

In the Environment Court of New Zealand
Christchurch Registry

I Mua I Te Kōti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-285

Under	the Resource Management Act 1991
In the matter of	an appeal under clause 14(1) of the First Schedule of the RMA in relation to the proposed Second Generation Dunedin City District Plan (2GP)
Between	The Preservation Coalition Trust Appellant
And	Dunedin City Council Respondent

Report from Counsel for Dunedin City Council related to conferencing

2 December 2019

Respondent's solicitors:

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**anderson
lloyd.**

May it please the Court

- 1 This report is in response to the Directions following the teleconference issued on 14 November 2019.

Draft agenda

- 2 A draft agenda was circulated by the Appellant. A copy of that version is attached as **Annexure 1**.
- 3 This draft agenda has raised a scope issue relating to the extent of the coastal overlay proposed by the Appellant. It is noted that the Appellant was directed to serve a plan showing the extent of the coastal overlay they are seeking by way of relief (Direction 7(b)(iii) dated 14 November 2019). This has not been provided although the draft agenda referred to a plan attached to a previous Dunedin City Council landscape report. That report showed the extent of the "coastal environment" which includes a large extent of the coastal marine area (outside the Dunedin City Council jurisdictional boundary) and the entire length of the Dunedin City coastline. Dunedin City Council considers that the Appellant's submission only sought a new "coastal overlay" to be applied to identified areas identified in its submission, being the Portobello Peninsula and the township and settlement zones from the Harington Point Road and Tidewater Drive intersection, extending towards Taiaroa Head. Therefore Dunedin City Council has made comments on the draft agenda and sent those to the Appellant and all parties. At the time of writing this report agreement has not been reached on that draft agenda so the Dunedin City Council's version is attached and proposed as **Annexure 2**. The changes made by the Dunedin City Council are shown as strikethrough and underlined.
- 4 There is an extensive difference in the scope of conferencing between these two areas. Dunedin City Council can only suggest at this stage that conferencing proceed to focus on the areas in the Council's agenda, being the area the Appellant submitted on.
- 5 Counsel for the Appellant has had opportunity to read this memorandum in draft; The Trust advises that it consents to caucusing on Council's more limited agenda, provided this is without prejudice to the Trust's position on scope and jurisdiction for wider relief sought.

Conferencing details

- 6 In terms of the other conferencing details Dunedin City Council reports:
 - (a) The witnesses attending are:
 - (i) Di Lucas – for Peninsula Coalition Trust;

- (ii) Mike Moore – for Dunedin City Council;
- (b) The estimated time required for conferencing is to allow two days.
- (c) The proposed dates that the experts are available are 12 and 13 December 2019 or 18 and 19 December as an alternative.
- (d) There are no specific facilities required.
- (e) Dunedin City Council has offered to make an administrative person available and proposes Kathryn Quill as a recorder available to attend the conference and prepare the joint witness statement under the direction of the experts.

Dated this 2nd day of December 2019



Michael Garbett
Counsel for the Respondent

LANDSCAPE CONFERENCING RE p2GP

There is no argument that Dunedin City includes important natural landscape and natural character. The questions are about their attributes, significance and extent. Once agreed, the appropriate management methods can be identified, that is, the zoning.

1. COASTAL OVERLAY

The coastal environment around the entire coastal length, urban and rural, has been delineated and is within the DCC database. The extent of the coastal environment was delineated for councils in 2015 (*Coastal Environment of Otago. Natural Character and Outstanding Natural Features and Landscapes Assessment Dunedin City Section Report* Mike Moore. 2015. Figure 1.) However this coastal overlay is not delineated within the 2GP and inclusion is sought.

Guidance for delineation of the coastal overlay is provided by NZCPS *Policy 1: Extent and Characteristics of the Coastal Environment*:

2. Recognise that the coastal environment includes:

- a. the coastal marine area;
- b. islands within the coastal marine area;
- c. areas where coastal processes, influences or qualities are significant, including coastal lakes, lagoons, tidal estuaries, saltmarshes, coastal wetlands, and the margins of these;
- d. areas at risk from coastal hazards;
- e. coastal vegetation and the habitat of indigenous coastal species including migratory birds;
- f. elements and features that contribute to the natural character, landscape, visual qualities or amenity values;
- g. items of cultural and historic heritage in the coastal marine area or on the coast;
- h. inter-related coastal marine and terrestrial systems, including the intertidal zone; and
- i. physical resources and built facilities, including infrastructure, that have modified the coastal environment.

As per NZCPS Policy 1, the area shown in the 2015 study at Figure 1 is assessed as in particular not adequately addressing:

- e. coastal vegetation and the habitat of indigenous coastal species including migratory birds;

- f. elements and features that contribute to the natural character, landscape, visual qualities or amenity values; or,*
- g. items of cultural and historic heritage in the coastal marine area or on the coast;*

The conferencing would review the adequacy of the attributes addressed in the 2GP and seek to agree on any revision.

The conferencing would address the council's current coastal overlay delineation, consider its adequacy in terms of NZCPS Policy 1, and seek to develop an agreed process to develop an adequate map for the 2GP.

To address the natural character, the natural features and/or the natural landscapes of the coastal environment, as per NZCPS Policies 13 and 15, the extent of the coastal environment first needs to be agreed.

2. ONL

Within the coastal environment, NZCPS Policy 15 requires:

c. identifying and assessing the natural features and natural landscapes of the coastal environment of the region or district, at minimum by land typing, soil characterisation and landscape characterisation and having regard to:

- i. natural science factors, including geological, topographical, ecological and dynamic components;*
- ii. the presence of water including in seas, lakes, rivers and streams;*
- iii. legibility or expressiveness – how obviously the feature or landscape demonstrates its formative processes;*
- iv. aesthetic values including memorability and naturalness;*
- v. vegetation (native and exotic);*
- vi. transient values, including presence of wildlife or other values at certain times of the day or year;*
- vii. whether the values are shared and recognised;*
- viii. cultural and spiritual values for tangata whenua, identified by working, as far as practicable, in accordance with tikanga Māori; including their expression as cultural landscapes and features;*
- ix. historical and heritage associations; and*

x. *wild or scenic values*

For other areas of the city, inland of the CEL, assessment is appropriate to identify attributes that would qualify an area as an outstanding natural feature or landscape, re s.6b, as per best practice. For PCET our preliminary assessment identified pONL extending beyond that delineated in the 2GP (typically referred to as Attachment 2).

Conferencing would involve agreeing on landscape attributes.

As per s.6b and Policy 15, the conferencing would then consider the adequacy of the ONL delineation in both the 2GP and in the pONL in Attachment 2, and identify what mapping or re-mapping may be appropriate.

3. RURAL RESIDENTIAL

As is recognised practice (Man of War), first the landscape is assessed and then management methods are identified.

Considering the area identified as pONL in Attachment 2, areas proposed in the p2GP to have Rural Residential zoning have been considered. As was provided in August 2019, areas where RR2 is assessed as an inappropriate method within the pONL were identified.

Once ONL areas have been agreed, and likely in a later session, conferencing would consider appropriateness of the RR2 areas we have identified as not appropriate within pONL.

Di Lucas

November 2019

Annexure 2

LANDSCAPE CONFERENCING RE p2GP

There is no argument that Dunedin City includes important natural landscape and natural character. The questions are about their attributes, significance and extent. Once agreed, the appropriate management methods can be identified, that is, the zonngzoning.

Questions for conferencing:

- (1) extent of coastal environment, whether it should be extended to give effect to the NZCPS in the locations submitted on, being the Portobello Peninsula, and the Township and Settlement zones between the Harington Point Road and Tidewater Drive intersection and extending towards Taiaroa Head (see paragraphs 4 and 5 of pages 48 and 49 of the Submission);
- (2) extent of ONL on map appended to PCT appeal, whether that is correctly identified;
- (3) whether identified values in appendix A3 and A5 for ONL and coastal environment overlays in 2GP need to be updated to reflect any changes arising from the mapping exercise in (1)-(2) above.

1. COASTAL OVERLAY

The coastal environment around the entire coastal length, urban and rural, has been delineated and is within the DCC database. The extent of the coastal environment was delineated for councils in 2015 (*Coastal Environment of Otago. Natural Character and Outstanding Natural Features and Landscapes Assessment Dunedin City Section Report* Mike Moore. 2015. Figure 1.) However this coastal overlay is not delineated within the 2GP and inclusion is sought as an overlay in the areas of the Portobello Peninsula (ONCC requested), and the Township and Settlement zones between the Harington Point Road and Tidewater Drive intersection and extending towards Taiaroa Head (NCC requested, see paragraphs 4 and 5 of pages 48 and 49 of Submissions).

Guidance for delineation of the coastal overlay is provided by NZCPS *Policy 1: Extent and Characteristics of the Coastal Environment*:

2. Recognise that the coastal environment includes:

- a. the coastal marine area;
- b. islands within the coastal marine area;
- c. areas where coastal processes, influences or qualities are significant, including coastal lakes, lagoons, tidal estuaries, saltmarshes, coastal wetlands, and the margins of these;

- d. areas at risk from coastal hazards;*
- e. coastal vegetation and the habitat of indigenous coastal species including migratory birds;*
- f. elements and features that contribute to the natural character, landscape, visual qualities or amenity values;*
- g. items of cultural and historic heritage in the coastal marine area or on the coast;*
- h. inter-related coastal marine and terrestrial systems, including the intertidal zone; and*
- i. physical resources and built facilities, including infrastructure, that have modified the coastal environment.*

As per NZCPS Policy 1, the area shown in the 2015 study at Figure 1 was prepared by a multi-disciplinary team of experts. This area is assessed as in particular considered by PCT as not adequately addressing the following values, which would need to be assessed by relevant experts:

- e. coastal vegetation and the habitat of indigenous coastal species including migratory birds;*
- f. elements and features that contribute to the natural character, landscape, visual qualities or amenity values; or,*
- g. items of cultural and historic heritage in the coastal marine area or on the coast;*

The conferencing would review the adequacy of the attributes addressed in the 2GP from values that have been identified by relevant experts and seek to agree on any revision.

The conferencing would address the council's current coastal overlay delineation, within the area described as the Portobello Peninsula, and the Township and Settlement Zones between the Harington Point Road and Tidewater Drive intersection and extending towards Taiaroa Head. consider its adequacy in terms of NZCPS Policy 1, and seek to develop an agreed process to develop an adequate map for the 2GP.

To address the natural character, the natural features and/or the natural landscapes of the coastal environment, as per NZCPS Policies 13 and 15, the extent of the coastal environment first needs to be agreed in these areas submitted on.

2. ONL

Within the coastal environment, NZCPS Policy 15 requires:

c. *identifying and assessing the natural features and natural landscapes of the coastal environment of the region or district, at minimum by land typing, soil characterisation and landscape characterisation and having regard to:*

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- ii. *the presence of water including in seas, lakes, rivers and streams;*
- iii. *legibility or expressiveness – how obviously the feature or landscape demonstrates its formative processes;*
- iv. *aesthetic values including memorability and naturalness;*
- v. *vegetation (native and exotic);*
- vi. *transient values, including presence of wildlife or other values at certain times of the day or year;*
- vii. *whether the values are shared and recognised;*
- viii. *cultural and spiritual values for tangata whenua, identified by working, as far as practicable, in accordance with tikanga Māori; including their expression as cultural landscapes and features;*
- ix. *historical and heritage associations; and*
- x. *wild or scenic values*

For other areas ~~of the city~~identified in the appeal (Attachment 2), inland of the CEL, assessment is appropriate to identify attributes that would qualify an area as an outstanding natural feature or landscape, re s.6b, as per best practice. For ~~PCET-PCT~~ our preliminary assessment identified pONL extending beyond that delineated in the 2GP (typically referred to as Attachment 2).

Conferencing would involve agreeing on landscape attributes in this area.

As per s.6b and Policy 15, the conferencing would then consider the adequacy of the ONL delineation in ~~both the 2GP and in~~ the pONL in Attachment 2, and identify what (if any) mapping or re-mapping may be appropriate.

~~3. RURAL RESIDENTIAL~~

~~As is recognised practice (Man of War), first the landscape is assessed and then management methods are identified.~~

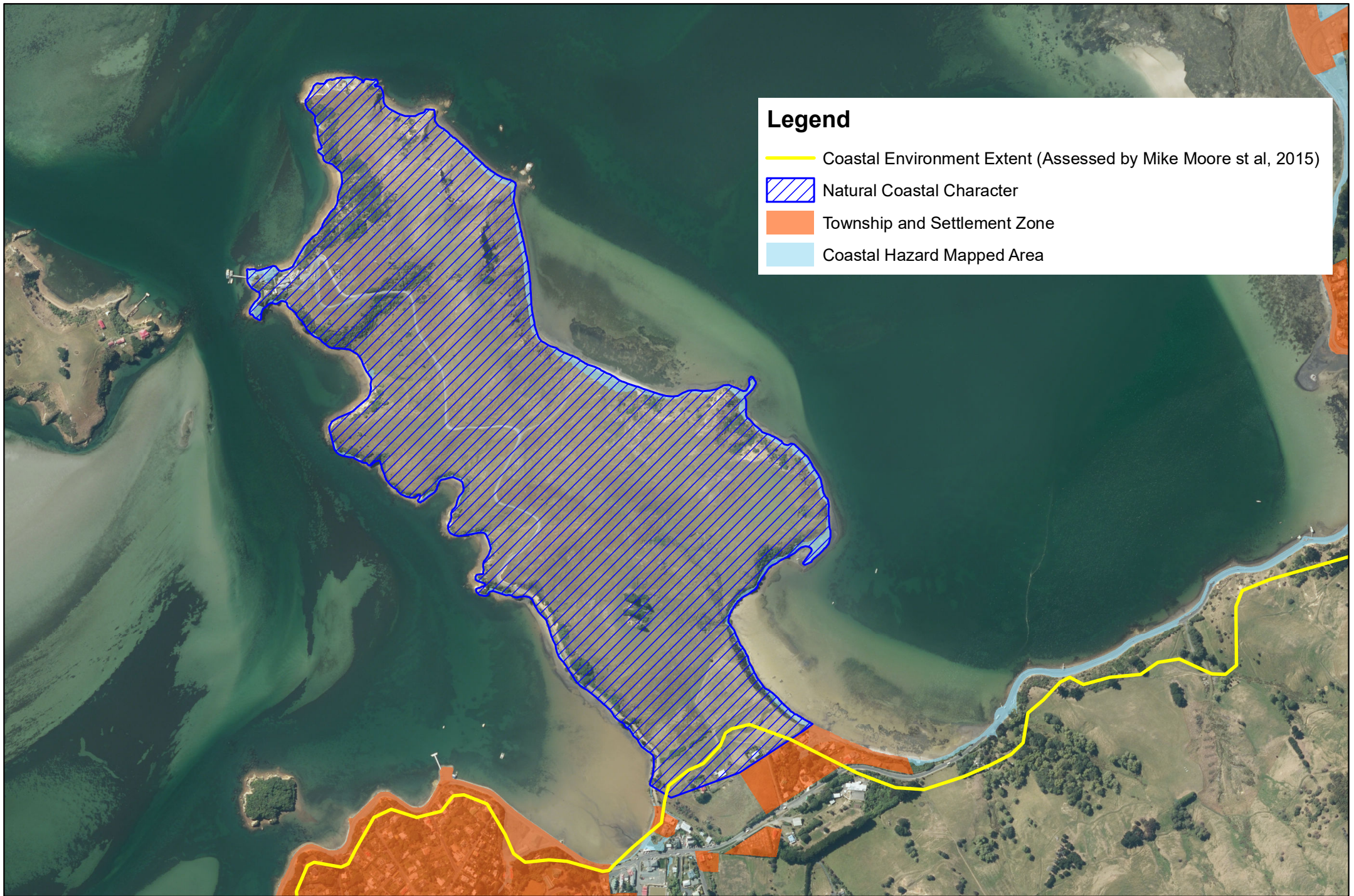
Considering the area identified as pONL in Attachment 2, areas proposed in the p2GP to have Rural Residential zoning have been considered. As was provided in August 2019, areas where RR2 is assessed as an inappropriate method within the pONL were identified.

Once ONL areas have been agreed, and likely in a later session, conferencing would consider appropriateness of the RR2 areas we have identified as not appropriate within pONL.

Di Lucas and Mike Moore

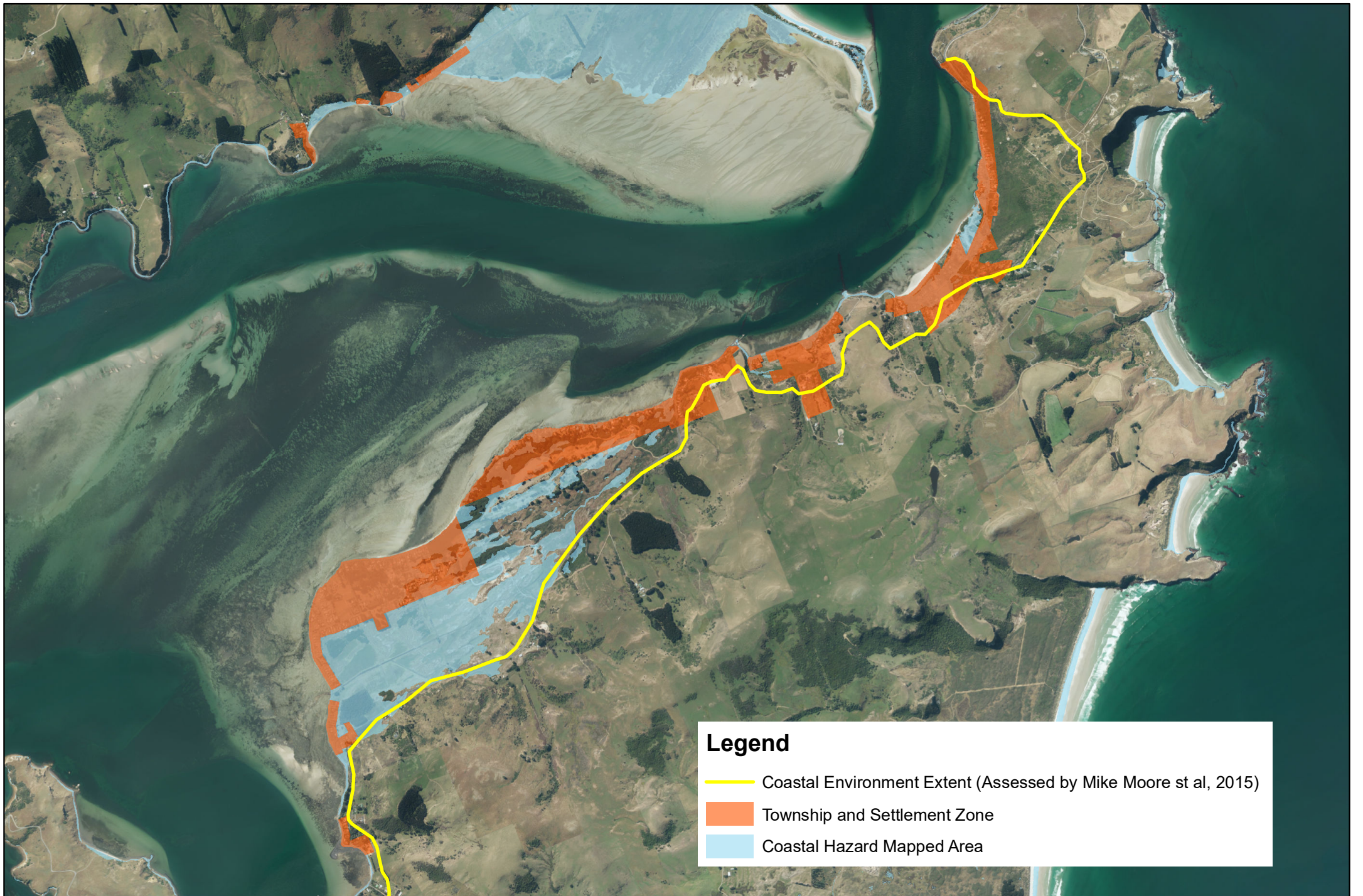
November 2019

DRAFT



Legend

- Coastal Environment Extent (Assessed by Mike Moore st al, 2015)
- Natural Coastal Character
- Township and Settlement Zone
- Coastal Hazard Mapped Area



Legend

- Coastal Environment Extent (Assessed by Mike Moore st al, 2015)
- Township and Settlement Zone
- Coastal Hazard Mapped Area