

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**

DEFINING LANDWARD LIMIT OF COASTAL MARINE AREA

27 November 2022

MAY IT PLEASE THE PANEL

Introduction

1. This Memorandum is filed in relation to the review of the District Plan for Porirua (the PDP).
2. I am a submitter on the PDP (submitter no. 168).
3. My submission asked for the provisions of the PDP (in particular, the maps) to be amended so the extent of the Coastal Marine Area (CMA) throughout the district is accurately determined and referenced in the PDP.
4. This issue was the subject of evidence and representations in Hearing Stream 1 (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) have been highlighted in presentations by me, and on my behalf, in Hearing Streams 2 – 4.
5. This memorandum is filed because recent resource consent proceedings initiated by Porirua City Council (PCC), and before Greater Wellington Regional Council (GWRC), have direct implications for the PDP proceedings and the Panel's consideration of submissions and evidence.
6. These resource consent proceedings initiated by PCC are relevant because they go directly to the question:

“how is the alignment of Mean High-Water Springs (MHWS) determined when a project or activity that may, or may not, be located in the CMA is proposed”.
7. Or in other words, these resource consent proceedings are a 'real life' example of how the approach proposed by PCC staff for the PDP provisions might, or might not, work in practice.
8. I ask that this memorandum, and the corresponding documents to which it cross-references, be accepted into the hearing record, etc..

Overview and Background

9. The location of the CMA boundary is a critical jurisdictional concept. The location of the CMA boundary determines whether section 9 and/or section 12

of the RMA applies to a particular project, and in doing so it defines what consents are required, under which plan (or plans), and which local authority is the RMA consent authority.

10. Except where there are stream or river outlets, the CMA boundary is determined from the alignment of the MWHS.
11. The PDP does not map the alignment of the MHWS. The proposed Natural Resources Plan for Wellington Region (the pNRP) does map various overlays, the extent of which is determined by a GIS 'coastal boundary', or a GIS layer with similar effect. In short, the pNRP does include a GIS layer (or layers) that rely upon a coastal boundary defined by GWRC.
12. With the PDP, PCC staff has given evidence to the PDP hearings suggesting that staff prefer the cadastral (land ownership) boundaries as a proxy for the CMA jurisdictional boundary. PCC staff has given no rationale (in RMA terms) for this preference other than claiming that:

“the LINZ hydro parcel is an appropriate boundary for overlays and zones.¹”

13. Evidence has been tabled indicating that the cadastral boundaries may be distant from the CMA boundary alignment by as much as several hundred metres.² For example, there is a cadastral boundary about 300 metres seaward of the CMA boundary at the mouth of Horokiri Stream as mapped in the pNRP.
14. As a submitter I have presented text to the Panel that I consider should form the basis of a provision in the PDP.³ This text acknowledges that the location of the CMA boundary:
 - is defined in some locations (ie: in the pNRP);
 - is more or less known in other locations (eg; from GIS layers such as that used by LINZ, GWRC and by PCC); but also,
 - accommodates PCC's desire to have the CMA boundary defined on an as and where required, or site and project specific basis.

¹ Refer Para.57 of Council reply on overarching matters addressed in Hearing Stream 1 - Torrey James McDonnell on behalf of Porirua City Council, dated 15 October 2021.

² Refer memorandum by B Warburton in support of submission by R Smith, dated 29 September 2021.

³ Refer Memorandum in Relation to District Plan Hearings Determining Landward Limit of Coastal Marine Area, dated 25 May 2022

15. In response to questions from the Panel at PDP hearings PCC staff has assured the Panel that the alignment of the MHWS is currently determined on a project/site specific (case by case) basis, and consent considerations are triggered by some 'proximity' (proximity not being defined) to an 'indicative coastline' (also not defined). In his evidence in chief to HS1 Mr McDonnell supposes that the location of the CMA boundary could be determined on a case-by-case basis, as and when activities are proposed near or adjacent to the location of the 'indicative' coastline.⁴
16. Council staff has not tabled any evidence confirming that this project/site specific determination of the CMA boundary is applied in practice.
17. On the other hand, as a submitter I have provided the Panel with examples where coastal work has been undertaken without any determination of the location of the MHWS, and from there the alignment of the CMA boundary is also ill-defined. Those examples are: Plimmerton Fire Station ('dune restoration'), Titahi Bay Surf Club retaining wall, the Porirua Wastewater Treatment Plant outfall, and 'stream realignment works' at South Beach Access Road, Titahi Bay. Images of those instances have been included in a presentation to the Panel by Mr B Warburton on my behalf.⁵

Recent Developments - Overview

18. On 2 November 2022 PCC lodged with GWRC applications for resource consents to undertake construction works, and to reclaim parts of the CMA within the Onepoto Arm of Porirua Harbour. This project is commonly known as the Wineera – Onepoto Walkway. Details are available here:
<https://porirua.govt.nz/your-council/city-projects/wi-neera-onepoto-shared-pathway-coastal-resilience-project/>
19. Given the proposed nature of this project by PCC it is not surprising that consent is required because some of the construction work, land disturbance and physical structures will be located within the CMA. In turn this requires a determination of the location of the MHWS.
20. Consequently, with this application for resource consent new information has been introduced into the public domain, and some of this information relates to the alignment of MHWS and therefore to the CMA boundary.

⁴ Refer Appendix A of Mr Torrey McDonnell's s.42A report for HS1 and his suggested amended text for the "Statutory Context" chapter of the PDP.

⁵ Refer Attachment C to presentation to the hearing panel by Brian Warburton in support of submission by R Smith, dated 29 September 2021

21. The 2 November 2022 application PCC lodged with GWRC relies on information provided by other parties in terms of the defining the elevation of MHWS and in terms of mapping the alignment of the MWHS contour. One such document is entitled: 'Porirua Harbour Survey - Report of Survey'. This report presents the results of bathymetric surveys on behalf of PCC by a company called: Discovery Marine Limited (DML).⁶

Recent Developments – Elevation of MHWS

22. The resource consents application PCC lodged with GWRC in early November 2022 relies on the 2009 work by DML. In doing so PCC has relied upon a presumed MHWS level of 1.72m above Chart Datum (CD) or 0.87m above RL.⁷ The relevant table from the AEE included with PCC's consent application is replicated below:

Table 2-3: Tidal levels for the Onepoto Arm (DML, 2009)

| Tidal level | Chart Datum CD (m) | RL (m) |
|---------------------------------|--------------------|--------|
| Highest Astronomical Tide (HAT) | 1.95 | 1.10 |
| Mean High Water Spring (MHWS) | 1.72 | 0.87 |
| Mean High Water Neap (MHWN) | 1.18 | 0.33 |
| Mean Sea Level (MSL) | 1.08 | 0.23 |
| Mean Low Water Neap (MLWN) | 0.97 | 0.12 |
| Mean Low Water Spring (MLWS) | 0.43 | -0.42 |
| Lowest Astronomical Tide (LAT) | 0.35 | -0.50 |

Recent Developments – Mapping

23. In its 2009 report entitled 'Porirua Harbour Survey - Report of Survey' DML stated:

“Areas not accessible by boat were surveyed during low water periods using RTK GPS. A surveyor with the RTK rover unit walked across drying areas taking spot fixes at regular intervals to fill gaps in data coverage. This topographic work was mainly undertaken throughout the Priority 1 area, but some work was also completed in the headwater regions of the two inlets. Elsewhere, the position of the MHW coastline was determined by laser binocular fixes from the boat to the visible HW mark and then compared to the LINZ digital shoreline; the PCC supplied coastline as well as the existing Chart.”

⁶ This is accessible via a LGOIMA request to PCC, but is included in consent application as a reference document, and cited as: 'DML (2009). Porirua Harbour Survey Report of Survey. Prepared for PCC'.

⁷ Refer Table 2-3 of Tonkin and Taylor report: "Wi Neera to Onepoto Shared Pathway and Coastal Resilience Project Coastal Resilience Consent Design and Effects Assessment", dated October 2022

24. The 2009 report therefore clearly confirms that DML (which is PCC's consultant) thinks there is adequate information already available, but supplemented by its own work, that defines the alignment of the MHWS.

Recent Developments – PCC's Claims

25. The Panel (via Minute 5) directed written questions to PCC's Mr McDonnell⁸ relating to the issues raised in the presentation by Mr Warburton on my behalf.⁹
26. At Para. 57 of his subsequent reply (in general terms) Mr McDonnell said this:
- "I consider that the LINZ hydro parcel is an appropriate boundary for overlays and zones. I consider that a note is needed in the Statutory Context section setting out Council's jurisdiction (and that it would still be relevant if the relief sought by the submitter was accepted). That is, MHWS will need to be determined on a site-by-site basis wherever relevant to a consent application. I have included a note to this effect."*
27. In relation to Figure 3 of Mr Warburton's presentation, and in his subsequent reply (in more specific terms) at Appendix 5(a), and to a question about the accuracy of Mr Warburton's diagrams, Mr McDonnell made these two comments:
- *"I am unsure where the Submitter obtained this line of MHWS. If it is the LINZ Coastline layer as sought by the submitter, this is not the same as MHWS which is dynamic and needs to be surveyed to ascertain the Council's jurisdictional boundary at any given point in time."*
 - *"The edge of the zone is not the "district boundary" as annotated. The district boundary is defined by MHWS which is dynamic and needs to be surveyed to ascertain the jurisdictional boundary at any given point in time."*

⁸ Refer: https://storage.googleapis.com/pdp_portal/pdps/hearing_stream1/council_reply/Council%20right%20of%20reply%20-%20Torrey%20McDonnell%20-%20Hearing%20Stream%201.pdf

⁹ Refer: https://storage.googleapis.com/pdp_portal/pdps/hearing_stream1/submitter_presentations/Submitter%20Presentation%20-%20Robyn%20Smith%20%5B168%20and%20FS09%7D%20-%20Hearing%20Stream%201.pdf

28. The Panel will, of course, realise that the area of land to which Mr Warburton has referred in Figure 3 of his presentation (and which Mr McDonnell has commented upon):
- is part of the land where PCC intends to undertake work associated with the Wineera – Onepoto Walkway project: and,
 - is part of the land where Mr McDonnell questioned the source and accuracy of the line defining the MHWS.
29. To assist the Panel, I have attached two diagrams covering (more or less) the same geographic area.
- Diagram One replicates the image presented with Figure 3 of Mr Warburton's presentation*
 - Diagram Two replicates the image included with the plans Wineera – Onepoto Walkway project with the alignment of the MHWS and the cadastral boundaries shown and highlighted in yellow.*

Diagram One:

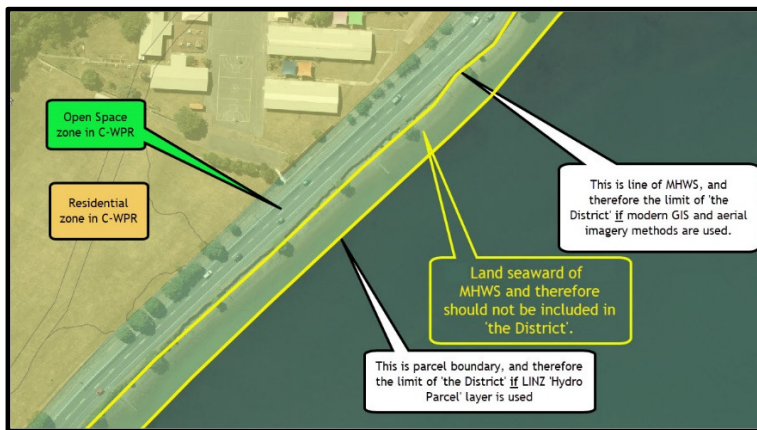
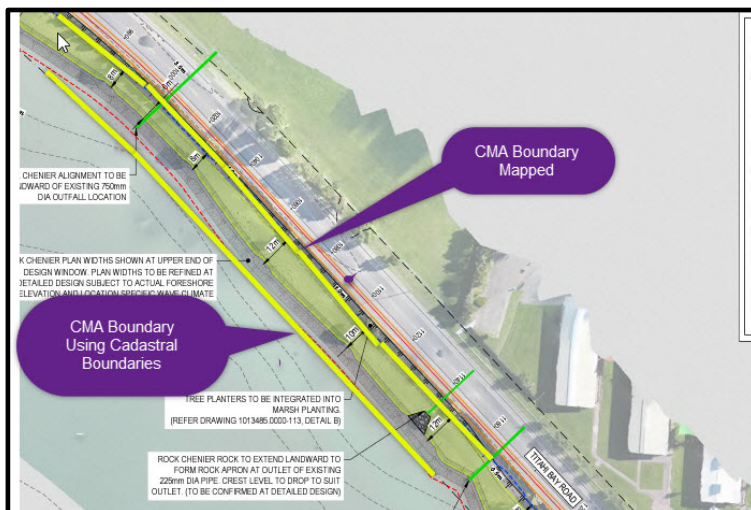


Diagram Two:



30. The points to be taken from this are:
- a. Mr McDonnell, a PCC staff member dealing with RMA provisions relating to the alignment of the MHWS and therefore the CMA boundary, has had access to relevant data provided to PCC; and
 - b. the PCC data Mr McDonnell has had access to confirms a significant difference between the definition of the LINZ 'hydro parcel' and the alignment of MHWS (and therefore the CMA boundary) as determined by PCC's own consultants.

Recent Developments – Conclusion

31. This information with the 2022 resource consent application suggests the applicant (by, or on behalf of, PCC) has 'adopted' the MHWS data derived from a 2009 bathymetric assessment and report by DML, and PCC (as the applicant) has not undertaken a site specific/project specific assessment to determine the MHWS in the vicinity of the project.
32. The purpose of this memorandum is to bring to the Panel's attention that the approach used by PCC for its own project (the Wineera- Onepoto Walkway) contradicts the assurances given by Council staff in evidence relating to site and project specific determination of MHWS when a project is proposed at or near the 'indicative coastline'.

Assessment

33. As I have previously submitted to the hearing panel, a mapped MHWS alignment/CMA boundary is essential for defining the local authority jurisdiction, and so that the PDP provisions that are 'linked' to the MHWS (eg: the coastal margin/setback) are able to be effectively implemented in practice.
34. As a submitter I have previously provided a suitable amendment to the PDP provisions that would:
- acknowledge that current information about the location of the MHWS/CMA boundary is not as perfect as PCC would prefer;
 - confirm that cadastral boundaries are not a suitable proxy as they bear no relationship to the concept of MHWS/CMA; and,
 - acknowledge that there is existing high-resolution data that currently provides a GIS layer (or layers) capable of being a resource consent trigger for any particular project being undertaken on or near the actual CMA boundary

35. My memo dated 25 May 2022¹⁰ outlined recent developments in respect of the CMA/MHWS issue in Wellington as it applies to the outlets of watercourses such as streams and creeks, and related to an Environment Court declaration sought by GWRC, but for one reason or another not brought to the Panel's attention by GWRC nor PCC staff.
36. In my 25 May 2022 memorandum, I asked 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 boundary¹¹.**

Explanatory notes:

¹⁰ Refer https://storage.googleapis.com/pdp_portal/pdps/pdp1/memos_from_submitters_to_panel/Submitter%20Memo%20030%20-%20Robyn%20Smith%20%5B168%5D%20-%20Further%20Representations%20-%20MHWS%20and%20the%20CMA%20%2825%20May%202020%29.pdf

¹¹ See section 2 of the RMA and definition of CMA.

- 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 (the Hydo Parcel)¹² 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.¹³*
 - 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.¹⁴*
 - 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.¹⁵*
 - 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.*
37. As I have previously noted a PDP provision of the sort and effect that I have outlined is required. Without it, certain provisions of the PDP (eg: the coastal margin/setback) become meaningless, and the administration of such provisions becomes inefficient and the provisions themselves become ineffective in achieving the intended outcome.
38. Without this sort of provision, the councils (PCC and GWRC) will be left with no jurisdictional certainty.
39. Landowners will have no certainty about the provisions that apply to them and the extent of those restrictions.
40. The general public will have no certainty that important associations with the CMA (eg section 6 of the RMA matters) will be protected and preserved.

¹² Clarification text (underlined) added on 27/11/2022)

¹³ Refer Maps 43 and 44 of the pNRP.

¹⁴ 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.

¹⁵ 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).

41. The evidence before the Panel is that:
- (i) site and project specific determination of MHWS when a project is proposed at or near the 'indicative coastline' does not occur in practice event when the PCC is the applicant; and,
 - (ii) PCC and GWRC, as the relevant local authorities, are satisfied that there is already currently available digital data defining the approximate alignment of MHWS and this is substantially more accurate than using cadastral boundaries as a proxy CMA boundary.

Conclusion

42. The situation and circumstances I have outlined above confirm two things:
- (i) There is existing data that PCC has relied upon to define a proxy and/or indicative MHWS alignment and that is preferable to (and more accurate than relying upon) cadastral boundaries which bear little resemblance to the coastline; and,
 - (ii) PCC does not itself, when seeking RMA consent, undertake a site or project specific MHWS assessment contrary to council staff assurances provided to the Panel.
43. I ask that this memorandum, and the corresponding documents to which it cross-references, be accepted into the hearing record, and factored into the Panel's consideration, deliberations, and eventual recommendations.
44. Thank you for your time and consideration.

Dated 27 November 2022.



Robyn Smith