

Consent Compliance Audit Report

File No: 61 18 36A
Site: Buffalo Beach Rd - Whitianga
Date of Assessment: 9 May 2013

1 INTRODUCTION

This report examines the level of compliance of Buffalo Beach Collaborative Committee with the conditions of the resource consent that authorises the seawall at Buffalo Beach. The audit follows a site visit undertaken on 14 February 2013. The audit has been conducted using information contained on file and gathered during the site visit.

2 RESOURCE CONSENTS HELD

Waikato Regional Council has details of the following resource consent at this site:

Consent	Status	Purpose	Commenced	Expiry
107307	Current	Continue to use an existing structure in the being a seawall protection structure & the continued occupation of the CMA for property protection purposes	16/09/2005	16/09/2015

3 SITE DESCRIPTION

The seawall was built in April / May 2000, fronting a number of privately owned properties along northern Buffalo Beach. The homeowners formed the Buffalo Beach Collaborative Committee (BBCC) and applied for resource consent to authorise the seawall on 28 March 2002. The application was notified in September 2002 and the hearing was held in October 2003. The recommendation to grant was made in October 2003, but this was subsequently appealed by the BBCC on 20 November 2003. The appeal was resolved by mediation and withdrawn. The Minister of Conservation signed of his decision to grant the coastal permit (authorisation 107307) on 16 September 2005.

The Buffalo Beach Collaborative Committee also applied for resource consent to authorise beach nourishment at Buffalo Beach on 28 March 2002 as a means of mitigation for the seawall. The application followed a non-notified process and coastal permit (authorisation 107308) was granted on 24 June 2003. The consent was exercised on one occasion in September 2004 and expired in June 2008.

4 PREVIOUS COMPLIANCE HISTORY

The site has had the following levels of compliance during past consent audits:

Year	Compliance status
2005/06	Partial compliance
2007/08	High level of compliance
2009/10	Significant non-compliance
2010/11	Partial compliance
2011/12	Partial compliance

The consent holder has not undertaken any action to resolve the non-compliance from the 2009/10, 2010/11 and 2011/12 monitoring events on the basis that it would prefer to conserve its resources for the upcoming consent process in 2015.

5 COMPLIANCE ASSESSMENT

The compliance assessment below has been carried out following the site visit on 14 February 2013. Only the relevant conditions have been subject to this audit. Please note that a description of the classification system used to describe compliance status is given in Appendix 1 of this report.

5.1 Consent 107307: Land - structure

Purpose:	Continue to use an existing structure in the being a seawall protection structure & the continued occupation of the CMA for property protection purposes
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Condition No.	Description
14	<p>The Consent Holder shall be responsible for the structural integrity and maintenance of the seawall, and for the provision and maintenance of any erosion control works that become necessary to preserve the structural integrity of the seawall, and/or to control erosion as a result of the exercise of this consent. Any such works through the term of this consent shall be at the expense of the Consent Holder.</p> <p>(Note a separate resource consent may be required as a result of the need to undertake erosion control works. Any such resource consent shall be obtained by the Consent Holder at their sole expense prior to commencement of any such works.)</p>
Assessment:	<p>The three land parcels immediately south of the seawall are experiencing exacerbated coastal erosion and subsequent loss of property due to end effect erosion caused by the BBCC seawall. TCDC regularly undertakes small scale beach scraping under Waikato Regional Coastal Plan permitted activity rule 16.6.10 and resource consent 124175 to repair the erosion. As I understand it TCDC undertakes these works at its own cost. Although this is an appropriate interim solution for erosion repair at this location, it does not address the real issue of end effect erosion that the seawall causes and places the consent holder at risk of legal action should the affected properties experience further losses.</p> <p>Whilst I recognize that remedial works have been undertaken to repair the erosion, I note that the consent clearly states that the erosion control works should be undertaken by the consent holder at their sole expense rather than at the expense of the community.</p>
Corrective Actions:	<p>While the consent holder is presently compliant with this condition due to the actions of TCDC, for this monitoring period it will remain in non-compliance based on the remedial works being undertaken at the expense of TCDCs ratepayers. The consent holder needs to consider an appropriate long term solution for this issue.</p>
	Medium priority non-compliance

Condition No.	Description
18	<p>Notwithstanding the obligations, in condition 16 hereof, the Consent Holder shall submit by 1 November of each year during the term of the consent, an annual written report to the Waikato Regional Council and the Thames-Coromandel District Council outlining the performance of the seawall in terms of effect on the beach profile, ecological values and end wall effects. The report shall include details of:</p> <ol style="list-style-type: none"> Any significant changes in the beach profile in front of and adjacent to the seawall; Any complaints received regarding the effects of the seawall, and the response to those complaints; A photographic record of the effect of the seawall on the beach environment and end wall effects; Details of whether any part of the seawall, including rock armouring, have become dislodged, and the actions taken to remedy this; Details of any property damage caused by the coastal erosion in the previous 12 months and of any insurance claims made by members of the Consent Holder during the period; and Summary of any beach nourishment projects undertaken in front of the seawall during the last 12 months.

Assessment:	At section 5.4 the Management Plan outlines that an Annual Report will be prepared and submitted to Waikato Regional Council by 30 November each year, with the first being received by 30 November 2007. No Annual Reports have been received by Waikato Regional Council to date, hence this condition has not complied with for six years. The consent holder has conveyed to me that it wishes to conserve its funds for the 2015 consent process.	
Corrective Actions:	Supply the Annual Report to Waikato Regional Council by 31 August 2013.	Low priority non-compliance

Overall compliance for consent 107307: Partial compliance

6 SUMMARY OF COMPLIANCE

Buffalo Beach Collaborative Committee has been assessed as having the following level of compliance with the consents associated with the Buffalo Beach seawall site:

Consent	Purpose	Compliance Status
107307	Continue to use an existing structure in the being a seawall protection structure & the continued occupation of the CMA for property protection purposes	Partial compliance

Overall Site Compliance: Partial compliance

7 DISCUSSION AND CONCLUSION

Having engaged with BBCC previously I am of the understanding that its preference is to direct its resources to the re consenting of the seawall in 2015 rather than the annual reporting requirement. Whilst I understand this preference, my role is to monitor compliance with the resource consent conditions, and these requirements have not been met since the time the consent was granted.

The law requires that the matters in section 5 of this report are addressed so that BBCC can come into compliance with the resource consent. In particular, the annual report must be submitted by the required date of 31 August 2013. By not complying with the conditions of consent, the occupation of the coastal marine area by the seawall is considered illegal in terms of the Resource Management Act 1991, therefore the consent holder is leaving itself open to enforcement action under the Act, which includes such tool as infringement notices, abatement notices or prosecution. The consent holder should also be mindful that any non-compliance with the current consent may be considered by the Commissioners when coming to a decision on any future resource consent application, should the BBCC wish to retain the existing seawall.

8 RECOMMENDATIONS FOR WAIKATO REGIONAL COUNCIL

I recommend that the site remain at Priority 2 for the 2013/2014 financial year. Compliance with the consent should be reassessed within the next two calendar years, prior to the expiry of the consent.

Amy Robinson
**Team Leader Coastal
Resource Use Group**

Date

Appendix 1

CLASSIFICATION GUIDELINE USED TO ASSESS COMPLIANCE STATUS

Compliance status for individual conditions

Compliance Status	Description
Not assessed	<ul style="list-style-type: none">Monitoring of this condition was not undertaken during this monitoring event
High priority non-compliance	<ul style="list-style-type: none">The non-compliance has the potential for, or has resulted in, significant adverse effects on the environment.
Medium priority non-compliance	<ul style="list-style-type: none">There is non compliance with limits or other direct controls on adverse effects; andThe non-compliance has the potential for, or has resulted in, a greater than minor increase in the level of effects authorised.
Low priority non-compliance	<ul style="list-style-type: none">There is non compliance with limits or other direct controls on adverse effects; andThe non-compliance has the potential for, or has resulted in, a less than minor increase in the level of effects authorised; and/orThere has been a significant technical non-compliance such as a failure to collect or supply self monitoring data.
Minor technical non-compliance	<ul style="list-style-type: none">There is non compliance with a condition, or part of a condition, that does not directly control adverse effects; andThe non-compliance was not significant in the management of effects. For example a short delay in supplying data or meeting a deadline for a report
Full compliance	<ul style="list-style-type: none">The condition has been complied with

Compliance status for individual consents and the entire site

Compliance Status	Description
Not assessed	<ul style="list-style-type: none">Monitoring has not been undertaken at this site during the current financial year
Significant non-compliance	<ul style="list-style-type: none">There has been a high priority non-compliance; and/orThere have been several medium priority non-compliances.
Partial compliance	<ul style="list-style-type: none">There has been a medium priority non-compliance; and/orThere have been several low priority non-compliances.
High level of compliance	<ul style="list-style-type: none">There has been a low priority non-compliance; and/orThere have been several minor technical non-compliances.
Full compliance	<ul style="list-style-type: none">All conditions that include limits or other direct controls on adverse effects have been complied with.A small number of minor technical non-compliances may have occurred.