

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

10 May 2022

INTRODUCTION

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), (b), (c) and (d) 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. Fourteen of my submission points have been allocated by council staff to Hearing Stream Five (HS5). Those points relate to two chapters:
 - a. Open Space (OSZ) 11 points – 168.1, 168.2, 168.3, 168.4, 168.6, 168.59, 168.60, 168.96, 168.97, 168.104 and 168.124.
 - b. Subdivision (SUB) - three points – 168.93, 168.94 and 168.95).

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

PRELIMINARY MATTER – SCOPE of PROPOSED DISTRICT PLAN

4. For the purposes of this statement, and because the matter has been raised by Kainga Ora and responded to by Ms Sweetman, I have referred to another of my submission points (point 168.104). This submission point relates to the property commonly known as Plimmerton Farm and to the extent of the Future Urban Zone (FUZ).
5. Because the Plimmerton Farm Zoning has been processed via a separate plan change (ie: one divorced from the city-wide plan change) in my submission point 168.104 I said this:

“I am opposed to any provision of the Proposed District Plan by way of submissions by others, or by council officer evidence and/or recommendations, that would result in, or attempt to result in, the provisions of the Proposed District Plan being applicable to subdivision, use and development of land within the Plimmerton Farm site (being Lot 2 DP 489799).”
6. The comment in the introduction to FUZ in the PDP reads:

“The Proposed Porirua District Plan does not apply to the land known as Plimmerton Farm, being Lot 2 DP 489799, 18 State Highway 1, Plimmerton, which is identified on the planning maps. Lot 2 DP 489799 is subject to Proposed Plan Change 18 to the Operative Porirua District Plan.”
7. Kainga Ora has asked that this comment be deleted as it is not relevant. I agree with Kainga Ora and this will be confirmed by me when my submission point 168.104 is considered by the Council.
8. In the interim, I have two comments:
 - i. If the statement is to be retained then presumably it will need to be updated in so much as there is now no “Proposed Plan Change 18”, and eventually there will be no “Proposed District Plan”. Whether such amendments are within the scope of submissions will be matters the Panel will need to satisfy itself of.
 - ii. The Council is currently engaging with the community in respect of a potential variation to the PDP in relation to other land in the Northern Growth Area. Until recently the Council’s engagement documents included a map showing Plimmerton Farm as being included in the ‘Special Purpose FUZ’. So, while I agree with Kainga Ora, a case for retention of the PDP comment could possibly be made as it might be a useful point by which the confusion created by misleading council maps can be rectified.

SUMMARY of OPEN SPACE and SUBDIVISION POINTS and REPLY to S.42A REPORT

9. I've included an attachment (Attachment A) comprising a summary table recording details of each of my submission points relating to the OSZ and SUB chapters as well as comments by the s.42A author along with my responses.

ONGOING MATTERS – EXTENT of the DISTRICT and WHAT PROVISIONS APPLY

10. This statement includes additional comment in relation to the Open Space Zone (OSZ) 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.
11. 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.
12. 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.
13. I maintain that the provisions of the PDP relating to the OSZ 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, the provisions of the PDP relating to Coastal High Natural Character Areas (CHNCA) and Historic Heritage (HH) reference to which was made in HS3, and Earthworks (EW) reference to which was made in HS4.
14. 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.
15. 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. Therefore my submission (and the concerns about spatial mapping therein), along with the outcomes I have sought, should not be seen as 'coming out of left field'.

SUMMARY

16. I ask that the spatial mapping flaws in the PDP be rectified so the discrepancies highlighted in my submission are addressed.
17. I ask the Panel to fully consider my submission points relating to the Open Space and Subdivision chapters.
18. I look forward to speaking to this statement, and answering questions from the Panel.
19. Please let me know if any aspect of this statement needs clarifying to 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
10 May 2022

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

Chapter	Open Space Zone	
Plan Provision	General and Maps	
Submission	Point Nos.	168.1 and 168.2
	Scope	All of Whitireia Park must be protected from inappropriate subdivision, use and development. Planning maps - all land in Whitireia Park continues to be zoned Open Space.
	Explanation	Whitireia Park is a prominent headland on the southern side of the entrance to Te Awarua-o-Porirua Harbour. The Park includes all land owned by the Crown, some areas owned by Ngāti Toa, the golf course and the Radio New Zealand (RNZ) land which leases most of the land to DOC. The Park is open to the public to wander at will. It is used by a wide range of people from Porirua and the wider Wellington Region for a variety of activities. It has highly significant recreation, biodiversity, landscape, educational and open space values.
	Outcome	Support the Open Space zoning for the Whitireia Park. Opposed to any provisions of PDP (as notified and/or potentially amended by way of submissions by others, or by council officer evidence and/or recommendations) that do not provide for the required protection.
S42A comment		Submitter's Response
S.42A author recommends submission point be accepted in full	I agree that the Park should retain its Open Space Zoning as the current recreational use of this area is consistent with the purpose of the Zone (OSZ-O1), and its high natural, ecological, landscape and historic values are consistent with the predominant character and amenity values of the Zone (OSZ-O2).	<p>I am pleased with the s.42A author's recommendation. I note 26 other submitters also sought retention of the Open Space zone.</p> <p>I trust that the Panel will ensure this approach is also reflected in its decisions.</p> <p>I note however that the s42A author's comments about landscape values (in the context of O2) contradict the comments by Ms Rachlin and Ms Armstrong about the landscape values of that part of Whitireia Park not included in ONFL003. Or in other words, Ms Rachlin and Ms Armstrong consider that the landscape values of the RNZ and Golf Course land is of no import, but on the other hand Mr McDonnell considers those same landscape values contribute to achieving objective O2.</p>

Chapter	Open Space Zone	
Plan Provision	Zoning and maps	
Submission	Point No.	168.97
	Scope	Retain zoning.
	Explanation	Supports Titahi Bay Beach, Stuart Park and Arnold Park as being within the OSZ.
	Outcome	Opposed to any provision of the PDP by way of submissions by others, or by council officer evidence and/or recommendations, that would result in, or attempt to result in, the provisions of the PDP applicable to land in the OSZ not applying to Titahi Bay Beach, Arnold Park or Stuart Park.

S42A comment		Submitter's Response
S.42A author recommends submission point be accepted in full	No explanation is provided	I am pleased with the s.42A author's recommendation. I trust that the Panel will ensure this approach is also reflected in its decisions.

Chapter	Open Space Zone	
Plan Provision	Rules	
Submission	Point No.	168.59 and 168.60
	Scope	Titahi Bay Beach and Titahi Bay Boatsheds
	Explanation	<p>Many of the boatsheds at Titahi Bay are fitted out with kitchen and ablution facilities even though they have no ability to connect to the public drainage network, and consequently they discharge wastewater onto the surrounding land and where it flows and seeps onto the beach and beyond.</p> <p>This wastewater discharge is not provided for under the rules of the operative and proposed regional plans and is prohibited under section 15 of the RMA. The rules of the District Plan regarding activities on Titahi Bay beach need to accord with, and be consistent with, the rules of the regional plans.</p> <p>Photos below show evidence of discharges of greywater behind boatsheds, and evidence of cooking and ablution facilities in one of the boatsheds.</p>
		

			
	<p>Outcome</p>	<p>Amend the PDP in respect of the Titahi Bay Beach and the Boatsheds so that:</p> <ol style="list-style-type: none"> a. Residential use of the boatsheds and the immediately adjacent land is explicitly prohibited. b. All cabinetry and facilities (including plumbing) inside the buildings that would normally be expected in a kitchen or bathroom is prohibited. c. It is clear that there are no existing use rights for residential occupation. 	
<p>S42A comment</p>		<p>Submitter's Response</p>	
<p>S.42A author recommends submission point be rejected</p>	<p>The s42A author's comments are under the heading of: 'Decisions sought in relation to specific reserves'.</p> <p>At para. 73 the s.42A author suggests that I do not outline the way in which I consider the OSZ is inconsistent with the regional plan.</p>	<p>Firstly, Titahi Bay beach (including the legal roads where the boatsheds are situated) is not reserve land as suggested by the s.42A author. Refer Map 1 of PCC's 'Titahi Bay Beach Management Plan'.</p> <p>Secondly, and as noted above, I have referred to the unconsented and unlawful discharge of wastewater onto the beach. This wastewater results from residential activities on the beach (albeit within the boatsheds). These activities are encompassed by s.9(3) of the RMA. Under s.31(1)(a) of the RMA the Council is required to manage the effects of that land use. The OSZ provisions of the PDP provide for residential activities on the beach because generally applicants will argue that discretionary (restricted) activity status means that the use is 'anticipated under the provisions of the plan' (or something similar), and council planners will always accept that argument.</p> <p>Allowing, or providing for, or anticipating, residential use in this location is not consistent with the regional plans, and does not achieve the consistency required by section 75(4)(b) of the RMA.</p> <p>Residential use of the boatsheds and the adjoining land is contrary to sections 6(a), (d) and (f) of the RMA.</p>	

Chapter		Open Space Zone
Plan Provision		OSZ-02 and subsequent rules
Submission	Point No.	168.3 and 168.96
	Scope	Whitireia Park – objective and rules
	Explanation	The OSZ provisions do not limit the number of buildings – any number is possible so long as each is less than 50m ² and the combined coverage is no more than 5 percent. Under the permitted standard relating to site coverage and floor area, up to 520 buildings could be built on the Radio New Zealand land which has an aggregated area of about 53 hectares. This would be contrary to the objective OSZ-02 ‘a low level of development and built form with few structures to support passive and active community activities’.
	Outcome	Amend the building bulk conditions to reflect OSZ-02.
S42A comment		Submitter’s Response
S.42A author recommends submission point be rejected	The s42A author provides no substantive reason for recommending rejection of the submission point.	<p>The s42A author’s preferred approaches appear to be:</p> <ol style="list-style-type: none"> “there is no evidence of environmental degradation therefore we don’t need district plan controls”; and, “Well, Radio NZ could do significant damage to the open space values under its designation”. <p>My comments are:</p> <ol style="list-style-type: none"> The s.42A author’s preference for laissez-faire means the relevant objective (OSZ-02), which refers to ‘maintenance and enhancement’, will not be met. Radio NZ may not always own the land in question. The argument that Radio NZ could (if it wanted to under the provisions of its designation) erect several hundred buildings is fanciful, hypothetical and incredible, and that proposition is dismissive of a legitimate concern. There is no conceivable reason why 520 separate buildings would be needed by RNZ let alone be needed for the designated purpose which is: <i>“radio-communication, telecommunication and ancillary purposes and land uses”</i>. Perhaps the Panel could ask the s42A author if he has any information that would support this baseline. <p>The s42A author also fails to compare the proposed approach for Whitireia Park (where the number of buildings is unlimited) with the PDP approach to Belmont Park and Battle Hill Park where only two buildings of 50m² in area are allowed (see OSZ-S3). There is obvious inconsistency with no rationale.</p>

Chapter		Open Space Zone
Plan Provision		OSZ-standards
Submission	Point No.	168.124
	Scope	All of the OSZ
	Explanation	Amend to limit the number of buildings on a site to one.
	Outcome	I submit that the building bulk conditions need amending particularly as objective OSZ-02 refers to <i>“a low level of development and built form with few structures to support passive and active community activities.”</i> Standard OSZ-S3 must be amended so it limits the number of buildings on a site to one.
S42A comment		Submitter’s Response
S.42A author recommends submission point be rejected	The s42A author provides no substantive reason for recommending rejection the submission point.	<p>The s42A author’s preferred approach appear to be: <i>“there is no evidence of environmental degradation therefore we don’t need district plan controls”</i>. That approach is contrary to section 31(1)(b) of the RMA which refers to “potential effects”.</p> <p>I consider that the s.42A author’s preference for laissez-faire means the relevant objective (OSZ-02), which refers to ‘maintenance and enhancement’, will not be met.</p> <p>The s42.A author suggests that OSZ-S3 must provide for multiple buildings and structures, so as to allow for: <i>“visitor centres, information kiosks and toilet blocks.”</i> It appears the s.42A author has overlooked the fact that “Park Facilities” are permitted under Rule OSZ-R3 and that rule does not require compliance with any permitted activity standard.</p> <p>Park facilities are defined as: <i>“land or structures that facilitate the management, use and enjoyment of a public open space, including:</i></p> <ul style="list-style-type: none"> <i>a. vehicle, machinery and equipment depots;</i> <i>b. storage sheds;</i> <i>c. public toilets, shelters and changing facilities;</i> <i>d. foot bridges and boardwalks; and</i> <i>e. minor stormwater management devices e.g. rain gardens.”</i> <p>So, my suggested amendment to OSZ-S3 would have no implications for the visitor centres, information kiosks and toilet blocks to which he refers. The s42A author has provided no evidence to substantiate his recommended rejection.</p> <p>In addition, the s42A author also fails to compare the proposed approach for Whitireia (which has no limits on the number of buildings) with the PDP approach to Belmont Park and Battle Hill Farm Forest Park where only two buildings each 50m² in area are allowed (see OSZ-S3).</p>

Chapter		Open Space Zone
Plan Provision		OSZ-R16, OSZ-R17 and OSZ-R18
Submission	Point No.	168.4, 168.5 and 168.6
	Scope	Whitireia Park - rules
	Explanation	Opposed to any provisions of the PDP as potentially amended by way of submissions by others, or by council officer evidence and/or recommendations, which do not provide for the protection required under section 6(a) of the RMA.
	Outcome	Amend OSZ-R16 (residential activity), OSZ-R17 (visitor accommodation) and OSZ-R18 (commercial activity) in relation to Whitireia Park to be non-complying activities.
S42A comment		Submitter's Response
S.42A author recommends submission point be rejected	The only reason (of any substance) the s42A author gives for recommending rejection of my submission points is that: <i>"all three of these activities currently occur in Porirua's reserves."</i>	<p>I consider that simply making district plan provisions equivalent throughout the District (which is in essence what the s.42A author is suggesting) is not good nor sound resource management.</p> <p>Battle Hill is not the same as Whitireia Park, and vice versa. Likewise, Ngāti Toa Domain is also unique. I have suggested non-complying activity status for residential activities, commercial activities and visitor accommodation, neither of which currently occur in Whitireia Park. This stricter consent regime I have suggested is consistent with OSZ-O2 the aim of which is 'maintenance and enhancement'. On first principles, it is not possible to maintain and enhance open space values if your consenting framework provides for, or permits, something that does not currently occur.</p> <p>I understand residential activities, commercial activities and visitor accommodation are all not provided for in the Whitireia Park Management Plan 2016 (refer: https://archive.gw.govt.nz/assets/Parks-and-Recreation/Whitireia/Whitireia-Park-Management-Plan-2016.pdf). GWRC manages the Park predominantly for recreational activities, such as; walking, dog walking, cycling, swimming, horse riding, fishing, rock climbing, kite surfing, and modal aeroplane flying (refer GWRC's website: https://www.gw.govt.nz/parks/whitireia-park/).</p> <p>Consistency between regulations under different statutes is always preferable to inconsistent, contradictory and confusing regulations. The provisions of the PDP should reflect and be consistent with the provisions of the park management plan. This is not what the s42A author is advocating.</p>

Chapter		Subdivision
Plan Provision		SUB-R12
Submission	Point No.	168.95
	Scope	All of the Plan – subdivision of lots containing an SNA
	Explanation	Amend the matters for discretion under SUB-R12 to include provisions relating to: <ul style="list-style-type: none"> • controls over the use and control of pest plants; • controls over the keeping of pest and predatory exotic animals; and • mechanisms relating to monitoring, compliance, enforcement, penalty, prosecution provisions, etc.
	Outcome	The provisions of the PDP (as I have suggested they should be amended) will assist the Council in respect of policies ECO-P2 and ECO-P4. ECO-P2 refers to protecting biodiversity values by implementing the effects hierarchy. Step one in the hierarchy is <i>“avoid adverse effects where possible”</i> . ECO-P4 says subdivision of land encompassing a SNA will only be allowed if the effects management hierarchy has been applied.
S42A comment		Submitter’s Response
S.42A author recommends submission point be rejected.	The s.42AS author has given no reason for his recommendation to reject my submission points other than because they “they relate to specific land use controls.”	<p>The s.42A author’s reason for rejection doesn’t stand scrutiny. Almost all subdivision rules and consents will have land use controls inbuilt to lesser or greater degree: for example, building roads and to what standard, establishing landscaping, building platform location, avoiding buildings in areas of unsuitable fill, setbacks from secondary flow paths, preventing excavations at toes of cut batters, etc, etc. The list is substantial.</p> <p>The Court has previously found that there is nothing inherently wrong with including such conditions in subdivision consents. Indeed, such conditions are specifically allowed for under section 220(c), (d) and (e) of the RMA, and comprehensively provided for by the cross reference in s.220 to s.108 of the RMA.</p> <p>The amendment I have sought is needed to achieve the protection required under s.6 of the RMA.</p>

Chapter		Subdivision
Plan Provision		SUB-R12
Submission	Point No.	168.94
	Scope	All of the Plan – subdivision of lots where access through an SNA is required
	Explanation	Under rule SUB-R12 of the PDP subdivision of land containing a SNA would be categorised as a discretionary (restricted) activity, if each lot can accommodate a complying building platform. However, the rule makes no reference to vegetation clearance within an SNA that needs to occur to provide access to the building platform, or needed so utilities can be installed.
	Outcome	Amend to: All Zones 1. Activity status: Restricted discretionary Where: a. A future building platform to contain a residential unit is identified for each new undeveloped lot that: i. Complies with the underlying zone provisions; and ii. Is located outside of the Significant Natural Area b. <u>All access and utility services can be provided to all building sites on all lots without creating any non-compliance with the provisions of the plan relating to SNAs.</u> 2. Activity status: Discretionary <u>Non-complying</u> Where: a. Compliance is not achieved with SUB-R12-1.a <u>or SUB-R12-1.b.</u>
S42A comment		Submitter’s Response
S.42A author recommends submission point be accepted in part	S.42A author concedes and finds some merit in my submission point but prefers an approach where access and utilities outside the SNAs are identified.	I consider that the s.42A author’s recommendation should be “accept in full” my submission point about access and utilities. I’m not aware of any part of this particular submission point that the author does not accept. He has made some comment about syntax, but it is not clear where the divergence is.
	S.42A author disagrees non-complying activity status is appropriate.	I disagree. Protection and preservation of SNAs is a s.6 of the RMA matter. Subdivision is not. If s.6 matters can’t be provided for with a subdivision then the default should be non-complying. Any less than that sends a message to subdividers that s.6 of the RMA matters are (from the Council’s perspective) not really that important.

Chapter		Subdivision
Plan Provision		SUB-S8
Submission	Point No.	168.93
	Scope	All of the Plan – esplanade reserves
	Explanation	The subdivision standard relating to esplanade reserves uses the word ‘adjoins’. Therefore, it could be argued that the standard does not apply to situations where the river flows through, or the line of MHWS crosses through, the land being subdivided. ‘Adjoining’ is not the same as ‘transecting’.
	Outcome	Amend SUB-S8 to read as follows: <i>"An esplanade reserve at least 20m wide must be set aside in accordance with section 230 of the RMA from land being subdivided where the subdivision would result in one or more allotments less than 4ha in area, and where any part of the land adjoins or encompasses:</i> <i>a. the line of the MHWS; or</i> <i>b. the bank of a river the average bed width of which is 3m or more."</i>
S42A comment		Submitter’s Response
S.42A author recommends submission point be accepted in part	S42A author confirms that: “the wording of SUB-S8 is deficient.”	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. I trust that the Panel will ensure this approach is also reflected in its decisions.

Chapter		Future Urban Zone
Plan Provision		General
Submission	Point No.	168.104
	Scope	Public Notice and Scope of Plan Change
	Explanation	The scope of the PDP has been made clear – it does not include Plimmerton Farm. The plan change for that site is now operative.
	Outcome	I oppose any provision of the Proposed District Plan by way of submissions by others, or by council officer evidence and/or recommendations, that would result in, or attempt to result in, the provisions of the Proposed District Plan being applicable to subdivision, use and development of land within the Plimmerton Farm site (being Lot 2 DP 489799).

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."*⁵

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 presentation⁶ 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

⁵ 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)

⁶ 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 PDP⁷. 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.

⁷ 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 presentation⁸, 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 submission⁹ 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."¹⁰

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."

⁸ At Para.15

⁹ Submitter 225

¹⁰ 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.¹¹
- 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.¹²
- 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.¹³

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.

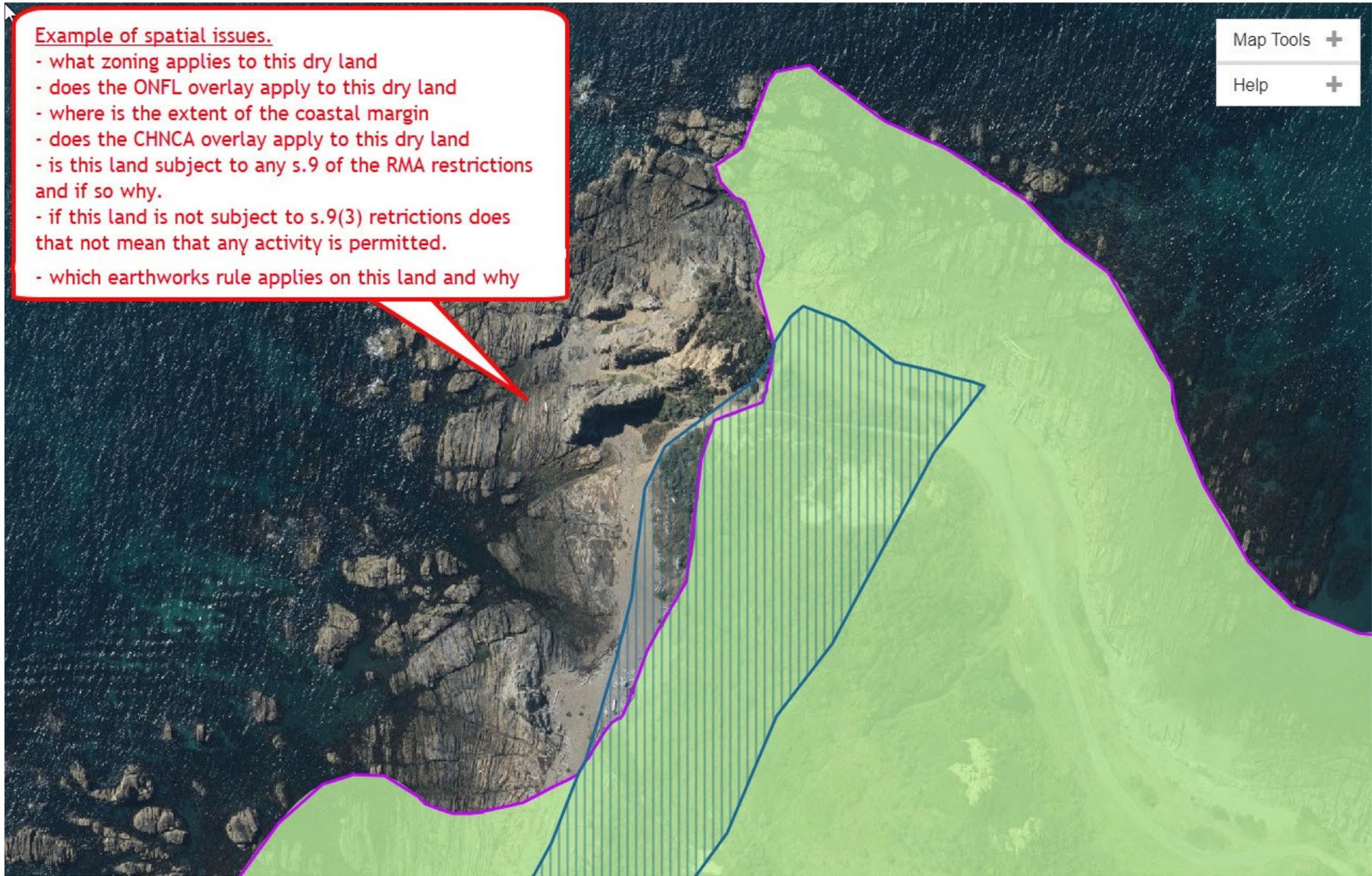
The PDP has not yet achieved this threshold.

¹¹ Refer rule NATC-R1 and standard NATC-S1

¹² Refer rule NFL-R1 and standard NFL-S1

¹³ Refer rule EW-R1 and standard EW-S1(3)

EXTRACT FROM PDP PLANNING MAPS



Example of spatial issues.

- what zoning applies to this dry land
- does the ONFL overlay apply to this dry land
- where is the extent of the coastal margin
- does the CHNCA overlay apply to this dry land
- is this land subject to any s.9 of the RMA restrictions and if so why.
- if this land is not subject to s.9(3) restrictions does that not mean that any activity is permitted.
- which earthworks rule applies on this land and why

8. OPEN SPACE ZONE

The PDP proposes that activities [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 incorporating a use of land will need to ensure they comply with section 9(3) of the RMA by identifying what, if any, restrictions in the district plan apply, and before they undertake the activity.

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, significant natural areas, outstanding natural features or landscapes, coastal high natural character areas, historic heritage and earthworks) 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 land use activities intended to be undertaken on land within or adjacent to the Open Space Zone (OSZ). For activities potentially regulated under the OSZ provisions this is primarily so because, or one reason or another, there appears to be a close association between the extent of the OSZ (as mapped in the PDP) and the likely location of the CMA (notwithstanding the fact that the PDP does not actually map the CMA boundary at all).

So, a person wanting to ensure they do not breach s.9 of the RMA, and intending to undertake an activity that may or may not be within the OSZ, will need to know the spatial extent of the OSZ, as well as the extent of any other zone that the PDP planning maps “suggest” may apply to land contiguous with the CMA, or even “close to” the “indicative coastline”.

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 what zone (and therefore what restrictions) 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.