

IN THE MATTER

of the Resource
Management Act 1991

AND

IN THE MATTER

of Hearing of Submissions
and Further Submissions
on the Proposed Porirua
District Plan

Minute 33 – Identification of Mean High Water Springs and Related Issues

Introduction

1. On 11 April, Ms Robyn Smith filed a Memorandum drawing our attention to Environment Court proceedings commenced by Greater Wellington Regional Council (**GWRC**) related to the definition of stream mouths in the Proposed Natural Resources Plan (**PNRP**) that had not been mapped (and consequently, on the boundary of the coastal marine area (**CMA**) where it intersects those streams). Her memorandum attached GWRC's application and supporting material, together with the Environment Court's interim decision on the matter. Ms Smith noted that this is new information and sought leave for submitters with status on issues related to GIS mapping in the location of mean high water springs (**MHWS**) and the CMA boundary to file further representations/evidence in light of this information.
2. Separately, we have received both Council's response to the request we made at Minute 29 and, a brief reply on behalf of Titahi Bay Residents Association Inc, by Mr Ebbett, in relation to the definition of MHWS at Titahi Bay Beach.
3. The purpose of this Minute is to address these various communications.

Environment Court Proceedings

4. Our reading of the material provided to us by Ms Smith indicates as follows:
 - The PNRP maps the mouths of a selected number of larger rivers and streams, from which the CMA boundary has been derived (and

mapped) based on the formula contained in the definition of the CMA in the RMA;

- That leaves a large number of smaller streams unmapped, and the PNRP provides no guidance as to where either the stream mouth or the CMA boundary is in such cases;
- The Regional Coastal Plan previously provided a deeming provision whereby the mouth of such small streams was taken to join MHWS either side of the stream mouth;
- A provision to the same effect was inadvertently omitted from the PNRP;
- GWRC sought to avoid the costs both of mapping the large number of streams affected, or of imposing the costs of survey on parties wishing to undertake activities in the vicinity of the stream mouths, by inserting the same deeming provision as was previously contained in the Regional Coastal Plan. This was described to the Court as allowing a pragmatic assessment to be made by the Regional Council;
- In its Decision dated 12 January 2022 ([2022] NZEnvC 1), the Environment Court agreed with the substance of GWRC's application, but identified a jurisdictional problem in granting the relief GWRC sought (a direction under Section 293 of the RMA) and accordingly sought further input from GWRC – we note that in a subsequent decision ([2022] NZEnvC 39), the Environment Court has made the direction sought pursuant to Section 292 of the RMA, which will take effect upon the PNRP becoming operative, which we understand to be imminent.

5. Clearly Ms Smith is correct, and this is new information post-dating the hearing of her submission in relation to mapping of MHWS in Stream 1. What is less clear to us is what relevance it has to that submission (and to other submissions that may have been made raising like points).
6. We invited the Council to respond to Ms Smith's Memorandum. The Council's response was that this is a GWRC jurisdictional matter on which the Council had no substantive comment, but that it considered Stream 1 closed as it relates to the PDP.
7. The Council may be correct in that this is solely a matter for GWRC and (implicitly) does not raise any new issues for the PDP, but we do not think that we are in a position to reach that conclusion at this point. Specifically,

there is an aspect of the case GWRC made to the Environment Court that is troubling us, and that we think that we need to clarify before determining whether we should seek input from submitters.

8. The GWRC application analysed the effect of the deeming provision sought to be inserted in the PNRP as avoiding the need for case by case surveys to ascertain the location of the CMA boundary (by using MHWS either side of the unmapped streams as the reference point for determining the location of the mouths of those streams, from which the location of the CMA boundary crossing the streams might then be derived by application of the formula stated in the definition of the coastal marine area- that the CMA boundary is five times the width of the stream mouth upstream, or one kilometre upstream, whichever is the lesser). However, our understanding is that the PNRP does not map the CMA other than at selected locations (that include Titahi Bay Beach) 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.
9. Assuming that advice is correct, it appears to us that the effect of the direction made by the Court (once it takes effect) is to remove the possibility that the mouth of an unmapped stream might be located somewhere other than at MHWS, but except in those locations where MHWS has been mapped, it does not remove the need to undertake a site specific survey of MHWS when relevant, because the application of the deeming provision requires the line of MHWS either side of the an unmapped stream mouth to be located, in order in turn that the CMA boundary upstream can be established.
10. As the Council has observed, this is a jurisdictional matter for GWRC and therefore it is appropriate that we ask GWRC whether our understanding of the position, as above, is correct, and if not, to explain in what respects our understanding is in error.
11. We request that GWRC file a Memorandum clarifying the position, as above by close of Friday 29 April. If that timing is problematic, GWRC is requested to advise the hearing administrator when it will be able to respond in writing.
12. When we have GWRC's clarification, we will consider afresh, Ms Smith's request that interested submitters have the opportunity to provide input. We should note that our current intention would be to provide limited leave for interested parties to comment, but we will confirm that when GWRC's feedback is in hand and we have had an opportunity to consider it.

MHWS at Titahi Bay

13. As above, we have comment both from the Council and from Titahi Bay Residents Association in relation to the revised map of the CMA boundary at Titahi Bay Beach.
14. Council advises that GWRC confirms that in its view, the revised map we have been provided with is correct. Mr Ebbett on behalf of the Residents Association asserts that the revised map “*is an illegal substitution for the Court-ordered Map 35*” and that the matter remains unresolved.
15. As Mr Ebbett observes, this is a matter between GWRC and the Residents Association. We have a map that we have been told by the Council is correct, after checking with GWRC. Mr Ebbett has not provided us with an alternative map. We do not think that we can take the matter any further ourselves.
16. However, because of the complications created by the 2021 Amendment to the RMA, it is likely that our decisions will not be released for some time. The Residents Association therefore has the opportunity to pursue its disagreement with GWRC, and to obtain direction from the Court if it is unable to persuade GWRC of the correctness of its position. We will have the ability to reflect any further revisions in the boundary of the CMA at Titahi Bay Beach from what we have already been provided with in our final decisions.

Dated 21 April 2022



**Trevor Robinson
Chair
For the Proposed Porirua District Plan Hearings Panel**