

**Before the Environment Court
At Wellington
I Mua I te Kōti Taiao
Te Whanganui-a-Tara Rohe**

ENV-2019-346-103

Under Clause 14 of Schedule 1, Section 310, and Section 293 of
the Resource Management Act 1991

In the matter of appeals on the Proposed Natural Resources Plan

And

In the matter of an application for a declaration and consequential orders

Between **Various**

Appellants

ENV-2019-000103, 105-133

And **Wellington Regional Council**

Respondent

ADA
Affirmation

**Affidavit of Iain Nicholas Dawe in support of section 293 application to
correct error in Proposed Plan - definition of river 'mouth'**

Sworn: ~~September~~ 2021

1 October



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I, **Iain Nicholas Dawe**, Senior Policy Analyst (Hazards and Coasts), Wellington Regional Council, solemnly and sincerely affirm:

- 1 My full name is Iain Nicholas Dawe.
- 2 I am authorised to make this affidavit on behalf of the Wellington Regional Council (**Council**) in support of its application for a declaration in relation to the location of river mouths in the Wellington Region, and consequential relief under section 293 of the Resource Management Act 1991 (**RMA**) to reflect that declaration in the Proposed Plan.

Qualifications and experience

- 3 I am a Senior Policy Advisor in natural hazards and coasts for the Wellington Regional Council. I have been employed at the Council since 2006.
- 4 I hold a BSc in geography/geology, an MSc with 1st class Honours in environmental sciences with a thesis specialising in coastal geomorphology and a PhD specialising in coastal processes, sediment transport and process geomorphology of mixed sand and gravel beaches, from the University of Canterbury.
- 5 I have been a member of the New Zealand Coastal Society for 20 years, an affiliated group of Engineering New Zealand (*fm.* Institute of Professional Engineers New Zealand) and for which I was the Wellington Regional Coordinator for 10 years from 2007-2017.
- 6 Currently I am the chair of the national Hazard Risk Management Special Interest Group that represents regional councils across New Zealand. The SIG group advocates for integrated hazards management across the local and central government sectors in areas of hazards planning and research.
- 7 As the natural hazards and coasts policy analyst for the Council I provide scientific analysis, commentary and research into natural




hazards that affect the Greater Wellington Region and to write and/or provide expert advice and evidence for hearings, the Environment Court and policy that deals with managing the risks from natural hazards. I provide advice to policy analysts, resource managers, consents officers, engineers and elected councillors in the Region, and to business's and the wider public.

8 I was team leader writing the natural hazards section of the Regional Policy Statement and was a team coordinator for the review of the natural hazards sections of the Proposed Natural Resources Plan (PNRP). I provided broader input into the review of the coastal provisions and was responsible for undertaking or managing and reviewing much of the GIS mapping work in the PNRP.

9 In this affidavit I discuss the error in the PNRP in respect of how river mouths are identified, and the correction sought in respect of the same.

Code of conduct

10 I have read the Code of Conduct for Expert Witnesses set out in the Environment Court's Practice Note 2014. I have complied with the Code of Conduct in preparing this affidavit. My qualifications are set out above. Except where I state I rely on the evidence of another person, I confirm that the issues addressed in this affidavit are within my area of expertise, and I have not omitted to consider material facts known to me that might alter or detract from my expressed opinions.

The Proposed Natural Resources Plan

11 The PNRP is an integrated plan and will replace the five operative regional plans for managing the coast, soil, discharges to land, fresh water and air, including the operative Regional Coastal Plan (RCP). Council's intent in combining the operative regional plans into a single integrated plan reflects the Council's desire to manage the Region's natural and physical resources in a holistic manner.



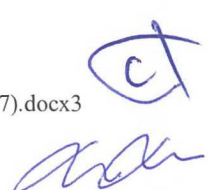
- 12 The PNRP was prepared over a six-year period and was publicly notified on 31 July 2015. Two hundred and fifty-five submissions were received by the closing date of 25 September 2015. A summary of decisions requested by submitters was notified on 26 February 2016.
- 13 The formal hearing proceedings were conducted between 22 May 2017 and 1 August 2018. Council gave notice on 31 July 2019 that it had made its Decisions on the provisions and matters raised in submissions on the PNRP.
- 14 The period for filing appeals with the Environment Court closed on 18 September 2019. The period for lodging any section 274 notice to join an appeal closed on 9 October 2019. A total of 30 notices of appeal were filed with the Environment Court. Appeals not resolved through mediation are due to be heard by the Environment Court in November and December 2021.

The error

- 15 Through the appeals process on the PNRP, an omission was discovered for identifying the 'mouth of the river' for the purpose of delineating the landward boundary of the coastal marine area where the line of mean high-water springs crosses a river.
- 16 The coastal marine area is defined in Part 1, section 2 of the Resource Management Act 1991 (**RMA**) as:

coastal marine area means the foreshore, seabed, and coastal water, and the air space above the water—

- (a) of which the seaward boundary is the outer limits of the territorial sea:
- (b) of which the landward boundary is the line of mean high water springs, except that where that line crosses a river, the landward boundary at that point shall be whichever is the lesser of—
 - (i) 1 kilometre upstream from the ***mouth of the river***; or
 - (ii) the point upstream that is calculated by multiplying the width of ***the river mouth*** by 5 (*my emphasis*)



17 The Operative Regional Coastal Plan for the Wellington Region includes the following text after its list of specified river mouths and coastal marine area boundary locations:¹

For the remaining rivers in the Wellington Region, 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.

18 This text, or an equivalent has been omitted in error from the PNRP. Whilst the main river mouths boundaries have been agreed to and are mapped in the PNRP (Maps 42-48), many smaller river mouths and stream boundaries have not been mapped and the landward extent of the coastal marine area is not delineated.

19 The river mouth boundaries in Maps 42 to 48 and their associated coastal marine area boundaries were developed in consultation with the Department of Conservation and territorial authorities during the regional coastal plan development in the late 1990's.

20 There are over 320 river and stream mouth outlets around the Wellington Region that flow over the mean high water springs boundary into the coastal marine area , of these, 25 have scheduled river mouth and coastal marine areaboundaries (about 7.5%). For the remainder, it was deemed not feasible to undertake a consultation programme to determine the river mouth and coastal marine area boundaries for every other river and stream that flows into the coastal marine area and that the most efficient and effective approach was to continue using the method established in the operative RCP.

21 Council decided not to renegotiate the existing scheduled river mouth boundaries for the PNRP and they were 'rolled-over' from the operative RCP. The mapped rivers were selected because they are managed for flood protection purposes (e.g., flood schemes, stop banks, mouth dredging, mouth cutting, mouth clearance), and the need to define legal

¹ Regional Coastal Plan, p221.



boundaries in order to know what rules apply (i.e., freshwater or coastal rules).

22 Therefore, the landward boundary of the coastal marine area at many river and stream mouths cannot be determined using the term as set out in Part 1 of the RMA, as it is measured from the 'mouth' of the river and relies on the location of the mouth of the river being defined.

23 'Mouth' is defined in Part 1 of the RMA to mean either:


- (a) as agreed and set between the Minister of Conservation, the regional council, and the appropriate territorial authority in the period between consultation on, and notification of, the proposed regional coastal plan; or
- (b) as declared by the Environment Court under section 310 upon application made by the Minister of Conservation, the regional council, or the territorial authority prior to the plan becoming operative,—

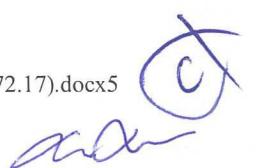
and once so agreed and set or declared shall not be changed in accordance with Schedule 1 or otherwise varied, altered, questioned, or reviewed in any way until the next review of the regional coastal plan, unless the Minister of Conservation, the regional council, and the appropriate territorial authority agree.

24 The 'mouth' location for a number of rivers (except those in Maps 42-48) in the Wellington Region were not confirmed during the period between consultation on and notification of the PNRP. Accordingly, for the coastal marine area to be determined in reliance on the provisions of the PNRP, this error needs to be remedied.

The consequence of the error

25 The primary consequence of the error is the uncertainty it creates for plan users and Council in determining where the coastal marine area boundary is in relation to river mouths (and therefore whether the regional coastal plan provisions² apply). This uncertainty in turn causes potentially undue cost to the applicant to determine where the coastal marine area boundary is located in relation to a particular river or stream

² Identified with a 'coastal icon' 



mouth. This cost to resource users is outlined more fully below in the section 32 assessment for this application.

- 26 A potential jurisdictional consequence may result from this error, in regard to which territorial authority controls land use activities in this area - does the PNRP apply over the area in question or the relevant city or district plan? This consequence is particularly important for structures (bridges, culvert, pipes, and drainage structures) that are placed in, on, under or over rivers in close proximity to the coastal marine area or upstream of the current coastal marine area boundary. This is pertinent for Councils such as the Kāpiti Coast District Council who administer (and maintain) many structures in this zone.
- 27 Further, there are uncertainties created for Council in the consideration of resource consent applications. For example, the PNRP has different standards for discharges to freshwater and coastal water. If the coastal marine area boundary has not been identified, this places an uncertainty on which discharge standard is to apply at these locations and which objective is to be met for the application to proceed.
- 28 The main parties affected are Territorial Authorities and Wellington Regional Council and to a lesser degree, infrastructure providers, Department of Conservation and landowners with streams that flow through their properties. In the past 20 years since the RCP has been operative, the approach has mainly been invoked to determine what rules apply for works being undertaken in the lower courses of streams close to the coastal marine area. The approach is efficient as it allows a pragmatic assessment to be made by Council, without territorial authorities, landowners and infrastructure providers having to commission surveys every time a determination of the mean high water springs is required.
- 29 Common activities undertaken in these situations includes, damming and diversion of water and disturbance for flood protection purposes (e.g., clearing blocked streams, mouth cutting), gravel extraction (i.e., for aggregate or flood protection purposes) and culvert or stormwater outfall maintenance and/or replacement. These activities are most



commonly undertaken by territorial authority's, and occasionally by infrastructure companies such as Wellington Water or Waka Kotahi. For landowners in remote locations (i.e., eastern Wairarapa), they are required to manage river mouths for their own operations as in most case these rivers and streams do not affect council or company infrastructure.

The proposed amendment

30 In order to remedy the above, the Council proposes that the following text be inserted into the PNRP:

Maps 42 to 48 show where the Coastal Marine Area and river mouth boundaries are located. For the remaining rivers in the Wellington Region not shown on Maps 42 to 48, 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.

The Coastal Marine Area means the foreshore, seabed, and coastal water, and the air space above the water—

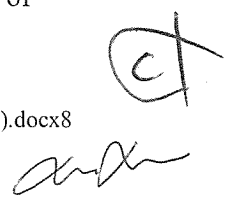
- (a) of which the seaward boundary is the outer limits of the territorial sea:
- (b) of which the landward boundary is the line of mean high water springs, except that where that line crosses a river, the landward boundary at that point shall be whichever is the lesser of—
 - (i) 1 kilometre upstream from the mouth of the river; or
 - (ii) the point upstream that is calculated by multiplying the width of the river mouth by 5.

31 The proposed text outlining where the coastal marine area is located for unmapped rivers and streams, and the definition of the coastal marine area from Part 1, section 2 of the RMA should be included in Chapter 13 of the PNRP and placed immediately above Map 42 (immediately below the heading which reads: 'Coastal marine area and river mouth boundaries'). This location would provide plan users and Council with the appropriate information regarding those rivers or streams not shown on maps 42-48 and the ability to determine the landward boundary of the coastal marine area as defined in section 2 of the RMA.

32 In my view, this would remedy the error outlined above.

Steps taken once discovering the error

- 33 Upon discovering the error, the Council followed a series of steps to confirm this error was in the PNRP as notified on 31 July 2015 and that this error did not arise through amendments made in the Decision's version of the PNRP.
- 34 After confirming the error in the PNRP (Decision version) the Council needed to determine if any appeal point within any Notice of Appeal would provide scope for the remedying the error. In this regard, the Council assessed all of Notices of Appeal that could relate to this error, including other appeal points related to the coastal marine area and river mouth boundaries. The Council can confirm that there are no appeal points that provide scope for this error to be remedied through the appeals process.
- 35 After confirming there was no avenue through the appeal process, the Council's next step was to raise the error with the Minister of Conservation and the relevant territorial authorities and seek their approval (as set out in paragraph 16 above and section 2 of the RMA) with a view to proceeding with this section 293 application.
- 36 The Council contacted the Minister of Conservation and territorial authorities by email and follow-up phone calls. Council received confirmation from all parties that they agreed an error had occurred between the operative regional coastal plan and the PNRP with the wording on river mouth boundaries omitted from the later. The parties agreed with the above proposed resolution to the error; to insert the missing paragraph into the PNRP to give certainty to plan users in determining the landward boundary of the coastal marine area and therefore which PNRP provisions apply to an activity.
- 37 A Memorandum of Counsel on behalf of the Wellington Regional Council updating the Court on this matter (23 April 2021) highlighted the concern and the Council's intention to seek that the Court utilise section 293 of the RMA to correct the PNRP through the inclusion of

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the paragraph. That memorandum gave the Court and all parties to the PNRP appeals process notice of the Council's intentions.

Section 32 analysis

38 The Section 32 evaluation for this application is below.

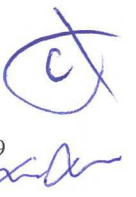
39 Section 32(1)(a) requires an evaluation of the whether the objective of the proposal is the most appropriate way to meet the purposes of the Act. The purpose of the proposal is to provide certainty to plan users and resource consent applicants as to the location of the MHWS boundary at river and stream mouths in the Region not otherwise provided in Maps 42 to 48. I consider that this proposal is the most appropriate way to achieve the purpose of the Act.

40 Section 32(1)(b)(i) requires identification of other reasonably practicable options for achieving the relevant objective.

40.1 There are four main options that could be employed to remedy this error. The first is to wait until the next plan change for the PNRP. This option however is not a reasonably practicable option, as plan users and the Council cannot make decisions about where the coastal marine area boundary is at river mouths in the Region, except where they are already identified in Maps 42 to 48.

40.2 The second option is to map the coastal marine area boundary for all rivers and streams that enter the coast. This option however would time consuming and expensive to undertake given the high number of rivers and streams that enter the coast.

40.3 The third option is to require landowners, councils and infrastructure providers to map or survey the mean high water springs every single time an activity or development is proposed in the vicinity of the river mouth. This would impose a high cost to applicants and result in lengthy delays



to allow time for a surveyor to undertake the work and present the results before any consenting could continue. Typical costs for a mean high water survey are in the order of several thousand dollars.

40.4 The fourth, and in my assessment, the most reasonably practicable option is to proceed with the declaration and section 293 application to insert the relevant paragraph into the PNRP.

41 Section 32(1)(b)(ii) requires an assessment of the effectiveness and efficiency of the proposal. I consider it is effective and efficient to implement this amendment in the PNRP to remove any confusion relating to the location of the coastal marine area boundary at river mouths not shown on Maps 42-48. This is the most efficient option to remedy this error as quickly as possibly through this s293 application, rather than the alternative of waiting for the next plan change.

42 Section 32(2)(a) requires an assessment of the costs of the environmental, social and cultural effects which are anticipated from the implementation of the amendment. I consider that the costs of making the amendment to the PNRP to identify the location of the coastal marine area boundary at river mouths not shown on Maps 42-48 is extremely limited. The amendment will not change the framework which will apply, instead it will remove uncertainty, and the costs which arise from that uncertainty.

43 Section 32(2)(b) requires an assessment of the benefits (environmental, economic, social and cultural) of the proposed application. The benefit to Council and plan users is in providing certainty regarding the position of the coastal marine area boundary at river mouths for resource consent applicants or in providing general advice to plan users. Further, there are benefits to ratepayers in the Region that do not have to pay for additional survey work that would be required for Council to establish the boundary of the coastal marine area at river mouths not already mapped by the PNRP (i.e., Maps 42 to 48). This is relevant for




- situations where the Council is the resource consent applicant i.e., for flood protection activities.
- 44 I consider the risk of 'acting' to be low for this application. There is potential for confusion and uncertainty if this application is not proceeded with in terms of providing a clear direction to plan users.
- 45 I consider the risk of 'not acting' (not including a means to identify the landward boundary of the coastal marine area where it crosses rivers) to be far greater. If this error is not addressed, there will be a high cost to individual resource consent applicants where they need to identify the boundary of the coastal marine area. This cost could be substantial and would be twofold in that it would require surveying the coastal marine area boundary at a river mouth in question and add to the resource consent processing time that is charged back to the applicant.
- 46 There is potentially a moderate-high cost to the environment if no action is taken. River mouths are typically sensitive and important ecosystems in the environment and commonly have high biodiversity values. The coastal rules in the PNRP have been developed to recognise the values these areas have, and it is important to ensure the correct rules are applied to ensure good kaitiakitanga/stewardship of these high value ecosystems.
- 47 I consider that the proposed amendment to insert new paragraphs into the PNRP is the most appropriate way to achieve the purpose of the RMA.
- 48 In conclusion, the proposed amendment is the most appropriate provision.

Affirmed

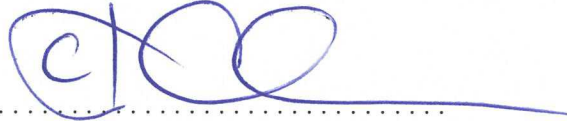
~~Sworn~~ at Wellington

on ~~1st~~ September 2021

before me: ~~October~~



Iain Nicholas Dawe



Solicitor of the High Court of New Zealand

Anita Kim Miller
Solicitor
Wellington

