

COMMISSIONER REPORT

TITLE: Commissioner Hearing
DATE: Wednesday, 10 October 2012
TIME: 9.30 am
VENUE: Tasman District Council, Council Chambers,
189 Queen Street, Richmond

COMMISSIONER: Commissioner Shona McGarry

APPLICANT: **Tasman District Council:**
Transportation Manager (G Clark)
Transportation Network Engineer (S Steedman)
Richard Reinen-Hamill (Tonkin and Taylor)

REPORTING OFFICERS: TDC Principal Resource Consents Advisor (J Butler)
TDC Consent Planner, Coastal (R Squire)
TDC Resource Scientist - Rivers & Coast (E Verstappen)

IN ATTENDANCE: Devin & Charmaine Gallagher - Submitters
Camilla Owen - Counsel for the Gallaghers

Helen Campbell, Friends of Nelson Haven & Tasman Bay Inc. -
Submitter

TDC Administration Officer (G Woodgate)

Commissioner McGarry welcomed everyone to the Hearing and explained the procedures and order to be followed.

TASMAN DISTRICT COUNCIL, BROADSEA AVENUE EROSION PROTECTION STRUCTURE - APPLICATION No. RM110150 and RM110096

RM110150

To occupy and disturb the common marine and coastal area in association with retaining and undertaking ongoing maintenance of an existing 427 metre long sea wall and associated wing walls.

RM110096

To retain and undertake ongoing maintenance of an existing sea wall and associated wing walls within an Open Space Zone.

ZONING

Coastal Marine Area
Open Space Zone

LAND AREA AFFECTED

9 hectares with 35 dwellings considered to be in the hazard zone with a further 15-20 properties on the remaining area north of Broadsea Avenue.

**TASMAN DISTRICT COUNCIL, BROADSEA AVENUE EROSION PROTECTION
STRUCTURE - APPLICATION No. RM110150 and RM110096**

THAT pursuant to Section 104B of the Resource Management Act, the Commissioner GRANTS consent to Tasman District Council as detailed in the following report and decision.

**Report and Decision of the Tasman District Council through
Commissioner Sharon McGarry**

**Meeting held in the Tasman Room, Richmond on 10 October 2012
Site visit undertaken on 9 October 2012
Hearing closed on 25 October 2012**

This is the decision of independent Commissioner Sharon McGarry, appointed by the Tasman District Council ("the Council") to hear and determine applications lodged by the **Tasman District Council** ("the Applicant") to occupy and disturb the coastal marine area, and to retain and undertake ongoing maintenance of an existing 427 metre long rock revetment and associated wing walls. The applications, made in accordance with the Resource Management Act 1991 (RMA or "the Act"), were lodged with the Council and referenced as RM110096 (coastal permit to occupy and disturb the coastal marine area) and RM110150 (land use consent to retain and maintain existing rock revetment).

- COMMISSIONER:** Ms Sharon McGarry, Chairperson
- APPLICANT:** Mr Gary Clark (Transportation Manager - Tasman District Council)
Mr Richard Reinen-Hamill (Consultant Coastal Scientist - Tonkin & Taylor Ltd)
Mr Selwyn Steedman (Asset Engineer - Tasman District Council)
- CONSENT AUTHORITY:** **Tasman District Council**
Ms Ros Squire (Consent Planner, Coastal)
Mr Eric Verstappen (Resource Scientist, Rivers and Coast)
- SUBMITTERS:** Ms Helen Campbell (Friends of Nelson Haven and Tasman Bay Inc.)
Ms Camilla Owen (Counsel for Mr and Mrs Gallagher)
Mr Devin Gallagher
- IN ATTENDANCE:** Mr Jeremy Butler (Principal Resource Consents Adviser - Tasman District Council) - Assisting the Commissioner
Mr Garry Woodgate (Committee Secretary - Tasman District Council)

1. SUMMARY

The Commissioner has **GRANTED** resource consents, subject to conditions, to occupy and disturb the coastal marine area, and to retain and undertake ongoing maintenance of an existing 427 metre long rock revetment and associated wing walls.

2. DESCRIPTION OF THE PROPOSED ACTIVITY

The Applicant has applied to occupy and disturb the coastal marine area, and to retain and undertake ongoing maintenance of an existing rock revetment structure at Ruby Bay. The revetment and associated wing walls extend for approximately 427 metres (m) from the northern end of Tait Street (Number 9), to just north of the ramp at the southern end of Chaytor Reserve.

Prior to the existing rock revetment being built, the residents along Broadsea Avenue had constructed a series of small bund walls using logs and clay spoil. As each bund wall was eroded away following storm events (including Cyclone Drena in 1997) it was progressively located a little further landward of its original position. In June 2000, the Broadsea Avenue property owners applied for land use consent to install a rock revetment to protect a rebuilt clay bank, the remaining reserve behind the bank and their properties. The application was initially refused by the Council, but on appeal by the applicants, resource consent was subsequently granted by consent order issued by the Environment Court, with the duration of consent limited to 10 years.

The existing rock revetment was constructed in 2001. The revetment has a crest height of between 4.0 and 4.5 m above mean sea level (amsl), being an average height above ground level of 1.6m on its landward margin and between 2.5 and 3.0 m above the current foreshore level on its seaward margin.

Resource consent for the existing rock revetment expired on 22 August 2011. The Engineering Department of the Tasman District Council has applied for resource consents to provide for the ongoing occupation of the coastal marine area and to retain and undertake ongoing maintenance of the existing rock revetment for a period expiring on 23 March 2044. The consent duration sought aligns with the expiry date of a number of resource consents, including a coastal permit for a Restricted Coastal Activity (SAR-05-6201-15) granted by the Minister of Conservation in June 2009 for the adjoining rock revetment immediately to the south (which is locally known as the 'Old Mill Walkway').

3. TASMAN RESOURCE MANAGEMENT PLAN ("TRMP") ZONING, AREAS AND RULE(S) AFFECTED

According to the TRMP the following apply to the subject property:

Zoning: Coastal Marine Area, Open Space Zone

Area(s): Coastal Environment Area, Land Disturbance Area 1

Activity	Relevant permitted rule	Applicable rule	Status
Continued occupation and disturbance of the common marine and coastal area for the purposes of retaining and undertaking ongoing maintenance of an existing 427 metre long rock revetment	25.1.5E	25.1.7	Discretionary
Retain and undertake ongoing maintenance of an existing rock revetment within an Open Space Zone	17.9.2.1	17.9.2.2	Discretionary

Overall, the proposal is a Discretionary Activity.

At the time the application was lodged (15 February 2011) there were no additional consents required. However, Plan Change 22 was notified on 26 February 2011 and

introduced an additional consent requirement for coastal protection structures in the coastal risk area as follows:

UNCONFIRMED NOTES

Activity	Relevant permitted rule	Applicable rule	Status
Construction or alteration of a coastal protection structure in a coastal risk area (Effective as of 31 March 2012)	18.9.2.1	18.9.2.3	<p>Restricted Discretionary Activity.</p> <p>The matters to which Council has restricted its discretion under this rule are:</p> <p>(1) The extent of negative and positive effects on adjoining properties, natural environment and coastal processes;</p> <p>(2) The finished appearance of the works, including buildings and land;</p> <p>(3) Any effects on access to the coastline; and</p> <p>(4) Any effects on recreation.</p>

I note that decisions on submissions have been made and notified under clause 10(4) Schedule 1 of the RMA.

In accordance with section 88A of the RMA, I note that the applications are required to be processed, considered and decided according to the status of the types of activities at the time the application was first lodged. However, regard is required to be given to the changes introduced.

4. NOTIFICATION AND SUBMISSIONS RECEIVED

The applications were notified on 27 August 2012, pursuant to Section 95 of the Act. A total of six submissions were received; four submissions were in support, two submissions were in opposition, with four submitters stating that they wished to be heard. The following is a summary of the written submissions received and the main issues raised:

Submissions in Support

Submitter	Reasons
Grant Rutledge	Generally supported the application. He submitted that the boat ramp at Chaytor Reserve should be made available for public use, with two rocks at the bottom marked to allow safe access.
Bruce Gilkison	Submitted that any future works be limited to maintenance of the existing structure and that no extension be permitted onto the beach which would restrict public access
Tiakina te Taiao Ltd	Supported the concept of the rock walls as they exist.

Submitter	Reasons
	<p>Accepted that the foreshore has been substantially modified and the natural character has been lost.</p> <p>The maintenance work will ensure the walls physical and visual enhancement and will not involve much disturbance.</p> <p>Although there is no archaeological site in close proximity to the wall, there are other sites along this section of the coast where there was coastal settlement, and there is always potential for further finds. They requested that any consent be subject to an “accidental discovery” condition.</p>
Devin & Charmaine Gallagher	<p>Supported the retention and ongoing maintenance of the rock revetment and the granting of consents subject to a number of matters being addressed including:</p> <ul style="list-style-type: none"> (i) consistency in the term of consent and the standard of construction and maintenance with the rock revetment immediately to the south (Old Mill Walkway); (ii) providing for ongoing maintenance and any further improvements in the structure for the duration of the consent should they become necessary; (iii) further investigation into the provision of stormwater flow paths and works to address effects identified; and (iv) further investigation into the cause of erosion with review conditions to allow for appropriate responses following the investigations.

Submissions in Opposition

Submitter	Reasons
Nelson/Tasman Branch Forest and Bird	<p>Requested that Council plan to relocate the households which adjoin the coastline at Ruby Bay. The submission identified the effects of hard rock protection and its impact on coastal birds, public access, natural character, landscape and recreation.</p> <p>The submission requested that the application be declined and that Council pursue a sensible, long term solution to the problem.</p>
Friends of Nelson Haven & Tasman Bay Inc	<p>Submitted that the original consent was for a seawall which was temporary and of no specific design.</p> <p>The assessment of the integrity of the structure in the application does not provide the high degree certainty required for the Council given the duration applied for.</p> <p>There is no consideration given to the effects of climate change or assessment of the actual or potential effects.</p> <p>Public access will not be enhanced by this proposal.</p> <p>The progressive and on-going construction of sea walls, rock protection works and other structures will continue to degrade the amenity values, character and physical beauty of the Ruby Bay coastline.</p>

Submitter	Reasons
	<p>Planned retreat is the only sensible solution to the continuing effects of nature.</p> <p>The proposal does not meet the requirements of the RMA, the sustainable management of natural and physical resources nor the objectives and policies of the New Zealand Coastal Policy Statement (NZCPS).</p> <p>The submission requested that Council decline the application or limit the term of the consents to no more than five years</p>

5. PROCEDURAL MATTERS

A letter received by the Council a day before the hearing commenced from Mrs Rae Robinson was tabled at the hearing. The letter expressed support for the applications to retain the existing revetment. I note that Mrs Rae was not a submitter on the applications. While I have read the letter, I record that I have given it no particular standing in deciding upon this matter.

No other procedural matters were raised which required consideration or a ruling.

6. EVIDENCE HEARD

I heard evidence from the applicant, expert witnesses, submitters, and the Council's reporting officers. The following is a summary of the evidence heard at the hearing.

6.1 Applicant's Evidence

Mr Gary Clark (Transportation Manager - Tasman District Council)

Mr Clark introduced the applications and advised that the 427m Ruby Bay seawall and associated wing walls are an existing structure and that its resource consent, authorised by Environment Court consent order, expired on 22 August 2011.

Mr Clark commented on the following recommended conditions which were appended to Ms Squires' report:

- Condition 8 - clarification is required so that work on the reserve or beach is only triggered if the damage is caused by maintenance works;
- Condition 19 - reword to require the use of darker, more natural colour and harder wearing rock to be progressively used on the revetment;
- Condition 23 - reword to exclude emergency works from the limits outlined for general maintenance works;
- Condition 26 - reword to include the ability to use a surveyor to undertake the surveys and a coastal engineer to undertake the subsequent analysis; and
- Condition 27 - include a definition of what a 'significant storm event' is considered to be.

Mr Richard Reinen-Hamill (Consultant Coastal Scientist - Tonkin & Taylor Ltd)

Mr Reinen-Hamill presented a background context of the 2002 Tonkin & Taylor report that identified the potential erosion hazard along the Ruby Bay foreshore. The report concluded that physical works (rock revetments) and management responses (including beach nourishment), along with eventual transfer of assets at risk would be most appropriate.

Mr Reinen-Hamill considered that since this time, the coastal erosion potential had not abated and that the long term strategy still had merit. However, he highlighted that no suitable or economic source of sediment for beach nourishment had been found. He noted that an appropriate planning framework is progressing slowly, but that a further 30 to 50 years is required for the development of longer term planning to address the impact of coastal erosion.

Mr Reinen-Hamill supported the intentions of the submitters who sought managed retreat of assets and a shorter term for the seawall. However, he considered that a reasonable period of time is necessary to achieve such long term aims. For this reason, he did not support the outcome of a shorter duration for consent as sought by some submitters.

In response to questions, Mr Reinen-Hamill confirmed that the original cost of the Broadsea Avenue seawall was approximately \$1.8 million. He noted that 17 properties were immediately at risk on Broadsea Avenue, as well as the Council's roading and reserve infrastructure.

I asked how the Council would signal its intention that these rock seawalls remain only a short term fix strategy. Mr Clark replied that notices would be placed on the titles of properties in this area regarding being in an identified Hazard Zone. He added that it is not the Council's intention to build any more rock walls as they are extremely expensive to construct and to maintain. Mr Reinen-Hamill added that notices on titles will be balanced by existing land use rights and the need for a hazard zone will generate a response from the insurance industry and the associated issue of risk will be a major driver of change. However, he reiterated that this change would take a considerable period of time.

Regarding the stormwater overtopping issue raised in Mr Gallagher's submission, I asked if blockages to the stormwater drain grates could be prevented. Mr Reinen-Hamill replied that the grates could be increased in size to take more capacity. He also said that the ramp (which is part of the Old Mill Walkway revetment immediately to the south) is intended to act as a secondary flow path whereby overtopping water can flow back to the sea. He could not confirm whether the crest of the ramp is actually 300 millimetres higher than design, as suggested by Mr Gallagher. But he noted this could be rectified to ensure it functions as a secondary flow path as designed.

6.2 Submitter's Evidence

Ms Camilla Owen (Counsel for Mr and Mrs Gallagher)

Ms Owen presented legal submissions on behalf of Mr and Mrs Gallagher and tabled a sworn affidavit from Mr Ari Fon, a Consultant Engineer employed by Aurecon New Zealand Ltd.

Mr Fon's evidence was that the ramp has been constructed at a higher level than indicated on the initial Old Mill Walkway revetment drawings i.e. at 4.0m reduced level (RL) instead of the designed 3.6m RL. He noted that because of this, the ramp does not function as a secondary flow path as intended. He identified ongoing blockage problems with the primary stormwater flow outfalls and recommended that the ramp crest be lowered to be in accordance with the original design plans.

Ms Owen noted the Gallagher's support of the retention and on-going maintenance of the existing seawall, subject to improvements, in combination with beach nourishment as a long-term method of addressing the coastal erosion pressure.

Ms Owen noted that there is currently a lack of provision for stormwater and seawater outfall once it reached the Chaytor Reserve and Tait Street areas and the need to ensure secondary flow paths. She said that while the matter could be addressed via compliance with the consent conditions of the existing consent for the Old Mill Walkway revetment, it should also be a requirement of any consent for this adjoining seawall, particularly given the physical location of the crest of the ramp. She noted the ramp effectively joined the two structures and was a key measure in mitigating overtopping effects. She stated the existing seawall did not prevent overtopping and therefore must address any adverse effects by enabling water to be returned to the sea. She submitted that should consent be granted, a condition should be imposed on the consent mirroring Condition 3 on the existing consent for the Old Mill Walkway revetment.

Mr Devin Gallagher

Mr Gallagher also spoke briefly on behalf of himself and his wife. He outlined that Broadsea Ave property owners pay \$100 each per annum for the maintenance of the seawalls and that the lack of an effective secondary flow path for stormwater and seawater to return to the sea is of major concern to residents. He emphasised that the seawall allows for overtopping and therefore this must be addressed.

Mr Gallagher also stated that he seeks acknowledgement of the human intervention that has taken place and that a restoration of a natural sand supply to the foreshore is necessary through a wider investigation into the sediment dynamics of the bay.

Ms Helen Campbell (Friends of Nelson Haven and Tasman Bay Inc.)

Ms Campbell presented a submission in opposition to the applications on behalf of Friends of Nelson Haven & Tasman Bay Inc. She stated that the current coastal hazard risk situation at Ruby Bay has arisen from poor Local Body vision, risk management and short term planning. She said that there has now been a change in how coastal use, development and management are addressed and this is exemplified by the Council's Plan Change 22, which addresses coastal hazard risk in the Ruby Bay area.

Ms Campbell understood that a full 20m wide esplanade reserve was not taken when the Broadsea Avenue subdivision was implemented. She considered that the esplanade reserve that was taken was entirely inadequate with the effect being a "coastal squeeze" whereby there is inadequate space to allow for the natural functioning of the coastal system.

Ms Campbell addressed the consent duration sought by the applicant and noted 33 years is too long. She considered a long consent duration would create an expectation that the area would continue to be protected and would delay long term retreat from the hazard zone.

Ms Campbell addressed the alternatives and acknowledged that seawalls have their place, but not in a situation such as Ruby Bay. She said that beach nourishment could be effective, but that planned or managed retreat would be the only option to meet the 100 year planning horizon. She noted that this would involve withdrawing, relocating or abandoning assets that are in danger of being affected by the hazards present. She added that there is a total lack of consideration of aesthetics in the hard engineering protection works that currently exist and noted that no landscaping had been addressed. In support of managed retreat she opined that insurance cover will become difficult to

obtain and premiums will become expensive in such areas due to the hazard and risk factors.

Ms Campbell summarised the Friends' submission by saying that what has been done cannot practically be undone, but that the Council needs to take the lessons of the past on-board and take a precautionary approach for the future 100 years. She requested that a term of no more than 10 years should be granted, and that in this time appropriate measures be put in place to mitigate the erosion and plan for its effects.

In response to questions, Ms Campbell confirmed that the Friends would seek that the seawall be removed upon expiry of its consents. I discussed with Ms Campbell the rights that property owners have, and that they cannot simply be removed or relocated from their land without, for example, special legislation, as has occurred in Christchurch. Mrs Campbell considered that insurance costs would ultimately force the issue and she called for the Council to buy the affected properties and rent them back to the previous owners.

6.3 Reporting Officer's Report and Evidence

Ms Ros Squire (Consent Planner, Coastal - Tasman District Council)

Ms Squire firstly addressed the matter of the ramp structure that is part of the Old Mill Walkway revetment. She considered that the height of the crest of the ramp should be dealt with by way of enforcing compliance with the existing consent that authorises that structure.

Ms Squire said that the esplanade reserve along the coast was originally 38m wide to the south and 25m wide to the north, but that over time this had been reduced to 7m wide at the south and 3m wide to the north.

Ms Squire agreed with Ms Campbell that the Council was considering coastal hazard risks much more cautiously, as evidenced by Plan Change 22 which will manage property growth along Ruby Bay. She outlined that the Council's objectives and policies are to get property owners identified to be at high risk to relocate into the hinterland. She said that the Council will not be complacent with a 32 year resource consent duration and will be more responsive in the future regarding climate change and sea level rise risks. She considered that a 10 year consent duration is far too short and would not give enough time to manage future hazard risks.

Mr Eric Verstappen (Resource Scientist, Rivers and Coast - Tasman District Council)

Mr Verstappen provided a general outline of the coastal hazard and erosion situation in Ruby Bay. He advised that if the revetment were to be removed, erosion and seawater inundation would occur almost immediately. He confirmed that it was his understanding that the ramp crest design height was 3.6m RL and that this was appropriate. He considered that if it was found to be too high then the existing crest should be lowered.

6.4 Applicant's Right of Reply

Mr Reinen-Hamill commented that erosion is a natural process and while a seawall does not arrest all erosion it creates a more stable line. He agreed that there are adverse effects that result from seawalls. Mr Reinen-Hamill did not agree with Ms Campbell that the seawall would have a life of less than 10 years. He considered that such a seawall would be effective in most events, but may sustain damage with a 1% AEP event. He noted that increased sea level rise would increase the regularity of overtopping.

Mr Reinen-Hamill agreed with others that beach renourishment was extremely expensive. He said that a large amount of sand would continue to be lost and renourishment was generally undertaken in more sheltered bays and harbours.

Mr Reinen-Hamill commented on Mr Gallagher's concerns about the beach system being "out of balance". He said that nature is not always in balance. Change can be a continuum with changes occurring over longer timeframes than historical aerial photographs show. He indicated that the coastline could be slowly responding to catastrophic change. In his opinion there was no indication that a natural sediment supply will become available over the next several decades and the process of erosion will therefore continue.

Mr Clark commented that if the sea wall becomes redundant it would be removed, and that this eventuality is covered by recommended Condition 2. He said that the ramp access is covered under the consent for the Old Mill Walkway revetment, and the seawater ponding is a blockage issue and so lowering of the boat ramp crest would help. In summary, he considered that a 10 year consent duration, as sought by Ms Campbell would not be sufficient time to address the hazard issues and would not address any relocation issues raised.

7. PRINCIPAL ISSUES AND OUR MAIN FINDINGS

The principal issues that were in contention and my main findings on these issues are:

- a) **Issue 1**
Is the repair and maintenance of the existing revetment an appropriate response to coastal hazard management?

It is agreed by all parties that hard protection measures, such as rock revetments are not long term solutions to coastal hazard management. It is also accepted that strategic planning for managed retreat from identified coastal hazard zones is the only sustainable long term solution. The applicant reinforces this view accepting that such works are relatively temporary in nature, require ongoing maintenance and are expensive.

The applicant confirms that the ongoing maintenance of the existing revetment is a short to medium term measure to enable the development of long term planning mechanisms, such as Plan Change 22 to the District Plan, and to give affected property owners time to plan for their relocation. I consider it is also likely that national planning strategies will be developed and implemented within this timeframe to guide managed retreat from identified coastal hazard zones.

I consider that the existing revetment forms an integral part of the wider existing hard protection structures along the Ruby Bay/Mapua foreshore. These adjoining structures are consented for the next 31 years and I accept that maintenance of the existing hard protection measures (Old Mill Walkway) would adversely affect this section of Ruby Bay without the ongoing maintenance of this section of hard protection to a commensurate standard.

I accept the evidence of Mr Reinen-Hamill that without ongoing maintenance, erosion along this section is likely to be rapid and that the properties along Broadsea Avenue would be under imminent threat. In this regard, I consider ongoing maintenance represents the only practical short term solution to protect properties and infrastructure.

On the basis of the evidence presented, I am satisfied that the ongoing maintenance and repair of the existing revetment is an appropriate response given the existing

extent of hard protection structures along the Ruby Bay foreshore, the immediate threat posed to existing properties and infrastructure if the structure was removed, and the long term planning being undertaken in developed and implemented conjunction with the proposal.

b) **Issue 2**

Will retention and maintenance of the existing revetment adversely affect public access to and along the foreshore?

The existing revetment structure has significantly lowered the profile of the beach and access along the foreshore is currently only possible during periods of mid to low tide. Public access to the foreshore is enabled by the existing ramp at Chaytor Reserve and steps at the end of Tait Street. Public access along the foreshore is still possible on the landward side of the existing revetment and along the Old Mill Walkway.

Mr Reinen-Hamill confirmed that further beach lowering will occur as a result of maintaining and protecting the toe of the revetment, but noted that public access along the esplanade reserve will be protected.

I am satisfied on the basis of the evidence that the existing access to and along the coastal marine area will be maintained. I accept that the existing public access along the esplanade reserve would be further reduced if the revetment was removed or not maintained.

c) **Issue 3**

Will retention and maintenance of the existing revetment adversely affect amenity and natural character of the coastal marine area?

The existing revetment structure (and others along this section of coastline) has significantly reduced the amenity and natural character of the coastal marine area. I note that these adverse effects are existing and are therefore difficult to avoid or mitigate. As discussed in relation to public access above, removal of the structure would do little given its proximity to the other structures such as the Old Mill Walkway revetment and houses along Broadsea Avenue.

I am satisfied on the basis of the evidence that the removal of the structure would be unlikely to restore the beach profile and coastal erosion along this section of coastline would continue at a much more rapid rate. I consider that no additional adverse effects will occur as a result of the proposal and that the progressive replacement of the existing white coloured rocks with grey coloured rocks will have a positive visual effect over time.

d) **Issue 4**

Does the proposal adequately address overtopping and stormwater management?

It is clear from the evidence that the existing structure is not designed to prevent the overtopping of seawater during significant storm events. The revetment forms a continuous barrier that effectively prevents overtopped seawater and stormwater naturally draining to the coastal marine area. This is clearly an adverse effect of the existing structure and adequate outfall to the sea must be provided for to prevent water ponding behind the revetment and in Chaytor Reserve.

The reserve area has been formed to allow water to pond and be drained to the sea via the existing inlet structure and pipeline. There is potential for this primary outfall to become blocked and the inlet has been designed to address this. However, it is

important that a secondary flow path is provided for in the event that the primary outfall is blocked.

The applicant outlined that the ramp structure (formed as part of the Old Mill Walkway revetment) has been formed to perform this function. However, the evidence of Mr Gallagher indicated that the existing crest height of the ramp is too high to function as designed.

On the basis of the evidence presented, I am satisfied that the ramp crest can be reduced to 3.6m RL, as designed, to function as a secondary flow path for stormwater and seawater.

8. RELEVANT STATUTORY PROVISIONS

8.1 Policy Statements and Plan Provisions

In considering this application, I have had regard to the matters outlined in Section 104 of the Act. In particular, I have had regard to the relevant provisions of the following planning documents:

- a) New Zealand Coastal Policy Statement 2010 (NZCPS);
- b) Tasman Regional Policy Statement (TRPS); and
- c) Tasman Resource Management Plan (TRMP).

The reporting officer drew my attention to a number of relevant objective and policies. I note the particular relevance of Policy 25 and Policy 27 of the NZCPS.

I also note the particular relevance of Policy 13.1.3.4, Policy 13.1.3.7 and Policy 21.3.3.1 of the TRMP and consider the proposal will not generate further adverse effects and that it is limited in extent to the existing degree of modification.

Overall, I consider the proposal is not contrary to the relevant objectives and policies of the NZCPS, TRPS and TRMP.

I accept that this proposal is undertaken in conjunction with other long term strategies, such as Plan Change 22. I consider this is the appropriate mechanism for the Council to signal to the affected community that such coastal protection works are a short term, temporary measures to enable managed retreat from the coastal hazard zone.

8.2 Part 2 Matters

In considering this application, I have taken into account the relevant principles outlined in Sections 6, 7 and 8 of the Act, as well as the overall purpose of the Act as presented in Section 5.

The following matters of national importance are considered to be relevant:

- S.6(a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development; and
- S.6(d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers.

The following other matters are also considered to be relevant:

- S.7(c) the maintenance and enhancement of amenity values;
- S.7(f) maintenance and enhancement of the quality of the environment;
- S.7(g) any finite characteristics of natural and physical resources; and
- S.7(i) the effects of climate change.

I am satisfied that the proposal will not significantly increase any existing adverse effects on natural character, public access, amenity values or the quality of the environment. While these adverse effects will continue as long as the structure remains, they will not significantly increase in scale or extent over this time. I consider the applicant has taken the effects of climate change into account and has signalled to the affected community that hard protection measures are short to medium term solutions to ongoing and increasing coastal hazard risks.

9. DECISION

Pursuant to Section 104B of the Act, I resolve to **GRANT** resource consents RM110096 and RM110150, subject to conditions.

10. REASONS FOR THE DECISION

Effects on the Environment

On the basis of the evidence before me, I accept that the actual and potential adverse effects on the environment from the proposal are likely to be minor. While it is clear the existing structure has resulted in significant changes to the coastal marine area, I accept these are existing and will not be exacerbated by maintaining the structure.

Objectives and Policies

The relevant objectives and policies of the NZCPS, TRPS and TRMP focus on limiting adverse effects, protecting community assets, maintaining public access and considering alternative strategies to managing coastal hazard risk. I am satisfied that overall the ongoing maintenance of the existing revetment is not contrary to the intent of these planning provisions.

Other Matters

No other relevant matters were brought to my attention.

Purpose and Principles of the Act

In adopting a broad overall judgement approach to the purpose of the Act, I am satisfied that the proposal is consistent with Part 2 and achieves sustainable management of natural and physical resources as set out in Section 5 of the Act.

11. COMMENTARY ON CONDITIONS OF CONSENT

There was a high level of agreement between the applicant and the reporting officer regarding appropriate consent conditions. I am satisfied that the revised set of recommended conditions addresses the specific matters raised by Mr Clark.

I consider that the need to provide for a secondary flow path for the outfall of stormwater and seawater to the coastal marine area is directly related to the effects of this proposal and should therefore be addressed by consent condition. While I accept the ramp structure is authorised by separate resource consents, I consider the ramps function as a secondary flow path addresses the potential adverse effects of this proposal. I therefore consider it appropriate to impose a condition specifying the crest height of the ramp and ensuring that it is consistent with the conditions of the resource consents for the Old Mill Walkway.

Overall, I consider the consent conditions to be appropriate, reasonable and enforceable.

13. EXPIRY OF CONSENT(S)

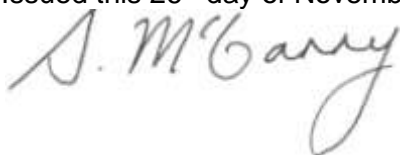
The applicant has sought a consent expiry date of 23 March 2044 to align with the existing resource consents for the adjoining Old Mill Walkway revetment. I accept this is appropriate given the structure effectively form a continuous section of hard protection along the Ruby Bay coastal marine area.

I do not accept that granting consent for a shorter duration, as requested by some submitters, will drive the development and implementation of long term planning solutions. Ten years is clearly not long enough for the Council and residents living within the identified coastal hazard zone to plan and manage their retreat from the coast.

Furthermore, I consider it is likely that such an approach would result in the applicant seeking to renew the consent and that this is not a desirable outcome.

On the basis of the evidence of Mr Reinen-Hamill, I do not accept that the life of the structure is likely to be less than 10 years. I am satisfied that with appropriate maintenance it is likely to be considerably longer. Given the assessment of environmental effects, the nature of the structure, the economic cost, and the value of the property and infrastructure it is protecting, I consider the consent duration sought is appropriate and reasonable.

Issued this 26th day of November 2012



Sharon McGarry
Hearings Commissioner



RESOURCE CONSENT

RESOURCE CONSENT NUMBERS: RM110096 and RM110150

Pursuant to Section 104B of the Resource Management Act 1991 ("the Act"), the Tasman District Council ("the Council") hereby grants resource consents to:

Tasman District Council
(hereinafter referred to as "the Consent Holder")

ACTIVITIES AUTHORISED BY THESE CONSENTS:

RM110096: Coastal permit to occupy and disturb the coastal marine area in association with retaining and undertaking ongoing maintenance of an existing 427 metre long sea wall and associated wing walls.

RM110150: Land use consent to retain and undertake ongoing maintenance of an existing sea wall and associated wing walls within an Open Space Zone.

LOCATION DETAILS:

Address of property: Ruby Bay Coastline from 9 Tait Street to Chaytor Reserve inclusive
Legal description: Ruby Bay Esplanade Reserve (Lot 30 DP 6775)
Certificate of title: CT 1B/1103
Easting and Northing: 2517653E 5996490N

Pursuant to Section 108 of the Act, these consents are issued subject to the following conditions:

CONDITIONS

1. The coastal permit (RM110096) and land use consent (RM110150) shall expire on 23 March 2044.
2. When the consents expire, or in the event of the structure becoming redundant or no longer fit for purpose, the Consent Holder shall take all necessary steps to either remove the structure, or incorporate the structure or the materials used in its construction in a replacement authorised structure or other work.

Conditions applying to all consents

3. The Consent Holder shall ensure that the maintenance of the structure shall be undertaken in general accordance with the documentation submitted with the applications lodged by Planning Consultant Keith Heather (with further information provided by Mr Reinen-Hamill, Senior Coastal Engineer of Tonkin and Taylor) on behalf of Tasman District Council and with Plans A and B attached to these consents. Notwithstanding this if there are any inconsistencies between this information and the conditions of consent, the conditions of consent shall prevail.
4. The Consent Holder shall ensure that all contractors undertaking maintenance works are made aware of the conditions of these consents and shall ensure compliance with the conditions.
5. The conditions of the consents may be reviewed in accordance with Sections 128 of the Act at any time during the exercise of these consents for the purposes of:
 - (a) dealing with, or requiring the applicant to adopt the best practicable option to remove or reduce any adverse effect on the environment arising from the exercise of the consents;
 - (b) taking into account uncertainties such as predicted sea level rise, climatic changes and beach accretion or erosion, all of which may influence the operation or sustainability of the structure;
 - (c) revising the beach profile monitoring programme;
 - (d) to deal with any other adverse effect on the environment on which the exercise of these consents may have an influence; and/or
 - (e) requiring compliance with the requirements of any relevant operative regional plan, national environmental standard, or Act of Parliament
6. The Consent Holder shall advise Council's Co-ordinator Compliance Monitoring (Carl Cheeseman, telephone (03) 543 8436) at least seven days prior to undertaking any maintenance works authorised by these consents so monitoring of conditions can be programmed.
7. The Consent Holder shall at all times maintain the structure in a sound, safe and competent condition in general accordance with Plan B attached. The Consent Holder shall notify the Environment and Planning Manager of Council at the earliest opportunity after any storm event or occurrence where any part of the structure is damaged, or any situation that may result in a hazard to the public. The Consent Holder shall undertake such remedial works as may be necessary, or as directed by the Environment and Planning Manager of Council to repair and retain the revetment in a competent and safe condition.

8. The Consent Holder shall, within one week following any maintenance works, remedy any damage and disturbance to the reserve and beach that may have been caused by maintenance works and return these areas to their pre-maintenance state as far as practicable.
9. In the event of Maori archaeological sites (e.g. shell midden, hangi or ovens, garden soils, pit depressions, occupation evidence, burials, taonga) or koiwi (human remains) being uncovered during maintenance works, activities in the vicinity of the discovery shall cease. The Consent Holder shall then consult with the New Zealand Historic Places Trust's Central Regional Office (PO Box 19173 Wellington, phone (04) 801 5088, fax (04) 802 5180), and shall not recommence works in the area of the discovery until the relevant Historic Places Trust approvals to damage, destroy or modify such sites have been obtained.

Advice Note:

The discovery of any pre-1900 archaeological site (Maori or non-Maori) which is subject to the provisions of the Historic Places Act needs an application to the Historic Places Trust for an authority to damage, destroy or modify the site.

Maintenance construction management

10. Prior to any maintenance activities being undertaken the Consent Holder shall erect Advice Notices at the car park at the end of Tait Street and at Chaytor Reserve. These notices shall provide warning of the maintenance activities noting any precautions that should be taken, as well as advising the period(s) during which these activities will be occurring and when public access shall be restricted. The notices shall be erected at least 10 working days prior to the commencement of the works and shall remain in place for the duration of the works before being removed on completion of the works.
11. The design and construction of any maintenance works shall be carried out under the supervision of a chartered professional engineer with appropriate experience in coastal structures engineering.
12. The structure shall be maintained so that it has a maximum batter slope ratio of 2H:1V and in a manner that provides a relatively regular, tightly interlocking face. Any new rock material placed as part of the works shall be laid on a graded and shaped face of competent, compacted material over which is laid a geotextile cloth fabric of suitable grading. Any maintenance of the toe of the revetment (including fabric placement) shall ensure that it is embedded to a depth no higher than reduced level (RL)1.2 metres, in the manner shown on the Plan B attached to this consent. The fabric and placed rock shall extend to and terminate at or above the general level of the land immediately behind the revetment, and in such a manner as to prevent washout of sand material behind/beneath the fabric. The geotextile fabric shall be appropriately placed and anchored to ground to prevent material being lost from beneath or behind the fabric through wave action or seawater inundation. The rock material shall be placed in such a manner (e.g. on a bed of suitably graded granular material placed on the fabric) so as to prevent puncturing or tearing of the fabric.
13. Any maintenance works shall ensure that the revetment continues to tie into the existing rock revetment to the south in such a manner so as to result in a smooth and continuous transition that minimises end effect erosion.
14. Any maintenance works below mean high water springs shall occur at such stages of the tide so as to not occur within, or be impacted or affected by, the ebb and flow of seawater and shall be undertaken in segments of approximately 5-15 metres.

15. All machinery entering or working in the coastal marine area shall be cleaned prior to arrival on site to remove weeds or seeds that may establish in the coastal marine area margin, or may enter the estuarine environment.
16. Any vehicle movements along the foreshore which may be required from time to time shall be restricted to the smallest area practicable.
17. The Consent Holder shall ensure that unimpeded public access to Chaytor Reserve and along the esplanade reserve or adjacent beach is maintained to the greatest extent practicable during maintenance works, with the exception of such construction times and areas where safety of the public would be endangered as a result of the works in progress.
18. If the Consent Holder needs to stop maintenance work for whatever reason the site shall be left in a neat, secure and tidy condition until work recommences.
19. Any new rock material used in the maintenance of the structure shall be of similar colouration and texture to that used in the Old Mill Walkway structure immediately to the south east (authorised by resource consent RM080953 and others).
20. Rock material placed as part of the maintenance of the structure shall be placed in such a manner so as to prevent puncturing or tearing of the underlying geotextile layer. If the material is punctured the hole must be repaired or the material replaced.
21. All imported fill and rock revetment material used in the maintenance of the structure shall be sufficiently clean prior to placement so as to not leach contaminants into the coastal marine area.
22. Any maintenance shall occur at such stages of the tide so as to not occur within, or be impacted or affected by, the ebb and flow of seawater. Any disturbance of the foreshore that occurs in the course of repair or maintenance works shall be limited to only that area required to successfully embed the toe of the revetment and shall be subject to the approval of the Council's Co-ordinator Compliance Monitoring.
23. Maintenance works shall not take place between the hours of 1900 and 0700 Monday to Saturday, or on Sundays or Public Holidays except when carrying out emergency works.
24. The Consent Holder shall not exceed the recommended upper noise limits as described in the New Zealand Construction Noise Standard NZS 6803:1999 Acoustics - Construction Noise.
25. The Consent Holder shall ensure that all machinery is maintained and operated in such a manner so as to minimise to the greatest extent practicable any spillage of fuel, oil and similar contaminants to water or land, particularly during machinery refuelling, servicing and maintenance. Maintenance, refuelling and lubrication of machinery shall not be carried out within 20 metres of the coastal marine area or any surface water body. Spillage of contaminants into any watercourse or onto land shall be remediated so that no residual potential for contamination of land and surface or sea water occurs. If a spill of more than 20 litres of fuel or other hazardous substance occurs, the Consent Holder shall immediately inform the Council's Co-ordinator Compliance Monitoring. The Consent Holder shall ensure that all contractors working under this consent are informed of this requirement.

Monitoring

26. The Consent Holder shall employ a suitably qualified and experienced surveyor to commission a beach profile survey monitoring, either by detailed GPS beach survey or

profile survey at a minimum of five regularly spaced locations between the northern end of the revetment at Tait Street and the southern end of Chaytor Reserve. Profile surveys shall be undertaken within six months from the date of consent being granted and thereafter no less than annually.

27. In addition, beach profile or GPS surveys shall be undertaken as soon as possible (but within two weeks) after a significant storm event, as requested by the Council's Environment & Planning Manager or his/her delegated agent. The GPS survey or each survey profile shall extend from the rear boundary of the Broadsea Avenue Esplanade Reserve to a point on the intertidal platform a minimum of 100 metres seaward of the toe of the main beach slope. This monitoring results shall be compiled and reviewed by an experienced coastal engineer or scientist on an annual basis and a short report summarising the observed trends of beach topographical change since the last survey and over the period of all surveys undertaken over the year shall be provided to the Council's Environment & Planning Manager within a month of completion of each survey.

Advice Note:

For the purposes of this condition a "significant storm event" is one that would generally occur over a high-tide period and sufficiently impacts the shoreline to result in overtopping of the rock revetment by either wave splash or blue water to the extent that either seawater inundation or ponding occurs on the reserve behind the revetment, or seawater flows into Tait St and Broadsea Ave occurs. As a further guide, such "significant" events are expected to occur, on average, on an annual or less frequent basis

The rationale for specifying storm events that cause overtopping is that it is these events when there is sufficient near-shore water depth and/or wave energy that will likely cause beach profile erosion and/or potential damage to the revetment.

The resource consents RM080953 and RM080893 that authorise the Old Mill Walkway rock revetment immediately to the south have a condition (Condition 19) upon them which require monitoring that is similar to that required by Conditions 26 and 27 above. It is recommended that the monitoring work undertaken as part of these conditions be done in conjunction with the monitoring of the Old Mill Walkway shoreline for efficiency and consistency purposes.

While there is no definition of a significant storm event on the Old Mill Walkway consents it is recommended that the definition provided above be applied to those consents also.

28. The crest height of the ramp at Chaytor Reserve that is part of the Old Mill Walkway rock revetment structure shall be reduced to 3.6 metres RL, as in accordance with the conditions of resource consents RM080953 and RM080893. In the event that there are changes made to the conditions for the Old Mill Walkway revetment, the height of the crest of the ramp shall be consistent with the height that is specified in those consents. The lowering of the crest height shall be completed within six months of the commencement of this consent.

GENERAL ADVICE NOTES

1. Any matters not referred to in the application for resource consents or otherwise covered in the consent conditions must comply with the Tasman Resource Management Plan and the Resource Management Act 1991.
2. The Consent Holder shall meet the requirements of Council with regard to all Health and Building Bylaws, Regulations and Acts.
4. All reporting required by Council shall be made in the first instance to the Co-ordinator Compliance Monitoring.

5. Pursuant to Section 36 of the Resource Management Act 1991, the Consent Holder shall meet the reasonable costs associated with the monitoring of this consent. Costs can be minimised by consistently complying with the conditions of this consent, thereby reducing the frequency of Council visits.
6. The Consent Holder is reminded that they may apply at any time under Section 127 of the Act to have any condition of this consent changed except that which specifies the expiry date of this consent.
7. Plans attached to this consent are (reduced) copies and therefore will not be to scale and may be difficult to read. Originals of the plans referred to are available for viewing at the Richmond office of the Council. Copies of the Council Standards and documents referred to in this consent are available for viewing at the Richmond office of the Council.

UNCONFIRMED NOTES

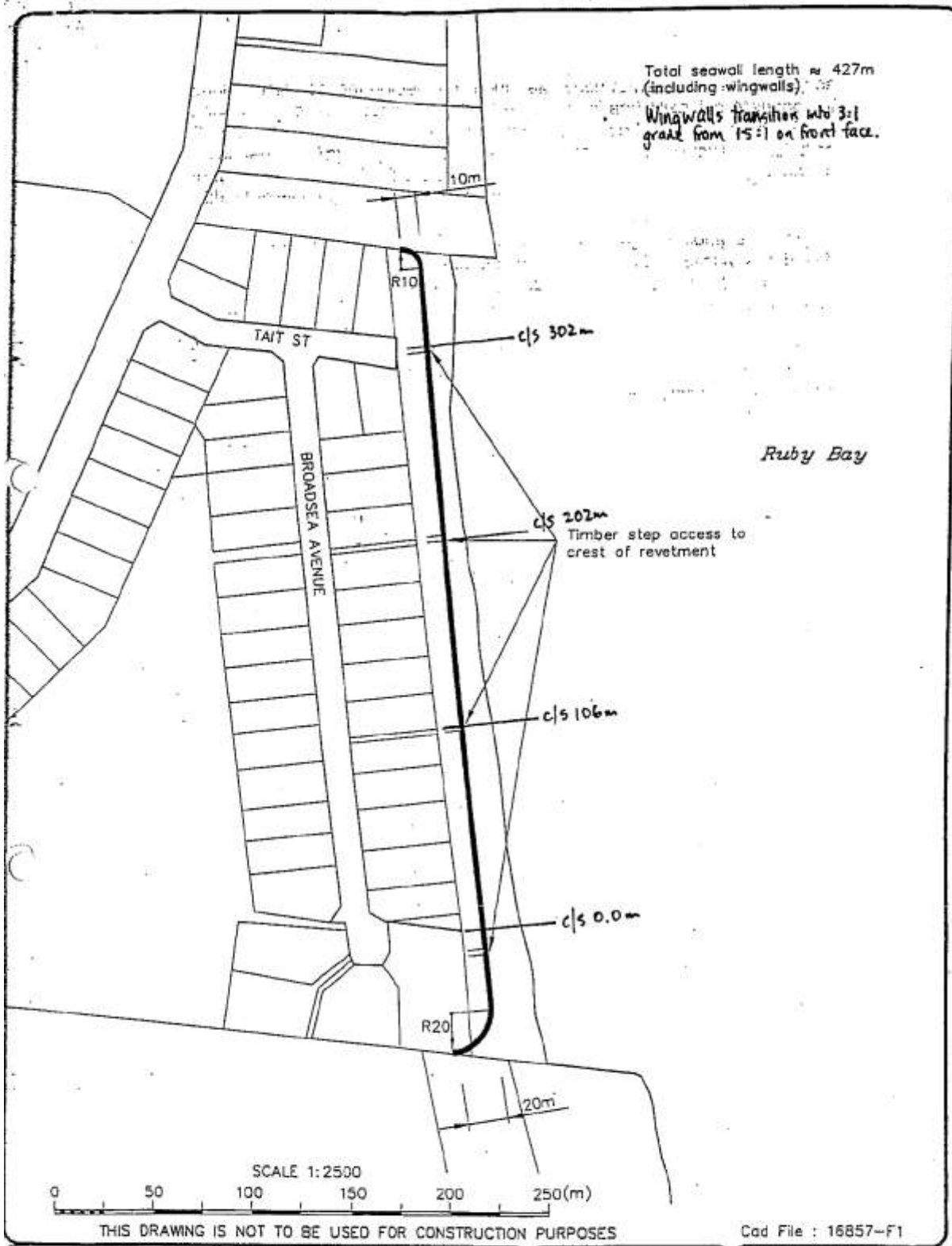


FIGURE 1: GENERAL LOCATION OF ROCK REVETMENT

UNCONFIRMED NOTES