

IN THE MATTER OF: THE RESOURCE MANAGEMENT ACT 1991

AND

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

AND

IN THE MATTER OF: A SUBMISSION BY MS R A SMITH

SUBMITTER STATEMENT

TO THE

HEARING PANEL

BY

ROBYN SMITH

27 January 2022

Tēnā koutu katoa

Ko Tokomaru tōku waka
 Ko Taranaki tōku maunga
 Ko Waitara tōku awa
 Ko Te Atiawa tōku iwi
 Ko Ngāti Rahiri tōku hapū
 No Taranaki au
 Kei Titahi Bay e noho ana
 Ko Robyn Smith tōku ingoa

1. This statement is to support my submission (no.168) on the City-Wide Review of the District Plan for Porirua (hereafter referred to as ‘the Plan’ or ‘the PDP’)¹.
2. 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 District²; and,
 - f. ensuring that the Plan:
 - gives effect to the RPS³ [s.75(3)(c) of the Act] in respect of several provisions (relating to allocation of responsibilities); and
 - is not inconsistent with the pNRP⁴ [s.75(4)(b) of the Act].
3. Eleven of my submission points have been allocated by council staff to Hearing Stream Four (HS4). Those points relate to four chapters:
 - a. Earthworks (four points – 168.78, 168.79, 168.80 and 168.81)
 - b. Infrastructure (one point – 168.105)
 - c. Three Waters (six points – 168.87, 168.88, 168.89, 168.90, 168.91, and 168.92).

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.

² S.73(1) of the Act

³ Regional Policy Statement

⁴ Proposed Natural Resources Plan

4. For the purposes of this statement, I have referred to another of my submission points (point 168.35). This submission point relates to the noise corridor, and asks “to which land it should apply”. While this point has been included in the summary of submissions⁵ it has not been referred to in the s.42A report for the ‘Noise’ chapter.. The Council may need to rely on this submission to make the required correction to the planning maps, because the PDP does not apply to the land known as Plimmerton Farm.
5. I’ve included an attachment (Attachment A) comprising a summary table recording details of each of my submission points as well as comments by the s.42A authors along with my responses.
6. This statement includes additional comment in relation to the Earthworks (EW) chapter that reinforces, and goes to, my previous concerns about the failure of the PDP planning maps to accurately delineate:
 - a. what land is shown on the maps to be zoned;
 - b. what land is shown as not being subject to any zoning;
 - c. if land is to be zoned, what is the zoning;
 - d. what land is shown on the maps as being subject to a policy overlay;
 - e. if land is to be subject to a policy overlay what is that overlay; and,
 - f. what land is shown on the maps as not being subject to any policy overlay.
7. To assist the Panel in its consideration and deliberations Attachment B to this statement contains a ‘stock-take’ to keep a track of the ongoing and unresolved issues relating to spatial mapping. This shows that the RMA issues associated with spatial mapping are not confined to HS1.
8. In Attachment B I record, and express concern about, the fact that Mr McDonnell has used his HS3 right of reply to recommend additional amendments on top of previous amendments (he recommended in HS1), while other parties to the PDP proceedings have been precluded from further contributions in this respect as per Minute 8 from the Panel.
9. I have submitted that there are fundamental flaws in the PDP. For example, the implications of many plan provisions resulting from zoning and policy overlays rely upon the location of the (as yet unidentified) MHWS, and/or what (if any) spatial overlay defines the extent of the District.
10. I maintain that the provisions of the PDP relating to earthworks 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, and the provisions of the PDP relating to Coastal High Natural Character Areas (CHNCA) reference to which was made in HS3.

⁵ Erroneously assigned to the “Plimmerton Farm chapter”.

11. The submission process relating to the PDP has been the first opportunity interested and engaged parties like me have had to comment on the Council's approach to spatial mapping as it relates to 'zoning' and 'policy overlays' and therefore as it relates to policies, standards and rules.
12. The consultation draft of the District Plan did not include any maps depicting zones, the seaward limits of the district, nor the extent of policy overlays. My submission then, along with the outcomes I have sought, should not be seen as 'coming out of left field'.
13. I ask that the spatial mapping flaws in the PDP be rectified so the discrepancies highlighted in my submission are addressed.
14. Unfortunately, I am unable to personally present this statement to, and answer questions from, the Panel. However, I should be able to reply to written questions if that would assist the Panel in its consideration of my submission and this statement.

A handwritten signature in black ink, appearing to be 'Robyn Smith', written in a cursive style.

Robyn Smith
Submitter 168
27 January 2022

ATTACHMENT A: **SUMMARY OF SUBMISSION POINTS, S42A COMMENT AND
SUBMITTER’S RESPONSES**

Chapter		Earthworks
Plan Provision		General
Submission	Point No.	168.78
	Scope	Administration of district plan provisions relating to earthworks
	Explanation	In its submission on DPC18 [Plimmerton Farm], GWRC suggested that it (alone) should process consents for bulk earthworks. There are some fundamental reasons why PCC needs to retain consenting functions for bulk earthworks. One relates to the frequent limitations on development resulting from earth-working for green-field subdivisions (e.g. areas of unsuitable ground, instability or needing specific engineering design), which need to be recognised and accounted for in perpetuity and that can only be addressed by way of consent notice on a subdivision consent which only PCC can grant. An approach by which PCC only has responsibility for small-scale earthworks would result in the vital connection between bulk earthworks and subsequent building on the vacant lots being lost.
	Outcome	I oppose any amendment to the provisions of the PDP by way of submissions by others, or by council officer evidence and/or recommendations, that would result in PCC not having responsibility for managing adverse effects from erosion and sediment discharge, or would result in PCC only having responsibility for small scale earthworks.
S42A comment		Submitter's Response
S.42A author recommends submission point be accepted in part	<i>No changes are proposed to the Plan that would result in Council not having responsibility for managing adverse effects from erosion and sediment discharge, or would result in Council only having responsibility for small scale earthworks.</i>	I am pleased that the s.42A author has given this assurance. I trust that the Panel will ensure this approach is also reflected in its decisions. I consider that the s.42A author's recommendation should be "accept in full". I'm not aware of any part of my submission point that the author does not accept.

Chapter		Earthworks
Plan Provision		EW-01
Submission	Point No.	168.79
	Scope	Provisions of district plan must be consistent with the provisions of the pNRP.
	Explanation	Policy 39 of the pNRP requires adverse effects on <i>“The adverse effects of use and development on outstanding water bodies and their significant values”</i> to be avoided.
	Outcome	I seek amendment to EW-01 to explicitly acknowledge the requirement to avoid adverse effects on Taupō Swamp Complex as well as Te Awarua-o-Porirua Harbour.
S42A		Submitter’s Response
S.42A author recommends submission point be rejected	<i>I consider that the wording of EW-01 is not inconsistent with Policy P39 of the pNRP (Appeals Version), as it includes the phrase ‘and assists to protect receiving environments’. I consider that the word ‘protect’ provides sufficient strength to encompass the intention of Policy P39.</i>	<p>The section 42A author has selectively cited part of EW-01.</p> <p>Clause 3 of EW-01 says this: <i>“Minimises erosion and sediment effects beyond the site and assists to protect receiving environments, including Te Awarua-o-Porirua Harbour”</i></p> <p>Minimisation of effects does not equate to avoidance of effects. Simply, the pNRP specifies that the threshold for receiving environments and outstanding waterbodies scheduled in Appendix A of the pNRP is higher than ‘minimisation’, or ‘assisting with protection’.</p> <p>My comment in respect of submission points 168.65 and 168.66 (HS2) is equally applicable in respect of the ‘Earthworks’ provisions of the PDP. That comment is this: <i>“In the case of Taupō Swamp Complex, application of the effects management hierarchy does not achieve the ‘avoidance’ required by Policy P39 of the pNRP.”</i></p>

Chapter		Earthworks
Plan Provision		EW-P1
Submission	Point No.	168.80
	Scope	Provisions of district plan must be consistent with the provisions of the pNRP.
	Explanation	Policy 39 of the pNRP requires adverse effects on <i>“The adverse effects of use and development on outstanding water bodies and their significant values”</i> to be avoided.
	Outcome	In my submission I sought amendment to Policy EW-P1 so it includes additional text as outlined below: <i>“Enable earthworks associated with subdivision, use and development, <u>subject to erosion and sediment effects on receiving environments including Taupō Swamp Complex, Taupō Stream and its tributaries, and Te Awarua-o-Porirua Harbour being avoided, where:”</u></i>
S42A		Submitter’s Response
S.42A author recommends submission point be rejected	<i>The wording sought by the submitter would result in adverse erosion and sediment effects from earthworks being required to be avoided on all receiving environments due to the use of the word ‘including’, rather than linking avoidance of these effects to specific receiving environments.</i>	<p>The s42A author’s point is noted. However, the s42A author has failed to acknowledge that Policy EW-P1 falls well short of achieving the relevant objective (EW-O1). EW-P1 is about ‘enabling’ earthworks, whereas EW-O1 is about protection of all receiving environments.</p> <p>EW-P1 should be re-written so its ‘enabling’ component is subordinate to the minimisation and protection that form part of EW-O1 and the avoidance required by Policy P39 of the pNRP.</p> <p>I therefore suggest the following text: <i>“Enable earthworks associated with subdivision, use and development, <u>subject to erosion and sediment effects on the receiving environments comprising Taupō Swamp Complex, and Te Awarua-o-Porirua Harbour being avoided, where:”</u></i></p>
	<i>I also note that ‘Taupō Stream and its tributaries’ is not identified in the pNRP as an outstanding water body. Similarly, Te Awarua-o-Porirua Harbour includes both the Onepoto and Pāuatahanui Inlet arms, while only the Pāuatahanui Inlet Tidal Flats and Saltmarsh are identified as outstanding water bodies. The Taupō Stream and Onepoto arm of Te</i>	<p>This comment by the s.42A author fails to acknowledge the interconnections between the various components of the physical environment. In simple terms, if there is an effect on Taupō Stream it’s axiomatic that there will be an adverse effect on Taupō Swamp.</p> <p>There is nothing in the RMA suggesting that the Council is not able to adopt a District Plan that ‘goes the extra mile’. Nor is there anything</p>

	<p><i>Awarua-o-Porirua Harbour are therefore not addressed by Policy P39 of the pNRP.</i></p>	<p>to suggest that the Council must adopt the lowest common denominator in terms of performance thresholds applicable to activities well known and proven to create significant adverse effects.</p>
	<p><i>As identified above, the Section 32 Evaluation Report Part 2 – Earthworks addresses the relationship between the different RMA and LGA documents addressing the control of earthworks in Porirua. This identifies that the pNRP address the effects of silt and sediment from earthworks on water quality, while the district plan can provide assistance through the management of silt and sediment on site. This is supported by the technical advice provided to PCC prior to the notification of the PDP.</i></p>	<p>I read this to mean that the s.42A author considers it is not the role of the Council to ensure the PDP includes provisions for the management of silt and sediment effects.</p> <p>If this is the case, then the author is mistaken.</p> <p>I refer to Panel to section 31(1)(b) of the RMA. This specifies that the Council’s functions under the RMA shall include:</p> <p style="text-align: center;"><i>“the control of any actual or potential effects of the use, development, or protection of land, ...”</i></p> <p>Soil erosion and runoff of water contaminated with sediment is an actual or potential effect of the using land by earthworking or soil disturbance. Therefore, the RMA says that the Council has a mandatory requirement to control such adverse effects. The RMA (nor the LGA for that matter) does not give the Council the authority to ignore that obligation, nor to relegate its role to a subsidiary function such as “providing assistance.”</p>

Chapter		Earthworks
Plan Provision		EW-S5
Submission	Point No.	168.81
	Scope	Provisions of district plan must be consistent with the provisions of the pNRP.
	Explanation	Policy 39 of the pNRP requires adverse effects on <i>“The adverse effects of use and development on outstanding water bodies and their significant values”</i> to be avoided.
	Outcome	I seek inclusion of a new rule - Rule EW-R1(3) to read: All Zones 3. Activity status: Non-complying Where: a. Compliance is not achieved with: (i) EW-S5
S42A		Submitter’s Response
S.42A author recommends submission point be rejected	<i>In relation to the additional rule sought by Robyn Smith [168.81] for non-compliance with EW-S5 to be a non-complying activity to reflect Policy 39 of the pNRP, that policy is discussed in detail in sections 3.9.2.3 and 3.10.1 above. As discussed in those sections, the pNRP address the effects of silt and sediment from earthworks on water quality. The district plan can provide assistance in the management of silt and sediment on sites. A district plan must not be inconsistent with a regional plan. As such, the Plan does not need to give effect to Policy P39 of the pNRP but must sit comfortably alongside it.</i>	As far as I’m aware the term “comfortably alongside” used by the s.42A author has no import. It is telling that the s.42A author fails to cite the actual provision of the RMA that is applicable in this instance. That provision is section 75(4)(b) of the RMA which says: <i>“A district plan must not be inconsistent with ... a regional plan for any matter specified in section 30(1).”</i> If the PDP includes provisions focusing on ‘enabling’ land uses capable of creating adverse effects on receiving environments listed in Schedule A of the pNRP, without mechanisms to ensure those effects are avoided (not simply minimised), then the PDP will be inconsistent with the pNRP

Chapter		Infrastructure
Plan Provision		Planning Maps – FUZ Plimmerton Farm
Submission	Point No.	168.105
	Scope	What zoning should apply to the land formerly known as SH One north of Plimmerton
	Explanation	The PDP maps suggest the Council intends that the eastern half of the road formerly known as SH One north of Plimmerton should be zoned FUZ while the western half should be zoned Open Space. [Refer to map in original submission] This seems to be incongruous as the Council has provided no explanation for this split zoning in the PDP.
	Outcome	I ask that the PDP is not approved until the zoning for the road corridor north of Plimmerton is clarified and a suitable section 32 analysis determines that it is appropriate from a resource management perspective.
S42A		Submitter's Response
S.42A author recommends accept in part	<i>I agree with the matter raised by Robyn Smith [168.105], that the zoning of the eastern side of State Highway 1 north of Plimmerton as Future Urban Zone is incongruous with the context of the surrounding area. there is no proposed zone for Lot 2 DP 489799 under the Plan. Therefore, I consider that in this location, from the point north of the Plimmerton roundabout to the point at the northern end of the section of road adjacent to Lot 2 DP 489799, the zoning of State Highway 1 should reflect the zoning on the eastern side of the road for the entire width of the road corridor."</i>	I consider that the s.42A author's recommendation should be "accept in full". I'm not aware of any part of my submission point that the author does not accept. While the s.42A author's recommendation appears to acknowledge the relevance of the point I made, there is no corresponding text or map that the Panel can easily adopt to reflect this recommendation. I consider that the s.42A author should be required to produce a map that the Panel is able to reference. As per Minute 15, the s.42A author has confirmed that his reference to 'eastern' is intended to be a reference to 'western'.

Chapter		Three Waters
Plan Provision		General
Submission	Point No.	168.87
	Scope	Provisions requiring rainwater tanks
	Explanation	<p>Do not support limiting the requirement for hydraulic neutrality for development in the Commercial and Mixed Use Zone, General Industrial Zone and the Hospital Zone. There is no obligation in the Residential Zones to address the effects of reduced response times and increased volume of stormwater runoff from development, let alone effects on the broader hydrological regime. There is no requirement for onsite attenuation.</p> <p>The Council is entitled to include land use provisions under s9(3) of the RMA for managing the effects of land use activities in terms of stormwater runoff.</p> <p>Consideration of changes to catchment hydrology caused by hard surfacing is a legitimate Council function.</p>
	Outcome	I seek amendment to the provisions of the PDP so credit for existing situations is specified.
S42A		Submitter's Response
S.42A author recommends accept in part	<p><i>As identified by the submitter and by Robyn Smith [168.87], the rule does not actually require a rainwater tank be installed, but only permits these if the [sic] comply with the standards. The amendment sought therefore corrects this by referring instead to new buildings, which is clearer and more robust wording.</i></p> <p><i>it is acknowledged that there may be ambiguity as to whether additions to existing buildings would be captured by this rule. I therefore consider that the rule heading should be amended to clarify that it also applies to additions to existing buildings which exceed 40 square metres.</i></p>	<p>I am pleased that, in this instance, the error in the PDP has been acknowledged and my submission point has been accepted.</p> <p>Having said that, I consider that the s.42A author's recommendation should be "accept in full".</p> <p>I'm not aware of any part of my submission point that the author does not accept.</p>

Chapter	Three Waters
Plan Provision	THWT-O1, THWT-P1, general, standards and rules, and definitions
Submission	168.88, 168.89, 168.90, 168.91 and 168.92
Point Nos.	168.88, 168.89, 168.90, 168.91 and 168.92
Scope	On what land should there be a requirement for hydraulic neutrality.
Explanation	<p>Do not support limiting the requirement for hydraulic neutrality for development in the Commercial and Mixed Use Zone, General Industrial Zone and the Hospital Zone. There is no obligation in the Residential Zones to address the effects of reduced response times and increased volume of stormwater runoff from development, let alone effects on the broader hydrological regime. There is no requirement for onsite attenuation.</p> <p>The definition of hydraulic neutrality is insufficient as it does not cover other parameters such as annual volumes, base flows, mean flows, and time of concentration. The PDP would benefit from incorporating the concepts of “maintaining catchment hydrology” and “minimise changes to the hydrological regime”, the inclusion of which might address the issue which is that hard surfacing can potentially cause potential hydrological changes that impact on downstream wetlands including Taupō Swamp.</p> <p>The Council is entitled to include land use provisions under s9(3) of the RMA for managing the effects of land use activities in terms of stormwater runoff.</p> <p>Consideration of changes to catchment hydrology caused by hard surfacing is a legitimate function of the Council.</p>
Outcomes	<p>I seek amendment to THWT-O1 to read: <i>Hydraulic and Hydrological Neutrality:</i> <i>There is no increase in the peak demand on stormwater management systems and increase in flooding from development within Urban Zones, Settlement Zone, and the Māori Purpose Zone (Hongoeka), and all development incorporates measures to ensure no change to the catchment hydrology</i></p> <p>I seek amendment to THWT-P1 read: <i>Hydraulic Neutrality and Hydrological Neutrality in Urban Zones, Settlement Zone and the Māori Purpose Zone (Hongoeka):</i> <i>Enable new development in the Urban Zones, Settlement Zone and the Māori Purpose Zone (Hongoeka) where it achieves hydraulic neutrality, and that incorporates stormwater hydrology mitigation for increases in mean annual exceedance frequency of the 2-year Average Recurrence Interval flow and mean annual volume of stormwater runoff.</i></p>

		<p>I seek amendment to the standards and rules to be consistent with THWT-P1 (as per amendment sought) and achieve objective THWT-01 (as per amendment sought).</p>
		<p>I seek amendment to the PDP to include specific attention to managing the hydrological regime so changes to base, average, annual flows potentially resulting from development (buildings, road and other hard surfacing) capable of adversely affecting downstream environments (including, but not limited to wetlands) are avoided.</p>
		<p>I seek amendment to include an appropriate definition of 'maintaining hydrological regime.'</p>
S42A		Submitter's Response
<p>S.42A author recommends rejection of the submission points</p>	<p><i>Under the RMA, GWRC has functions for the control of the use of land for the purpose of maintenance of the quantity of water in water bodies under section 30(1)(c)(iii), and the control of the quantity, level, and flow of water in any water body, including the control of the range, or rate of change, of levels or flows of water under section 30(1)(e).</i></p> <p><i>I therefore consider that the potential effects of development on the wider hydrological regime is not an appropriate issue for the Plan to address, as this is a function of regional councils under the RMA and is already addressed by the GWRC in the pNRP. Replication of the functions of the regional council would not be efficient and would also be beyond the scope of the Council's functions under s31 of the RMA.</i></p>	<p>I read this to mean that the s.42A author considers that (in his opinion) it is not the role of the Council to ensure the PDP includes provisions for the management of adverse effects resulting from the use of land by constructing hard surfaces.</p> <p>If this is the case, then the author is mistaken. I refer the Panel to section 31(1)(b) of the RMA that specifies that the Council's functions under the RMA shall include:</p> <p style="text-align: center;"><i>“the control of any actual or potential effects of the use, development, or protection of land, ...”</i></p> <p>Changes to the runoff volume and rate, and to rainfall event response times, are actual or potential effects from the use of land for hard surfacing. Therefore, the RMA says that the Council has a mandatory requirement to control such adverse effects. The RMA (nor the LGA for that matter) does not give the Council authority to completely ignore this function by dismissing it as being a “replication”.</p> <p>If the s.42 author was correct (in claiming that controlling runoff effects was not a council function) then the Council (and many other councils throughout the country for that matter) would be ultra vires for including provisions such as TWRT-R2 – ‘Increases in Impervious Surface Area of a Site’ - in its District Plan.</p> <p>In simple terms, the Council cannot have it both ways:</p> <ul style="list-style-type: none"> • it cannot claim to have authority to control land uses comprising hard surfacing for the purpose of achieving ‘hydraulic neutrality’; while also,

- claiming it has no authority to manage or regulate those same uses in so far as they impact on the local and catchment hydrology.

My comment in respect of submission points 168.16 and 168.28 (HS2) is equally applicable in respect of the 'Three Waters' provisions of the PDP.

I have yet to see to any information provided by the Council in these proceedings that satisfactorily addresses the issues to which my previous comments refer.

Those comments were:

“Like all wetlands, Taupō Swamp Complex is very susceptible to changes in land use in its catchment, with key considerations being:

- *discharges of contaminants (including sediment);*
- *changes to the hydrological regime; and*
- *invasion of exotic weeds and animal pests.*

Ultimately all stormwater runoff and sediment discharge from urban development in the catchment will be to the swamp complex, and all changes to the catchment hydrology (for example, by in-filling gullies and wetland drainage for roads and building platforms) will, in one way or another, impact directly on the hydrology of the complex and therefore on its faunal and floral composition, and its ecological coherence and robustness.

Wetlands are products of their environment and by far the most important factor in characterising and managing a wetland is hydrology. This is all too often overlooked, under-estimated or simply inadequately researched, and insufficient attention is paid to hydrological events and to the size and characteristics of the full catchment area (the area inside the ecological boundary) of the wetland. The effective ecological boundary of most wetlands lies well outside the fence, or cadastral boundaries.

Hydrology (water depth, and periodicity of rainfall and stream flow rate) not only interacts and often modifies the physical environment, it also

determines plant distribution and wetland type, such as deep-water swamp and the extent of ephemeral (seasonal) wetland.

Because of the prominent role of hydrology in wetland structure and functioning, changes in the hydrological parameters can have major effects on the character and sustainability of a wetland.

Policy P39 of the pNRP is about avoiding adverse effects on Taupō Swamp Complex. S.75(4)(b) of the RMA requires the PDP not to be inconsistent with the regional plan. The rules and standards of the PDP are written so generally speaking where a consent is required it falls into the restricted discretionary and discretionary category. Council consent planners/hearing commissioners generally take the view that developments that fall within the 'discretionary activity' category are 'provided for in the district plan'. The rationale by the consent decision-maker then following is that consent must be granted to such activities, with discretion only being exercised with respect to the fine print of (what normally are) standard conditions. History is full of examples where this approach has resulted in adverse effects on wetlands from sediment discharge, animal and plant pest invasions, and degradation of wetland due to catchment hydrology."

Chapter		Noise
Plan Provision		The Summary of Submissions suggests that this submission point belongs to the “Plimmerton Farm” chapter
Submission	Point No.	168.35
	Scope	What land should be subject to noise corridor
	Explanation	The PDP indicates an intention to create a 'noise corridor' overlay relating to proximity to the road formerly known as State Highway One. The PDP maps show the noise corridor encroaching into Plimmerton Farm. However, the PDP does not apply to the land within Plimmerton Farm. This is explicit in the public notification of the PDP, and is also acknowledged in previous formal correspondence from council staff.
	Outcome	I seek amendment to, and validation of, the spatial layers on the online version of the PDP, particularly in respect of the noise corridor overlay which is shown to encroach into Plimmerton Farm.
S42A		Submitter’s Response
S.42A author has not addressed this submission point	This submission point has not been addressed in the s42A report relating to ‘Noise’.	<p>This is yet another example of a GIS mapping errors in the PDP.</p> <p>The PDP planning maps suggest land that is not subject to the PDP (ie: Plimmerton Farm) should be subject to the Noise Corridor provisions.</p> <p>This is a fundamental error and the decisions on submissions on the PDP must reflect the fact that the PDP provisions do not apply to the land that was subject to PC18; ie, Plimmerton Farm (Lot 2 DP 489799).</p>

ATTACHMENT B: NOTES ABOUT MATTERS CONSIDERED IN HEARING STREAM ONE THAT HAVE DIRECT RELEVANCE TO MY HEARING STREAMS TWO, THREE AND FOUR 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."*⁶

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 presentation⁷ 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 HS4 submission points that directly result from uncertainty about the extent of the Council's jurisdiction due to the PDP's approach to spatial mapping, and also to 'roll-over' issues from the previous HS1, HS2 and HS3 as they are integrally connected.

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

⁶ 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)

⁷ At Para.22 and in Attachment C

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.

In Minute 8 the Panel recorded that, in its view: *“it is not appropriate to receive further commentary on the issues of concern to Ms Smith.”*

Nonetheless, on this issue Mr McDonnell (s42A author for the Council) has taken the opportunity of his right of reply for HS3, and in response to Minute 16, to recommend further amendments to the already amended ‘Statutory Context’ section of the PDP⁸. Amendment upon amendment is indicative that even the council policy team considers the PDP approach struggles to meet the statutory obligations on the Council in respect of certainty, clarity, efficiency and effectiveness. As an individual interested in, and engaged with, the development of the PDP I find this particularly troubling as comment by me and others has been effectively precluded by the process and the Panel’s directions.

2. ‘CLOSE TO’ AND ‘INDICATIVE COASTLINE’

Mr McDonnell’s suggested text (his HS1 right of reply, and his HS3 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, 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 (all of which had a council, as proponent, component). I am aware of several more examples.

⁸ Refer Paras 94 – 99 of the Council’s Reply on Natural Hazards and Coastal Environment - Hearing Stream 3 - Torrey James McDonnell on behalf of Porirua City Council Date: 22 December 2021

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 presentation⁹, 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 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 submission¹⁰ 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."¹¹

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

⁹ At Para.15

¹⁰ Submitter 225

¹¹ At Para. 52

5. COASTAL HIGH NATURAL CHARACTER AREAS

Mr McDonnell's suggested text (his HS1 right of reply, and his HS3 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 rights of reply make 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 either of his rights of reply.

6. HISTORIC HERITAGE

Mr McDonnell's suggested text (his HS1 right of reply, and his HS3 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. A policy overlay by definition 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 nor in his HS3 right of reply.

7. EARTHWORKS

The PDP proposes that earthworks [in terms of section 9(3) of the RMA] will be regulated from different perspectives depending upon the location of the activity site, and therefore by the zoning and the policy overlays implications for the PDP provisions.

In other words, a person intending to undertake an activity involving soil disturbance will need to: ensure they comply with section 9(3) of the RMA by identifying what, if any, restrictions in the district plan apply.

For them to achieve this they will need to know:

- What is the zoning (if any) on the land where the activity will be undertaken; and,
- What (if any) policy overlays apply to the land where the activity will be undertaken; and,
- Whether the zone and policy overlay provisions apply to the nature of the activity.

Due to the uncertainties and vagueness of the spatial mapping for the PDP (previously identified in these proceedings particularly in respect of the coastal margin, SNAs, ONFLs, CHNCAs, and historic sites) a district plan user will not be able to determine whether the activity they intend to undertake will breach the restriction in section 9(3) of the RMA.

This is particularly the case for a land use activity involving earthworks.

The PDP acknowledges that earthworks are potentially regulated by many provisions in the PDP.

The PDP says:

“The following chapters contain provisions for earthworks:

- *Infrastructure;*
- *Natural Hazards;*
- *Historic Heritage;*
- *Notable Trees;*
- *Sites and Areas of Significance to Māori;*
- *Ecosystems and Indigenous Biodiversity;*
- *Natural Character;*
- *Natural Features and Landscapes;*
- *Public Access; and*
- *Coastal Environment.”*

Using earthworks, as they may be regulated by Chapter NFL - Natural Features and Landscapes, Chapter NATC - Natural Character, and Chapter EW – Earthworks, as an example. Note: this example could conceivably apply to much of the land encompassing Whitireia Park.

- If the earthworks site is in the coastal margin, the earthworking is regulated under the provisions of Chapter NATC and are permitted if the quantity of earthworks is limited to 25m² in any 12-month period per site.¹²
- If the earthworks site is not in the coastal margin, but are identified as a ONFL, the earthworking is regulated under the provisions of Chapter ONF and are permitted if the quantity of earthworks is limited to 50m² in any 5-year continuous period per site.¹³
- If the earthworks site is not in the coastal margin, and also not in the ONFL, but is within the Open Space Zone, they are regulated under the provisions of Chapter EW and are permitted if the quantity of earthworks is limited to 500m² in any 12-month period per site.¹⁴

A person wanting to ensure they do not breach s.9 of the RMA, and intending to undertake earthworks that may/or may not be in a CHNC and/or in a ONFL, and may or may not be within the Open Space zone, will need to know:

- The spatial extent of the ‘coastal margin’ and therefore the delineation of the MHWS as the ‘coastal margin’ is a parallel off-set from this line;
- The spatial extent of the CHNCA overlay;
- The spatial extent of the ONFL overlay; and,
- The spatial extent of the Open Space zone.

None of these determinations can be made using the spatial information so far provided with the PDP. By way of example, I refer the Panel to the attached image. This PDP map image shows how impracticable it is to determine whether rules NATC-R1, NFL-R1 or EW-R1 apply, or indeed if no s.9 RMA restrictions apply.

The Council’s policy responses to my submission points in this regard have, so far, failed to adequately address the issue I’ve identified.

This can only be satisfactorily addressed by the PDP incorporating accurate, up-to-date, non-contradictory, consistent, spatial information.

The PDP has not yet achieved this threshold.

¹² Refer rule NATC-R1 and standard NATC-S1

¹³ Refer rule NFL-R1 and standard NFL-S1

¹⁴ Refer rule EW-R1 and standard EW-S1(3)

EXTRACT FROM PDP PLANNING MAPS

