

Proposed Natural Resources Plan for the Wellington Region

**MINUTE # 54 MEMORANDUM DIRECTING
CONFERENCING – COASTAL MANAGEMENT
Hearing Stream 6**

**Joint Witness Conferencing Statement
held on 23 August 2018**

Date: 4 September 2018

**Topic: Rule cascade for structures in the coastal
marine area**

1. Introduction

1. In Minute #54 dated 2 August 2018, the Panel requested that conferencing on the rule cascade for structures in the Coastal Marine Area (CMA) to any gaps and potential solutions as to any such gaps is to take place.
2. The joint conferencing is to take place between Mr le Marquand and the relevant Council section 42A reporting officers Yvonne Legarth and Paul Denton.
3. The outcome of the conferencing was originally to be reported back to the Panel by 5pm on Friday, 31 August 2018. An extension was granted by the Panel in accordance with Minute #56 to 4th September 2018.

2. Expert Witness Conference

4. Topic: Rule cascade for structures in the Coastal Marine Area (includes coastal management structures and Schedules E1 to E3: Heritage structures.

Conferencing Date: 23 August 2018.

Venue: Offices of Greater Wellington Regional Council: Shed 39, Meeting Room 20.

In attendance: Mr le Marquand on behalf of the Oil Companies and Powerco; and Mr Denton and Ms Legarth on behalf of the Council.

3. Methodology

5. We examined the rules in Section 5.7 Coastal management and focused on Rules R149 to Rule R184.
6. We agreed that all of the rules, including the rules addressing seawalls, manage structures. This being the case, we discussed the definition of 'seawalls', as recommended in the HS6 Right of Reply prepared by Mr Denton, and agreed that a change to that definition is required to ensure that it is clear that a seawall is a structure. There are unintended consequences for rules in the proposed Plan if the definition of 'seawall' could be interpreted as meaning the structures rules in the Commercial Port Area (CPA) and the heritage structures

rules do not encompass seawalls. Recommended amendment to the definition of 'seawall', as follows:

A hard inflexible structure edge between the land-water interface of the CMA along river mouths, shorelines, or lake edges made up of structural materials including concrete, steel, timber or rock. A seawall is a structure and includes rock revetment, groyne or bulkhead.

7. See Attachment 3 for the recommended change to the definition of seawall and the s32AA assessment.
8. We agreed that there are no gaps, and where there is no more specific rule that Rule R161 applies for structures outside sites of significance, and Rule R162 applies within a site of significance.
9. We agreed that where a structure is identified in Schedule E, that rule manages an RMA section 6 matter, and a structure (including a structure located in the CPA, or a navigation aid or a seawall) identified in Schedule E cascades to the Heritage structure rules in section 5.7.7.
10. We agreed that the maintenance or repair Rule R149 is intended to apply to all structures, including seawalls and navigation aids, except those identified in Schedule E. It is our view that Rule R149 should be amended to make that clearer.
11. Mr le Marquand's view is that this could be achieved by deleting conditions (g) and (ga) from R149 and including the following note to the Rule:

This rule applies to all existing CMA structures, including seawalls, navigation aids and port structures except those heritage structures identified in Schedules E1-3 and E6 (in which case R168 applies)

12. Ms Legarth supports the inclusion of a Note, but does not agree that the conditions in R149(g) and (ga) which apply to Schedule E heritage structures should be deleted. Conditions (g) and (ga) should be retained in Rule R149; because a Note has little or no regulatory effect. Where a permitted activity

rule is not intended to apply to an item in Schedule E this should be specified in the rule.

13. We agreed that an amendment to Rules R168 and R168A be recommended to better align the three rules dealing with maintenance or repair; and alteration of Schedule E structures. This is Attachment 1 of this joint conferencing statement: “Consolidated Rule R168/168A”.
14. We identified a need for consequential changes to the rules at the end of the cascade (the default rules) to ensure all relevant rules were referenced and/or there was a clear default pathway provided for. We note that this did not necessarily make for a less complicated structure but we believe it will assist in rule navigation.
15. We only added relevant rules into the statement in the default rules (i.e “... that is not permitted by rule x, or controlled by rule x ... is discretionary”) where references to other rules had been included already but some are missing. Where the rule cascade is clear we did not add rule references into the applicable default rule.
16. We identified a number of possible drafting refinements and where possible we have taken the opportunity to provide a re-draft. As these changes have arisen out of conferencing, other submitters have not had an opportunity to comment. Other refinements could not be addressed at this time. The rules appear to be effective; but may not be the most effective and may be able to be refined. These are:
 - There is some overlap with permitted activity Rules R168 (Additions and alterations to heritage structures) and R168A (Maintenance and repair of heritage structures); and while the two rules deal with different activities; it is possible to retain the recommended permitted activity conditions and amalgamate the two rules.
 - Rules R163 and R164 manage the ‘replacement’ of a structure; and are dependent on Rule R152 (Removal and demolition of a structure or part of a structure – permitted activity) or Rule R153 (Removal and demolition of

a structure or part of a structure - restricted discretionary activity) occurring first. The issue may arise from an intention to grandfather the right to occupy associated with an existing structure; and options include a definition for 'replacement'; or amalgamating Rule R163 and R164 with the rules providing for 'new structures' and 'occupation of space'; or amalgamating Rules R163 and R164 with Rules R152 and R153 may address this issue. If the Panel would like a recommendation on the potential to refine Rules R163 and R164 in a supplementary joint conferencing statement that could be provided to the Panel by 18 October 2018.

17. The RMA section 42A report recommendation is to amend Rule R149 (permitted activity) to specifically deal with utility services, conductors, pipelines etc. We discussed whether the amendments to Rule R149 should also be added to R168A and R168; or if amalgamated to refer to R168.
18. Where utility services, conductors, pipelines etc are attached to, and therefore are part of a structure in Schedule E; these do not always form part of the heritage values of the structure, nevertheless, the method of attaching those facilities to the heritage structure and the scale of the pipeline etc are relevant effects for the council to consider when pipelines etc are being maintained or replaced.
19. The pipeline attached to Point Howard Wharf and the building on the Clyde Quay Wharf were discussed as examples. Where an assessment has been undertaken and it is determined that a pipeline (or other utility) does not form part of the heritage values of a particular structure, that could be recorded in the heritage summary in Schedule E. This approach would require an assessment of values and may go beyond what can be achieved as part of this process.

4. Principles and assumptions

20. We did not identify a gap in the rule cascade applying to structures in the CMA, although the cascade is not always clear.

21. There are four groups of activities:
- Maintenance and repair
 - Additions and alterations
 - Removal and demolition;
 - Placement of new structures
22. There are a number of streams within the rule cascade. Permitted activity rules that apply to all structures (either in a site of significance or not), which then separate into more specific cascade depending on the type of structure or its location. Where a structure is located in a site of significance (e.g. Schedule F) those rules are part of the cascade of more general 'structures' rules.
23. Where a structure is:
- a new structure, additions and alterations, replacement and associated use of a structure (general, and in sites of significance) cascades to Rule R161 and R162.
 - Rule R149 applies to all structures, except heritage structures where (if the panel are of a mind) R168/R168A applies.
 - If an item is in Schedule E - then it cascades to the Heritage structure rules in 5.7.7.
 - a new seawall or additions and alterations, or replacement of a seawall (general, and in sites of significance) the rules cascade to Rule R166 and R167.
 - a seawall (in Schedule E and in the CPA) cascades to Rules R171 and R172.
 - a seawall in a CPA, Rule R149 applies then it cascades to the more specific seawall rules R165 – R167 (or to 5.7.7 if a heritage structure).

- a navigation aid (general, and in sites of significance) cascades to Rule R164 (or to 5.7.7 if a heritage structure).
- a navigation aid (in Schedule E and in the CPA) cascades to R171 and R172.
- a boatshed (boatshed management area and in sites of significance) cascades to R184 (occupation) and (new structures, additions and alteration to structures and use of a structure) Rule R161 and R162.
- a structure identified in Schedule E (heritage structures) cascades to R171 and R172.
- a structure located in the commercial port area (CPA) cascades to R161.

5. Attachments

24. Consolidated Rule R168/168A (maintenance or repair or alteration to a scheduled E1, E2, E3 or E6 heritage structure).
25. Revised red/blue line rules with recommended amendments in yellow to clarify changes in the cascade and provisions where needed
26. A basic flow diagram showing the general rule cascade is attached. A comprehensive flow diagram was difficult to prepare in the time available, and a set of diagrams showing the rule cascades where structures are in a specified Schedule, in an CPA, a navigation aide, in the airport height control area, or a seawall can be provided to assist with deliberations.
27. RMA section 32AA assessment for the revised recommended definition of seawall.

6. Recommendations:

28. We recommend:
 - the amendments proposed in the attached redline document and consolidated Rule R168 / R168A

29. If a set of flow charts would assist the Panel with deliberations, that could be provided to the Panel by 21 September 2018.
30. Further conferencing would be needed to untangle of the occupational elements in the CMA rules; and if this would assist the Panel that could occur by 18 October 2018.

Attachment 1: Consolidated Rule R168/168A

Attachment 2: Joint witness statement: Structures rule cascade

Proposed Natural Resources Plan: Section 5.7 Coastal Management: Structures: Rules R149 to R184: Rule cascade Table

Attachment 3: Joint witness statement: Recommended amendments to rules to address gaps identified in conferencing

Attachment 4: Amended Section 32AA report for management of the CMA

S85/058, S146/032	2 Interpretation	<u>Seawall</u>	<p>A hard inflexible <u>structure edge</u> between the land-water interface along river mouths, shorelines, or lake edges made up of structural materials including concrete, steel, timber or rock. A seawall is a <u>structure and includes rock revetment, groyne or bulkhead.</u></p>	<p><u>Effectiveness and efficiency</u></p> <p>The proposed Plan includes a definition of hard engineering and this definition includes seawalls. However, the proposed Plan refers directly to seawalls in the rules (R165, R166, R167) and policy (P139) and not hard engineering. There is a point of confusion here where the direct provisions may not be effective. To overcome this issue, I have proposed a new definition of seawall. This is a hard inflexible structure between the land and water. A seawall is a structure and includes a rock revetment, bulkhead or groyne.</p> <p>This new definition of seawall will provide increased effectiveness and remove potential misunderstanding that may have occurred from the use of this term in the management of the CMA provisions in the proposed Plan.</p> <p>The amendment to this definition (in orange) as part of the Joint conferencing on the 23rd August 2018, ensures that a seawall is a structure in terms of the rules for the management of the CMA in the proposed Plan.</p> <p><u>Costs: (numerical and potential costs)</u></p> <p>No specific costs have been assessed for the amendment to this definition. There are unlikely to be increased costs to the community from this amendment in the proposed Plan.</p> <p><u>Benefits: (environmental, cultural, economic and social)</u></p> <p>There is potentially an increased benefit by improving the effectiveness of this new provisions for the management of the CMA.</p> <p><u>Risk of acting or not acting</u></p>
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