

**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

Memorandum of Counsel supporting application for directions as to service

Date: 17 September 2021



Level 4, 20 Customhouse Quay, Wellington 6011
PO Box 2791, Wellington 6140
DX SP20002, Wellington
Tel +64 4 472 6289
Fax +64 4 472 7429

Solicitor on the record
Contact solicitor

Kerry Anderson
Emma Manohar

kerry.anderson@dlapiper.com
emma.manohar@dlapiper.com

Tel +64 4 474 3255
Tel +64 4 918 3016

MAY IT PLEASE THE COURT

INTRODUCTION

- 1 The Wellington Regional Council intends to apply for a declaration under section 310(e) of the Resource Management Act 1991 (**RMA**) determining the location of unmapped river 'mouths' in the Proposed Natural Resources Plan for the Wellington Regional (**PNRP**).
The declaration to be sought is:

When determining the location of a river mouth 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.

- 2 As consequential relief to implement the declaration (if granted by the Court), the Council also intends to apply for an order under section 293 of the RMA to amend the PNRP to include a provision setting out how the location of unmapped river mouths are determined in Chapter 13 of the PNRP, placed immediately above Map 42 (below the heading which reads: 'Coastal marine area and river mouth boundaries'). The provision is as follows:

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

- 3 The Council has also applied for directions as to service of these applications. It is submitted that the requirements of the RMA will be satisfied if it is served on the Minister of Conservation, territorial authorities within the Wellington Region and those parties who filed an appeal or section 274 notice on the PNRP, but not the broader public.

SERVICE

Requirements

- 4 For a declaration, under section 312(1) of the RMA, the Council must serve notice of the declaration on every person 'directly affected' by the application.

- 5 The Environment Court in *Canterbury Regional Council v Department of Conservation* held that the term 'affected' meant an 'appreciable effect more than minimal, one that differentiates the person from a generality in order to define the direct effect'. Whether a party is directly affected is a matter requiring examination in every case.

EnvC C081/04.
See also High Court in *BP Oil Ltd v Taupo District Council* HC Hamilton M300/85, 31 January 1989

- 6 For a section 293 application, the Court can direct consultation with the 'parties and other persons that the Court directs'. Section 293(1)(b) of the RMA

Consultation

- 7 As set out in the affidavit of Dr Dawe, some consultation has already taken place. The Minister of Conservation and Territorial Authorities within the Wellington Region have been contacted by the Council, to provide an update on the issue and the proposed amendment to the PNRP to address the issue. Those parties have confirmed agreement that an error has occurred in terms of the definition of river mouth in the PNRP and agreed with the Council's proposed amendment to the PNRP to address the error. However, there is still the issue of service of this application for declaration and consequential order under section 293 to provide for the amendment. Affidavit of Dr Dawe at [35] & [36]
- 8 A Memorandum of Counsel on behalf of the Wellington Regional Council updating the Court on this matter (23 April 2021) identified the error and the Council's intention to seek that the Court utilise section 293 of the RMA to correct the PNRP through the inclusion of the paragraph set out at paragraph 2 above. That memorandum gave the Court and all parties to the PNRP appeals process notice of the Council's intentions. No responses or correspondence was received in relation to this issue.

Parties that are directly affected

- 9 The Council submits that the people that should be served with this application are:

- 9.1 The Minister of Conservation.
- 9.2 All Territorial Authorities in the Wellington Region with a coastline, being Hutt City Council, Porirua City Council, Wellington City Council, Carterton District Council, Kapiti Coast District Council, Masterton District Council, South Wairarapa District Council, and part of Tararua District Council. The only Territorial Authorities not included is the Upper Hutt City Council, as its district does not include a coastline.
- 9.3 All appellants and section 274 parties on the PNRP.
- 10 It is submitted that this group will capture the authorities who may be impacted by the change of geographical jurisdiction.
- 11 It also provides notification to those parties who are involved in the proceedings which provide a basis for this application.
- 12 In terms of any other party which may be 'affected', Council has considered what the impact might be on a person who might be contemplating an activity which this may impact on. The affidavit of Dr Dawe also considers which parties are affected by the error.
- 13 It is submitted that the only change will be for an activity which is occurring in a river, or the bed of a river near the river mouth, where that river mouth is not mapped by the PNRP. Under the PNRP, there is no way of determining where the landward boundary of mean high water springs is in those situations, and a

Affidavit of Dr
Dawe at [25] -
[29]

declaration would need to be sought to provide that certainty.

14 However, as the Operative Regional Coastal Plan is still in effect, it provides useful guidance as to where this is, and the sensible approach, and one that has been adopted by Council, is that the river mouth is a straight line representing the continuation of the line of mean high water springs on each of the river.

15 This is the same approach as is now sought through these applications. As such, general plan users will not be adversely affected and therefore do not need to be notified of this application. Regardless, given that the appeals are live, the Council is suggesting that the appellants and section 274 parties be notified as they have shown to be invested in the PNRP more generally.

Directions sought

16 Accordingly, directions are sought from the Court that this matter should be served on the Minister of Conservation, the Territorial Authorities in the Wellington Region, and all appellants and section 274 parties on the PNRP.

Date: 17 September 2021



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K Anderson/K Rogers
Solicitor for Wellington Regional
Council