

Introduction

1. I'm Brian Warburton and presenting in support of submission no.168. Thank you for the opportunity.

I intend to read this presentation but I'm happy to take questions as I progress. At Para.13 I intend to deviate temporarily from the prepared presentation primarily to respond to comments made at the Monday session.

A response is essential and hence I seek leniency in respect of the indicative time allocation for this presentation.

I'm happy to provide a copy of these speaking notes.

2. The council summary suggests the submission covers 124 points.
3. All those submission points will assist the Council.
4. Seven submission points have been allocated to Hearing Stream One. Those points fall into two groups:
 - a. Statutory Context
 - b. Delineating Council's Jurisdiction.

By way of clarification, the submission has not questioned whether the 'inland extent of the coastal environment' had been accurately determined, which was the inference from Monday's hearing.

The 'mapping issue' raised in the submission, and the subject of this hearing, relates only to the definition of the MHWS and therefore the CMA.

The Coastal Environment overlay is a different entity. For example, it doesn't have a seaward limit, for obvious reasons.

The submission is about the seaward limit of the District. Defined by the MHWS.

5. I note 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.

Statutory Context

6. The submission identified erroneous references in the Plan to “*land **above** the line of Mean High-Water Springs (MHWS)*”.
7. In the definition of the Coastal Marine Area and the context of ‘the District’, 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** 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.

In short, the seaward extent of the various zones and overlays bears no relationship to the limit of the District which is the MHWS.
12. Several examples are given in the submission.
13. These mapping deficiencies fall into three categories:
 - I. where the maps do not identify a zoning as applying to part of the District clearly landward of High-Water.
 - II. where the maps identify a policy overlay applying to part of the District but do not identify a corresponding underlying zoning. [Note: This category includes the expanded SNA134 as per Mr Goldwater’s evidence for Stream 2].
 - III. where the maps identify the seaward extent of a zone (and 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.

The planner has suggested (Para. 149) that the submission seeks identification of the MHWS as, in his words, “*it forms the boundary of various mapped features*”. This is incorrect. The expression “mapped features” is not used in the submission. The reasons for seeking accurate delineation of the MHWS are listed in Para.6.4.5 of the submission and repeated here. It’s more basic than “mapping a feature”.

As the Panel noted on Monday, the CMA boundary/MHWS is mapped (and I presume agreed on the pNRP) where it crosses some watercourses (but only five in total) – Maps 43 and 44 of the pNRP are attached to this presentation.

As far as Titahi Bay is concerned, I have not been privy to the methodology used to determine the extent of the vehicle restricted area (now finalised after appeal by the TBRA).

Other environmental features are indeed mapped in the pNRP, some apparently using the MHWS as a delineating factor.

For example, the maps in Schedule A and Schedule B (waterbodies) of the pNRP, which include Onepoto and Pauatahanui arms of the Harbour.

It is clear from the pNRP that the landward extent of those water bodies has not been ‘adopted’ from cadastral boundaries.

Again, I’m not aware of the methodology used to determine the landward extent of these waterbodies. However, on the face of it those ‘mapped features’ in the pNRP appear to provide a reasonable representation of MHWS (certainly one more realistic, for a large part, than the cadastral boundaries derived from the LINZ Hydro Parcel).

The Planner agreed on Monday that the PDP maps do not coincide with “mapped features” in the pNRP. In other words, the Council has not used information already available in the RMA arena.

The Planner is incorrect when he stated on Monday that no submitters have sought for this discrepancy to be rectified. This is exactly what is sought in Para. 6.4.12 of the submission, namely, “the exact scope of the CMA throughout the city needs to be accurately determined and referenced in the C-WPR”.

14. This outcome has been sought because the location of High-Water is an important method for achieving the purpose of the Act.
15. For example:
 - a. it defines the extent of the CMA;
 - b. it demarcates jurisdictional matters;
 - c. it defines where the restrictions under s.12 of the Act apply and where they do not;
 - d. it defines the extent of potential esplanade reserves; and,
 - e. it defines the extent of setbacks such as the 'coastal margin'.
16. It appears this method has not been analysed in terms of s.32 of the Act. Rather, council 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, and Figure 1 here, this Plan zone/ High-Water discrepancy can be as much as 300 metres.

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 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*'.
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.
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.....*". 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. The planner has not stated how the impracticalities of his 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 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; 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 and 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.
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 instead of highly inaccurate and misleading data derived from sketches, some more than 100 years old.

30. The planner suggests some additional text to “address uncertainty”, apparently based on similar text in Auckland’s Unitary Plan.
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.”*
32. I don’t intend to read Para. 32. In essence Auckland Council decided that given the emphasis on spatial data in the Unitary Plan, an accurate delineation of the MHGS was essential.
33. On this basis, Auckland Council has been able to model its High-Water. Cadastral boundaries have been mothballed by Auckland Council as far as the CMA is concerned.
34. Other councils have undertaken similar work.
35. The recently operative 2nd generation plan for Kapiti Coast does not use cadastral boundaries as a proxy for the High-Water and the CMA.

The planner suggested on Monday that Kapiti Coast has used the LINZ Hydro Parcel. This is incorrect. Refer Footnote 29 on Page 6 which refers to the evidence of Dr Dawe, GWRC, at the pNRP hearings.

36. Figure 2 is a ‘snapshot’ from the online KCDC planning maps applicable to the south-western part of Paraparaumu. The image confirms KCDC acknowledges that the seaward limit of the ‘District’ is about 87 metres seaward of the cadastral boundaries, and therefore needs to be ‘zoned’.
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 was involved in determining the MHWS for KCDC, and the work was undertaken because it was more effective and efficient than undertaking ad-hoc MHWS surveys of individual properties/activities.
39. The planning maps for Porirua’s PDP are inaccurate and misleading.
40. Examples are cited in the submission. These largely focus on how this issue relates to Whitireia Peninsula and to Titahi Bay.

41. Figure 3 shows another example. It relates to Titahi Bay Road.
42. Applying the planner's recommended approach here results in a 17-metre-wide strip running seaward of, and parallel to, Titahi Bay Road, being erroneously 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 to this presentation 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';
 - c. failing to give effect to the RPS; and,
 - d. failing to avoid inconsistencies with the regional plan.

Conclusion

46. The Council should accept the relief sought in the submission: namely,
 - a. Para. 6.4.12 of the submission, submission point 168.43, para. 149 of the section 42A report] which relate to delineation of MHWS; and
 - b. Para. 6.4.6. and 6.4.7 of the submission which sought this outcome: that, "*all land landward of MHWS should be mapped*", as far as it relates to Titahi Bay and to Whitireia Park.