

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV-2015-404-0000719

IN THE MATTER OF

an application for judicial review under Part I of the
Judicature Amendment Act 1972

BETWEEN

**URBAN AUCKLAND, THE SOCIETY FOR THE
PROTECTION OF AUCKLAND CITY AND
WATERFRONT INCORPORATED**

Applicant

AND

AUCKLAND COUNCIL

First Respondent

AND

PORTS OF AUCKLAND LIMITED

Second Respondent

FIRST AFFIDAVIT OF

**GAVIN CRAIG LISTER FOR APPLICANT IN SUPPORT OF URBAN
AUCKLAND**

Sworn April 2015

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I, **Gavin Craig Lister**, of Auckland, Landscape Architect, swear:

Introduction

1. My name is Gavin Craig Lister. I am a founding director of Isthmus, a landscape architecture, urban design, and architecture practice.

Qualifications

2. I am a qualified landscape architect and urban designer. I have a Bachelor of Arts from the University of Auckland; a post-graduate Diploma in Landscape Architecture from Lincoln College; and a Masters of Urban Design from the University of Sydney. I am a Fellow of the New Zealand Institute of Landscape Architects ('NZILA').

Experience

3. I have 27 years' experience in different types of landscape and urban projects throughout New Zealand including:
 - (a) Landscape and urban design assessments for district plan provisions and structure plans;
 - (b) Parks and reserves;
 - (c) Urban streets and public spaces;
 - (d) Commercial and industrial developments;
 - (e) Housing; and
 - (f) Infrastructure projects.
4. Specific experience relevant to the Auckland Port includes:
 - (a) A varied range of infrastructure projects including an options assessment for the Alternative Waitemata Harbour Crossing, electricity generation projects (including the HMR and Waitahora wind farms, Tauhara II geothermal station, and Mokihinui hydro project), electricity transmission (including the 400kV capable North Island Grid Upgrade Project), and

highways (including Transmission Gully, the Basin Bridge and currently the Pūhoi to Warkworth RONS). I have generally provided evidence in support of such projects, but occasionally in opposition. I have also been engaged in two instances to provide advice to the Minister of Conservation on infrastructure projects in Te Wai Pounamu World Heritage Area;

- (b) Specific port experience includes work on landscape, visual and natural character matters for CentrePort in relation to proposals to dredge the entrance to Wellington Harbour to accommodate larger container ships; and
- (c) I have undertaken work in the vicinity of the port precinct including work in the Britomart precinct for Cooper and Co., and for Ngati Whatua o Orakei in relation to the Proposed Auckland Unitary Plan with regards Quay Park and Port expansion.

5. I am a member of Auckland Council's panel of independent commissioners, and a member of the Auckland Urban Design Panel.

Code of conduct

6. I confirm that I have read and agree to comply with the 'Code of Conduct for Expert Witnesses' in the High Court. In particular, unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that otherwise might alter or detract from the opinions that I express.

Scope of affidavit

7. My affidavit addresses visual effects of the consented B2 and B3 wharfs, focusing mainly on the outlook from Queens Wharf, a listed historic site. I address the following topics:
- (a) The importance of Queens Wharf to the connection between central Auckland and the Waitematā;
 - (b) The effects on Queens Wharf arising from the wharf extensions, namely:

- (i) Blocking outlook to the Harbour entrance and outer Waitematā; and
 - (ii) Enclosing Queens Wharf within a harbour basin.
- (c) Visual effects from other locations; and
- (d) Response to visual, natural character and landscape conclusions of the s42A Reports that formed the recommendations to the Commissioners to approve the B2 and B3 consents.

Summary of affidavit

8. The view from the end of Queens Wharf is one of the most important public views in central Auckland. It is important to the connection between central Auckland and the Waitematā because:
- (a) Queens Wharf is on the axis between the main street and the harbour, and has been earmarked as a public place;
 - (b) The outlook from the end of Queens Wharf is especially evocative of Auckland's sense of place; and
 - (c) It is one of the very few public locations in central Auckland where such an outlook still exists.
9. The B2 and, in particular, B3 wharf extensions will have significant adverse effects because they will:
- (a) Block the outlook from Queens Wharf to the harbour entrance and the outer Waitematā; and
 - (b) Enclose Queens Wharf within a basin.
10. The s42A Reports make errors in assessing the effects. Specifically, their assessment that there will be 'imperceptible visual effects' is wrong in fact, and natural character and landscape matters in relation to the New Zealand Coastal Policy Statement are inadequately addressed.

Importance of the view from Queens Wharf

11. I take it as axiomatic that the Waitematā is central Auckland's most significant natural feature. More particularly, the Waitematā, defined by the volcanic cones, 'Waitematā Sandstone cliffs', and gulf islands, is fundamental to Auckland's setting and sense of place. Celebrating this natural setting is one of the important planks supporting Auckland's vision of 'the world's most liveable city'. To this end, re-developing the waterfront and 'stitching' the central city with the harbour are important strategies of both the Waterfront Plan and the City Centre Masterplan.

Waterfront Auckland has prepared this Waterfront Plan to ensure that Auckland makes the most of the opportunities afforded by the waterfront - the superb natural setting and sparkling Waitematā Harbour - as the heart of New Zealand's global city. (Waterfront Plan, page 10)

The City Centre Masterplan identifies eight transformational moves required to ensure an accessible, distinct and vibrant city centre and the vision above. These are listed below:

1. Uniting the waterfront and city centre – the Harbour Edge Stitch (Central City Masterplan, page 76)

12. Queens Wharf has particular significance to the connection between central Auckland and the Waitematā. Auckland's first wharf, 'Queen Street Wharf', was in this location at the foot of the main street. Historical photos depict a seamless connection between the city and harbour. Early photos also illustrate that the wharf was a promenade as well as a gateway and place of commerce. In a sense, this axis between city and harbour is part of Auckland's DNA.

Queens Wharf, which extends 400m from Quay Street, is the oldest of the wharves and the origin of Queen Street. The wharf and Queen Street create a strong north-south axis. (Waterfront Plan, page 91)

13. The current Queens Wharf, built in the early twentieth century, is the second wharf on the site. It is classified as a Category 1 historic place by Heritage New Zealand. The reasons stated for its significance include reference to Auckland's main wharf having been

on this location since the 1860s and the social events associated with both the earlier and current wharfs. Similarly the heritage assessment prepared for Auckland City Council and the Auckland Regional Council highlight the history of Auckland's main wharf 'at the end of the city's main thoroughfare'.¹

14. While the harbour was fenced off for many years, there has been a concerted programme to re-establish the connection with the harbour, which is encapsulated in the Waterfront Plan and the City Centre Masterplan. These strategies contain two main axes:
 - (a) An east-west harbour-edge (the Quay Street axis); and
 - (b) A perpendicular city-to-harbour axis between Queen Street and Queens Wharf. (While the Quay Street axis brings the city to the harbour edge, the north-south axis onto Queens Wharf takes people out into the harbour proper).

15. The view from the end of Queens Wharf is especially evocative of Auckland's 'sense of place'. It is a composition of the following elements:
 - (a) The waters of the inner harbour framed by the two Devonport volcanic cones (Takarunga/Mt Victoria and Maungauika/North Head) and the 'Waitematā Sandstone' cliffs at Stanley Point;
 - (b) Rangitoto which appears over the slender Devonport isthmus;
 - (c) The harbour entrance around the North Head bastion; and
 - (d) The outlook to the outer Waitematā, inner gulf islands (Motukorea/Browns Island, Motuihe) and the Bean Rock Lighthouse.

16. The composition leads the eye down the harbour to the outer Waitematā, and around North Head to the Hauraki Gulf.

¹ Queen Street Wharf and Sheds, Design Competition Phase 1, Heritage Assessment, for Auckland City Council and Auckland Regional Council, Matthews and Matthews Architects Ltd, 2009, Page 30.

17. The Port is also an important element of this outlook. In my opinion it contributes to Auckland's identity as an authentic working harbour. However, at present the port doesn't overwhelm the natural setting. But it is a fine balance: the view to the harbour entrance is already restricted to just the outermost end of Queens Wharf, and the port already blocks views of the headlands on the southern side of the harbour (such as Achilles Point).
18. Queens Wharf is one of only two public locations in the central city from where such a view is still available. There are similar views from the end of Princes Wharf (where there is a viewing platform at first floor level) although it is inferior as a public place. There are also views down the harbour from Wynyard Point but it is more remote from the city centre.
19. Queens Wharf, by comparison, is earmarked to be redeveloped as a significant public place and is on the north-south axis between city and harbour.

Effects of the B2 and B3 wharf extensions on the outlook from Queens Wharf

20. The end of the B3 extension will intercept the line-of-sight to Devonport Wharf (i.e. Victoria Road Wharf), blocking views of the water beyond this line. It will effectively block views of the eastern end of the harbour, the harbour entrance, and the outer Waitematā.
21. The B2 extension by itself would extend roughly half way across the current view of the harbour entrance.
22. The B3 wharf extension will also enclose Queens Wharf within a basin so that the current experience of the harbour proper will be lost. Queens Wharf's prominence as the principal axis between main street and harbour will be weakened.
23. Such effects will be caused by the wharf structures themselves, but will be exacerbated by any cargo stored on the wharfs and ships berthed at the wharf extensions.
24. To explain it another way, the worst place to build a new structure in the port precinct in terms of visual effects from Queens Wharf is the

location of the B3 extension. The B2 extension also adversely impacts views from Queens Wharf, although the effect is not as pronounced as B3.

25. These effects are illustrated by the plan diagram and photosimulations in the Attachment One, a separate A3 document. Note: The photosimulations depict a field-of-view of approximately 110° in order to show proper context. They are all at the same scale, and have been printed at a correct scale for a normal reading distance of 400mm.
26. The view is important not simply for the view alone (there are many fine views of the Waitematā from other places), but because of the role of Queens Wharf connecting the city with its harbour setting.

Visual effects from other locations

27. The B2 and B3 wharf extensions will have some adverse effects from other locations, such as from elevated viewpoints in Stanley Point and central city buildings, and from the harbour itself. From such locations the wharfs would change the proportion between open water and the area contained within the port precinct. However, the effects from such viewpoints are less significant than those from the end of Queens Wharf because of the latter's context in connecting Auckland with its harbour setting.

S42A Report

28. The s42A Report assessed that '*any visual effects will be barely perceptible given this highly modified large working port environment*' (page 15 and 18 respectively of the B2 and B3 s42A reports). Such an assessment is wrong in fact, as illustrated by the photosimulations referred to above.
29. Relevantly, Mr John Goodwin's evidence on behalf of POAL for Topic 050 of the Proposed Auckland Unitary Plan (the evidence for which is publicly available on the Independent Hearing Panel's website) effectively confirms that the s42A Report was wrong in concluding the effects would be 'barely perceptible'. Mr Goodwin says in relation to views from the central city west of the port:

*"I am of the opinion that **the most noticeable changes will result from the consented B2 / B3 extensions**. From these locations the wharf structures will partially obscure some views towards the outer harbour – which will be further obscured (periodically) by berthed ships, and the cranes which load and unload cargo from these ships. In that particular area, the view will change and become one of port development and shipping activity. It is however noted that this change will be more noticeable from Queens Wharf, as opposed to Princes Wharf, with a view towards the outer harbour from the latter remaining (to a much greater degree) after the consented extensions. This includes visibility of Browns Island." (paragraph 2.12) (emphasis added)*

30. The s42A Report is also incorrect, in my view, in dismissing natural character considerations by the observation that: *'The application site is highly modified with little remaining natural character...'* (pages 15 and 18 respectively of the B2 and B3 s42A reports) and that *'the activity does not affect the natural character of the coastal environment'* (pages 19 and 23 respectively of the B2 and B3 s42A reports). While the port is very highly modified, the open waters of the Waitematā do still possess natural character. In this context, the harbour in combination with the other natural landform features (especially the volcanic cones and islands) is important to Auckland's setting and sense of place. These matters must be given consideration in terms of Policies 13 and 15 of the New Zealand Coastal Policy Statement. In my view there are significant adverse effects for the reasons given above.
31. The reporting planner did not have the benefit of visual, landscape or natural character assessments on which she could base her opinion, and she does not appear to have taken context into account beyond the immediate port.
32. For these same reasons, neither of the Duty Commissioners had any information on these significant effects of the wharf extensions, and their conclusions that the effects of the B2 and B3 extensions were less than minor (therefore warranting non-notification) are

deficient to that extent.

SWORN at Auckland this day of April before me:		
		Gavin Craig Lister
A Solicitor of the High Court of New Zealand		