

**LOWER KAIWHARAWHARA STREAM, ESTUARY AND RECLAMATION  
STUDY**  
**BACKGROUND PAPER ON REGULATIONS OF STATUTORY AUTHORITIES**

**1. Wellington City Council**

District Plan – Central Area

The Kaiwharawhara estuary and surrounds come under the Central Area of the District Plan (DP) which is currently being revised under DP Change 48. No appeals affect this area.

At an earlier review of the DP between 1994-2000 WCC had proposed the area (see 1994 maps for boundaries) be rezoned Open Space B. This was appealed to the Environment Court with Decisions RMA 800/96 for CentrePort Ltd and RMA795/96 for Tranz Rail Ltd, both dated 8 May 2000. At this stage the reclaimed land was deemed Port Operational area (see DP Map15 and relevant comments below).

The Environment Court's Determination covered a **height restriction of 18.6m** ("measured above ground level") for the two sites but recognised that some equipment/structures such as cranes and elevators might need to be higher with a maximum height of 20m. There was also a **maximum coverage of the land by buildings of 35%**. These are now included in Chapter 13.6 of the DP. The 35% maximum coverage was to be calculated separately by the two companies with the stream as the dividing line. There were two other relevant aspects of the Court's Determination. Under Rule 13.3.2 of that determination, **for both sites**, it states "...the extent to which development is designed and positioned to reduce impacts on views from the motorway of the city and harbour and recognises the reclamation land as an important feature for the city". The determination also stated any building within this site coverage requirement "is designed to promote the spacing of building development and the retention of open areas to encourage the retention of harbour views from the motorway". These explanations although included in part of the appeal settlement, have been removed from DP48. So now there appears to be no specific mention of the reclamation as a feature for the city. Falling outside the DP but part of the record of determination of the Court is a statement requiring CentrePort only to consult with the Kaiwharawhara Reclamation Working Group on "landscaping, and in particular tree planting of the area facing the motorway, as well as on measures to mitigate the visual bulk of any proposed buildings".

Regarding the **Port Operational** area shown in DP Map 15, it is difficult to verify the exact boundaries on the land. Surely the estuary should not be included? Also it appears that the DOC managed Crown land on the northern side of the large reclamation as well as the sea-edge Crown land alongside the marshalling yards are included. Is some of the NZ Transport Agency land alongside the motorway also included? Another query relates to OnTrack's purchase of the marshalling yards but not yet legalised. Is this area still part of the Port Operational land under CPort's jurisdiction? We gather WCC is currently revising all DP maps so hopefully the current boundary of "Port Operational" land will be clarified.

All the Kaiwharawhara area is part of WCC's Pipitea Precinct where some special rules apply in terms of future planning by KiwiRail/Ontrack and CPort. Para 12.2.4.4 of the DP emphasises this area's location on the main northern gateway to the city which gives it a particular strategic importance. The Pipitea Precinct masterplan requires consideration of building footprints, heights, viewshafts, accessibility, areas of environmental sensitivity and public space networks. Consultation with key interest groups is also built in as a requirement for future development.

Coastal Issues.

DP 3.8. The demarcation of responsibility between WCC and GW along the coast is the line of Mean High Water Springs (MHWS). Disturbance of the seabed and discharge of contaminants is GW responsibility.

Chapter 4 of the DP under "Methods" emphasises the importance of the coastal environment and that its "qualities and character should not be lost through inappropriate activities or developments". Reference is also made to the maintenance and enhancement of public access. It is expected that both in terms of activities and access, WCC would be looking to see what improvements could be made for the public should development be proposed for the area and the opportunity exist to negotiate or impose requirements. This is a messy corner of the harbour with no agreed plans for its future.

Chap. 12.2.5.4 recognises "the special relationship of the port to the coastal marine area through identification of the Operational Port area". Under "Methods – Rules and Advocacy" - reference is made to the NZ Coastal Policy Statement and the Regional Coastal Plan. These are higher level documents which essentially acknowledge that the port has existed for a long time and will continue to do so. There is recognition that in the main the area is distinct from the more natural coastal areas of the city.

Earthquake Faultline. No conditions in the DP apply to the earthquake fault line as it lies beyond the reclamation.

#### Hazardous Material

In 1998 CPort appealed against WCC's Variation 7 regarding use, storage and handling of hazardous substances. The Environment Court's Decision relating to the Port Operational Area referred to how hazardous substances should be kept and handled for various substances. Possibly some are occasionally carried on the ferries by train or truck. The DP does not have rules regarding public access to any hazardous area.

#### Biodiversity Action Plan September 2007.

Project Kaiwharawhara is mentioned in this Plan as having "a stream restoration programme". The vision is "to protect and enhance the natural landscape, ecosystems, homes and recreation areas". (p.15). Regarding the harbour, the importance of the marine environment is stressed for NZ's freshwater fish species. (p.17). The Plan also refers to NZ's native eels which breed elsewhere with larvae returning to the original streams. The Kaiwharawhara Stream has eels. Note also little blue penguins used to occupy this stream (and still may or be encouraged to return).

The study should ensure stakeholders are informed of all the biodiversity issues (including pollution) for consideration when drawing up any new plans. Overall the policy covers Wellington's vision for biodiversity involving identifying, protecting, restoring and researching.

#### Maori Interests

The Government has negotiated A Statutory Acknowledgement with the Port Nicholas Block Settlement Trust which requires relevant authorities to consult with the Trust regarding any Consents which involve the Kaiwharawhara Stream bed. The implications of this are being considered as part of the DP Review.

Heritage Policy.

The historic locations of the two Maori pas and the village are not mentioned in the DP. The only nearby reference relates to the Bridle Track from Kaiwharawhara Rd to Khandallah (outside the study).

## **2. Greater Wellington Regional Council (GW)**

GW only has jurisdiction below Mean High Water Springs (MHWS).. It does not control any activities on dry land. However CentrePort – its subsidiary -controls all port operations including the buying and selling of land and any other land acquisition from other agencies, eg NZTransport Agency, within its ownership.

### **Regional Coastal Plan (RCP)**

This is the main statutory document for controlling activities in the coastal marine area (CMA). There are no other documents that have control functions.

The commercial port area subject to the CMA is the wet/sea area as defined in map 4a of the RCP. This includes structures where they extend over the water. The RCP distinguishes between activities inside the commercial port area and activities outside the port area.

The RCP became operative in June 2000. Before that the Transitional Plan was operating and controlled activities, and before that the port was controlled by the Wellington Harbour Board under its own legislation.

All the activities described below apply only to the “wet”commercial port area.

**Reclamations** – Rule 2 discretionary activity – requires reclamations to have Consent.

**Structures** – Rule 10 permitted activity – allows activities to occur on structures built over the sea

Rule 11 permitted activity – allows activities to occur on Crown land which is seabed

Rule 12 permitted activity – allows cargo and passenger handling to occur on structures over the sea

**Disturbances** – Rule 33 permitted activity – allows maintenance dredging within the port area

Rule 38 discretionary activity – requires Consent for major disturbances of the port area – large dredging operations.

**Discharges** – all shipping activities – discharges to air, etc. is permitted/ Discharges to water are controlled by the Marine regulations and the RCP in different circumstances.

The above are the main rules operating in the port area. If for example, activities occur outside the ones quoted above, the activity would need to be evaluated against the rulings in the plan.

## **3.National Legislation**

### **Foreshore & Seabed Act 2004**

Public foreshore and seabed was vested fully in the Crown under the Act (except land subject to specified freehold interest).

### **NZ Coastal Policy Statement 2010**

These and maybe other government policies need studying.

WCC/GW/Trelissick Park Group 25 April 2012.