

IN THE MATTER OF: The Resource Management Act 1991

AND

IN THE MATTER OF: Review of District Plan for Porirua City

MEMORANDUM FROM
TITAHI BAY RESIDENTS ASSOCIATION INCORPORATED

25 May 2022

RESPONSE TO INVITATION OF THE PANEL - MINUTE 34

1. This memorandum is filed in response to the Minute 34 invitation of the panel for submitters seeking mapping of either MHWS [Mean-High-Water-Springs] or the boundary of the CMA [Coastal Marine Area] to explain how and why GWRC's Application, and the Environment Court's rulings on it are relevant to their submission.
2. For consistency we refer to the regional council as Wellington Regional Council (WRC), being the legal identity in Court Orders.
3. In November 2020 Titahi Bay Residents Association Incorporated (TBRA) submitted (No 95) to Porirua City Council (PCC) that the Proposed District Plan (PDP) be amended generally to include, *Definitions 1.1 Mean-high-water-springs (MHWS) is defined by the boundary line of the relevant adjacent zone on the overlay of the planning map. (Titahi Bay screen shot attached).*
4. That submission was relegated by PCC officers to Hearing Stream 3 (HS3) in December 2021.
5. In parallel with the PDP and HS3 proceedings the WRC lodged an application to the Environment Court (EC) seeking a declaration relating to a 'method' for determining the location of a 'river mouth' where a river crosses the line of MHWS.
6. As the Panel will be aware, TBRA was an appellant against the provisions of the proposed Natural Resources Plan (pNRP) [refer ENV-2019-WLG-000121]. This appeal was resolved when the parties agreed to amendments to the rules of the pNRP relating to vehicles on Titahi Bay Beach and agreed to a map (Map 35) defining the part of the beach to be subject to the rule restrictions. A copy of Map 35 is attached (see Attachment A).
7. It appears that WRC's intentions to apply to the EC for the declaration arose prior to the ENV-2019-WLG-000121 consent memorandum being signed in late March 2021. For one reason or another WRC failed to advise TBRA of its intentions. Nor did WRC advise TBRA that a declaration application had been lodged (in early October 2021) and that the EC had made the declaration sought by WRC on 12 January 2022.
8. TBRA has consistently, and for many years, advocated for the need for clarity around the statutory jurisdiction of Titahi Bay Beach. TBRA's endeavours in this regard are a matter of long-standing public and legal record.
9. TBRA has difficulty reconciling WRC's lack of meaningful engagement with TBRA about its intentions to ask for a Court declaration with WRC's fundamental and 'over-arching' obligation to represent its constituents. TBRA notes that the WRC engaged with PCC about its EC declaration intentions whilst omitting to inform TBRA. It is also relevant that TBRA's 'assignment' to HS3 (as opposed to HS1) meant it was not party to verbal evidence (by way of seemingly casual questions from the Panel's chair) provided by Ms Fleur Matthews, policy manager, WRC, on 29 September, 2021.

10. At the very least WRC (in its declaration application) and the EC (in its decision on the declaration application) should have considered if there was any potential conflict between what WRC was seeking and what had already been agreed with TBRA by way of the Consent Memorandum and Map 35.
11. TBRA finds it difficult to understand why the question about potential conflict was never asked by the EC, and why TBRA's input from WRC, into finding the answers was never sought.
12. In the absence of anything to the contrary, TBRA considers that Map 35 should be taken as defining the line of MHWS for that part of the beach highlighted in brown.
13. For the purposes of its submission on the PDP TBRA is prepared to proceed on the basis that the landward extent of the area on Map 35 shaded in brown is the agreed line of MHWS for that stretch of Titahi Bay.
14. TBRA notes that the Panel appears to be under a similar impression in so much as at Para. 8 of Minute 33 the Panel said this:
 1. *"However, our understanding is that the PNRP does not map the CMA other than at selected locations (**that include Titahi Bay Beach**) [emphasis added] and the advice we received from GWRC's representatives when they appeared in the Stream 1 hearing was that the location of MHWS had to be established by a survey if and when it was relevant."*
15. TBRA does note, however, that the Panel implies the CMA boundary is mapped at Titahi Bay. TBRA considers this is not the case because defining the vehicle restricted area did not specifically take into account the fact that at least three watercourses cross the brown shaded area. Therefore, and in accordance with the definition of CMA in s.2 of the RMA, defining the CMA boundary in this location could require more detailed considerations on a case-by-case basis, but this would 'add to' rather than 'detract from' the relevance of the NRP.
16. The TBRA is aware of Robyn Smith's submission (submitter 168) in which she has asked for amendments to the PDP 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.
17. TBRA supports Ms Smith's intentions in this regard because this will provide certainty and clarity which, for many years, has been sadly lacking.
18. TBRA has reviewed Ms Smith's response to the Panels' Minute 34 invitation and sees no inconsistencies in our approaches.
19. TBRA's and Ms Smith's proposals for PDP text will provide certainty and clarity which, for many years, has been sadly lacking.
20. TBRA notes that the extent of the 'District' is defined by the location of the CMA boundary and is therefore a fundamental concept in New Zealand's resource management legislation.
21. To this end, and in light of the Environment Court's declaration, and in recognition of the requirements for district plans to be consistent with regional plans [s75(4)(b) of the RMA], TBRA asks that the PDP be amended as specified below.

Proposed Amendment to the PDP

For the purposes of defining the line of MHWS at Titahi Bay, the following four principles shall apply.

1. *for the stretch of beach encompassed by the brown shaded area in the NRP's Map 35 the landward limit of the shading shall be taken as the line of MHWS.*
2. *for those stretches of beach at the northern end and at the southern end of, but outside the brown shaded area in NRP's Map 35*, the line of MHWS shall be determined in accordance with best survey and cartographic practice, and by a suitably qualified person.*

3. *in respect of the stretches of beach at the northern end and at the southern end it is acknowledged that watercourses flow across the beach (named Titahi Creek and Koangaumu Creek respectively)** ***. The positioning of the line of MHWS where it crosses these watercourses has potential implications for the determination of the landward boundary of the CMA****. Accordingly, the 'river mouth' for both watercourses shall be determined in accordance with Environment Court's declaration 2022-NZEnvC-001, and the upstream position of the CMA boundary will be determined in accordance with the definition of CMA in section 2 of the RMA.*
4. *in respect of the stretch of beach within the brown shaded area in the NRP's Map 35 the 'river mouth' for each of the three watercourses shall be mapped from the line of MHWS as with 21.4 above.*

22. The matter highlighted by the Panel (and to which TBRA has responded above) confirms that the Environment Court's declaration, and subsequent amendment of the pNRP, has created additional uncertainty as far as the stretch of Titahi Bay Beach depicted on Map 35 is concerned.
23. Section 75(4)(b) of the RMA requires consistency between regional and district plans.
24. Regulatory uncertainty is never desirable.
25. Over many years TBRA has committed significant resources to resolving regulatory and jurisdictional issues relating to the management of Titahi Bay Beach.

TBRA seeks the amendments to the PDP to which it has referred above.

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- * For the purposes of this TBRA response a map is attached at Attachment B showing these northern and southern extremities
- ** <https://gazetteer.linz.govt.nz/place/59962>
- *** <https://gazetteer.linz.govt.nz/place/59959>
- **** See definition of CMA in s2 of the RMA

Dated 25 May 2022



Graeme Ebbett
Chairman
Titahi Bay Residents Assn Inc

ATTACHMENT A: COPY of MAP 35 from proposed NATURAL RESOURCES PLAN

ATTACHMENT B: AERIAL IMAGES IDENTIFYING NORTHERN and SOUTHERN EXTREMITIES of MAP 35 RESTRICTED AREA

Snap Shot of Titahi Creek Where it Crosses Titahi Bay Beach

Snap Shot of Koangaumu Creek Where it Crosses Titahi Bay Beach

ATTACHMENT A: COPY of MAP 35 from proposed NATURAL RESOURCES PLAN



Titahi Bay fossil forest (indicative)

Titahi Bay Residents
Association
Porirua City Council


Map 35



~~This version of the map is not complete.~~ The version of this map available online through the online web map viewer shows the **complete**, detailed information on a GIS overlay ~~that is not shown on this hard copy.~~ The online version is available on the Council's website at <https://mapping.gw.govt.nz/gwrc/> (select theme **proposed** Natural Resources Plan **2015**) and can be accessed from the Council offices or public library.

-  Titahi Bay fossil forest
-  Area A

0 100 200 m



Topographic and Cadastral data is copyright LINZ. LIDAR data is copyright GWRC.
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greater WELLINGTON
REGIONAL COUNCIL
Te Pare Matua Taiao

ATTACHMENT B: AERIAL IMAGES IDENTIFYING NORTHERN and SOUTHERN EXTREMITIES of MAP 35 RESTRICTED AREA

Snap Shot of Titahi Creek Where it Crosses Titahi Bay Beach



Snap Shot of Koangaumu Creek Where it Crosses Titahi Bay Beach

