

**Before the Hearings Panel
At Wellington**

Under the Resource Management Act 1991

In the matter of Proposed Natural Resources Plan for the Wellington Region

**Hearing Stream 6 Right of Reply: Supplementary Legal Submissions - Scope
for changes proposed by Ms Legarth regarding new Heritage Area and Mr
Blackman regarding maintenance dredging**

Date: 6 August 2018



50-64 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
Kate Rogers

kerry.anderson@dlapiper.com
kate.rogers@dlapiper.com

Tel +64 4 474 3255
Tel +64 4 474 3050

MAY IT PLEASE THE PANEL:

Introduction

1 The Panel heard the Reply evidence for Hearing Stream 6 from Monday 30 July to Wednesday 1 August. During the hearing two issues of scope arose which the Panel asked to be further addressed on. Those issues are:

1.1 Scope for the amendments proposed by Ms Legarth, namely Schedule E6, amendments to rules to reference Schedule E6 and a new policy P46A.

1.2 Scope for the amendments proposed by Mr Blackman to Rule R202.

AMENDMENTS PROPOSED BY MS LEGARTH

2 Ms Legarth prepared the Hearing Stream 6 Right of Reply Report for Significant Historic Heritage (**Reply**). In that Reply she recommended an alternative plan framework for the historic heritage of the Lambton Harbour Coastal Marine Area. In particular she recommended the following amendments (**amendments**):

2.1 An additional Schedule E6 be added to the proposed Plan.

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Historic Heritage
at [18]

2.2 Naming of the area that includes the historic heritage listed in Schedule E6 as the 'Lambton Harbour Heritage Area'.

Heading of
Schedule E6 and
heading of Policy
P46A

2.3 A new Policy P46A be inserted in the proposed Plan, to recognise the historic heritage values within the coastal marine area of Lambton

Above at [17]

Harbour, and to manage the effects of use and development on the items identified in Schedule E6.

2.4 Amendments to Rules R168A, R169, R171 and R172 to refer to Schedule E6.

Supplementary provisions provided at hearing on 31 July 2018

3 The Panel has asked for an assessment as to the scope for the above amendments.

Summary

4 In summary, it is submitted there is scope provided by the submissions of Heritage NZ and Wellington Civic Trust for the amendments proposed by Ms Legarth. Whether the Panel considers those are the most appropriate provisions is a matter for the Panel.

5 As we have previously submitted, for an amendment to be within scope, typically there would be a relationship between a submission and an amendment, such that the amendment 'can fairly be said to be a foreseeable consequence of any change directly proposed in the reference'.

Hearing Stream 1 submissions, 20 April 2017 at [105]-[115], Hearing Stream 4 submissions, 8 December 2017 at [41]-[42]; and the Memorandum of Counsel regarding scope, 22 December 2017 at [5]-[8].

6 The scope to make changes for the Panel lies between the notified version of the proposed Plan, and any submissions. In this case, the proposed Plan does not include the items in Schedule E6 in Schedule E1 or E2, but submissions seek those items are added to those Schedules. The consequence would be that Rules R168A, R169, R171 and R172 would apply to those items and Policy P46. What is proposed by Ms Legarth is between those two positions. That is, the items identified by the submitters are added to a new Schedule (E6) rather than E1 or E2 and the same rules apply to them as what

Westfield (New Zealand) Ltd v Hamilton City Council [2004] NZRMA 556 (Westfield) at [73] and [74] and applied more recently in *Hawke's Bay Fish and Game Council v Hawke's Bay Regional Council* [2017] NZEnvC 187

was sought by the submitter. A new Policy (P46A) would then apply, rather than P46. This new Policy has less stringent requirements than P46, but still aims to recognise the historic heritage of those items and to manage adverse effects on them. This sits between what was in the proposed Plan and what was sought by submitters. For that reason it is within scope as additional protection of heritage items in this area was clearly sought and therefore, additional protection was reasonably foreseeable consequence of the changes sought in the submissions.

Proposed Schedule E6

7 Ms Legarth proposes that the following items are included in the new Schedule E6 (**items**): Above at [19]

7.1 Kings Wharf

7.2 Harbour Ferry Wharf

7.3 Tug Wharf

7.4 Reclamation Edges

7.5 Wharves and Wharf Edges

7.6 Link Span (also called Customs Post Building)

7.7 Overseas Passenger Terminal

8 Heritage New Zealand (**HNZ**) or the Wellington Civic Trust (**Trust**) sought that the above items be included in Schedules E1 or E2 as follows:

Kings Wharf

9 In its submission, HNZ sought that Kings Wharf be added to Submission 94 at

Harbour Ferry Wharf

- 10 HNZ sought the inclusion of the 'Ferry Wharf' in Schedule E2. Submission 94 at page 7

Link Span (Customs Post Building)

- 11 HNZ sought clarification as to whether items on Schedule E2 included the Customs Post Building, and if it did not, to specifically include it in Schedule E. Submission 94 at page 5

Tug Wharf, Reclamation Edges, Wharves and Wharf Edges

- 12 In its submission the Trust stated that:

... some items currently protected in the Regional Coastal Plan no longer have protection and [it] opposes this reduction in protection. Submission 62 at page 5 - submission on Policies P46, P47

- 13 It also stated in its reasons that:

The schedules have retained some of the items in the Regional Coastal Plan, but not all...

Wharves and wharf edges and reclamation edges which are still in place are however missing. Parts of these areas are picked up by the comprehensive listing of Queens Wharf, Ferry Wharf, Railway Wharf, Taranki Street Wharf and Waterloo Quay Wharf. However, the wharf and reclamation edge protection, which reflects the harbour edge at the time of Lambton Harbour waterfront was handed over to the city for public use, it is not included.

- 14 The Trust went on to seek that:

... the parts of the wharf edges and reclamation edges which are currently protected under the Regional Coastal Plan are also recognised and incorporated as part of the sites of historic heritage values in the Proposed Plan. Submission 62 at page 7 - submission on Schedule E1 and E2

- 15 Accordingly, to determine what the Trust was seeking we need to determine what the 'wharf edges and reclamation edges' protected in the Regional Coastal Plan (**RCP**) are. Appendix 7 of the RCP - Planning Map 4D (included as **Appendix A** to these submissions) identifies the 'Protected wharf and wharf edge' in red.
- 16 The Tug Wharf is not specifically identified on Planning Map 4D, but it is within the area shown in red. Appendix 4 (included as **Appendix B**) of the RCP sets out the 'Features and Buildings of Historic Merit' and states that the 'location' of the 'Wharves and Wharf Edges shown on Planning Map 4D' is 'Tug Wharf to Overseas Passenger Terminal'.
- 17 The Wellington Regional Council will provide the Panel with a map demonstrating where the Tug Wharf is in comparison to the areas identified on Planning Map 4D. This will be included as part of Ms Legarth's Supplementary Right of Reply and we understand that this will show 'on the ground' that the Tug Wharf is within the area identified in a red on Map 4D.
- 18 It is submitted that this means that Civic Trust sought that the Tug Wharf be listed in the Schedule E1 or E2. Listing it in Schedule E6 and having the Rules referred to above and Policy P46A apply are therefore within scope of its submission.

Overseas Passenger Terminal

- 19 We understand from Ms Legarth that a reference to the 'Overseas Passenger Terminal' (**OPT**) in her Schedule E6 is a reference to the 'Overseas Passenger Terminal Wharf' (or Clyde Quay Wharf), not the building on the wharf.
- 20 The scope to include the OPT Wharf relies on the same Civic

Trust submission analysed above. That is, for there to be scope the OPT wharf must be part of the 'wharf edges and reclamation edges' currently protected under the RCP.

- 21 Map 4D identifies the edge of this wharf - it is outlined in red and is part of the 'protected wharf and wharf edges' in the RCP. Given this, it is submitted that the inclusion of the OPT wharf is within scope of the amendments. To make this clear, we suggest the description in Schedule E6 is amended to refer to the wharf.

Effect of Schedule E6

- 22 Ms Legarth proposes that Rules R168A, R169, R171 and R172 refer to the new Schedule E6. There is no submission seeking this change to the Rules, as Schedule E6 is a new proposal.

- 23 However, R168A, R169, R171 and R172 refer to Schedule E1, E2 and E3. If any of the items in Schedule E6 had been included in Schedules E1 to E3 (which is what the submitters sought), then they would have been caught by those rules (depending on the activity proposed).

Redline version at
page 227 - 230

- 24 Accordingly, whether the items are included in Schedule E6 or E1/E2 there is no difference in terms of which Rules apply.

Effect of new Policy P46A

- 25 Policy P46A is a new policy proposed by Ms Legarth. No submission specifically sought P46A. However, we understand from Ms Legarth that P46A is a less restrictive framework than P46, albeit it still aims towards a similar outcome as P46, the management of effects on the heritage items.

Redline version at
page 68

- 26 As above, if the items were included in Schedule E1 or E2 as

sought by the submitters, then P46 would have been applicable to the items, if resource consent was required. Given this, the foreseeable outcome of the submissions which sought that the items be included in Schedule E1 and E2 was that P46 would apply to the items.

- 27 As P46A is a less restrictive policy, it is submitted that it is within scope of the submissions (ie, it falls between what was in the proposed Plan and what was sought by submissions). It is a foreseeable outcome that the items would be recognised as a heritage items in some way, and P46A (and the other amendments) provide for that recognition.

Heritage Area

- 28 The Panel also asked whether there was scope to call this a 'Heritage Area'. It is submitted that what the list is called does not really alter its meaning, but there is potential for confusion. That is, using 'Area' does suggest it applies to a wide area and that there may be something within that 'Area' that is protected that is not in the list in E6. It also may be confused with formal Heritage Areas under the Heritage NZ Act 2014.
- 29 Ms Legarth accepted in questions from the Panel that it was only the items in Schedule E6 that should be subject to the proposed Plan provisions and she had no concerns with the removal of the reference to 'Heritage Area' in the headings of both Schedule E6 and Policy P46A.

AMENDMENTS PROPOSED BY MR BLACKMAN

- 30 In our legal submissions in reply for Hearing Stream 6 we commented on the scope for amending rule R202, which addresses maintenance dredging outside the Commercial Port Area.

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20 July 2018

31 Our position was that:

... R202 might be amended under [the Rangitane] submission, and there is scope for amendment to R202 to provide for maintenance dredging in sites identified in Schedules A-F as a discretionary or non-complying activity.

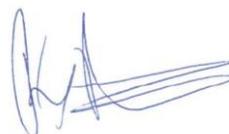
Above at [50]

32 Subsequently, Mr Blackman tabled an addendum to his Hearing Stream 6 Right of Reply Report - Activities in the CMA (1 August 2018). The outcome of this addendum was that maintenance dredging outside the Commercial Port Area is a non-complying activity, where the dredging is in areas listed in Schedules C, F, J and K.

33 Our legal submissions only stated that there was scope to amend the rule for areas listed in Schedules A to F. The Panel has asked us to confirm whether there is scope provided by any other submissions.

34 We have reviewed the submissions. None provide scope for a change to activity status for maintenance dredging outside the Commercial Port Area in a site listed in Schedule J or K.

Date: 6 August 2018

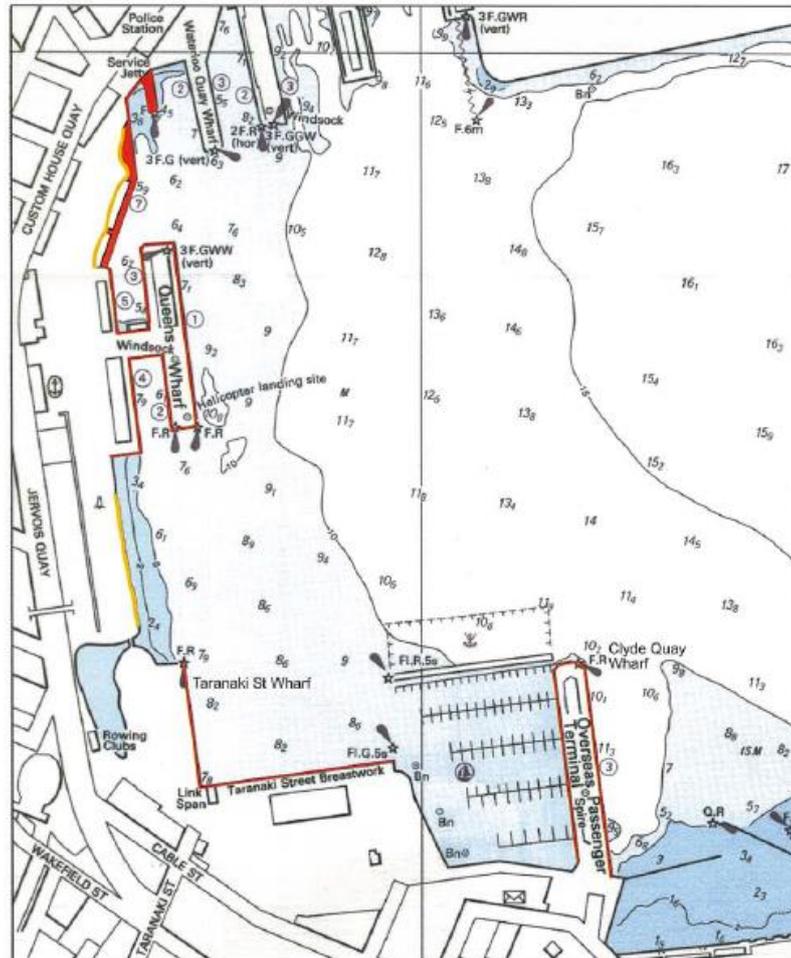


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Kerry Anderson/Kate Rogers
Counsel for Greater Wellington
Regional Council

APPENDIX A

Planning Map 4D

Protected Wharf and Reclamation
Lambton Harbour Development Area



Legend

- Protected wharf and wharf edge
- Protected reclamation edge

The landward boundary of the coastal marine area is the line of mean high water springs.



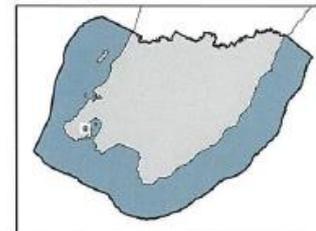
Part of Chart NZ 4634 Wellington Harbour Entrance and Plans of Wharves - Lambton Harbour reproduced by permission of Land Information New Zealand



CAUTION
NOT TO BE
USED FOR
NAVIGATION



Locality Map



APPENDIX B**Appendix 4****Features and Buildings of Historic Merit**

Name	Location	Structure
Shed 3	Queens Wharf	Building
Shed 5	Queens Wharf	Building
Halswell Lighthouse	Point Halswell	Lighthouse
Point Jerningham Lighthouse	Point Jerningham	Lighthouse
Harbour Board Gates 1899	Queens Wharf	Gates
Seatoun Wharf	Seatoun	Wharf
Island Bay Sea Wall	Island Bay	Sea Wall
Karaka Bay Wharf	Karaka Bay	Wharf
Lyall Bay Sea Wall	Lyall Bay	Sea Wall
Oriental Bay Sea Wall	Oriental Parade	Sea Wall
Evans Bay Sea Wall	Evans Bay	Sea Wall
Boating Jetty	Evans Bay	Jetty
Aberdeen Quay Seawall	Evans Bay	Seawall
Evans Bay Patent Slip and Wharf	Evans Bay Parade	Slip and Wharf
Days Bay Wharf	Days Bay	Wharf
Petone Wharf	Petone foreshore	Wharf
Skerret (George Hamilton Scott Trust) Boatshed	Lowry Bay	Boatshed
Steeple Rock Lighthouse	Harbour entrance	Lighthouse
Former Eastbourne Ferry Terminal	Tug Wharf	Building
Wharves and Wharf Edges shown on Planning Map 4D in Appendix 7	Tug Wharf to Overseas Passenger Terminal	Wharves
Reclamation Edge shown on Planning Map 4D in Appendix 7	Lagoon to Tug Wharf Vicinity	Rock rip-rap
Street Facade of the former Westport Chambers Building, Circa Theatre	Taranaki Wharf	Building