

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**

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

29 November 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 submission summary 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. Sixteen submission points have been allocated to Hearing Stream Three. Those points fall into four topics:

Topics	Submission Point Nos.	Scope of Submission Point
Coastal Environment	168.41	Amend the definition to read: <i>"The Coastal Environment comprises that part of Porirua City that is seaward of the landward extent of the coastal environment as identified in the planning maps"</i> .
	168.42	Add a definition of 'landward extent of the coastal environment'.
	168.51	Amend all references to "inland extent of the coastal environment" in the PDP to read: "landward extent of the coastal environment."
	168.52	Amend to include a statement detailing how the landward limit of the coastal environment was determined.
	168.53, 168.54 and 168.55	Amend the policies, rules and standards so that earthworks, clearance of vegetation, and buildings (regardless of scale or purpose within CHNCs 008 to 014) are a non-complying activity, with an explicit exemption for planting associated with ecological restoration.

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

Coastal High Natural Character Areas	168.117 – 168.123	Supports the identification of CHNC008 – CHNC014 as a coastal area with High Natural Character.
Historic Heritage	168.106	Supports the identification of the Titahi Bay Boat Sheds as heritage items (HHB018).
Notable Trees	168.107	The list of notable trees should not include any exotic species, or tree, that is not endemic to Porirua, unless they have significant historic or cultural value.

5. As explained in Paras. 55 – 68 below, submission point 168.45 (which relates to district plan mapping) also needs to be addressed in HS3.
6. I note that there are four CHNCs in Whitireia Park (CHNCs 008, 009, 010 and 011) and three in Titahi Bay (CHNCs 012, 013 and 014).
7. It's axiomatic that CHNC 008 to 014 are also within the Coastal Environment.
8. Except for some alignment issues associated with the PDP's approach to spatial mapping (referred to further below) CHNC008, 009, 010, 011 and 012 are all located within ONFL003, as shown in Figure 1 below.



Figure 1: Map Showing CHNC008, 009, 010, 011 and 012 'Enclosed' by ONFL003

9. CHNC013 and 14 are both located within SAL003.
10. Below, I refer to Ms Smith's submission points in the context of the relevant topic and the section 42A author's recommendation.

Coastal Environment Provisions

Point 168.51 – Section 3.6.3 of s.42A Report

11. Mr McDonnell has agreed that "inland" should read "landward" in the definition of "coastal environment."

Point 168.51 – Section 3.16 of s.42A Report

12. The s.42A report refers again (at Sect.3.16.3) to Ms Smith's submission point 168.51 (see Mr McDonnell's footnote 35). Mr McDonnell's para. 208 should read: *"I recommend that the submissions from Robyn Smith [168.41 51] be accepted in fullpart."*

Point 168.41 – Should it be: 'inland' or 'landward'

13. Ms Smith has no additional comment to make.

Points 168.42 and 168.52 – How was 'Coastal Environment' Defined and Delineated

14. Ms Smith has sought inclusion of two things:
 - A definition of the term *"landward extent of the coastal environment"* (point 168.42); and,
 - Commentary about how this 'extent' was determined (point 168.52).
15. Mr McDonnell has recommended that both these submission points be rejected. In doing so he relies on his comment that: *"The first paragraph of the Introduction to the Coastal Environment Chapter briefly explains how this area was determined, ..."*
16. On review, Ms Smith considers this may be sufficient if it weren't for the fact that the first paragraph to which Mr McDonnell uses the word 'inland' on three occasions, as noted below.

*"Porirua's coastal environment is dynamic, extending 12 nautical miles out to sea and incorporating an **inland** extent where coastal processes, influences or qualities are significant. It represents an important interface, exposed to natural hazards while also providing amenity, cultural and social value to the community and it is of particular importance to tangata whenua. This chapter only applies to the **inland** extent of the coastal environment as shown on the planning maps. The seaward extent below Mean High Water Springs ("MHWS") out to the 12 nautical mile limit is within Greater Wellington Regional Council's jurisdiction. The **inland** extent of Porirua's coastal environment has been identified in accordance with Policy 1 of the New Zealand Coastal Policy Statement (2010)."*

17. We also note that Policy CE-P1 of the PDP uses the expression: *"Identify and map the **inland** [emphasis added] extent of the coastal environment and the different areas"*

18. As noted above, Mr McDonnell has agreed that the term ‘inland’ is not appropriate in this context.
19. At Para.106(a) Mr McDonnell (apparently claiming scope authority from Ms Smith’s submission point 168.51 which strictly speaking only related to the definition) has recommended: *“Amend all references to ‘inland extent of the coastal environment’ in the PDP to read ‘landward extent of the coastal environment’ ...”*
20. Mr McDonnell’s recommendation does not seem to deal with two of the three instances in the introductory paragraph; which refer to:
 - a. *“**inland** extent where coastal processes” and,*
 - b. *“The **inland** extent of Porirua’s coastal environment”.*
21. Perhaps Mr McDonnell’s recommendation should have simply said: *“Amend all references to ‘inland’ to read ‘landward’.*
22. On Ms Smith’s behalf I confirm that her submission points 168.42 and 168.52 will be addressed if the required corrections highlighted in paragraphs 16 and 17 above are made. Clause 16(2) of the First Schedule might apply in this instance.

Points 168.53, 168.54 and 168.55 – Provisions for Buildings, Earthworks and Vegetation Removal

23. Ms Smith’s submission points are that non-complying should be the activity status for:
 - a. earthworks within CHNC008 – 014.
 - b. vegetation removal within CHNC008 – 014.
 - c. new buildings within CHNC008 – 014.
24. Under the notified PDP these activities are categorised as follows:
 - a. earthworks – permitted activity subject to certain limits (rule CE-R1)
 - b. vegetation clearance - permitted activity subject to certain limits (rule CE-R2)
 - c. buildings – restricted discretionary subject to certain limits (rule CE-R8)
25. At paras. 75, 83 and 303 of his s.42A report Mr McDonnell has recommended rejection of Ms Smith’s submission points⁶.
26. As far as earthworks and vegetation clearance activities within CHNCs are concerned, Mr McDonnell has split his consideration into different sections of his report:
 - a. sec. 3.3 as well as sec. 3.19.1 in terms of earthworks; and,
 - b. sec. 3.4 as well as sec. 3.19.6 in terms of vegetation and biodiversity matters.
27. Mr McDonnell does not mention any rationale for this ‘splitting’. Why are Ms Smith’s points about the inappropriateness of permitting earthworking and vegetation activities considered in sections 3.3 and 3.4 of the s.42A report while points by Porirua City Council, Waka Kotahi and GWRC relating to the same matter (ie, what should be permitted) are considered in section 3.19 of the s.42A report.

⁶ At para.75 Mr McDonnell has incorrectly described his recommendation as being “accept in part”.

28. For all these land use activities (earthworks, vegetation and buildings) Mr McDonnell's approach is in essence the same. He considers that: *"it is appropriate to have a permitted threshold for activities that have little or no material effect on the values of CHNC areas, ..."*.
29. However, the PDP documentation includes no information to support his conclusion with respect to *"little or no" "material effect"*.
30. Mr McDonnell seems to have come to this conclusion based solely on the quantum referenced in the rules/standards (ie: depth and/or surface areas), and not the environmental or statutory context applicable to the activities. For example, there is no consideration given by Mr McDonnell to the policy provisions of the NZCPS and/or the RPS.
31. I note in this regard that Porirua City Council (as a submitter) has sought deletion of CE-R1(1)(a)(i).⁷ In essence, this would mean that unlimited earthworks would be allowed within CHNCs for: *"new public walking or cycle access tracks"*.
32. The outcome PCC wants from this submission point is that earthworks for new walking and cycling tracks would not fall within the Coastal Environment chapter but be considered under rule INF-R9(1)(c)(vi)(2) which, subject to standard INF-S15 or INFS17 (as the case maybe), in turn says that the surface area limits do not apply to PCC activities. This is regardless of whether the site is within a CHNC area or not.
33. Mr McDonnell's recommendation⁸ to accept PCC's submission point seems to contradict his assertion⁹ that: *"such activities have little or no material effect on the values of CHNC areas."*, namely, those described in the rule/standard as notified.
34. There is no evidence produced to show that the *"little or no material effect"* 'gateway' (which Mr McDonnell favours) would still apply if PCC's submission points were accepted.
35. Or in other words, is it correct to accept Mr McDonnell's claim that, on the one hand earthworks less than 50m² have *"little or no material effect .."*, (the inference of which is that earthworks greater than 50m² do have effects that are not "little" and which are "material") and then on the other hand agree that an unlimited surface area is appropriate if the earthworks are undertaken by the Council.
36. In RMA terms, with a few exceptions, the identity of the agency/person undertaking the work should be irrelevant. This does not seem to be Mr McDonnell's approach, and for no particular or apparent reason he seems to favour PCC's submission.
37. Ms Smith has sought reversal of the presumption in rules relating to earthworks, vegetation and buildings in CHNC008 – 014.

⁷ PCC's submission point 11.54

⁸ See Para 273 of s.42A report

⁹ Para.71 of s.42A report

38. Currently the presumption is that those activities will be ‘provided for in the district plan’, (either as permitted or restricted discretionary). However, that permissive approach in the PDP runs contrary to the relevant provisions of the NZ Coastal Policy Statement (NZCPS) and the RPS.
39. Policy 13(1)(a) of the NZCPS is: *“to preserve natural character”*.
40. Policy 15(1)(a) of the NZCPS is:
To protect the natural features and natural landscapes (including seascapes) of the coastal environment from inappropriate subdivision, use, and development:
 - a. *avoid adverse effects of activities on outstanding natural features and outstanding natural landscapes in the coastal environment; and*
41. Under section 75(3)(b) of the RMA the district plan is required to *“give effect to — any New Zealand coastal policy statement.”* Under section 75(3)(c) of the RMA the district plan is required to *“give effect to — any regional policy statement.”*
42. The obligation under Policy 13(1)(a) of the NZCPS to *“to preserve natural character”* applies to policies, rules and standards of the PDP relevant to CHNC 008 to 014
43. The obligation under Policy 15(1)(a) of the NZCPS to *“avoid adverse effects of activities* applies to policies, rules and standards of the PDP relevant to CHNC008, 009, 010, 011 and 012.
44. Ms Smith’s position is that the permitted limits for earthworks, vegetation clearance and buildings in rules CE-R1, CE-R2 and CE-R8 are incompatible with the preservation and avoidance required by Policies 13(1)(a) and 15(1)(a) of the NZCPS.
45. Likewise, the permitted levels for earthworks, vegetation clearance and buildings are incompatible with Policies 3, 35 and 36 of the RPS.
46. The explanation to Policy 3 the RPS says: *“Policy 36 will need to be considered alongside Policy 3 when changing, varying or reviewing a district or regional plan.”*
47. Policy 36 lists nine matters to which particular regard must be had *“in determining whether an activity is inappropriate.”*
48. The explanation to Policy 36 says this: *“The determination as to whether a proposed activity is appropriate, given that context, is then assessed using the factors in this policy. These address the nature and characteristics of the proposal and the potential effects which could arise from the proposal.”*
49. There is nothing in Mr McDonnell’s report indicating that his determination about effects of the activities potentially permitted (ie: whether a permitted activity is inappropriate) has followed the approach mentioned in Policies 3 and 36 of the RPS.
50. Ms Smith therefore asks the Panel to agree to her relief sought in regard to submission points 168.53, 168.54 and 168.55, and accordingly she asks the Panel to decide to amend the relevant policies, rules and standards so that:
“Earthworks, vegetation clearance, and buildings regardless of scale or purpose within CHNCs 008 to 014 are non-complying activities, with some explicit exceptions specified in her submission.”

Managing the Environment – Jurisdiction

51. PCC has jurisdiction in respect of managing land use activities able to adversely affect the natural character of the coastal environment¹⁰.
52. PCC's jurisdiction in this regard mimics its jurisdiction in respect of the margins of wetlands. Or in other words, PCC has responsibilities to manage *"the effects of the use ... of land"*.¹¹
53. Earthworks, vegetation clearance and buildings are all uses of land in terms of section 9(3) of the RMA. Ms Smith considers Greater Wellington Regional Council's (GWRC) memorandum dated 10 November 2021^{12 13} is incomplete, and therefore misleading. GWRC's memo omits to refer to 'natural character values' even though the explicit direction in section 6(a) of the RMA is: *"the preservation of the **natural character** [emphasis added] of wetlands and their margins"*.
54. The obligations under s6 of the RMA relating to wetlands encompass more than just managing effects in terms of biodiversity and hydrology. But this is the inference from GWRC's memorandum, and the narrow evaluation therein.

Coastal High Natural Character Areas - Mapping

55. Ms Smith's submission records the fact that the PDP needs to define MHWS because:
 - a. the PDP relies significantly on spatial mapping; and,
 - b. the location of MHWS determines the extent of:
 - zones,
 - overlays, and
 - the coastal margin.
56. On two occasions in her submission Ms Smith sought this outcome: *"All land that is landward of the MHWS should be mapped."*¹⁴
57. Relief from this submission point has been recorded in the Council's summary of submissions as Point 168.45.
58. However, the submission point has not been considered in the relevant s.42A reports under HS2 or HS3. Ms Smith is concerned about this, as well as the possibility that the omission will be repeated in HS4 (with respect to earthworks) and HS5 (with respect to open space zoning). This concern is magnified by the Panel's Minute 10 implying any further dissent in this matter will not be countenanced.
59. It's fundamental issue to these proceedings that submitters, like Ms Smith, have been, and are still unable, to determine when, and to what extent, the issues they have raised will be challenged by council staff and contractors in their s.42A reports and evidence.

¹⁰ Refer Policy 3 of the RPS.

¹¹ Section 31(1)(a) of the RMA.

¹² [https://storage.googleapis.com/pdp_portal/pdps/pdp1/memos_from_submitters_to_panel/Submitter%20Memo%20-%20GWRC%20memorandum%20on%20wetlands%20regulation%20-%2010%20November%202021%20\[137%20and%20FS40\]%20-%20Hearing%20Stream%202.pdf](https://storage.googleapis.com/pdp_portal/pdps/pdp1/memos_from_submitters_to_panel/Submitter%20Memo%20-%20GWRC%20memorandum%20on%20wetlands%20regulation%20-%2010%20November%202021%20[137%20and%20FS40]%20-%20Hearing%20Stream%202.pdf)

¹³ Unsigned and anonymous

¹⁴ See s.6.4.6 and 6.4.7 of submission 168

60. All submitters, like Ms Smith, are substantially disadvantaged, particularly so because the panel is now attempting to truncate their participatory rights.¹⁵
61. The Panel will recall hearing from Jenny Blake (submitter no. 017), a resident of Murphys Road, along these lines in respect of quarrying activities and SNAs.
62. I contacted Ms Blake pointing out that PCC had recently as early November 2021 had not updated submitters about their allocation to the various hearing streams. In reply, she said this:

“This is very much appreciated as it is incredibly difficult to understand how and when concerns about a range of multiple impacts on the Judgeford area have been arranged to be heard within the hearing streams which have been structured for the administrative convenience of the Porirua City Council.”

63. Council staff and/or contractors have failed to conceive that Ms Smith’s submission points might span one or more ‘topics’. This failure to recognize the integration inherent in the RMA should not detract from the outcomes Ms Smith has sought as it relates to this hearing stream (HS3).
64. Ms Smith has given several examples in her submission, and in presentations to date, showing the issues arising when PCC assigns a zone, overlay, and/or setback relative to something that the PDP hasn’t delineated (namely, the MHWS).
65. Attachment D to Ms Smith’s presentation for HS2 recorded:
- “Notes About Matters Considered in Hearing Stream One that have Direct Relevance to my Hearing Stream Two Submission Points”.*
66. For the Panel’s reference that Attachment D is attached to this presentation as well.¹⁶
67. The comment in the Attachment D about relevance of the HS1 ‘spatial mapping issues’ to HS2 considerations is equally applicable to HS3 considerations in so much as the PDP shows significant discrepancies between the various GIS polygons comprising the spatial maps relating to Heritage Items and relating to Coastal High Natural Character Areas.
68. To assist the Panel in its consideration and deliberations Attachment A to this presentation contains a similar ‘stock-take’ to keep a track of the ongoing and unresolved issues relating to spatial mapping. This shows that the RMA issues are not confined to HS1.
69. In essence, Ms Smith has submitted that there are fundamental flaws in the PDP, in so much as the implications of many plan provisions resulting from zoning and policy overlays rely upon the location of the (as yet unidentified) MHWS.
70. Ms Smith maintains that the provisions of the PDP relating to the CHNC areas fall within that “basket of flaws” attributable to the PDP’s approach to spatial mapping, as do the provisions of the PDP relating to SNAs and the coastal margins reference to which was made in HS1 and HS2.

¹⁵ Refer Minute 10

¹⁶ Attachment B to this presentation

71. I note that the submission process relating to the PDP has been the first opportunity that submitters such as Ms Smith have been able to comment on the Council's approach to spatial mapping as it relates to 'zoning' and therefore as it relates to 'the extent of the District'). The consultation draft of the District Plan did not include any maps depicting zones and/or the seaward limits of the District. Ms Smith's submission then should not be seen as 'coming out of left field'.
72. The following images support Ms Smith's contention as far as they relate to the CHNC and the Coastal Environment provisions. They show:
- Overlays that have no underlying zoning - CHNC009, CHNC011 and CHNC012 (Figures 2, 3 and 4);
 - Land that by all accounts should be included as a CHNC, and has a zoning but does not have a spatial overlay - CHNC011 (Figure 4); and,
 - Land where there is generally no correlation between the spatial extent of the zone and the CHNC overlay as it effects CHNC013 and CHNC014 (Figure 5).
73. Ms Smith asks that the spatial mapping flaws in the PDP be rectified so the discrepancies highlighted in her submission are addressed.

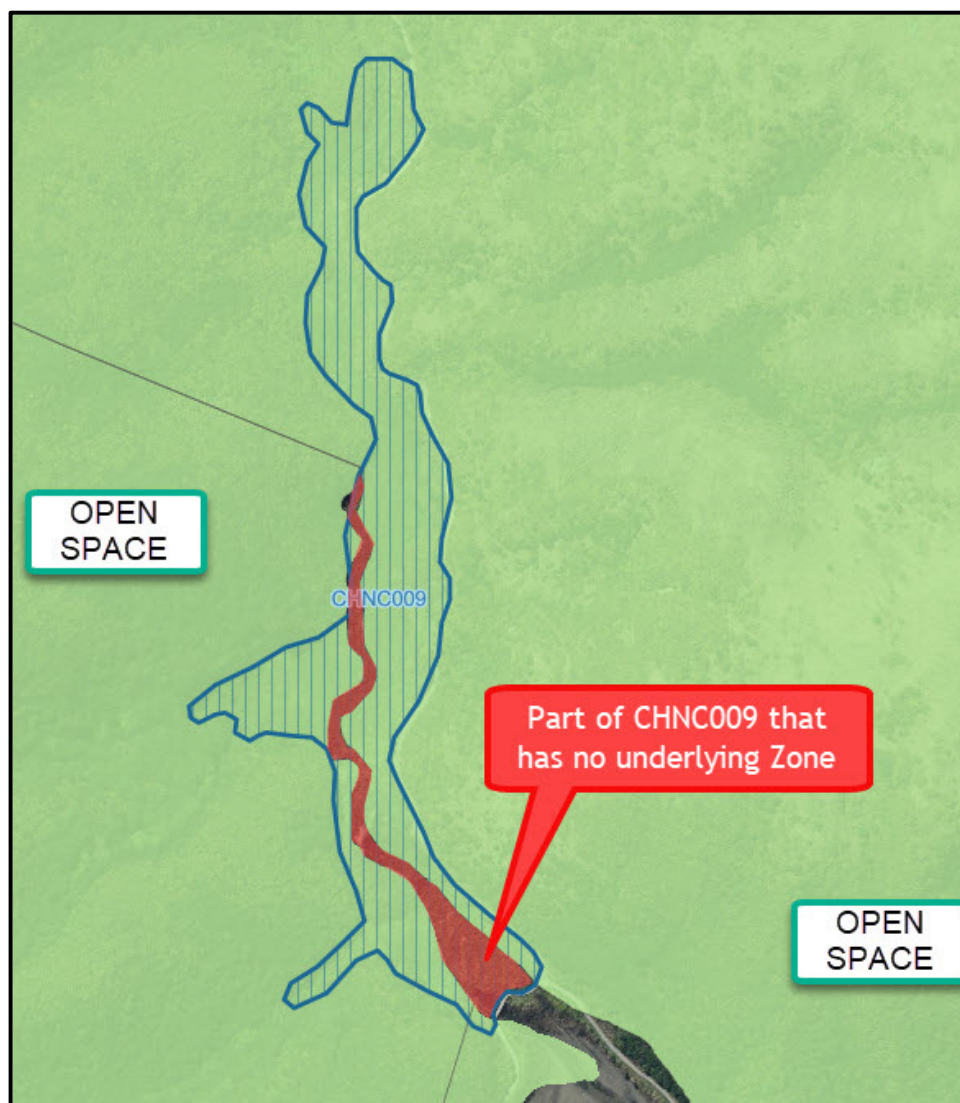


Figure 2: Map Showing Part of CHNC009 with no Underlying Zone

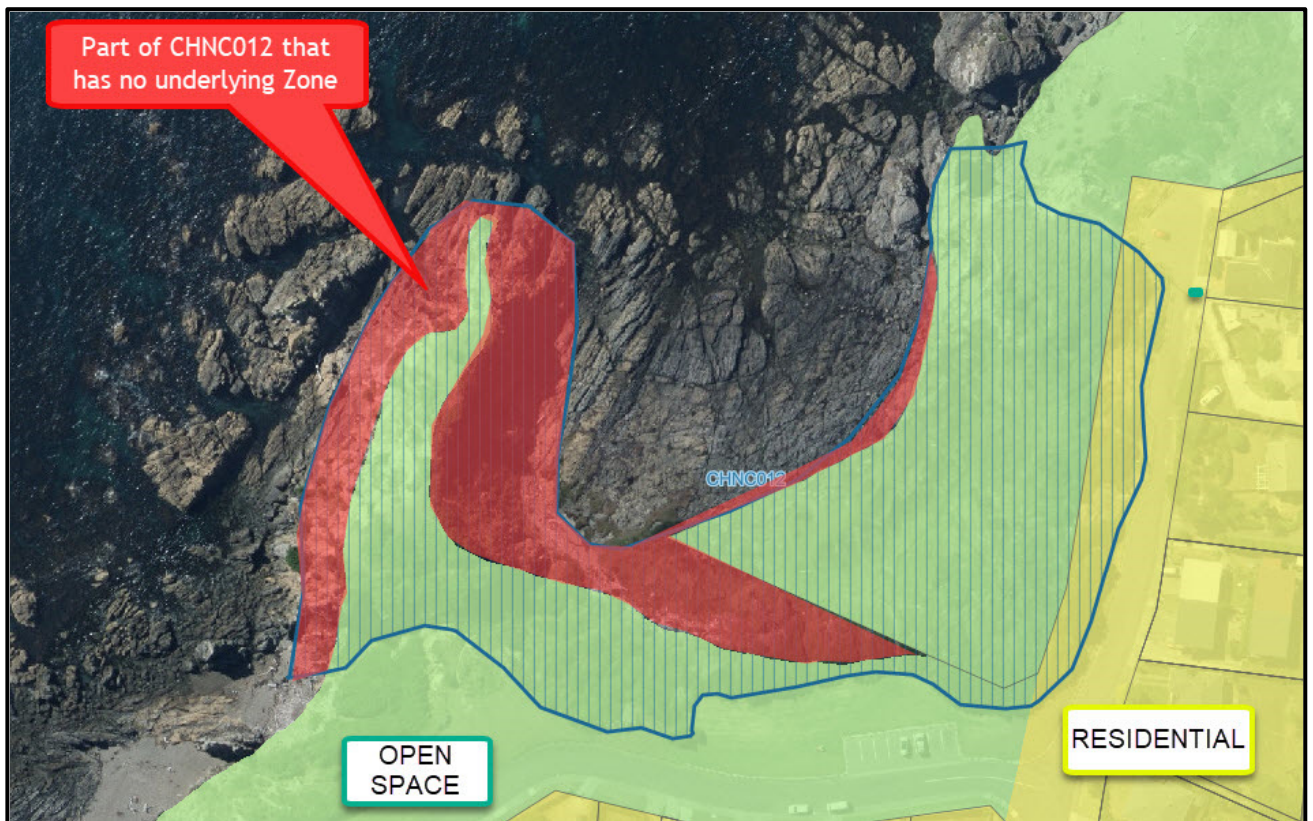


Figure 3: Map Showing Part of CHNC012 with no Underlying Zone

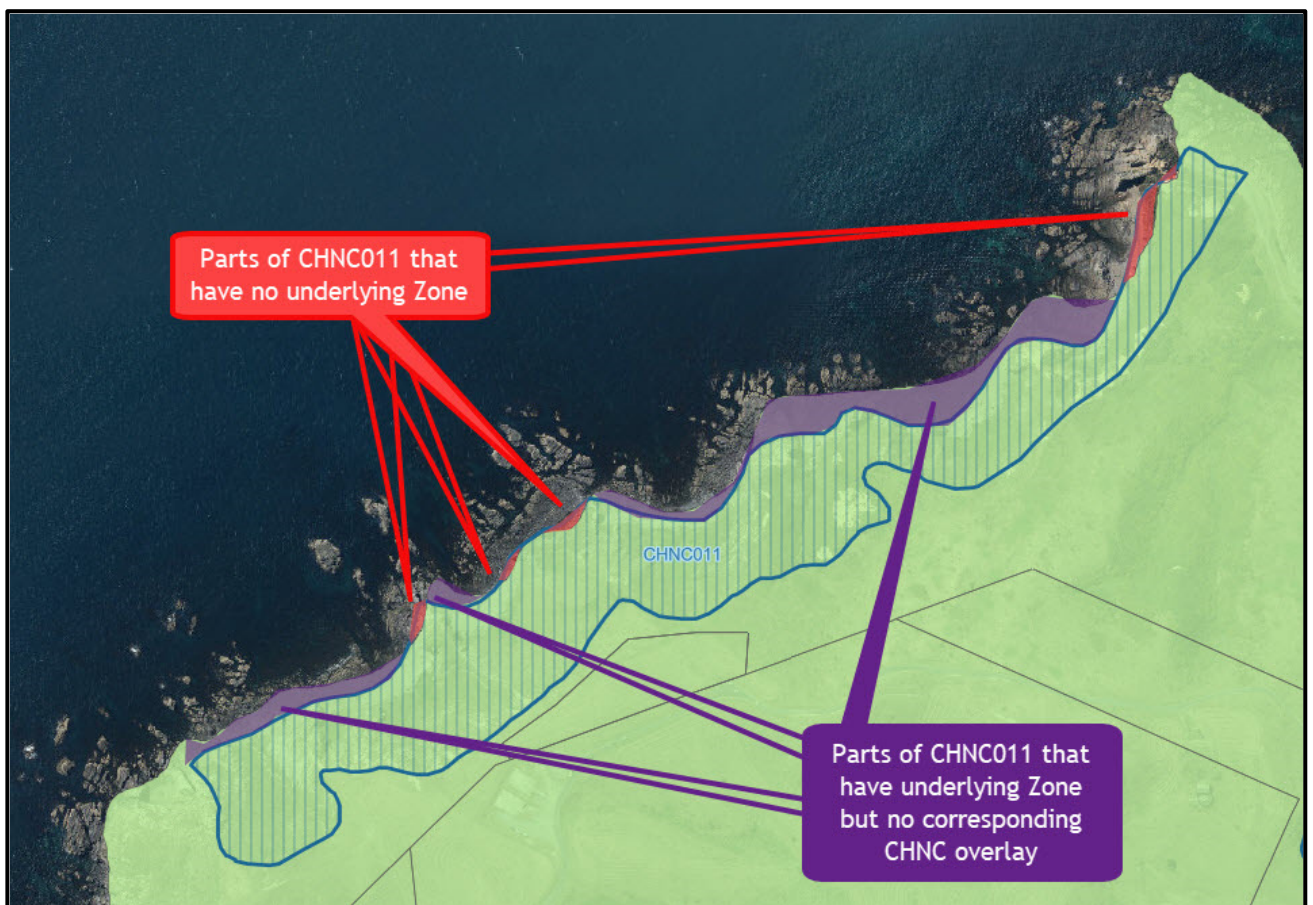


Figure 4: Map Showing Part of CHNC011 with no Underlying Zone, and Land that Has Underlying Zoning but Omitted from Overlay CHNC011

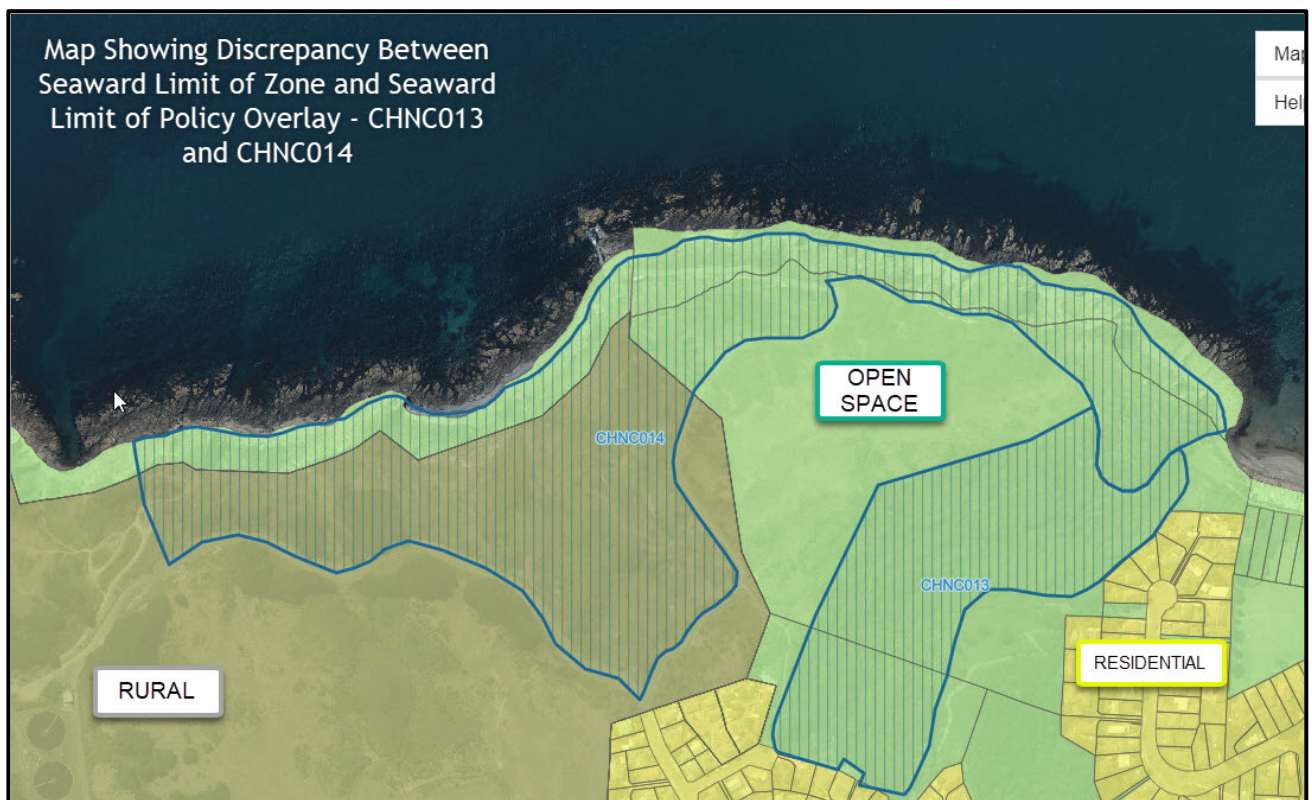


Figure 5: Map Showing Discrepancy between Limit of Zone and Limit of Policy Overlay

Heritage Provisions

74. Ms Smith has submitted: *"I support the identification of the Titahi Bay Boat Sheds as heritage items (HHB018)."*^{17 18} She notes that Heritage New Zealand Pouhere Taonga has sought: *"re-categorisation from a Group B to Group A Heritage Item."*, which is an outcome she is not opposed to.
75. It is noted that the spatial mapping flaws in the PDP also have implications for the provisions of the PDP relating to heritage items. I refer to Figure 6 below showing that large portions of boatsheds at the northern end of Titahi Bay are located on land that is not zoned.
76. Ms Smith asks that the spatial mapping flaws in the PDP be rectified so all parts of the district landward of MHWS are mapped.

¹⁷ Para. 9.1 of submission 168.

¹⁸ Submission point 168.106

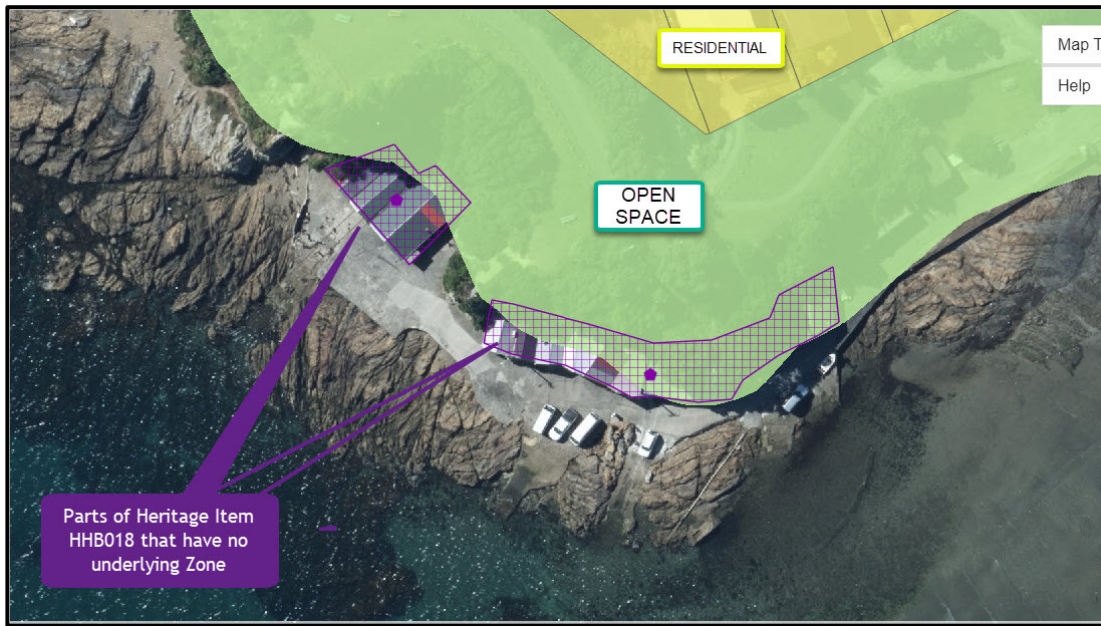


Figure 6: Map Showing Northern Boatsheds Not Subject to Any Zoning

Notable Tree Provisions

77. Ms Smith has submitted: *"I submit that the list of notable trees should not include any exotic species, or tree, that is not endemic to Porirua, unless they have significant historic or cultural value"*.
78. She has sought this outcome because large exotic, or non-endemic, trees can cause significance weediness from seed dispersal. This issue appears not to have been considered in the s.35 evaluations nor in the s.42A reports.
79. The Panel will be aware that the Parliamentary Commissioner for the Environment has recently produced a report entitled: *"Space invaders: A review of how New Zealand manages weeds that threaten native ecosystems."*¹⁹
80. That reports notes: *"Territorial authorities also have a role under the Biosecurity Act and RMA."*²⁰ and under *"RMA 1991, s 31(1)(b) (iii)"*.²¹

Brian Warburton
29 November 2021

¹⁹ <https://www.pce.parliament.nz/publications/space-invaders-managing-weeds-that-threaten-native-ecosystems>

²⁰ Footnote 4

²¹ Footnote 5

ATTACHMENT A: NOTES ABOUT MATTERS CONSIDERED IN HEARING STREAM ONE THAT HAVE DIRECT RELEVANCE TO MY HEARING STREAM TWO AND THREE SUBMISSION POINTS

My 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).

Several examples are given in the submission, and also in Mr Warburton's Hearing Stream One presentation on my behalf.

These mapping deficiencies fall into three categories:

- a. where the maps do not identify a zoning as applying to part of the District clearly landward of MHWS.
- b. where the maps identify a policy overlay applying to part of the District but do not identify a corresponding underlying zoning.
- 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.

The location of the MHWS is an important method to achieve the purpose of the Act.

I note that Mr Iain Dawe, for GWRC, in his evidence for HS3 has said this:

"It is important that the PDP contains spatially defined hazard maps and information that is easy to find and interpret so that plan users are able to obtain all information relevant to a property."²²

A simple deletion of **one** word would make this statement equally applicable to the matters about spatial mapping raised in my submission. Mr Dawe's statement would then read:

"It is important that the PDP contains spatially defined maps and information that is easy to find and interpret so that plan users are able to obtain all information relevant to a property."

With his right of reply for HS1, Mr McDonnell suggested text for insertion into the PDP. This text in essence would result in the determination of the limit of the Council's jurisdiction being deferred until a later date. I gather that Mr McDonnell believes this later date would be as and when matters arose requiring the MHWS to be located.

Mr Warburton's presentation²³ highlighted some of the difficulties and impracticalities of this approach.

The purpose of the following notes is to bring the Panel's attention to the issues applicable to my Hearing Stream Three submission points that directly result from uncertainty about the extent of the Councils jurisdiction due to the PDP's approach to spatial mapping, and also to 'roll-over' issues from the previous HS1 and HS2 as they are integrally connected.

²² At para.45 of [https://storage.googleapis.com/pdp_portal/pdps/hearing_stream3/submitter_evidence/Submitter%20evidence%20-%20Iain%20Dawe%20for%20GWRC%20\[173%20and%20FS40\].pdf](https://storage.googleapis.com/pdp_portal/pdps/hearing_stream3/submitter_evidence/Submitter%20evidence%20-%20Iain%20Dawe%20for%20GWRC%20[173%20and%20FS40].pdf)

²³ At Para.22 and in Attachment C

1. ZONING ON ADJACENT LAND

Mr McDonnell's suggested text (his HS1 right of reply) refers to what, he believes, could happen if the MHWS was delineated, at the later date, such that there was no zone applying to the land landward of the MHWS. His suggested text includes this:

"Where there is land identified landward of MHWS that does not have a zone, the Open Space Zone shall apply, except for land adjacent to the Māori Purpose Zone (Hongoeka) where that Zone shall apply."

Mr Mc Donnell's suggested text, however, makes no mention of what, if anything, would happen where the adjacent land might be zoned: Rural, Recreation, or Residential.

2. 'CLOSE TO' AND 'INDICATIVE COASTLINE'

Mr McDonnell's suggested text (his HS1 right of reply) refers to what, he believes, could happen if a proposal was to be undertaken where the location of the MHWS might be a relevant consideration.

His suggested text includes reference to "close to" and "indicative coastline": Mr McDonnell has not suggested a definition for these terms, and indeed there can be none. What exactly does: "close to" and "indicative coastline" mean. Those terms are vague and unenforceable. Therefore Mr McDonnell's suggestion in terms of spatial mapping will be ineffectual.

Conflated with this are several questions including these:

- *"in the case of land being marketed, how is a prospective purchaser expected to know what the implications of the MWHS uncertainty will be"*
- *"When is it supposed that the person proposing an activity will ask themselves those same questions"; and,*
- *"What regulatory process will be 'triggered' so those persons will be required to undertake the so-called case-by-case, and site-specific determination."*

Questions of a similar ilk were noted in Para. 22 of Mr Warburton's presentation for HS1 on my behalf, and related to:

- costs - survey
- costs - plan change
- other parties affected by location of MHWS
- what happens to policy overlays

Mr McDonnell claims that this 'case by case' and 'site-specific' approach has worked in the past. He has, however, not provided no actual examples supporting his assertion.

On the other hand, Mr Warburton's presentation (see Attachment 3) for HS1 on my behalf presented three examples where the location of the MHWS should have been a relevant consideration but where no determination was made for the particular project. I am aware of several more examples.

3. HS2 - POLICY OVERLAYS – SNAs, ONFLs etc

Mr McDonnell's suggested text (his HS1 right of reply) refers to what, he believes, could happen if the MHWS was delineated, at the later date, such that there was no zone applying to the land landward of the MHWS. His suggested text includes this:

"Where there is land identified landward of MHWS that does not have a zone, the Open Space Zone shall apply, except for land adjacent to the Māori Purpose Zone (Hongoeka) where that Zone shall apply."

Mr McDonnell's right of reply makes no reference to relevant policy overlays; ie, do they remain static, or do they too move with the zoning. Either way, this raises issues with respect to the relevant provisions of the RPS and s.31 of the RMA.

With my HS2 submission points I have sought appropriate spatial mapping in the PDP relating to the SNA, ONFL, and SAL overlays. I maintain that the matters identified in these submission points cannot be adequately addressed until the issues raised in my HS1 submission points are addressed which is not achieved with the additional PDP text suggested by Mr McDonnell.

4. COASTAL MARGIN

As Mr Warburton noted in his HS1 presentation²⁴, the delineation of the MHWS is an important planning mechanism; one reason being (in the context of the PDP) that it defines the extent of the 'coastal margin'. As recorded in my HS2 submission points, I support the concept of a 'coastal margin'. However, as recorded in my HS1 submission points there are implications in terms of needing the MHWS to be delineated.

There were no submissions opposing the concept of the 'coastal margin'.

There is a functional need for the MHWS to be delineated for without that the delineation of the 'coastal margin' is vague and uncertain, and likely to be ineffective.

Mr McDonnell's suggested additional PDP text does not address this issue.

In her assessment of Royal Forest and Bird Protection Society's submission²⁵ about the coastal margin Ms Rachlin says this:

"On the issue of clarifying what and where the coastal margin is, the PDP contains a definition of 'coastal margin'. This definition is key to understanding the specifics of the coastal margin and provides the necessary clarity and certainty. As such I disagree with the request from Forest and Bird."²⁶

I maintain that the definition of the 'coastal margin' provides neither clarity nor certainty which Ms

²⁴ At Para.15

²⁵ Submitter 225

²⁶ At Para. 52

Rachlin claims will be provided. Because the extent of the Council's jurisdiction has not been delineated on the spatial maps, it is impossible for, what is in essence, an offset relative to the MHWS to have any meaning let alone meaning with clarity and certainty.

With my Hearing Stream Two submission points I have sought appropriate provisions in the PDP relating to the 'coastal margin'. I maintain that the matters identified in these submission points cannot be adequately addressed until the issues raised in my HS1 submission points are addressed which is not achieved with the additional PDP text suggested by Mr McDonnell.

In fundamental terms Ms Rachlin has not yet been asked, and therefore has not responded to, this question:

"How can the location of the 'coastal margin' be delineation (on the ground) if the location of the MHWS (from which the margin is an offset) has not."

5. COASTAL HIGH NATURAL CHARACTER AREAS

Mr McDonnell's suggested text (his HS1 right of reply) refers to what, he believes, could happen if the MHWS was delineated, at the later date, such that there was no zone applying to the land landward of the MHWS.

Mr McDonnell's right of reply makes no reference to relevant policy overlays; ie, do they remain static, or do they too move with the zoning. Either way, this raises issues with respect to the relevant provisions of the RPS and s.31 of the RMA.

With my submission I have sought appropriate spatial mapping in the PDP relating to the CHNC overlay. My submission point 168.45 says this: *"All land that is landward of the MHWS should be mapped."*

I maintain that the issue and relief identified in my submission won't be adequately addressed with the additional PDP text suggested by Mr McDonnell in his HS1 right of reply.

6. HISTORIC HERITAGE

Mr McDonnell's suggested text (his HS1 right of reply) refers to what, he believes, could happen if the MHWS was delineated, at the later date, such that there was no zone applying to the land landward of the MHWS.

Mr McDonnell's right of reply makes no reference to relevant policy overlays. By definition a policy overlay must relate to land with an underlying zoning. The absence of an underlying zoning for the land in the vicinity of the northern Titahi Bay boatsheds means that the 'overlay' map is inaccurate and consequently parts of the boatsheds are given no protection under the Historic Heritage provisions of the PDP. This raises issues with respect to the relevant provisions of the RPS and s.31 of the RMA.

With my submission I have sought appropriate spatial mapping in the PDP relating to the Historic Heritage overlay. My submission point 168.45 says this: *“All land that is landward of the MHWS should be mapped.”*

I maintain that the issue and relief identified in my submission won't be adequately addressed with the additional PDP text suggested by Mr McDonnell in his HS1 right of reply.

**ATTACHMENT B: COPY OF ATTACHMENT D TO MS SMITH'S PRESENTATION FOR
HEARING STREAM 2.**

ATTACHMENT D: NOTES ABOUT MATTERS CONSIDERED IN HEARING STREAM ONE THAT HAVE DIRECT RELEVANCE TO MY HEARING STREAM TWO SUBMISSION POINTS

My 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).

Several examples are given in the submission, and also in Mr Warburton's Hearing Stream One presentation on my behalf.

These mapping deficiencies fall into three categories:

- d. where the maps do not identify a zoning as applying to part of the District clearly landward of MHWS.
- e. where the maps identify a policy overlay applying to part of the District but do not identify a corresponding underlying zoning.
- f. 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.

The location of the MHWS is an important method to achieve the purpose of the Act.

With his right of reply, Mr McDonnell suggested text for insertion into the PDP. This text in essence would result in the determination of the limit of the Council's jurisdiction being deferred until a later date. This later date would be as and when matters arose requiring the MHWS to be located.

Mr Warburton's presentation²⁷ highlighted some of the difficulties and impracticalities of this approach.

The purpose of these notes is to bring the Panel's attention to two key issues applicable to my Hearing Stream Two submission points that directly result from uncertainty about the extent of the Councils jurisdiction due to the PDP's approach to spatial mapping.

7. POLICY OVERLAYS

Mr McDonnell's suggested text refers to what, he believes, could happen if the MHWS was delineated, at the later date, such that there was no zone applying to the land landward of the MHWS. His suggested text includes this:

"Where there is land identified landward of MHWS that does not have a zone, the Open Space Zone shall apply, except for land adjacent to the Māori Purpose Zone (Hongoeka) where that Zone shall apply."

Mr Mc Donnell's suggested text, however, makes no mention of what, if anything, would

²⁷ At Para.22 and in Attachment C

happen to any relevant policy overlays; ie, do they remain static, or do they too move with the zoning. Either way, this raises issues with respect to the relevant provisions of the RPS and s.31 of the RMA.

With my Hearing Stream Two submission points I have sought appropriate spatial mapping in the PDP relating to the SNA, ONFL, and SAL overlays. I maintain that the matters identified in these submission points cannot be adequately addressed until the issues raised in my Hearing Stream One submission points are addressed which is not achieved with the additional PDP text suggested by Mr McDonnell.

8. COASTAL MARGIN

As Mr Warburton noted in his Hearing One presentation²⁸, the delineation of the MHWS is an important planning mechanism; one reason being (in the context of the PDP) that it defines the extent of the 'coastal margin'. As recorded in my Hearing Stream Two submission points, I support the concept of a 'coastal margin'. However, as recorded in my Hearing Stream One submission points there are implications in terms of needing the MHWS to be delineated.

There were no submissions opposing the concept of the 'coastal margin'.

There is a functional need for the MWHS to be delineated for without that the delineation of the 'coastal margin' is vague and uncertain, and likely to be ineffective.

Mr McDonnell's suggested additional PDP text does not address this issue.

In her assessment of Royal Forest and Bird Protection Society's submission²⁹ about the coastal margin Ms Rachlin says this:

"On the issue of clarifying what and where the coastal margin is, the PDP contains a definition of 'coastal margin'. This definition is key to understanding the specifics of the coastal margin and provides the necessary clarity and certainty. As such I disagree with the request from Forest and Bird."³⁰

I maintain that the definition of the 'coastal margin' provides neither clarity nor certainty. Because the extent of the Council's jurisdiction has not been delineated on the spatial maps, it is impossible for, what is in essence, an offset relative to the MHWS to have any meaning let alone meaning with clarity and certainty.

With my Hearing Stream Two submission points I have sought appropriate provisions in the

²⁸ At Para.15
²⁹ Submitter 225
³⁰ At Para. 52

PDP relating to the 'coastal margin'. I maintain that the matters identified in these submission points cannot be adequately addressed until the issues raised in my Hearing Stream One submission points are addressed which is not achieved with the additional PDP text suggested by Mr McDonnell.

