is provision for access along the beach and/or already established pedestrian linkages along Buffalo Beach Road.

Positive Effects

- 9.17 The proposal is one method of managing coastal erosion and the best practical option for this particular situation when taking into account the effectiveness and economics of other alternative options. Overall the upgrade to the existing coastal defence structure provides protection for the residential properties for 40 to 50 years based on the evidence and recommendations of the applicant's engineers. As assessed by the applicant's engineer, the improvements to the southern portion of the existing defence structure is likely to mitigate the potential end wall effects and provide an improved outlook for the residential properties located to the south of the structure.
- 9.18 Apart from some minor end wall effects that are able to be managed and mitigated, the existing coastal defence structure as described by the applicant's engineers as appearing to provide a reasonable level of protection. The effects of the existing structure are well known and have created far less effects on the environment than the Cooks Beach seawall that created considerable end wall effects and the seawall on the main beach of Mercury Bay that required extending due to the end wall effects. After approximately 15 years, the existing coastal defence structure has not created a severe reaction to coastal erosion that required any further extension to the seawall, which is very positive. It is acknowledged that ongoing management of end wall effects will need to continue.

Conclusion

- 9.19 Based on the engineering report and previously prepared assessments for the existing structure, the proposal would meet the foreseeable needs of future generations and as far as practical mitigates any adverse effects on the environment.
- 9.20 Pursuant to Section 104D(1)(a) of the Resource Management Act 1991, and based on the assessment of effects above; and the supporting reports and attachments, I am satisfied that the first test of Section 104D can be met and the adverse effects of the activity on the environment will be minor.

10. PROPOSED DISTRICT PLAN OBJECTIVES AND POLICIES

- 10.1 Pursuant to Section 104D(1)(b) of the Resource Management Act, the second test for TCDC, is for it to be satisfied that the proposal will not be contrary to the

objectives and policies of the Proposed District Plan. Sections 7; 7A; and 10 of the Proposed District Plan lists objectives and policies relevant to the application. Some of the aspects of the application as it relates to the relevant objectives and policies are:

- Section 7.3 - Objective 1 confirms that use and development in the Coastal Environment *enables people and their communities to provide for the social, economic, and cultural well-being and their health and safety*. The proposal will ensure the well-being and safety of the people and residential properties. The Objective also requires the management of *coastal hazard risks*. There are several methods that have been undertaken to manage coastal hazard risks and although 'hard' structures is not a preferred option, nevertheless a coastal defence structure is still one method of managing coastal erosion. The proposal is therefore not contrary to Section 7.3 – Objective 1.
- Section 7A – Objective 1 relates to the natural character of the coastal environment. When you carefully review the wording of Objective 1, it uses the words *recognise that there are different levels of natural character in the Coastal Environment*. As already explained, the site has not been identified as an Outstanding or High Natural Character environment. Given that the site has not been identified as outstanding or high natural character, the Proposed District Plan recognises that this coastal environment is modified and is not a pristine environment. Mercury Bay contains a number of structures and modifications. The proposal is therefore able to sit within this modified coastal environment and preserve current natural character values. The proposal is therefore not contrary to Section 7A – Objective 1. All other objectives and policies within Section 7A all relate to identified Outstanding and High Natural Character areas and are not applicable to the subject site.
- Section 10.3 – Policy 1k requires an assessment of the potential effects of climate change when assessing natural hazard risks. The Tonkin and Taylor report has taken into account climate change and sea level rise within the design of the improved coastal defence structure.
- Section 10.3 – Objective 4 confirms that new 'hard' coastal defences to reduce coastal hazard risk are not established within the coastal environment 'except' where no other option is available to safeguard life and existing dwellings. The applicant's position is that the options are limited and the hard coastal defence structure would protect the existing residential dwellings (as it has proven to do so in the past).
- Section 10.3 – Policy 4e would like a 'hard' coastal defence structure that needs *replacing or major restoration work*, to be replaced with a 'soft' coastal defence *if this is feasible to maintain existing protection from coastal erosion and/or coastal inundation*. The applicant's position is that the structure does not require *replacing* and the proposal is not for *major restoration work* nor is

it feasible to replace with a 'soft' coastal defence due to predicted climate change and sea level rise and wave action.

- 10.2 From the assessment in Sections 7; 8 and 10 of this report, I am satisfied that the proposal will not be contrary to the relevant objectives and policies of the Proposed District Plan and Regional Plans and therefore meets the second test of Section 104D of the Resource Management Act 1991.

11. WRITTEN APPROVALS

- 11.1 Pursuant to Sections 95 to 95F of the Resource Management Act 1991, there is no longer a presumption that a Council must publicly notify a resource consent unless the proposal meets certain tests (in this case the effects are minor). The assessment of effects section within this report determines that the potential adverse effects on the environment will be no more than minor and the general public will not be adversely affected by this particular proposal.
- 11.2 The Council may, in its discretion, decide whether to publicly notify an application under Section 95D if the activity "*will have or is likely to have*" adverse effects on the environment that are more than minor. The repealed provisions required the application to have effects that were no more than minor or less than minor.
- 11.3 The starting point is now neutral, as opposed to the previous presumption in favour of notification. As outlined in the Assessment of Effects on the Environment section of this report; the uniqueness of the situation (i.e. improvements to an existing structure); and based on the supporting engineering and ecological reports; the adverse effects of the proposal are considered to be no more than minor. The potential adverse effects of the proposal on the wider community would be no more than minor due to the location of the structure (i.e. not part of the main beach of Mercury Bay) and is also an upgrade of the existing coastal defence structure that has been in place for approximately 15 years.
- 11.4 I can confirm that pursuant to Section 95A(2)(b) that the applicant does not request public notification. The Council under Section 95E(1) must decide that a person is an affected person if the activity's adverse effects on the person are minor or more than minor (but are not less than minor). That is to say, a person is deemed not to be affected if the effects on that person are less than minor.
- 11.5 It is my opinion that any off site effects, including those on adjoining owners who might otherwise be potentially affected are likely to be less than minor because of the known effects of the existing coastal defence structure and that it is proposed to undertake improvements to the southern end of the seawall to mitigate as far as practical end wall effects.

- 11.6 The applicant is currently undertaking consultation with the local iwi authority and their comments will be provided as soon as possible. Likewise correspondence has been sent to the Department of Conservation and the applicant is also waiting for their comment on the proposal. The applicant has also met with representatives of the Local Community Board and the local Area Manager to discuss the project.
- 11.7 While it is acknowledged that the final decision on non-notification and/or some form of notification lies with the Councils, it is my opinion that any off site effects, including those on adjoining owners who might otherwise be potentially affected, are likely to be no more than minor due to the known effects of the existing coastal defence structure and that the proposed improvements do not adversely affect the existing situation.

12. CONCLUSION

- 12.1 From the analysis of the Resource Management Act 1991, the Thames Coromandel Proposed District Plan, the NZCPS 2010, the Waikato Regional Council's Regional Policy Statement (April 2016), and an assessment of any potential effects that the proposal might have on the environment, the Councils can be satisfied that:
- The proposal will not be contrary to the objectives and policies of the Proposed District Plan or Regional Plans, and
 - The adverse effects on the environment will be no more than minor.
- 12.2 The proposal is not inconsistent with any regional planning provisions. Pursuant to Section 104D of the Resource Management Act 1991, and based on the supporting expert reports (ecology, engineering), I am satisfied that the proposal will meet both the tests of Section 104D, satisfy Section 104 and furthermore be consistent with the purpose and principles of the Act. In my professional opinion, this planning assessment and the supporting environmental reports applicable to the proposal provide excellent justification for the Thames-Coromandel and Waikato Regional Councils to grant resource consent to the Buffalo Beach Homeowners Association for the proposed upgrade of the existing coastal defence structure subject to appropriate conditions.

PLANNERS PLUS LIMITED
David Lamason (BREP (Massey), MNZPI)
Director