

Summary of Oral Submission to Panel by John Reardon, Submitter 724

1. This Submission is confined to comments on the Waikanae River but is relevant to all rivers and river banks.
2. The mouth of the Waikanae River is defined as being at the north tip of the rock groyne on the south bank (true left); see annexure 1.
3. Coast and rivers have different statutory context: rivers come under Soil Conservation and Rivers Control Act 1941 (SCRC 1941).
4. The Shand Report and PDP etc all proceed as if the coast and rivers have the same statutory context. This leads authors to infer they have the option of not managing erosion on river banks, in the same way as they intend not to manage erosion on the coast.
5. Not correct: SCRC 1941 imposes mandatory obligations on regional councils to comply with this Act. See annexure 2:

s 10 Objects:...to prevent... soil erosion; prevent damage by floods;
etc

s 126(1) “It shall be a function of every [Regional Council] to minimise and prevent damage within its district by floods and erosion.” (“shall” denotes mandatory)

The [Regional Council] has all the powers necessary for:

s 126(2)c “Preventing or lessening any likelihood of the overflow or breaking of the banks of any watercourse.”

S 126(2)e “Preventing or lessening erosion...”

6. In summary, the Regional Council MUST manage the rivers in its region, and this explicitly means preventing or acting to lessen the overflow and erosion of the banks.

7. There appears to have been no co-ordination between the District Council and the Regional Council in KCDC's response to the Shand Report. The Shand Report is well known for its two scenarios of managed lines and unmanaged lines. But in the case of rivers, all management must be done by the Regional Council. When the Shand Report was published, KCDC sent affected landowners a letter dated 25 August 2012 saying that "Council was required to place this information on any land information memorandum requested for your property." We objected to the unmanaged lines being placed on the LIM, because we knew that the river was being managed. We suggested to the CE of KCDC that he obtain a letter from the Regional Council confirming that their policy was to manage the river. The CE did that; and the Regional Council sent a letter dated 29 October 2012 confirming that it had a ten year plan to continue management of the river and that it "would expect this to continue in subsequent plans." It noted that, up to now, management has been confined to occasional mouth cutting of the Waikanae River and maintenance of the rock groyne, because that is all that is presently required.

8. We then received a further letter from KCDC dated 10 December 2012, saying that KCDC had modified the wording in regard to erosion risk for inlets. But the enclosed modified map was as bad, if not worse, because it created a "shaded" area up to the former unmanaged line that was in fact coloured blue, implying that all the land will be inundated by the sea. See annexure 3.

9. The result is:
 - a) The unmanaged lines may have relevance for the shoreline, but not for river banks, because of the different statutory regime.

- b) It is irrational for KCDC to provide in its Proposed District Plan for a scenario where the river banks are unmanaged, because this assumes that the Regional Council will break the law. And it flies in the face of the assurance from the Regional Council that it will continue to manage the river. (Court will overturn an irrational decision).
- c) The managed lines in KCDC's Proposed District Plan are also unreliable. If damage to river banks increases over time, or they erode, the Regional Council has a statutory duty to respond to prevent or lessen that damage.
- d) It is irrational for KCDC to assume on the one hand that the Regional Council will continue with its minimal management of mouth cutting (because that is the only management work required at present), but on the other hand say in its PDP that the river banks will fail under this minimal management. (The PDP envisages that the north bank of the river will fail and erode north to Waiheke Street.) That is because this scenario assumes that the Regional Council will break the law and not respond to threats to the river bank if they occur in the future.

10. We have repeatedly been told in public statements that the Shand Report is good science and has been peer reviewed etc. The implication is that mere residents cannot challenge it or the coastal section of the subsequent PDP. But, like a lot of science, the Report is based on assumptions, sometimes hidden assumptions. I do not mean anything sinister by that; I mean assumptions that the author himself has unconsciously made. This submission draws attention to two such assumptions, one by Dr Shand, and one by the author of the PDP:

- a) Dr Shand assumes that KCDC has the option not to manage the river banks, in the same way as it can choose not to manage the shoreline. There are several mistakes underlying his assumption:

-he seems to be unaware that the SCRC 1941 imposes a statutory duty to manage river banks from the mouth landwards;

-he seems to think that KCDC is the authority that makes decisions about whether to manage the river banks, when that power is exclusively given to the Regional Council.

- he seems to be unaware that the Regional Council intends to continue managing the river.

-Dr Shand's "managed" lines along the north bank of the Waikanae River (Figure 4.9B) explicitly envisage that the current river banks have completely failed, and that the banks have eroded north to Waiheke Street. Dr Shand does not disclose what "management" brings the erosion of the banks to these new "managed" lines. At para 4.4.8(6) of his Report he says,

"As with the rest of the north Kapiti coast, the open coast shorelines on both sides of the inlet are unmanaged, so both natural and managed inlet erosion offsets (from the IMCs) are calculated using unmanaged open coast component values."

This quote seems to mean that Dr Shand is treating the banks of the Waikanae River inlet as part of "the open coast shoreline." Of course, he is wrong to do so in regard to the landward side of the mouth, because of the SCRC 1941. The lines he draws go upstream of the mouth: figure 4.9B.

Secondly, the quote is confusing: he appears to say he has calculated the managed lines as if the banks were unmanaged. This explanation owes more to the tradition of Kafka than Newton. In any event, he does not disclose what level of management he bases his managed lines on, in regard to the river bank; if calculated on current management, see next para b):

b) The author of the PDP assumes that the Regional Council's minimal level of management of the river will continue exactly as it is, for the next 100 years, notwithstanding the dramatic erosion to the river bank envisaged in the PDP. This assumption is irrational.

11. I therefore ask the Panel to recommend the following changes:

- a) That the unmanaged lines be removed from the landward side of the river mouth, on the basis that the river banks will be managed by the Regional Council.
- b) That the 50 and 100 year managed lines on the landward side of the river mouth, derived from the Shand Report at Figure 4.9B, be withdrawn from the PDP in the meantime, on the basis that these are in fact calculated on no management, and the Regional Council has a statutory duty of "preventing or lessening the breaking of the banks" of the river, and therefore that the management of the river will necessarily increase in response to the increased threats envisaged by the PDP.
- c) That KCDC should liaise with the Regional Council from time to time on what actual management the latter intends to undertake. Until the Regional Council decides what management it will undertake in the river, in response to climate change, there is no factual foundation on which Dr Shand or KCDC can base calculations for managed lines.
- d) That it is irrational for KCDC to base calculations for 50 and 100 year managed lines on the Regional Council's current management, because the current management is not responding to any threat from climate change. It is irrational for KCDC to assume that the Regional Council will have absolutely no response over the next 100 years to climate change as it may affect the river or river banks.

