

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

AND

IN THE MATTER OF: **REVIEW OF DISTRICT PLAN FOR PORIRUA CITY**

**MEMORANDUM in RELATION
to
DISTRICT PLAN HEARINGS**

DETERMINING LANDWARD LIMIT OF COASTAL MARINE AREA

25 May 2022

MAY IT PLEASE THE PANEL

Overview

1. This Memorandum is filed in response to the Panel's invitation (by Minute 34 dated 30 April 2022) allowing further representation or evidence in relation to mapping of the line of Mean High-Water Springs (MHWS) and/or the Coastal Marine Area (CMA) boundary.
2. The Panel has limited the scope of any further representation or evidence to:
 - a. only those parties that made submissions about the MHWS/CMA issue and subject to Hearing Streams 1 – 3 (HS1, HS2 and HS3); and,
 - b. the identification of how the Environment Court's decisions [reported at NZEnvC 1 and 39 – ENV-2021-WLG-000033] are relevant to a submission.
3. I have submitted on the PDP (submitter no. 168). As the Panel will know my submission asked for the provisions of the PDP (in particular, the maps) to be amended so the extent of the CMA throughout the district is accurately determined and referenced in the PDP. This issue was the subject of evidence and representations in HS1. In addition, the implications the matter has for the wider PDP (for example, in terms of defining the extent of the 'coastal margin' provision of the PDP, as well as other policy overlays) have been highlighted in presentations by me, and on my behalf, in HS2 and HS3.
4. The Titahi Bay Residents' Association (submitter no. 095) appears to be only other party able to reply to the Panel's Minute 34.
5. Greater Wellington Regional Council's (GWRC) (submitter no. 137) submission referred to 'Coastal Environment Mapping' and asked the Panel to *"Amend Coastal Environment maps so that it is clear where sites are outside of PCC's jurisdiction."* The scope of GWRC's submission only relates to maps that show policy overlays (eg: Significant Natural Areas) covering areas seaward of the CMA boundary. I don't consider the Panel's invitation in Minute 34 applies to GWRC.
6. Similarly, Porirua City Council's (PCC) (submitter no. 011) submission does not entitle it to reply to the Panel's invitation because PCC's submission made no reference to the CMA or the MHWS and was silent on the issue. PCC could have made a further submission in reply to my submission but did not do so.

The Issue - Scope Description

7. As a preliminary matter I suggest that the subject title of any further correspondence from the Panel about this issue should be more ‘on point’. Minutes 33 and 34 both have “*Identification of Mean High-Water Springs*” as the subject heading. The issue, as I see it and as I have referenced it, is fundamentally different.
8. The issue to which my submission referred is:
How will the PDP:
 - a. *define the extent of the District; and,*
 - b. *allow a user of the PDP to determine what provisions of the PDP apply to a potential land use activity?*

I think it more relevant to use ‘Determining Landward Limit of the Coastal Marine Area’ as a subject heading. This heading, or one similar, goes more directly to the relevant submission point (168.046) which was:

“Amend the planning maps so that the exact extent of the CMA (and therefore land that is subject to the PDP and the zone provisions) throughout the city is accurately determined.”.

9. As the Panel will appreciate, for those situations where the position of a ‘river mouth’ and CMA boundary are not specifically mapped in the regional plan, the sub-components to this question are:
 - where is the line of MHWS
 - does the line of MHWS cross a ‘river’
 - where is the ‘mouth’ of the river
 - how wide is the river at its mouth
 - where is a line upstream from the mouth by a distance equal to five times the width of the river mouth.

The Issue – Environment Court’s Declaration

10. The background to the Environment Court’s decisions, reported at [2022] NZEnvC 1 and 39 – ENV-2021-WLG-000033, has been summarised in my memorandum to the Panel dated 11 April 2022, which included relevant attachments, and also the Panel’s subsequent Minute 33 dated 21 April 2022.

11. As factual record I note that:
 - Decision [2022] NZEnvC 1 relates to a declaration.
 - Decision [2022] NZEnvC 39 relates to a direction.

12. Decision [2022] NZEnvC 1 was made by the Environment Court on 12 January 2022. The Court’s decision reads:

“Pursuant to s 310(e) RMA the Court declares:

When determining the location of a river mouth in the Wellington Region, not shown on Maps 42 to 48 of the PNRP, the mouth is deemed to be a straight line representing the continuation of the line of Mean High-Water Springs on each side of the river at the river outlet.”

13. Section 313(a) of the RMA allows the Environment Court (upon application by any person under section 311 of the RMA) to: *“make the declaration sought by an application under section 311, with or without modification”*.

14. The scope of declarations able to be made by the Environment Court is listed in section 310(a) to (h) of the RMA. The Environment Court in Decision NZEnvC 1 has claimed section 310(e) of the RMA gives it the authority for the declaration.

15. Section 310(e) of the RMA says:

“A declaration may declare .. the point at which the landward boundary of the coastal marine area crosses any river.”

16. Section 310(e) of the RMA (which is what the Court has relied upon) applies only to: the CMA boundary where it crosses a river.

17. Section 310(e) of the RMA (which is what the Court has relied upon) makes no reference to a declaration defining the location of a river mouth.

18. While determination of the CMA boundary might be assisted by knowledge of the river mouth location the latter does not unequivocally determine the former, there being an inherent additional discretionary judgement about the river mouth width (refer section 2 of the RMA and definition of CMA).

19. It appears the Environment Court, in its decision [2022] NZEnvC 1, has exceeded the scope of the mandate under which it has claimed to be acting.

20. On the face of it, the Environment Court is not authorised to make a declaration under section 310(e) of the RMA about the region-wide location of river mouths where they are not defined in Maps 42 to 48 of the pNRP.

The Issue – Effect of Environment Court’s Declaration – the Question

21. As I see it the Panel’s primary question in Minute 34 is: *“How and why the Environment Court’s rulings .. are relevant to [my] submission.”*

22. At Para. 3 of Minute 34 the Panel has said:

“In Minute 33 we noted also that we could not readily identify the relevance of GWRC’s application and the Environment Court’s rulings on it, to Ms Smith’s submission.”

23. From my perspective there are two scenarios needing consideration in reply to the Panel’s query. Both are addressed below.

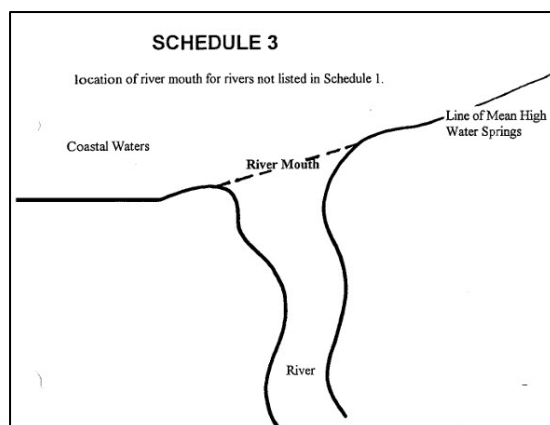
The Issue – Effect of Environment Court’s Declaration – Scenario One

24. As noted above, the Environment Court appears to have exceeded its authority in respect of s.310(e) of the RMA.
25. If this is found to be the case, the Court’s decision [2022] NZEnvC 1 presumably becomes null and void.
26. It is axiomatic that, if the Court’s decision [2022] NZEnvC 1 is nullified, it then has no implications for issues raised in my submission.

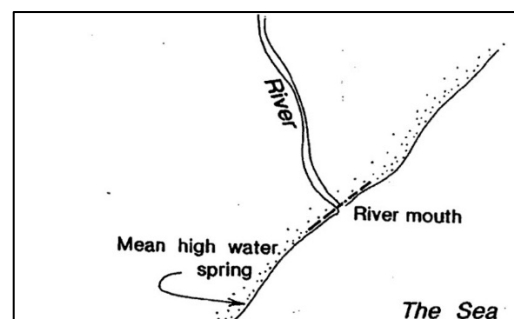
The Issue – Effect of Environment Court’s Declaration – Scenario Two

27. For Scenario Two, it’s presumed the Court’s decision [2022] NZEnvC 1 is robust and defensible. In this circumstance, the decision has several implications for my submission and how it will be considered by the Panel, the scope and effects of which are encompassed by the following points.

28. Under section 75(4)(b) of the RMA a district plan must be consistent with the relevant regional plan. I presume this consistency obligation also applies to aspects of a regional plan amended by the Environment Court under section 293 of the RMA.
29. However, it is not possible to determine (in a consistent manner) the location of the CMA boundary as has been suggested by Mr McDonnell (PCC – s.42A author) while also determining (in a consistent manner) the location of the ‘river mouth’ as directed by the Environment Court.
30. The method of determining the location of the ‘river mouth’ as directed by the Environment Court is generally applicable to linear open coastlines. Most regional councils have found the Environment Court’s approach difficult to apply and enforce where a stream or river may be entering an estuary or a tidal-inlet. In essence, this is because the lines of MHWS on the two ‘sides’ of an estuary or a tidal-inlet subtend an acute angle, while the two sections of MHWS either side of a river entering an open coast are more likely to be positioned along the same linear projection.
31. For those other estuary or tidal-inlet situations some councils have attempted additional explanatory text, but GWRC has chosen not to do so.
32. In short, the declaration by the Environment Court is unhelpful in determining the location of a ‘river mouth’ (and from thereby the alignment of the CMA boundary) where the river enters an estuary or a tidal-inlet. This difficulty does not generally arise to the same extent when determining the location of the MHWS (and thereby the CMA boundary) where a watercourse (ie: river, stream or creek) crosses an open coastline, with more or less linear configurations. Even then some councils have included explanatory diagrams, such as the two below.



River Mouth Diagram – Far North DC



River Mouth Diagram – Gisborne DC

33. This dilemma of how to define the location of a river mouth where it enters an estuary or a tidal-inlet was the subject of an email request by Mr B Warburton to GWRC dated 28 March 2022 (refer Attachment A). GWRC's advice in response is relevant to the subject of the Panel's Minutes 33 and 34. GWRC made no mention of the Environment Court's declaration, nor the corresponding addition to the pNRP provisions. Instead, GWRC staff advised that determination of the MHWS 'boundary' [sic] relies on several topographic and tidal data.
34. On face value then this suggests that the Environment's Court declaration does not achieve the clarity and certainty to which Mr Iain Dawe (GWRC policy advisor) referred in his affirmation to the Court (refer Attachment A to my memorandum dated 11 April 2022). Or in other words, why would the Council need to rely on several data sources if the Environment's Court declaration had provided the required clarity?
35. Mr A McKenzie (PCC district plan manager), in his email to the Panel dated 12 April 2022, claims that the CMA location is of no consequence to PCC as it is a regional council jurisdictional matter only. This is not so.
36. The CMA boundary is a coin with two sides. It is just as important to PCC as it is to GWRC in terms of which council has resource management responsibility, and what plan provisions apply to what activities.
37. In HS1 to HS3 I have previously provided critiques of Mr McDonnell's evidence and right of reply. His contribution is relevant to, but largely unhelpful in, addressing the issues I have raised.
38. PCC was aware of GWRC's application to the Environment Court under section 311 of the RMA before its lodgement date on or about 6 October 2021. Mr McDonnell and Mr McKenzie had email correspondence with GWRC about the application as early as March 2021.
39. Nonetheless, in his HS1 s.42A report, and subsequent right of reply, Mr McDonnell recommended the Panel amends the PDP provisions in respect of the 'Statutory Context' chapter. Mr McDonnell's recommended amendments make references to MHWS being the jurisdictional boundary.

40. Similarly, the ‘Statutory Context’ chapter of the PDP (as notified) makes a fundamental error in so much as it refers to:

“This District Plan applies to land above the line of Mean High Water Springs (MHWS)”.

41. The District Plan actually applies to all land landward of the CMA boundary. The CMA boundary, and the line of MHWS, are two different concepts (a key point to which Commissioner St. Clair alluded in the hearing for HS1).
42. Mr McDonnell’s recommended amendments also make no reference to the s.2 RMA formula ($1L = 5W$) for determining the location of the CMA jurisdictional boundary based on the location of the river mouth and the width of the river mouth.
43. Mr McDonnell seems to presume that the MWHS alignment equates to the CMA boundary. As the Panel will know this is only the case where the MHWS does not cross a river. Where the MHWS crosses a river there are other considerations needed, not the least of which is: *“are there any potential relevant declarations made by the Environment Court”*.
44. When it comes down to it, for locations where a river enters an estuary or a tidal-inlet there is only a random chance that a CMA boundary adopted directly from the line of MHWS will correspond to the CMA location based on the ‘river mouth declaration’ made by the Environment Court. There are several hurdles inhibiting clarity for ‘river entering estuary or tidal-inlet’ scenarios not the least of which is understanding what exactly is meant by “river outlet”, a term used in the Environment Court’s ‘river mouth declaration’.
45. In summary, Mr McDonnell’s attempts at providing clarity about the definition of the seaward limit of the ‘District’, and other PDP provisions that rely on similar information (such as the ‘coastal margin’), have been corrupted by the Environment Court’s declaration.
46. As the Panel will appreciate, uncertainty is not conducive to sound resource management decision-making. The Environment Court’s declaration has created another level of uncertainty, ie, is the MHWS/CMA boundary envisaged by Mr McDonnell the same CMA boundary as determined by reference to the Court’s ‘river mouth declaration’.

47. It's difficult to see how they can possibly be the same. One (being the Environment Court's approach) anticipates the use of a $1L = 5W$ formula while the other (Mr McDonnell's approach) is completely silent in that regard, presuming instead that the CMA boundary is the same as the line of MHWS. This discrepancy is also by no means assisted by the absence of any cross-referencing in the PDP to the relevant text in the pNRP, the insertion of which the Court has directed.
48. By way of a visual clarification, I've provided two images of that part of the City commonly known as Duck Creek Saltmarsh/Wetland (refer Attachments B and C). One image shows the extent of the MHWS (and thereby the CMA boundary) using Mr McDonnell's approach. The other shows the same location but applying the Environment Court's 'join the dots' approach to defining the 'river mouth' and thereby the location of the CMA using the $1L = 5W$ formula.
49. The disparity between the two approaches is obvious.
50. I think there are at least 12 other examples within the City of watercourses clearly crossing the line of MHWS but also where it is difficult to imagine how the Environment Court's 'river mouth declaration' could be applied without creating some uncertainty or doubt.
51. At Attachment D I've provided aerial images showing these 12 locations. In each case, it is easy to see how the Environment Court's 'join the dots' linear projection approach might be inappropriately applied in practice by way of simple reference to a perceived line of MHWS.
52. I submit that, as a result of the Environment Court's declaration, and the uncertainty and confusion it has created, the PDP process must be used to establish an accurate and defensible MHWS boundary for those 'river entering estuary or tidal-inlet' scenarios.
53. As a result of the Environment Court's declaration, I ask that the provisions of the PDP include the following text, or text with similar effect, in the Statutory Context chapter of the PDP.

For the purposes of defining the line of Mean High-Water Springs (MHWS), the 'River Mouth' location, and thereby the landward limit of the Coastal Marine Area (CMA), which in turn determines the extent of the Council's jurisdiction, the Council has adopted a five-pronged approach:

- i. *The line of MHWS shall, except where provided for in (ii), (iii), (iv), or (v) below, be the landward extent of the LINZ's [NZ Coastlines GIS Polygon \(Topo, 1:50k\)](https://data.linz.govt.nz/layer/50258-nz-coastlines-topo-150k/) <https://data.linz.govt.nz/layer/50258-nz-coastlines-topo-150k/>*

- ii. *(i) above shall not apply for any specific project or activity if the line of MWHS crosses the river, and the ‘river mouth’ location and the landward limit of the CMA (as they apply to that specific project or activity) have been mapped and scheduled in the relevant regional plan.*
 - iii. *(i) above shall not apply for any specific segment of the coastline if the line of MWHS, as it applies to that specific segment, has been mapped and specifically described in an Environment Court decision.*
 - iv. *(i) above shall not apply for any specific project or activity if the line of MWHS (along with the corresponding ‘river mouth’ location where relevant) has been determined by a suitably qualified person as being applicable for that project and activity, and for the specific location where the activity or project will be undertaken, and where that determination has been certified by the Council, by the Regional Council and by the Department of Conservation.*
 - v. *In all instances where a river enters coastal water, but where (ii) does not apply to that particular watercourse, then:*
 - a. *Option (iii) or Option (iv) (as the case maybe) must be applied for the determination of the line of MHWS for that location; and,*
 - b. *the river mouth location shall be determined in accordance with the approach declared in Environment Court decision [2022] NZEnvC 1 based on that line of MHWS; and,*
 - c. *the 1L:5W formula shall be applied in defining the CMA boundary¹.*
54. By way of explanatory notes:
- i. *The LINZ’s ‘NZ Coastline’ polygon is readily accessible and, for most practical purposes, is an accurate definition of the MHWS. It is more meaningful and relevant than relying upon the ‘NZ Hydro Parcel’ polygon (which council staff have so far advocated) as it only maps cadastral boundaries.*
 - ii. *This exception applies to those circumstances where the ‘river mouth’ and the CMA boundary have been identified in the regional plan. This applies to five rivers in Porirua; namely, Taupo Stream, Porirua/Kenepuru Stream, Pauatahanui Stream, Horokiri Stream and Kakaho Stream.²*
 - iii. *This exception acknowledges that in some instances the line of MHWS has been determined during Environment Court proceedings. This is applicable to Map 35 of the pNRP the shading on which depicts the line of MHWS for most of Titahi Bay.³*

¹ See section 2 of the RMA and definition of CMA.

² Refer Maps 43 and 44 of the pNRP.

³ Notes: At Para. 8 of Minute 33 the Panel implied that the pNRP has mapped the CMA at Titahi Bay Beach. Conversely I note that Mr I Dawe, in his right of reply dated 18 July 2018 for pNRP Hearing Stream 6 said: “GWRC has not defined a mean high water springs (MHWS) line defined for the Wellington region coastline, except at selected river mouth locations and Titahi Bay”. Mapping the CMA boundary and the line of MHWS are two different concepts. There are three watercourse that cross the part of Titahi Bay shaded on Map 35, and these would need to be factored into any determination of the CMA boundary based on the MHWS line to which Mr Dawe refers. I’m not aware that that work has been undertaken.

- iv. *This exception acknowledges that in some instances the line of MHWS may have been determined by an agreed process for a specific project or activity.⁴*
- v. *This specifies that determining river mouth locations (and thereby the landward limit of the CMA) must be based on reliable lines of MHWS, except where they are already scheduled in the regional plan or the subject of a previous RMA process. This avoids arbitrary definition of a 'river mouth' location based on unreliable assessments.*

Summary

- 55. I have highlighted the additional uncertainty about the location of the CMA boundary that could result from the Environment Court's declaration and subsequent amendment of the pNRP.
- 56. In HS1 I have previously highlighted some of the costs of such uncertainty. GWRC also appears keen on avoiding such scenarios. However, it's difficult to see how that will be achieved when the relevant text in the pNRP is primarily intended for open linear coastlines, and open to misconstruction, and therefore potentially ineffectual, in estuarine and tidal-inlet systems.
- 57. Uncertainty about the location of the CMA boundary needs to be avoided. Avoiding that uncertainty by mapping, or by reference to existing map data (as sought in my submission), is now more essential due to the Environment Court's declaration.
- 58. Email correspondence with GWRC staff (Attachment A) confirms local government has access to the information and data required to identify and map the line of MHWS, and thereby the CMA boundary. Mr Dawe has confirmed that Kapiti Coast District Council (along with other councils, including Auckland Council and Environment Bay of Plenty) has mapped its coastline.⁵

⁴ I am aware of instances where this could have applied but the necessary process and rigor has not been adopted. Some instances have been previously highlighted in PDP proceedings (refer Attachment C to Mr Warburton's presentation during HS1 and in support of my submission).

⁵ Mr I Dawe, in his right of reply dated 18 July 2018 for pNRP Hearing Stream 6 (a copy of which is attached to McDonnell's right of reply for HS1), said: *"Auckland Council and Environment Bay of Plenty have had MHWS mapped for their regions. The work was undertaken by NIWA and was done by calculating the MHWS from long term tidal datasets and plotting this onto a high-resolution coastal contour map." "We currently have a contact [sic] with NIWA to plot the MHWS for the Kāpiti Coast. The aim is to use high resolution LiDAR elevation data and surveyed beach profiles to map a MHWS zone that will encompass the MHWS envelope, ..."*

59. PCC could do the same; thereby avoiding uncertainty, providing clarity, and assisting district plan users.
60. If the coastline, the river mouth locations, and the landward limit of the CMA, are not mapped then the PDP must include text describing how those parameters (and therefore the Council's jurisdiction) will be determined as and when required.
61. But neither approach can stand alone:
 - a. not, Mr McDonnell's because it fails to take account of 'river mouth' situations;
 - b. nor, the Environment Court's because it doesn't reference how the line of MHWS on "*each side ... at the river outlet*" is to be determined.
62. With the Environment Court's declaration there's an imperative that the 'river mouth' component needs to be meaningfully integrated into the district plan provisions.

Conclusion

63. Thank you for the opportunity to provide additional comment, and for your time and consideration.

Dated 25 May 2022



Robyn Smith

ATTACHMENTS

- | | |
|---------------|--|
| Attachment A: | Email Correspondence with GWRC Staff about Determining Landward Limit of CMA |
| Attachment B: | Aerial Diagram Showing Likely Determination of CMA Boundary at Duck Creek By Connecting Adjacent MHWS Lines as per Environment Court Declaration |
| Attachment C: | Aerial Diagram Showing Likely Determination of CMA Boundary at Duck Creek Based on Actual MHWS Line |
| Attachment D: | Images Showing Locations of Other Watercourses Where Specific Determination of the Line of MHWS and the Landward Limit of CMA is Required |

Attachment A: Email Correspondence to and from GWRC Staff about Determining Landward Limit of CMA

From: Shaun Andrewartha <Shaun.Andrewartha@gw.govt.nz>
Sent: Thursday, 21 April 2022 2:09 pm
To: Brian Warburton (External) <brian.warburton@xtra.co.nz>
Cc: Nigel Corry <Nigel.Corry@gw.govt.nz>; Alistair Cross <Alistair.Cross@gw.govt.nz>; Iain Dawe <Iain.Dawe@gw.govt.nz>
Subject: RE: Determination of CMA and Local Government Jurisdictional Boundaries and Responsibilities

Thanks for the prompt reply and phone message. Responses to your questions as follows:

1. GW has a number of information sources to draw upon to provide topographic and tidal data to start the process of determining a MHWS boundary, such as:
 - a. regional elevation contours to 1.0 m accuracy derived from aerial LiDAR survey;
 - b. tidal information from tide gauges;
 - c. LINZ published tidal information;
 - d. the NZ Nautical Almanac;
 - e. NIWA's tidal information service;
 - f. a NIWA produced MHWS10 line for the region based on LiDAR data.
2. Sorry I didn't make it clear below. Yes, there may be occasion of dual responsibility. As stated below there can be 'land use' matters (s9 RMA) that can be controlled under both Plans provided their ultimate purpose is for matters that are under that Authority's remit.

Ngā mihi
Shaun



Shaun Andrewartha (he/him)
Kaiwhakahaere Matua / Manager, Environmental Regulation
Greater Wellington Te Pane Matua Taiao
M: 021 526562
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100 Cuba Street, Te Aro, Wellington 6011
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From: brian.warburton@xtra.co.nz <brian.warburton@xtra.co.nz>
Sent: Thursday, 21 April 2022 11:51 am
To: Shaun Andrewartha <Shaun.Andrewartha@gw.govt.nz>
Cc: Nigel Corry <Nigel.Corry@gw.govt.nz>; Alistair Cross <Alistair.Cross@gw.govt.nz>; Iain Dawe <Iain.Dawe@gw.govt.nz>
Subject: RE: Determination of CMA and Local Government Jurisdictional Boundaries and Responsibilities

Hi Shaun

As per my phone call, thanks for your email.

I have two supplementary questions.

1. You have said : “In the case of Te Onepoto Bay ... the MHWS is approximately 8 m upstream from the foot bridge and taking this as the stream mouth,”

Can you please tell me, what is the basis for your determination about the position of the MHWS in this location?

2. You have said : “Outside of these areas, they would be subject to rules in the Porirua District Plan (PDP).”

The inference here is that GWRC considers that the provisions of the Porirua District Plan (PDP) would not apply to activities landward of the CMA but in the bed of the stream or wetland. Perhaps I’ve misinterpreted your response. My understanding is that PCC and GWRC have dual responsibility for stream and rivers etc., or in other words s.9(3) of the RMA applies to all land that is landward of the CMA, not just land that is outside the beds of rivers etc.

A prompt reply would be appreciated.

Regards

Brian Warburton

From: Shaun Andrewartha <Shaun.Andrewartha@gw.govt.nz>

Sent: Thursday, 21 April 2022 11:29 am

To: Brian Warburton (External) <brian.warburton@xtra.co.nz>

Cc: Nigel Corry <Nigel.Corry@gw.govt.nz>; Alistair Cross <Alistair.Cross@gw.govt.nz>; Iain Dawe <Iain.Dawe@gw.govt.nz>

Subject: RE: Determination of CMA and Local Government Jurisdictional Boundaries and Responsibilities

Kia ora Brian,

Thank you for your email below. You have requested advice about the process GW staff would follow in order to determine local government jurisdiction for consent requirements if someone approached GW for advice about an activity they wished to undertake involving earthworks, vegetation clearance or building development within the Onepoto Stream estuary.

Greater Wellington as the regional council has jurisdiction over the coastal marine area (CMA) and beds of lakes and rivers (BoLR) which includes wetlands. Areas outside the CMA and BoLR are considered terrestrial and fall under the jurisdiction of Territorial Authorities, such as Porirua City Council. Each Local Authority has a plan that contains policies and rules specific to the different areas. For example, Greater Wellington has a (proposed) Natural Resources Plan (pNRP) with policies and rules for managing activities in the CMA and BoLR. Both plans also cover ‘land use’ activities and certain activities affecting those matters under the respective jurisdiction may well require consents from both authorities (eg earthworks). The plans effectively define which activities are permitted and those that require a consent.

If a party contacts the council requesting information or applying for consent to undertake an activity such as earthworks or vegetation clearance around a stream, wetland or river mouth the

enquiry is usually passed to the environmental regulation team. A team member is assigned the role of overseeing the application or request and assesses what specialist input is required to provide the information sought or support a decision. This may involve staff from flood protection, biodiversity, policy or science teams to advise on the location of river mouths, CMA boundaries, wetland or river bed extents and what rules may apply on the basis of whether the site is considered to be in a freshwater or coastal environment. This may require a site visit.

In some places, a site may fall within an area scheduled in the natural resources plan for containing significant or outstanding natural features, and further rules and restrictions may apply.

In the case of Te Onepoto Bay, there is a scheduled wetland with a stream running through it into the CMA. The MHWS is approximately 8 m upstream from the foot bridge and taking this as the stream mouth, the CMA boundary would be calculated by measuring the width of the stream perpendicular to the channel in metres and multiplying by 5 (as per the RMA definition). This distance further upstream forms the legal CMA boundary.

Activities downstream of this boundary would be subject to coastal rules in the pNRP and areas upstream of this in the bed of the stream or wetland would be subject to the freshwater rules in the pNRP. Outside of these areas, they would be subject to rules in the Porirua District Plan (PDP).

If the activity was entirely within GW's jurisdiction it would be dealt with by the pNRP and likewise if it fell entirely within PCC's jurisdiction it would be subject to rules in the PDP. This would normally involve coordination between the two councils to define and agree upon the jurisdictional boundary and appropriate consenting authority. If the activity crossed the boundaries or is an activity covered by both plans, consents may be required from both consenting authorities and then discussion would be had between the authorities as to whether a joint process is appropriate.

I trust this answers your query?

Ngā mihi
Shaun



Shaun Andrewartha (he/him)

Kaiwhakahaere Matua / Manager, Environmental Regulation

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From: brian.warburton@xtra.co.nz <brian.warburton@xtra.co.nz>

Sent: Monday, 4 April 2022 5:41 pm

To: Nigel Corry <Nigel.Corry@gw.govt.nz>

Cc: 'Wendy Walker' <Wendy.Walker@porirucity.govt.nz>

Subject: RE: Determination of CMA and Local Government Jurisdictional Boundaries and Responsibilities

Hello Nigel

I look forward to your advice about GWRC's position.

Not unexpectedly, Ms Walker has deferred to staff evidence on its Proposed District Plan, notwithstanding that that evidence is flawed inasmuch as it refers to previous instances of MWHs determination (in something of a claim that there is a process/procedure council follows) of which there is no factual and substantive evidence. Indeed, the evidence is to the contrary.

The scope of my query is, as far as GWRC's functions are concerned, somewhat different. In the declaration proceedings with the Environment Court (to which I referred) GWRC has, in essence, claimed that the boundary of the CMA can be determined by extending the lines of MHWS on both sides of a watercourse.

One can sort of imagine how this might apply on an open sandy coastline (where the watercourse in question flows at right angles to the coastline), but not so easy to see how GWRC's approach would work in an estuarine environment, where there is usually an acute angle between the path of the watercourse and the coastline. Hence my query using a real example.

As requested, please provide me with advice about the process GWRC staff would follow to determine local government jurisdiction and consent requirements, etc., if a proponent of an activity approached GWRC for comment/advice about an activity they wished to undertake involving earthworks and/or vegetation clearance and/or building development on that part of Porirua district encompassed by the red line on the following map, which is the estuary for Onepoto Stream, Whitireia.

I look forward to your response.

Regards

Brian Warburton

From: Wendy Walker <Wendy.Walker@porirua.govt.nz>

Sent: Monday, 4 April 2022 4:53 pm

To: Brian Warburton <brian.warburton@xtra.co.nz>; Nigel Corry <Nigel.Corry@gw.govt.nz>

Subject: RE: Determination of CMA and Local Government Jurisdictional Boundaries and Responsibilities

Kia ora Brian

Thank you for your email.

As you know Brian, this matter has recently been heard by the Hearings Panel as part of the Proposed District Plan Hearings. You can refer to Torrey McDonnell's right of reply on behalf of Council to Hearing Stream 1 for our view on the most appropriate spatial boundary for planning maps, and how zoning should be determined in areas adjacent to the dynamic line of Mean High Water Springs.

This matter is currently the subject of deliberations by the Panel where it is possible that they may form a different view based on matters raised by submitters.

Ngā mihi,

Wendy Walker
Chief Executive
Kaiwhakahaere Matua



Tel: 04 237 1401
porirucity.govt.nz

From: brian.warburton@xtra.co.nz <brian.warburton@xtra.co.nz>

Sent: Monday, 28 March 2022 6:11 pm

To: 'Nigel Corry' <Nigel.Corry@gw.govt.nz>; Wendy Walker <Wendy.Walker@porirucity.govt.nz>

Subject: [EXTERNAL] Determination of CMA and Local Government Jurisdictional Boundaries and Responsibilities

Hello Wendy and Nigel

As you will know, the location and alignment of the Mean High-Water Springs (MHWS) is an important statutory concept. In simple terms, and as far as the Resource Management Act (RMA) is concerned, it determines which local authority has regulatory jurisdiction and what provisions (if any) of a district plan and/or a regional plan apply.

As you will also be aware, GWRC is currently in the process of finalising the provisions of the Natural Resources Plan (NRP) while PCC is in the process of hearing submissions on its Proposed District Plan (PDP).

In the proceedings relating to the NRP and the PDP participants (submitters and councils) have queried:

- Whether the location and alignment of the MWHS should be depicted on the PDP maps; and,
- How is the location of the CMA boundary determined where it crosses the bed of a watercourse (ie: river, stream or creek).

How the location of the CMA boundary determined where it crosses the bed of a watercourse (ie: river, stream or creek) was also a matter referred to by Commissioner St. Clair during proceedings relating to Hearing Stream One.

The facts about this issue, as far as the Porirua district is concerned, are:

- PCC claims (via. evidence to the PDP hearing panel) that the location and alignment of the MWHS need not be depicted on the PDP maps.
- PCC proposes (via. evidence to the PDP hearing panel) that the location and alignment of the MWHS can be determined on a case by case, site specific, basis, as and when activities are proposed that might be near, or adjacent, to the “apparent” or “indicative” CMA.
- PCC ‘experts’ (via. evidence to the PDP hearing panel) have suggested that this “case by case, site specific, basis, as and when activities are proposed that might be near, or adjacent, to the apparent or indicative CMA” approach has successfully worked in the past.
- Submitters on the PDP have given presentations citing examples where this case by case, site-specific, determination approach has not been previously applied.
- Submitters on the PDP are currently collating evidence of additional examples where this case by case, site-specific, determination approach has not been previously applied. The Ombudsman is investigating one relevant aspect.

- In its evidence to the PDP hearing panel PCC has failed to explain how this site-specific MHWS determination would be undertaken when the PDP is not clear about when it applied and when it didn't (or in other words, what would the 'trigger' be to compel a proponent of an activity to undertake this determination).
- In its evidence to the PDP hearing panel PCC has failed to explain how the outcome of this site-specific MHWS determination would transpose into changes to the PDP maps showing zones and policy overlays (submissions have indicated this would likely require a plan change).
- Of the numerous watercourses draining to Porirua Harbour and to the outer coast, the NRP only defines the CMA boundary where it crosses four watercourses.
- For the balance of the various watercourses draining to Porirua Harbour and to the outer coast, neither the PDP nor the NRP can advise a user of the PDP and/or the NRP where the CMA boundary is located (as it crosses a watercourse).
- Except for the mouths of the four watercourses mapped in the NRP for the entire balance of the coastline within Porirua district the PDP (as notified), and the NRP, are completely silent about the location of the CMA boundary.
- The maps currently included with the PDP are so inaccurate as to suggest that large parts of Pauatahanui Inlet should be mapped as 'land' and included in the 'District' even though they are clearly seaward of MHWS being underwater twice every day upon high tide.
- Submitters have brought the PDP hearing panel's attention to this nonsense.
- Having clarity about the location of the CMA boundary is important because [as noted by the Environment Court in ENV-2021-WLG-000033 at Para. 20 (a preliminary decision, which deals with an application for a declaration brought by GWRC, attached)]:
"It is clearly necessary to have some such method in the PNRP in order to simply determine which authorities have jurisdiction and which sets of rules apply to any particular activity. To leave the PNRP without such a method could breach the obligation on the Council to preserve the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and to protect them from inappropriate subdivision, use, and development (s 6(a) RMA). Dr Dawe impressed upon the Court the sensitivity and the importance of the ecosystems affected."
- Having clarity about the location of the CMA boundary (for these jurisdictional reasons) has been emphasised in submissions and several presentations on the PDP.

I ask that PCC and GWRC (as the case maybe) considers the summary I've provided above, and, in the light of the issues raised, that you advise me of the following:

- What process would be followed by PCC and GWRC staff to determine local government jurisdiction, zoning, policy overlays and consent requirements, etc., if a proponent of an activity approached the council/councils for comment/advice about an activity they wished to undertake involving earthworks and/or vegetation clearance and/or building development on that part of Porirua district encompassed by the red line on the following map, which is the estuary for Onepoto Stream, Whitireia.

Please note: the image is a PDP screen-shot and the blue-green colouring indicates the extent of the proposed 'Open Space' zone in the PDP. The extent of this zoning is clearly inaccurate as it includes parts of the CMA, and it does not include (but should) areas of dry land.



I can provide elaboration about all the points to which I've referred in this email if required. I think the implications of the matters to which I've referred will be clear to PCC and GWRC staff involved in the relevant PDP and NRP proceedings.

In the first instance, I suggest that you relay this email to Torrey McDonnell (PCC) and Iain Dawe (GWRC).

I look forward to your response(s).

Regards

Brian Warburton
029 479 6755

Attachment B: Aerial Diagram Showing Likely Determination of CMA Boundary at Duck Creek By Connecting Adjacent MHWS Lines as per Environment Court Declaration



Attachment C: Aerial Diagram Showing Likely Determination of CMA Boundary at Duck Creek Based on Actual MHWS Line



Attachment D: Images Showing Locations of Other Watercourses Where Specific Determination of the Line of MHWS and the Landward Limit of CMA is Required

Note: in all cases the cyan line is the line of MHWS derived from LINZ's [NZ Coastlines GIS Polygon \(Topo, 1:50k\)](https://data.linz.govt.nz/layer/50258-nz-coastlines-topo-150k/)

<https://data.linz.govt.nz/layer/50258-nz-coastlines-topo-150k/>

