

IN THE MATTER OF: **THE RESOURCE MANAGEMENT ACT 1991**

AND

IN THE MATTER OF: **CITY-WIDE PLAN REVIEW OF THE DISTRICT PLAN FOR PORIRUA¹**

AND

IN THE MATTER OF: **A SUBMISSION BY Ms R A SMITH**

**PRESENTATION
TO THE
HEARING PANEL
BY
BRIAN WARBURTON**

29 September 2021

¹ Excluding land within the District known as 'Plimmerton Farm' (Lot 2 DP 489799), which is the subject of the now operative Plan Change 18.

Introduction

1. I'm Brian Warburton and presenting in support of submission no.168 on the City-Wide Review of the District Plan for Porirua (hereafter referred to as 'the Plan')².
2. The summary by the section 42A author (hereafter referred to as the 'planner') suggests the submission covers 124 points.
3. The adoption of all submission points would assist the Council, as outlined below:
 - a. in achieving the purpose of the Act (in particular avoiding adverse effects and meeting the needs of future generations);
 - b. in better fulfilling its functions under s.31 of the Act;
 - c. better providing for the protections required under ss.6(a) and (d) and the management required by s.6(h) of the Act;
 - d. in allowing the Council to have regard to the effects of climate change [s.7(i) of the Act];
 - e. fulfilling the duty to always have one district plan for the District³; and,
 - f. ensuring that the Plan:
 - gives effect to the RPS⁴ [s.75(3)(c) of the Act] in respect of several provisions (relating to allocation of responsibilities); and
 - is not inconsistent with the pNRP⁵ [s.75(4)(b) of the Act].
4. Seven submission points have been allocated to Hearing Stream One^{6 7}. Those points fall into two groups:
 - a. Statutory Context
 - b. Delineating Council's Jurisdiction.
5. I note that two Panel members have been involved in Natural Resources Plan hearings and determination of MHWS at Titahi Bay, so they will be familiar with the relevant considerations.

² Excluding land within the district known as 'Plimmerton Farm' (Lot 2 DP 489799) which is the subject of the now operative Plan Change 18.

³ S.73(1) of the Act

⁴ Regional Policy Statement

⁵ Proposed Natural Resources Plan

⁶ Points 168.31, and 168.43 to 168.48.

⁷ The submission included several points relating to definitions. These have not been considered by the s42A author (hereafter referred to as the author) report ostensibly because that report only deals with definitions that have implications for more than one topic. Ms. Smith seeks to retain her right to speak further to her submission points about definitions.

Statutory Context

6. The submission identified erroneous references in the Plan to “*land **above** [my emphasis] the line of Mean High-Water Springs (MHWS)*” (hereafter referred to as ‘High-Water’).
7. In the definition of the Coastal Marine Area⁸ and the context of ‘the District’⁹, the Act refers to the ‘landward boundary’ and the ‘seaward boundary’. To ensure consistency, to avoid confusion and to assist in administration, the submission requests deletion of the word ‘above’, and its replacement with the word ‘landward’.
8. The planner has acknowledged this substitution is appropriate.
9. Nonetheless, the planner proceeds to suggest: “*The CMA **below** [my emphasis] MHWS is the jurisdiction of regional councils, as defined in the Act.*”
10. The correct term, and one consistent with the Act in this context, is ‘seaward’ – not ‘below’.

Delineating the Council’s Jurisdiction

The Issue

11. The submission points out that, in many aspects, the maps included with the Plan are not helpful in delineating the extent of the Council’s jurisdiction (ie: the limits of the ‘District’ as defined in the Act).
12. Several examples are given.
13. These mapping deficiencies as fall into three categories:
 - a. where the maps do not identify a zoning as applying to part of the District clearly landward of High-Water.^{10 11}
 - b. where the maps identify a policy overlay applying to part of the District but do not identify a corresponding underlying zoning.^{12 13}
 - c. where the maps identify the seaward extent of a zone (and therefore by association the seaward extent of the District) which is significantly inconsistent with the limit of the CMA as depicted in the maps in Chapter 13 of the pNRP^{14 15}.
14. The location of the High-Water line is an important method to achieve the purpose of the Act.

⁸ The CMA

⁹ In s.2 of the RMA ‘District’ is defined as: “**district**, in relation to a territorial authority,—
 (a) *means the district of the territorial authority as defined in accordance with the Local Government Act 2002 but, except as provided in paragraph (b), does not include any area in the coastal marine area:*
 (b) *includes, for the purposes of section 89, any area in the coastal marine area.*”

¹⁰ Refer ss.6.4.6 and 6.4.7 of the submission

¹¹ Note: where land is not zoned, the presumption in s.9 of the Act applies and there are no standards and rules; ie, any land use activity is permitted.

¹² Refer ss.6.4.8 and 6.4.9 of the submission

¹³ This category includes the expanded SNA134 as per Mr Goldwater’s evidence (Council Statement of Evidence by Nicholas Paul Goldwater of Wildland Consultants Ltd - Principal Ecologist, page 60.)

¹⁴ Maps 43 and 44 of the pNRP (refer Attachments A and B)

¹⁵ Refer s.6.4.10 of the submission

15. For example:
- it defines the extent of the CMA;
 - it demarcates jurisdictional matters;
 - it defines where the restrictions under s.12 of the Act apply and where they do not;
 - it defines the extent of potential esplanade reserves; and,
 - it defines the extent of setbacks such as the 'coastal margin'.^{16 17}
16. It appears the Council has not analysed this method in terms of s.32 of the Act. Rather, it has just adopted cadastral boundaries as a proxy for High-Water. As outlined below, this leads to parts of the District not being subject to any zoning restrictions.
17. As shown in Figures 18 and 19 of the submission, this Plan zone/ High-Water discrepancy can be as much as 300 metres.¹⁸ Figure 1 below shows this.

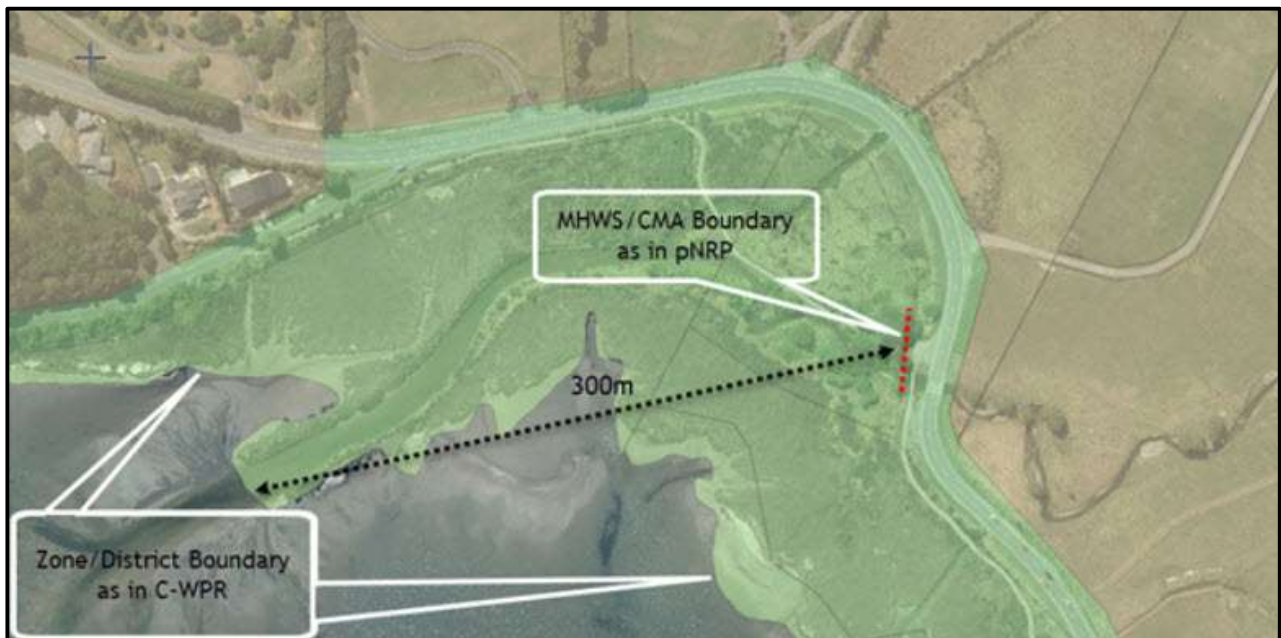


Figure 1: Map of Showing Reach of Horokiri Stream Seaward of the MHWS Included in the District Plan

Discussion

18. The planner concedes the CMA boundary is ill-defined in the Plan as it is based on land ownership, and the corresponding LINZ 'hydro parcel'. The planner then proceeds to recommend a rather convoluted and confusing text for the Plan that purports to clarify and address uncertainty. In essence, this suggests High-Water could be delineated each, and every, time an activity is 'close to the indicative coastline'.

¹⁶ The 'Coastal Margin' which is defined in the Plan as being: "all landward property which is within 20m of the line of MHWS."

¹⁷ The term 'Coastal Margin' is used 21 times in the Plan.

¹⁸ In the case of Horokiri Stream where the zone boundary in the Plan (based on cadastre) is offset by up to 300m from the CMA boundary (MHWS) as depicted Map 43 of the pNRP.

19. It's not clear what 'close to' means in this context. Perhaps it's the same as a +/- margin of 300 metres referred to above.¹⁹
20. In addition, the planner's recommended text says this: "*If a site-specific survey determines that MHWS is not located in the position shown on the maps.....*".²⁰ This is a nonsense because the fundamental issue under discussion is that the Plan does not even show the MHWS, let alone show the MHWS in the wrong alignment.
21. Using cadastral boundaries for resource management purposes is fundamentally wrong. In effect the planner is recommending the Council renounce all its responsibilities under the Act for land along, and adjacent to, the coastal margin. The Council will be saying, for example, that it doesn't know where the building setback from the coast applies and where it doesn't. This is not conducive to the public and landowners having certainty.
22. In addition, the planner has not stated how the impracticalities of this approach will be overcome: These include, but are not limited to:
 - a. Who will pay for the ad-hoc High-Water surveys;
 - b. What process will trigger a High-Water survey if the activity "*close to the coastline*" is permitted under the ill-defined Plan but might not be (under s.12 of the Act for example) if the High-Water is delineated;
 - c. What if the owner of a contiguous property wanted to object to the delineation of the High-Water that might cross several boundaries;
 - d. A plan change will be required once an ad-hoc survey is complete showing additional land needs to be zoned;²¹ and,
 - e. Who will pay for the required plan change?
23. Attachment C includes additional comment from me about the Planner's recommended text.
24. The extent of zoning and overlays should be based on the definitions of the Act and the Council's functions under the Act, not some arbitrary cadastral boundary that has no logic or relevance in terms of resource management principles.
25. High-Water is defined in the Act – that definition makes no mention of adopting parcel boundaries by default or as the 'next best'.
26. If the work is done, the Council will find that in many cases the LINZ 'hydro parcel' (which the planner recommends) incorporates seaward parcel boundaries adopted from land surveys undertaken in the late 1800s.

¹⁹ See Para. 17

²⁰ It appears the planner has borrowed this text from the Auckland Unitary Plan with no analysis.

²¹ The ability under Cl.20A of the 1st Schedule to the Act to correct minor errors would not apply.

27. However, when a large part of the land within Porirua was initially surveyed, the surveyors did not have the benefit of GIS, or high-resolution aerial photography. Nor did they know, and surely can't have anticipated, that the differentiation between High-Water and low water would be of such significance from a resource management perspective.
28. The Council should be using the best available information, not the worst. In some instances, the cadastral boundaries the planner advocates are simply sketch lines by a surveyor making the first plot in the late 1800s.
29. More than a century later the Council now has the benefit of high-resolution GIS and aerial photography. This data should be used in preference to highly inaccurate and misleading data derived from sketches, some more than 100 years old.
30. The planner suggests the additional text to "address uncertainty" is based on similar text in Auckland's Unitary Plan.²²
31. The planner has not pointed out that Auckland Council has abandoned cadastral boundaries and has adopted modern technology (LIDAR and aerial photography) to: "*more accurately define the land/coastal marine area boundary in the Auckland region.*"²³
32. The Unitary Plan issues and option assessment had this to say:
- "While accurate delineation of the MHWS boundary requires site specific assessment, the coastline still requires some form of representation on planning maps. This is because an important concept of the new Unitary Plan is accessibility and detailed spatial representation (at an individual property scale) of the overlays and zones that will form the basic elements to the plan. These layers will be visually represented on updated aerial photography and will form a spatial toolbox that provides a representation of planning boundaries. Providing a more accurate indicative coastline than those currently available is therefore considered an important component of the Unitary Plan to provide a transitional point between the different zones and overlays that may operate in land and coastal space."*²⁴
33. On this basis, Auckland Council has been able to model its High-Water²⁵, and cadastral boundaries have been mothballed as far as the CMA is concerned.
34. Other councils have undertaken similar work.^{26 27}
35. And, the recently operative 2nd generation plan for Kapiti Coast does not use cadastral boundaries as a proxy for the High-Water and the CMA.

²² No citation or reference is given in the s.42A report.

²³ See <https://knowledgeauckland.org.nz/publications/development-of-an-updated-coastal-marine-area-boundary-for-the-auckland-region/>

²⁴ See: <http://www.aupihp.govt.nz/documents/docs/aupihpmemohearingtopic026att420141219.pdf>

²⁵ Adopting a 'MHWS-10' being the level equalled or exceeded by the largest 10% of all tides.

²⁶ Northland Regional Council, and Bay of Plenty Regional Council being two other examples.

²⁷ References to several assessments and technical reports associated with this issue in the Auckland's Unitary Plan and the Regional Plan for Bay of Plenty are attached.

36. Figure 2 below is a 'snapshot' image from the online KCDC planning maps applicable to the south-western part of Paraparaumu. This image confirms KCDC acknowledges that the seaward limit of the 'District'²⁸ is about 87 metres seaward of the cadastral boundaries, and therefore needs to be 'zoned'.

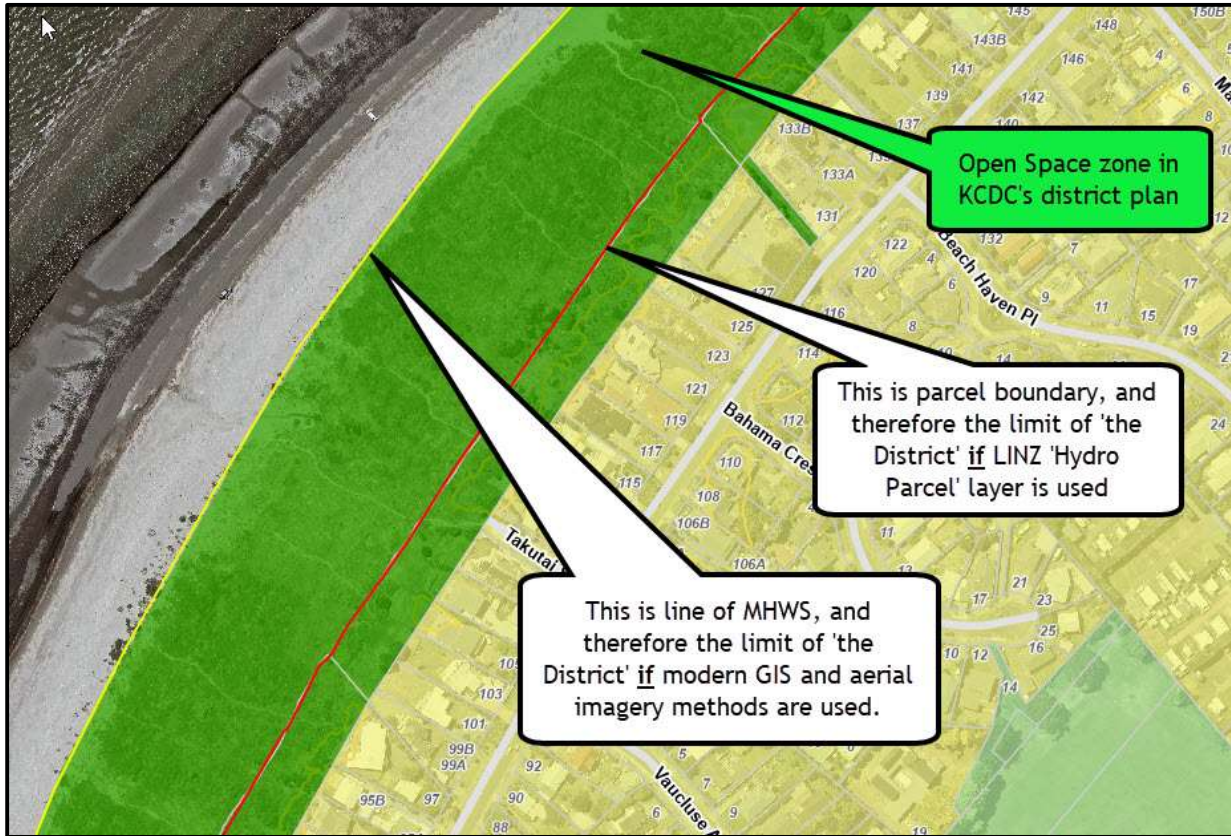


Figure 2: *Map of Showing Part of South-Western Paraparaumu Seaward of Cadastral Boundaries and Included in District Plan*

37. This is the correct approach, and it is what PCC should be doing. If the planner's recommended approach was applied in Kapiti, this strip, 87 metres wide, would fall into 'no-man's land'; ie, it would be landward of High-Water but not be within a district plan zone.
38. It appears Greater Wellington Regional Council was involved in determining the MHW for KCDC, and the work was undertaken because it was more effective and efficient than undertaking ad-hoc MHW surveys of individual properties.²⁹
39. The planning maps for this plan are inaccurate and misleading.
40. Examples are cited in the submission. These largely on how this issue relates to Whitireia Peninsula and to Titahi Bay.
41. Figure 3 below is another example. It relates to Titahi Bay Road.

²⁸ In terms of the Act

²⁹ Refer <https://pnrp.gw.govt.nz/assets/Uploads/HS6-ROR-Activities-in-the-CMA-Appendix-F-Evidence-Dr-Iain-Dawe-Mean-High-Water-Springs-18-July-2018.pdf>

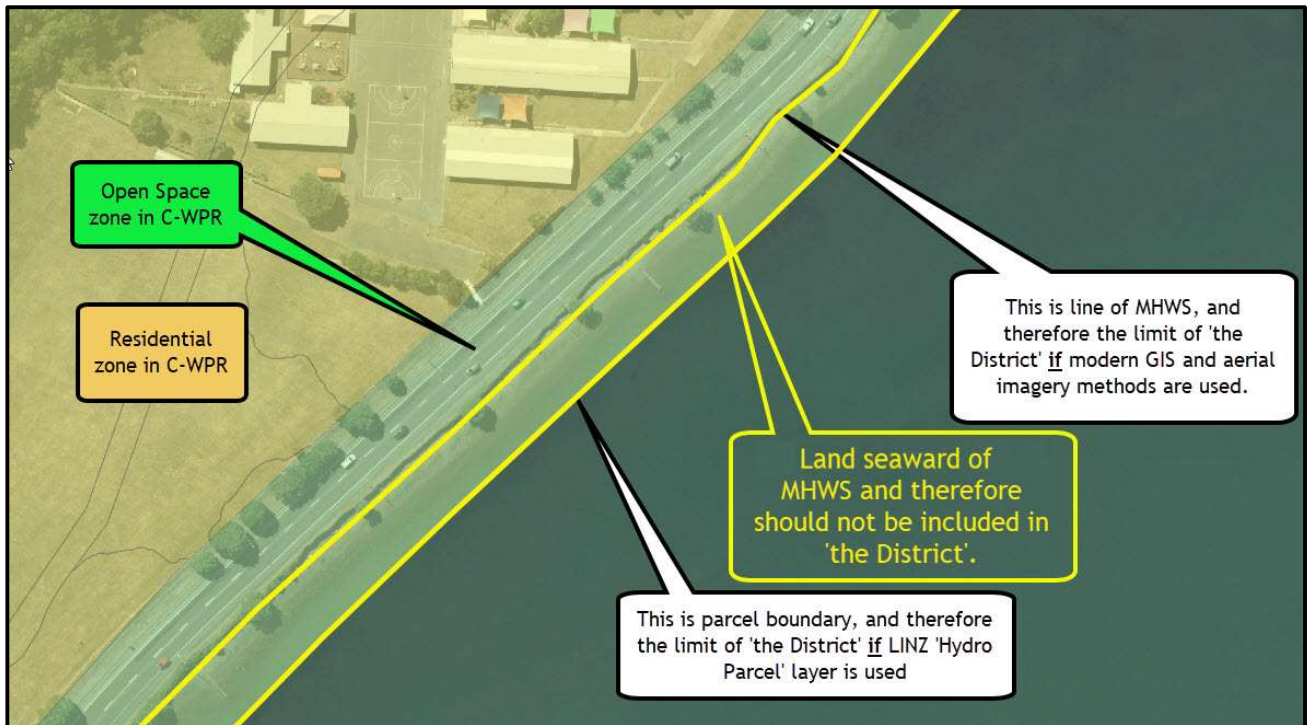


Figure 3: *Map of Coastal Margin Along Titahi Bay Road Showing Strip of Land Included in District Plan but Seaward of MHWs*

42. If the planner's recommended approach was applied here the 17-metre-wide strip running seaward of, and parallel to, Titahi Bay Road, would be subject to the Plan. But this strip is inundated with seawater twice daily and is therefore within the CMA. Accordingly, the strip cannot be subject to the provisions of the Plan. The planning maps suggest otherwise, however.
43. Attachment D includes images of other examples; Dolly Varden, Ngatitōa Domain and Golden Gate Peninsula.
44. It's apparent other local authorities have concluded that vague and inaccurate Zone/District delineation using cadastral boundaries is not conducive with achieving **statutory** functions and duties under the Act.
45. If the Council does not adopt modern survey methods using GIS and aerial photography it will be:
- a. failing to identify the land it is responsible for, and what land it is not, and therefore will not be fulfilling its functions under s.31 of the Act;
 - b. failing to have a plan that applies to 'the District'³⁰;
 - c. failing to give effect to the RPS^{31 32}; and,
 - d. failing to avoid inconsistencies with the regional plan.³³

³⁰ S.75(1) of the Act

³¹ S.75(3)(c) of the Act

³² Refer Policies 61, 62 and 63 of the RPS

³³ S.75(4)(b) of the Act

Conclusion

46. The outcomes sought in the submission should be endorsed. They are that:
- a. the scope of the CMA throughout the city needs to be accurately determined and referenced in the Plan;
 - b. in the alternative and as an interim provision, the Plan must, as a minimum, adopt LINZ's 'NZ Coastline' polygon as a proxy delineation of the CMA, except for more contentious sites (for example, Titahi Bay); and,
 - c. for key sites (including Titahi Bay) the delineation of the CMA must be determined using agreed high-resolution methodology.



Brian Warburton

29 September 2021

REFERENCES:

Extract from Unitary Plan for Auckland <https://unitaryplan.aucklandcouncil.govt.nz/HTMLSept/Part%202/Chapter%20D/Chapter%20D%20-%205%20Coastal%20zones.htm>

Assessment Report Prepared to Assist Hearing on Unitary Plan for Auckland. Undated. <http://www.aupihp.govt.nz/documents/docs/aupihpmemohearingtopic026att420141219.pdf>

Auckland Council memo relating to GIS map layers. December, 2014 <http://www.aupihp.govt.nz/documents/docs/aupihpmemohearingtopic02620141219.pdf>

Technical Assessment prepared by NIWA – entitled “Development of an updated Coastal Marine Area boundary for Auckland Region.” July, 2012. <http://www.aupihp.govt.nz/documents/docs/aupihpmemohearingtopic026att320141219.pdf>

Technical Assessment prepared by NIWA – entitled “MHWS level for the Bay of Plenty”. October, 2016. <https://cdn.boprc.govt.nz/media/32572/NIWA-091119-MHWSlevelforBOP.pdf>

Attachment A: Map 43 from Proposed Natural Resources Plan as it applies to Horokiri Stream



Attachment B: Maps 43 and 44 from Proposed Natural Resources Plan

Coastal marine area and river mouth boundaries

Map 43



Taupō Stream 0 12.5 25 50 m 




Kakaho Stream 0 25 50 100 m 



Horokiri Stream 0 15 30 60 m 



Pauatahanui Stream 0 62.5 125 250 m 

Coastal marine area and river mouth boundaries

Map 44



Porirua Stream 0 50 100 200 m 



Makara Stream 0 40 80 160 m 



**Te Awa Kairangi/
Hutt River** 0 180 360 640 m 



Wainuiomata River 0 125 250 500 m 

Attachment C: Critique of Planner’s Recommended Text

Planner’s Recommended Text	Critique
<p><i>The MHWS boundary has not been surveyed for inclusion in the planning maps as it is dynamic and its location can change.</i></p>	<p>This has not prevented the likes of Auckland Council, Northland Regional Council, Bay of Plenty Regional Council, and Kapiti Coast District Council (and possibly other local authorities) delineating the MHWS. The location of MHWS must be delineated so the Council and plan users know the extent of the Council’s jurisdiction, and the limit of corresponding rights and responsibilities.</p> <p>Likewise, one could state that the District limits based on cadastrals is rigid and locked in time, and out of date by up to 150 years.</p>
<p><i>Zone boundaries in the planning maps and most other mapped features are defined by Land Information New Zealand’s cadastral boundaries which is a fixed feature.</i></p>	<p>Cadastral boundaries are indeed fixed in a point of time (they are not “fixed to a feature”), in some cases as long ago as the late 1800s. However, cadastral boundaries are a very inaccurate proxy for the MHWS. There is nothing in the Act suggesting that zone or overlay boundaries need to coincide with cadastral boundaries. And nothing to suggest that cadastral boundaries should be used to define the extent of the District.</p>
<p><i>As a jurisdictional boundary, the exact location of the line of MHWS needs to be defined on a case-by-case basis.</i></p>	<p>I disagree. Section 73(1) of the Act requires there to be a district plan at all times for the ‘District’. The proposed District Plan suggests that parts of the District will not be subject to any zoning, standards and rules. This must be rectified by the limit of the District (ie; the MHWS) being mapped. Currently, the Plan maps include nothing to indicate the extent of the District.</p>
<p><i>Where activities are close to the indicative coastline, a site-specific survey will be required to determine the location of the line of MHWS which defines the landward boundary of the coastal marine area.</i></p>	<p>What does ‘close to the indicative coastline’ mean in this context.</p> <p>I have two points:</p> <ol style="list-style-type: none"> 1. ‘close to’ is very vague and such ill-defined terms should not be used to describe and define fundamental and important concepts under the Act. 2. as already noted, in some instances the zoning limits in the Plan are far from the ‘coastline’ and I consider ‘ill-defined’ would be a more appropriate term than ‘indicative’. <p>The ‘site-specific survey’ to which the planner has referred has not happened in the past, suggesting there’s a good probability it won’t happen in the future. This is not conducive to good resource management outcomes.</p>

By way of example, I refer to a land use consent granted to PCC for 'beach restoration' work (now failed) around a stream outlet at Titahi Bay in 2012 [File Ref. RC6129] There was no 'site-specific survey' in that instance. Council staff just assumed they knew the alignment of MHWS.



I understand that a 'site specific survey' was also not undertaken when extensions to the seawall at the Titahi Bay Surf Club were constructed in September 2019.



Likewise, I understand that a 'site specific survey' did not occur when earthworks were undertaken seaward of the Plimmerton Fire Station in an attempt (now failed) at establishing sandy dunes on a rocky platform in late 2012.



These examples confirm that there is no fail-proof mechanism for triggering the 'site specific survey' of MHWS (on a case by case basis), and no guarantee that this will be undertaken, even when the work has council authority/backing/support.

If a site-specific survey determines that MHWS is not located in the position shown on the maps, the boundary at the interface between the coastal marine area and the adjacent land zone and overlays will shift to the new line of mean high-water springs.

This is a nonsense because the fundamental issue under discussion is that the Plan does not even show the MHWS, let alone show the MHWS in the wrong alignment.

How will the "boundary at the interface" shift.

This will require a plan change once an ad-hoc 'site-specific survey' is complete showing additional land needs to be zoned, and likely showing the extent of other provisions in the Plan (eg: the coastal margin) also needs delineation.

Where there is land identified landward of MHWS that does not have a zone, the adjacent zoning shall apply.

It is by no means clear how the planner believes the landward extent of the CMA is to be determined (case by case) when the activity is permitted in the (inaccurate) district plan.

A plan change will be required to alter the extent of Plan zoning after MHWS has been redefined on a case by case basis.

Determining what comprises 'adjacent' is potentially problematic. Refer image opposite. What zone is 'adopted' in this instance?

Ad hoc zone changes will have impacts on landowners' development rights or obligations and they must be involved in any process, and have associated appeal rights.

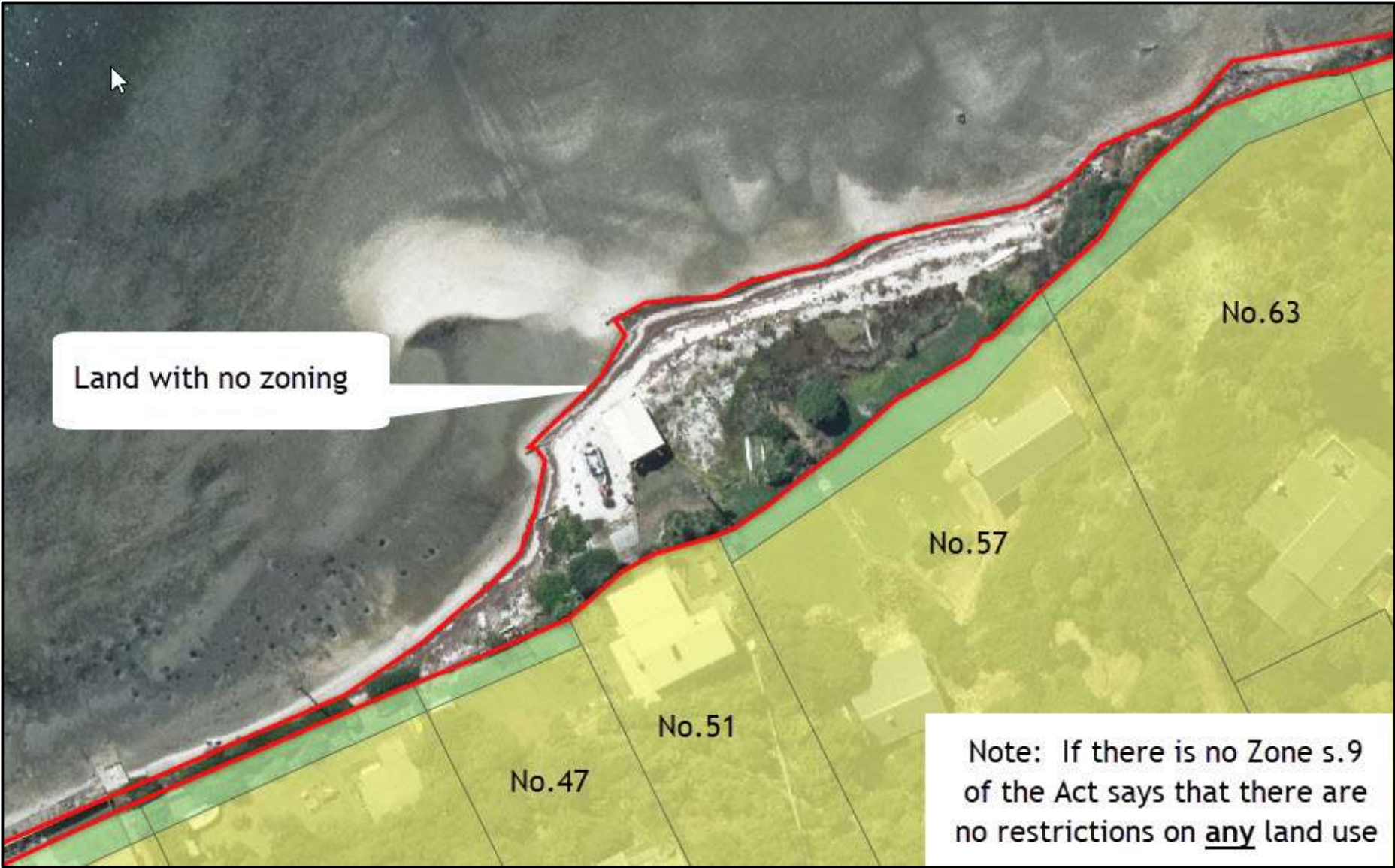


District Plan provisions do not apply to any part of an overlay or other mapped feature in the planning maps that extends into the Coastal Marine Area.

This is not what the Plan maps suggest.

The correction needs to be more fundamental than that. Simply, it is not within the Council's jurisdiction to have a District Plan showing parts of the CMA suappling adjancet zonnig mean in this contextbject to overlays and/or zones.

Attachment D: Additional Examples of Land in the District with No Zoning



GOLDEN GATE PENINSULA



DOLLY VARDEN



NGATI TOA DOMAIN