

**In the Matter of the Resource Management Act 1991  
AND**

**In the Matter of Hearings into the Provisions of the  
Proposed Wellington Natural Resources Plan.**

**Hearing Stream 3: Natural Form and Function &  
Water Allocation**

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**STATEMENT OF EVIDENCE OF LINDSAY DAYSH FOR CENTREPORT LIMITED AND  
CENTREPORT PROPERTIES LTD.**

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**Introduction**

1. My name is Lindsay John Daysh. My qualifications and experience are outlined in my evidence in chief for Hearing Stream 1 on behalf of CentrePort Limited (CentrePort) and CentrePort Properties Ltd (CPPL) dated 5 May 2017.
2. I reiterate that I have read and am familiar with the Code of Conduct for Expert Witnesses in the current Environment Court Practice Note (2014), have complied with it, and will follow the Code when presenting evidence.

**Background**

3. This evidence relates to CentrePort and CPPL's submissions in relation to PNRP provisions for:
  - Natural Form and Function; and
  - Water Allocation and in particular provisions relating to the Waiwhetu Aquifer.
4. In this evidence I:-
  - Outline the matters of significance in respect of existing and future Port Operations and the influence of natural form and function provisions of the PNRP;
  - Comment on the matters of relevance in the Natural Form and Function s42A report;
  - Provide context to CentrePort's functional need requirements in respect of the Waiwhetu Aquifer; and
  - Comment on the revised provisions under the topic of Water Allocation recommended by the s42A report author.

## **CentrePort**

5. As context to the submissions on both natural form and function and in relation to water allocation matters, the Panel will be aware that CentrePort has three operational sites at:
  - Thorndon being the primary location of Port related activities. This site is denoted as operational Port Area in the Wellington City District Plan and as Commercial Port Area in the PNRP below mean high water springs extends from Kaiwharawhara Point in the north to the Lambton Harbour North Area in the south.
  - Seaview that is utilised primarily for the transfer of bulk fuel; and
  - Burnham and Miramar Wharves.
6. The primary point is that the Port is essentially fixed in its current position with limited ability to be able to extend or intensify beyond the current boundaries.
7. In addition, and as was outlined in Mr Delaney's evidence at Hearing Stream 1 in June, there has been substantial damage to the Port after the November 2016 earthquake. This includes damage to a number of buildings within its commercial property portfolio. The Port is well advanced in carrying out a number of repair and replacement activities some of which have required consent applications where the PNRP provisions have needed to be applied.
8. The third point is that prior to the earthquake last year CentrePort was well advanced in the process of preparing for consent applications to deepen the shipping channel within Wellington Harbour and at the Thorndon Container Wharf. This is required in order for the Port to accommodate larger ships with deeper draughts that can currently be provided for.
9. Again Mr Delaney has referred to the current status of this process in his evidence for Hearing Stream 1. In relation to Policy 51 and Schedule K which concern regionally significant surf breaks, the PNRP provisions are applicable to the Shipping Channel Deepening Project.

### **Topic: Natural Form and Function**

10. Turning first to CentrePort and CPPL submissions on Natural Form and Function, this topic seeks to provide objectives and policies relating to Natural Form and Function. This topic also references Schedule J on Geological Features in the Coastal Marine Area (CMA) and regionally significant surfbreaks in Schedule K.

11. While the Port facilities are primarily located in an urban environment, the Kaiwharawhara Stream enters the Harbour through the Port facilities. While not a subject for this hearing, the interface between the Port environment and the stream mouth leads to potential conflict between the legitimate expectations of the Port to appropriately develop its facilities and the protective provisions that apply in respect of scheduled sites with significant values. In relation to sites with significant landscape values it is also acknowledged that there are none currently included within the PNRP that have been categorised and that there is currently a process of identification being carried out by Greater Wellington in conjunction with the Wellington Territorial Authorities.
12. With this in mind it is also very important to have an objective and policy framework that appropriately recognises the potential for both consideration of natural form and landscape values and for regionally significant infrastructure that have an operational requirement and functional need to be located particularly in the CMA.
13. A number of the matters raised in submissions by CentrePort and CPPL for this hearing stream are consistent with submissions made on other parts of the Plan and I note that other submitters have made similar points.

**Objective O19**

14. Objective O19 that also applies to the CMA states:

*The interference from use and development on natural processes is minimised.*

15. CentrePort's submission was that the use of the word interference within the objective is not appropriate. Interference, such as appropriate dredging, reclamations or protecting regionally significant infrastructure, may "interfere" to a greater or lesser degree with natural processes, but there could be a functional and operational need for such interference and it could be acceptable from an effects perspective.
16. The relief requested was to amend Objective O19 as follows:

The interference **adverse effects** from use and development on natural processes is ~~minimised~~ **avoided, remedied or mitigated.**
17. This is consistent with other submission points on a number of Objectives and Policies made by CentrePort, CPPL and a number of other submitters that have an issue with the use of the word "minimised". The Panel will also be aware of the Joint Witness Statement from a number of planners involved in the PNRP that had a focus on Policy P4 that

attempts to outline a definition to describe how minimisation of adverse effects would apply.

18. The Officer recommends that CentrePort's submission seeking amendments to Objective O19 is rejected.<sup>1</sup> The report states:

*"The submissions made by CentrePort Limited (CentrePort) S121/026, Kiwi Rail Holdings Limited S140/018, Horticulture NZ S307/016 and Wellington International Airport Limited S282/011 provide general support for Objective O19, however their submission is that 'interference' is not appropriate in an objective. The submissions seek that the objective be reworded, replacing "Interference from use and development on natural processes is 'minimised' with "The adverse effects" from ... is 'avoided, remedied, or mitigated'. The submission of CentrePort raises a concern about the expression 'interference' being unclear that is supported in part by Meridian Energy Limited FS32/014. Carterton District Council FS85/076 supports the submission.*

*The operative plans use 'interference' when discussing the natural course or flow of the river or stream, and any diversion of water; and in the context or relationships and activities that may affect ground water replenishment and use. The issue identified in the RPS is that "Human activities have modified and continue to interfere with natural physical and ecological coastal processes." The word 'interference' is intended to describe the potential adverse effects.*

*The RPS recognises that "The land and everything within and upon it is interrelated. Land management, river management, and maintaining and developing transport or housing infrastructure all utilise resources and can have an effect upon natural processes" and "Ecosystems are dynamic (constantly changing) and the many diverse natural processes that drive ecosystems are as important as the biodiversity values within them. In addition, all parts of an ecosystem are interconnected" and "Landscape is shaped by a combination of natural processes and human actions".*

*I consider that Objective O19 as notified describes an outcome that would allow activities to be undertaken in a manner that provides for natural processes to occur. Nevertheless, an amendment to Objective O19 could more clearly state the intended outcome sought in terms of ensuring natural elements, patterns and*

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<sup>1</sup> S42A Report, Appendix C Recommended decisions on submissions: Natural Form and Function.

*ecological processes continue to occur, and the integrity and functioning of natural processes and forms are retained.*<sup>2</sup>

19. The preferred option from the Officer for Objective O19 is to amend it as follows

*Natural processes, including natural elements, patterns and ecological processes continue to occur, and the integrity and functioning of natural processes and forms are retained.*<sup>3</sup>

20. I consider that this alternative wording has practical problems when it comes to assessing what may be otherwise be appropriate use and development particularly when it comes to regionally significant infrastructure.
21. Firstly it uses the words 'Natural processes, including natural elements, patterns and ecological processes continue to occur' and the retention of "the integrity and functioning of natural processes and forms'. In essence I do not agree with the Officer. If you do not retain both natural processes and the form of those natural processes a proposal would not meet this objective. The possible outcome is that an otherwise appropriate proposal may suffer from a policy "knockout".
22. My preference is to utilise the wording in CentrePort's submission. As an objective or outcome statement you seek to avoid first and if you cannot avoid then you seek to remedy or mitigate adverse effects - in this case on natural processes.

**Policy P24**

23. As notified Policy P24 regarding Outstanding Natural Character states:

**Policy P24: Outstanding natural character**



**Areas of outstanding natural character in the coastal marine area will be preserved by:**

- (a) avoiding adverse effects of activities on natural character in areas of the coastal marine area with outstanding natural character, and
- (b) requiring use and development to be of a type, scale and intensity that will maintain the natural character values of the area, and

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<sup>2</sup> S42A Report, paragraphs 277-281.

<sup>3</sup> S42A Report, Appendix A, p 21.

- (c) requiring built elements to be subservient to the dominance of the characteristics and qualities that make up the natural character values of the area, and
- (d) maintaining the high levels of naturalness of these areas, and
- (e) avoiding the adverse effects of activities, including those located outside the area, that individually or cumulatively detract from the natural character values of the outstanding natural character area.

24. In its submission CentrePort is concerned with this policy as no outstanding natural landscapes have been identified and the use of the word 'avoiding' in the policy could amount to a prohibition on appropriate use and development in the CMA. CentrePort's preferred amendment to Policy 24 is as follows:

**Areas of outstanding natural character in the coastal marine area will be preserved by:**

- (a) **Protecting** ~~avoiding adverse effects of activities on~~ natural character in areas of the coastal marine area with outstanding natural character **by avoiding inappropriate use and development**, and
- (b) requiring use and development to be of a type, scale and intensity that will maintain the natural character values of the area, and
- (c) requiring built elements to be subservient to the dominance of the characteristics and qualities that make up the natural character values of the area, and
- (d) maintaining the high levels of naturalness of these areas, ~~and~~
- (e) ~~avoiding the adverse effects of activities, including those located outside the area, that individually or cumulatively detract from the natural character values of the outstanding natural character area.~~

25. The Officer recommends that CentrePort's and CPPL's submissions seeking amendments to Policy P24 are rejected.<sup>4</sup>

26. This is for various reasons including the fact that appropriate provision is made for regionally significant infrastructure elsewhere in the Plan. A common theme with the

<sup>4</sup> See Appendix C Recommended decisions on submissions: Natural Form and Function.

infrastructure providers is that some of the policies as written are absolute in their requirements, and when read on their own, an otherwise appropriate development could fail because it does not comply or is not consistent with a policy in the Plan. I see no reason why the amendments sought cannot provide an appropriate balance between the obvious need to recognise and provide for outstanding landscape values and the reasonable needs of an appropriate use and development in the CMA.

27. In terms of context, it is unlikely that any of the Commercial Port Area will be seen as an outstanding natural landscape when the process of identification has been carried out and then implemented through a plan change. However there is an issue of principle that CentrePort and a number of other infrastructure providers have identified that the wording of such policies should not be so absolute as to frustrate what otherwise is an acceptable development.

***Policy P25***

28. Policy P25 leads on from Policy 24 and it relates to other natural character features in the CMA:

Use and development shall avoid significant adverse effects on natural character in the coastal marine area (including high natural character in the coastal marine area) and in the beds of lakes and rivers, and avoid, remedy or mitigate other adverse effects of activities, taking into account:

- (a) the extent of human-made changes to landforms, vegetation, biophysical elements, **natural processes** and patterns, and the movement of water, and
- (b) the presence or absence of structures and buildings, and
- (c) the particular elements, features and experiential values that contribute significantly to the natural character value of the area, and the extent to which they are affected, and
- (d) whether it is practicable to protect natural character from inappropriate use and development through:
  - (i) using an alternative location, or form of development that would be more appropriate to that location, and
  - (ii) considering the extent to which **functional need** or existing use limits location and development options.

29. While the policy as drafted was not submitted on by CentrePort, as it was considered that the functional needs exclusions could adequately take into account the reasonable needs of the Port, it did oppose the Trelissick Park Group's submission on Policy P25.
30. The scheduling of the Kaiwharawhara Stream Estuary in Schedule F4 (Sites with significant biodiversity values in the coastal marine area), is also the subject a number of submission points from CentrePort that are to be considered in later hearing streams.
31. Tressilick Park Group sought relief that protects this area from inappropriate development to maintain the natural character that will increase over time.<sup>5</sup> The Officer recommends that CentrePort's further submission be disallowed.
32. The Kaiwharawhara Point Area is part of the port and will potentially be a key operational area in the future. The Point was created by reclamation associated with the development of the Thorndon Container facilities and remains underutilised.
33. The upper reaches of the Kaiwharawhara Stream west of Hutt Road are relatively natural but it is highly modified crossing underneath Hutt Road, the railway lines and the motorway before it discharges to the CMA.
34. To the south of the Point is the Interislander Ferry operations and between the ferry terminal and the Point is the outlet of the Kaiwharawhara Stream into Wellington Harbour. This is shown in the aerial photograph below.

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<sup>5</sup> S42A report Appendix C Recommended decisions on submissions: Natural Form and Function.



Aerial Overview of Kaiwharawhara Point. Image from <http://mapping.gw.govt.nz/GW/GWpublicMap>

35. The problem as I see it is the request from the submitter to “*maintain the natural character that will increase over time*”. CentrePort, as part of its Master Planning process, is considering the best options to make beneficial use of Kaiwharawhara. While CentrePort is working through these options it is feasible that there may be an effect on the natural character of the CMA in this location.
36. While obviously any adverse effects in this location would need to be avoided, remedied or mitigated, there are potentially practical issues with the wording of “*maintaining natural character increasing over time*” as the area is already highly modified and bisects a fundamental part of the region’s significant infrastructure.

37. I also note that the Officer has recommended some changes in the redline version of the Plan provisions primarily around the deletion of subclause (d) and its replacement with a revised set of three subclauses:
- d) alternative locations, design or form of development that have less adverse effects, and*
  - e) the extent to which the activity has a functional need to be located in the coastal marine area that limits location and development options, and*
  - f) the ecosystems, natural flow characteristics and hydrodynamic processes, and the natural pattern and range of water level fluctuations in natural wetlands, rivers and lake and their margins.*
38. I am generally supportive of these changes but would recommend that in revised clause (e) the words “*and operational requirement*” are added. Both terms are defined in the Plan and often go together. Clause 9 (e) would then read:

*(e) the extent to which the activity has a functional need **and operational requirement** to be located in the coastal marine area that limits location and development options, and*

#### **Policy P26**

39. Under the narrative of Policy P26, the Officer references CPPL’s submission on Policy P4 as follows:

*The submissions by NZTA, First Gas Ltd, Horticulture NZ S307/036, Wellington International Airport Limited S282/034, Holcim (New Zealand Ltd S276/010 and First Gas Ltd S145/074 are to amend Policy P26 by replacing “minimise” with “avoid, remedy or mitigate” to be consistent with the RMA. Relief sought is: Use and development will ~~be managed to minimise~~ avoid, remedy or mitigate adverse effects on the integrity and functioning of natural processes. Further submissions that support (or support in part) replacing ‘minimise’ in P4 and P26 with “avoid, remedy or mitigate” are Carterton District Council FS85/147, FS85/145 and FS85/144; Powerco FS56/054; Queen Elizabeth II National Trust FS96/035; Wellington Water Limited FS25/022 and CentrePort Properties Limited FS49/065.”*

...

*The submissions appear to be seeking the certainty of the familiar wording in the RMA. Ideally, the objective and policy should apply the RMA to the specific circumstances of the district or region, and not just restate the RMA.*

*I consider that it is important for the plan to state what 'minimise' means. I would not support the use of 'minimise' in a policy where the term is open to interpretation and / or is not sufficiently clear about the outcomes being sought in respect of an issue. However, in this case proposed Policy P4 sets out how 'minimise' will be applied, which promotes consistency in decisions on applications and across the suite of the regional council's planning instruments. In the context of the regional planning provisions that specifically use the term, 'minimise' means reducing adverse effects of the activity to the smallest amount practicable. Proposed Policy P4 underpins proposed Policy P26 by identifying the matters to be considered to achieve that outcome.*

*The caucusing of planning experts discussed the drafting of Policy P4, and that clarification might occur by adding the Policy P4 sub-clauses into other policies where they are relevant.*

*If the decision of the Hearing Panel is to amend Policy P4 either as a definition or as a policy in the form identified in caucusing, then the following subclauses would be relevant to the matters addressed by proposed Policy P26:*

*Policy P26: Use and development will be managed to minimise effects on the integrity and functioning of natural processes by:*

- a. considering alternative locations and methods for undertaking the activity that would have less adverse effects, and*
- b. locating away from areas identified in Schedule A (outstanding water bodies), Schedule C (mana whenua), Schedule E (historic heritage), Schedule F (indigenous biodiversity), and*
- c. timing the activity, or the adverse effects of the activity, to avoid times when adverse effects may be more severe, or times when receiving environments are more sensitive to adverse effects, and*
- d. using good management practices, and*
- e. designing the activity so that the effects of the scale or footprint of the activity is as small as practicable.<sup>6</sup>*

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<sup>6</sup> S42A Report, paragraphs 313 – 318.

40. I have a problem with this suggested rewording as there is no reference to functional need or operational requirement, and this particularly applies to Port operations in the CMA. If you consider development at Kaiwharawhara Point for example, and where there may be a potential effect on the Kaiwharawhara Stream estuary, a real proposal would have to be considered against:
- clause a, as there is only one location and there are no alternatives;
  - clause b, as it adjoins or may affect a site in schedule F4 (in which case the proposal would be non-complying);
  - clause c may not be applicable;
  - clause d, although you would assume best practice is used; and
  - clause e, this would depend on the scale and significance of the proposal but the effects or footprint cannot always be as “small as practicable”.
41. I would add a further clause as to whether there is a functional need or operational requirement for the proposal to be located where it is. That would mean that in the real world scenario that an otherwise acceptable proposal could be justified.
42. This would read:
- (e) **when considering functional needs and operational requirements** designing the activity so that the effects of the scale or footprint of the activity is as small as practicable.*
43. If this change was made I would support the changes to the policy.

**Policy P48**

44. The Officer recommends that CentrePort’s submission seeking amendments to Policy P48 is rejected stating:<sup>7</sup>

*“The submission made by CentrePort Limited (CentrePort) S121/063 is to support in part; to amend the sub-clauses of Policy P48 by “..... (a) seeking to avoid adverse effects of activities on identified outstanding natural features and landscapes, and (b) ~~avoiding significant adverse effects and~~ avoiding, remedying or mitigating other adverse effects of activities on natural features and landscapes”.*

...

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<sup>7</sup>[See Appendix C Recommended decisions on submissions: Natural Form and Function.

*When the plan was notified, it did not identify areas of outstanding natural features and landscapes. I consider that amending Policy P48 to limit its application to 'identified' natural features and landscapes would nullify the policy. Method M24 is to identify outstanding natural features and landscapes in the region, and areas with outstanding /high natural character in the CMA, and those areas would then be included in the plan by way of a plan change. I do not consider that any amendment should be made to Policy P48 to refer to 'identified' areas until those areas have been identified.*

*As dealt with above, Policy P48 in the proposed plan manages effects on outstanding natural features and landscapes; these can be identified using the criteria in the RPS; Policy P48 applies the policy hierarchy from the NZCPS. Method M24 is to work to identify and specify those areas in the plan.*

*As the identification of outstanding natural features and landscapes is still being undertaken, I do not recommend any changes to Policy P48.”<sup>8</sup> [Paragraphs 373 – 383]*

45. This policy relates to protection of outstanding features and landscapes. CentrePort's submission was on the basis that outstanding natural features and landscapes are not identified in the Plan. Given this policy seeks avoidance and protection, care should be taken. In addition, the policy uses the term 'avoid' as a bottom line, and incorporates both coastal and non-coastal areas. In this context, it is important that existing and future Regionally Significant Infrastructure are recognised and provided for.
46. Suggested changes were:
- The natural features and landscapes (including seascapes) of the coastal marine area, rivers, lakes and their margins and natural wetlands shall be protected from inappropriate use and development by:
- a) **seeking to** avoid~~ing~~ adverse effects of activities on **identified** outstanding natural features and landscapes, and
  - b) **avoiding** significant adverse effects ~~and avoiding~~, remedying or mitigating other adverse effects of activities on natural features and landscapes.
47. I accept that the word "identified" is not necessary but I also consider that due caution will be taken in terms of identification when that process occurs, particularly if there are

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<sup>8</sup> S42A Report, paragraphs 373-383.

features that are identified in the CMA that may be affected by the Shipping Channel Deepening Project.

48. The word avoid is an absolute term - basically if there are effects of an appropriate use and development no consent would pass this threshold even if such effects could be remedied or mitigated. In addition, the clause b changes are more appropriate as avoidance may not always be an option nor will there always be the ability to ensure there are not significant adverse effects.

***Policy P49***

49. This policy concerns use and development adjacent to outstanding natural features and landscapes and special amenity landscapes. In its submission CentrePort supported the intent of the policy, however, it was concerned that it may not always be possible to entirely protect or avoid effects, especially where there are functional needs and operational requirements as is often the case with Regionally Significant Infrastructure.

50. CentrePort's proposed wording was:

Use and development in the coastal marine area on sites adjacent to an outstanding natural feature or landscape or special amenity landscape identified in a district plan shall be managed by **seeking to**:

(a) ~~protecting~~ visual and biophysical linkages between the site and the outstanding natural feature or landscape, and

(b) avoiding adverse cumulative effects **from inappropriate use and development** on the values of an outstanding natural feature or landscape.

51. The Officer recommends that CentrePort's submission seeking amendments to Policy P49 is rejected. The Officer notes:

*"CentrePort Limited (CentrePort) S121/064, Chorus New Zealand Limited S144/018 and Spark New Zealand Trading Limited S98/018 seek to amend Policy P49 to add 'seeking to' and to: "avoid adverse cumulative effects on the values 'from inappropriate use and development' on the values of an outstanding natural feature or landscape". Powerco FS56/064 Roding, Parks and Gardens and Solid Waste departments of Hutt City Council and Upper Hutt City Council FS59/036 and Powerco FS56/065 support the submission.*

...

*It is not necessary to add a reference to 'inappropriate use and development' or to enable regionally significant infrastructure, because that would duplicate other provisions in the proposed plan. The benefits of Regionally Significant Infrastructure (RSI) are already recognised in other parts of the plan (e.g. Policy P12); and provided for. For example, Policy P138 manages structure in sites with significant values except where it is necessary to enable the development, operation, maintenance and upgrade of regionally significant infrastructure.*

*It is not necessary to duplicate those provisions in a section of the plan that's deals with effects of activities located adjacent to a site of significance identified in a district plan.*<sup>9</sup>

52. Again I have a problem with this. In my view, the words proposed by CentrePort were deliberately developed to avoid any policy conflict between the enabling policies on regionally significant infrastructure and what are protectionist policies such as this one. I consider that while it may be perceived as duplication, each of the policies should stand on their own and not result in a situation where there is either policy conflict or a need for a weighing up process by a decision maker as to which policy may trump the other.
53. In addition, this policy uses two very strong and absolute words - avoiding and protecting - so the clarifications sought by CentrePort are in my view appropriate. With the changes that I propose, a proponent can at least make their case that what is proposed is appropriate.

### ***Policy P50***

54. Policy 50 concerns significant geological features and reads:-

*The significant adverse effects of use and development on the significant geological features identified in Schedule J (geological features) shall be avoided.*

55. CentrePort supports the intent of the policy, however, it was concerned that it may not always be possible to avoid effects, especially where there are functional needs and operational requirements as is often the case with regionally significant infrastructure.

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<sup>9</sup> S42A report paras 394-397

56. CentrePort proposed to amend Policy P50 as follows:

The ~~significant~~ adverse effects of use and development on the significant geological features identified in Schedule J (geological features) shall be avoided, **remedied or mitigated**.

57. The Officer recommends that CentrePort's submission seeking amendments to Policy P50 is rejected.<sup>10</sup> The Officer explains:

*The submission made by CentrePort Limited (CentrePort) S121/065 supports in part and seeks that the term 'significant adverse effects' be deleted and that it is replaced with 'adverse effects be avoided, remedied or mitigated'.*

*The policy intent is to manage adverse effects on the significant geological features. Based on the technical report, the sites identified in Schedule J are vulnerable, and activities directly impacting upon those sites are likely to have permanent effects. Permanent and irreversible effects would be considered to be significant. The approach in the policy envisages that some activities with minor effects can occur.*

*Adding 'avoid, remedy or mitigate' does not provide a lot of guidance for decision makers, therefore I do not consider that an amendment to Policy P50 is needed.<sup>11</sup>*

58. I accept the Officer's view that the geological features are potentially vulnerable but I do not agree with the Officer that this is enabling for minor effects. The difficulty with the policy is the use of the word avoid and the need for a decision maker to determine whether there are significant, rather than moderate or minor, adverse effects where remediation or mitigation may be also appropriate.

### **Objective O37 and Policy 51**

59. Objective 37 relates to surfbreaks and states:

*Significant surf breaks are protected from inappropriate use and development.*

60. Policy 51 which is proposed to implement Objective 37 states:

*Use and development in and adjacent to the significant surf breaks identified in Schedule K (surf breaks) shall be managed by minimising the adverse effects on:*

- (a) natural processes, currents, seabed morphology and swell corridors that contribute to significant surf breaks, and*

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<sup>10</sup> See Appendix C Recommended decisions on submissions: Natural Form and Function.

<sup>11</sup> S42A Report, paragraphs 446-448.

(b) access to significant surf breaks within the coastal marine area, on a permanent or ongoing basis.

61. The Officer recommends that CentrePort's submission regarding Objective O37, seeking to clarify the nature of potential adverse effects and measurement of these and how the policy would be applied in practice, is accepted in part.<sup>12</sup> The Officer states:

*The submission made by CentrePort Limited (CentrePort) S121/033 is concerned that there is uncertainty associated with the surf breaks and the nature of potential adverse effects on those features in Schedule K; and seeks that the nature of potential adverse effects and measurement of these and how the policy would be applied in practice is clarified. The submission is supported by Wellington International Airport Limited S69/024.*

*The proposed plan does not have sections that provide explanations of the objectives and policies. Objective O37 is applied in the same way as other objectives in the plan. Objective O37 is implemented by Policy P51. Policy P51 uses 'minimise' and therefore the policy would be interpreted in light of Policy P4; which is to reduce adverse effects to the smallest amount reasonably practicable. An assessment of the effects of an activity on the surf break would be considered as part of a resource consent application where a consent is required by the rules in the plan. As is common with assessments made as part of a resource consent application, Objective O37 will be paired with other objectives and policies in the plan that are relevant depending on the matter at hand. For example, the objectives and policies that apply to the beneficial use of land and water, and the specific policies that deal with activities such as reclamations, and natural character, and natural processes might all be relevant and would be considered together. The practice is to apply an overall judgement using the sustainable management tests in RMA section 5.*

*As with features identified in Schedule J, those in Schedule K have been assessed as significant. I rely on the technical report that has assessed the significant surf breaks in the region. This provides a factual assessment based upon the inherent quality of the surf breaks that are included in the relevant Schedule.*

*I do not consider that Schedule K should be deleted. Objective O37 is implemented by Policy P51 in the proposed plan, which is to manage use and development to*

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<sup>12</sup> S42A Report, Appendix C Recommended decisions on submissions: Natural Form and Function

*minimise adverse effects. Policy P4 and the joint caucusing statement deal with the interpretation of 'minimise'.<sup>13</sup>*

62. In relation to Policy 51, CentrePort sought the following changes:

*Use and development in and adjacent to the significant surf breaks identified in Schedule K (surf breaks) shall be managed by ~~minimising~~ **avoiding, remedying or mitigating** the adverse effects on:*

- a) natural processes, currents, seabed morphology and swell corridors that contribute to significant surf breaks, and*
- b) access to significant surf breaks within the coastal marine area, on a permanent or ongoing basis.*

63. The Officer recommends that CentrePort's submission regarding Policy P51 is accepted in part. However, she rejects CentrePort's submission seeking to amend the Policy stating:

*"The submission point by CentrePort Limited (CentrePort) S121/066 is to clarify the nature of potential adverse effects and measurement of these and how the policy would be applied in practice; and S121/067 is to amend Policy P51 by replacing 'minimise' with avoiding, remedying, or mitigating'. Wellington International Airport Limited FS69/054 supports the submissions in part, seeking clarification of how the policy is intended to be applied.*

...

*I recommend that Policy P51 is retained as notified. If the Hearing Panel consider that it is appropriate to amend Policy P4 in the manner set out in the expert planners caucusing statement, then I recommend that the following subclasses be added to Policy P51:*

*Policy P51: Use and development in and adjacent to the significant surf breaks identified in Schedule K (surf breaks) shall be managed by minimising the adverse effects on:*

- (a) **natural processes, currents, seabed morphology and swell corridors that contribute to significant surf breaks, and***

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<sup>13</sup> S42A Report, paragraphs 474– 478.

- (b) ***access to significant surf breaks within the coastal marine area, on a permanent or ongoing basis.***
- (c) ***consideration of alternative locations and methods for undertaking the activity that would have less adverse effects, and***
- (d) ***timing the activity, or the adverse effects of the activity, to avoid times when adverse effects may be more severe, or times when receiving environments are more sensitive to adverse effects, and***
- (e) ***using good management practices for reducing the adverse effects of the use and development.***<sup>14</sup>

64. Concern about how this policy will be applied remains and the potentially revised policy still uses the word “minimise” rather than “avoid, remedy or mitigate”. This has been a consistent matter in a number of submissions by CentrePort and others. There are also syntax issues that are unclear and confusing with the relationship with the first line and clauses c, d and e, that should be prefixed by the word ‘by’ rather than ‘on’ that appropriately prefix clauses a and b.
65. In this context, I can relate the application of this policy to a real situation where with the Shipping Channel Deepening Project there is the potential for an impact upon the identified surf break known as the Pipes on the coast south of Eastbourne. This potential effect is as a result of the possibility of a decrease in the levels of wave energy over and above the decrease that may be occurring as result of natural processes.
66. Putting aside the positive effects to Central New Zealand of enabling larger ships, you then look at how the policy revised by the Officer may be applied by a decision maker.
67. When you look at this checklist of matters where an activity needs to be “*managed by minimising the adverse effects*” a and b refer to the matters to be considered i.e. natural processes and access, while c, d and e outline the methods of attempting to minimise adverse effects.
68. In relation to c, d and e in the context of the Shipping Channel Deepening Project only the methods part of c apply, as timing in d does not apply and once the shipping channel has been deepened there are no management practices in e that would apply.

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<sup>14</sup> S42A Report, paragraphs 487-494.

69. I would therefore support going back to the wording of Policy 51 as proposed by CentrePort in its submission. At least with the “avoid, remedy or mitigate” wording, the full range of feasible options for managing adverse effects could be considered.

**Schedule K and Map 24**

70. The Officer recommends that CentrePort’s submission seeking to clarify how the relevant policies to Schedule K and Map 24 will be applied is rejected, stating:

*The submission made by CentrePort Limited (CentrePort) S121/142 is that there is uncertainty arising from Schedule K and to clarify how the relevant policies to Schedule K will be applied.*

*Effects on areas identified in Schedule K are managed through the matters of control and matters of discretion in the activity specific rules in the proposed plan; e.g Rule R186: General surface water and foreshore activities – restricted discretionary controls the effects of general surface water and foreshore activities and the associated use in the coastal marine area. The Council has retained discretion to impose conditions (or decline consent) in respect of effects on a site or habitat identified in or using Schedule C (mana whenua), Schedule F4 (coastal sites), Schedule F5 (coastal habitats), Schedule J (geological features) or Schedule K (surf breaks).*

*I recommend that Schedule K is retained as notified.”<sup>15</sup>*

71. I consider that Schedule K can remain and it was not CentrePort’s submission that it be deleted, either in its entirety or that any of the specific surf breaks themselves be removed from the Schedule. As outlined above, the issue is more with the policy itself and how it would be applied in practice.

**Schedule J**

72. The Officer recommends that CPPL’s submission seeking to remove Railway Wharf and Waterloo Quay Wharf and the underlying and adjacent coastal marine area from Schedule C (mana whenua), Schedule F4 (coastal sites), Schedule F5 (coastal habitats), and Schedule J (geological), and all associated maps if these are considered to apply to the wharves is rejected.

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<sup>15</sup> S42A Report, paragraphs 498– 502.

73. I accept this. The main point of the CPPL submission was in relation to the Heritage listing of Railway Wharf and Waterloo Quay Wharf which is to be considered in Hearing Stream 6.

**Topic: Water Allocation**

74. The submissions of CentrePort and CPPL on this topic relate entirely to the Hutt Valley Aquifer and the provisions that apply.

***Definition of Bore***

75. The Officer does not recommend any changes to the definition of bore, but recommends the addition of a new rule for structures deeper than 5m in the Hutt Valley aquifer zone and a 5m depth limit for permitted activities under Rule 146 where they occur in Hutt Valley aquifer zone. She states:

*My understanding that is in the Hutt Valley there is a confining layer of material which overlies the productive aquifers in the Hutt Valley. The confining layer is often referred to as an aquiclude or an aquitard. The aquifers are used by WWL for municipal supply (as well as other smaller users). The integrity of the aquifers, both in terms of quality and quantity, is to a certain extent protected by the confining layer. WWL and Council both consider it important to protect the confining layer. Two pre-hearing meetings were held with WWL and CentrePort Properties Limited regarding the drilling of bores and other activities that could affect the integrity of the Hutt aquifer system. The minutes of the pre-hearing meetings are attached in Appendix F.*

*As a result of the pre-hearing meetings it was agreed in principle to:*

- Amend the permitted activity Rule 146 to include a depth condition (5m) in the Hutt Valley aquifer zone that will ensure any bores that have the potential to penetrate the confining layer will require resource consent, where the effects can be appropriately assessed, and*
- Introduce a new rule, which only applies in the Hutt Valley aquifer zone (on land only), which would require resource consent for piling or excavation activities that exceed a depth of 5m.*

*Based on the outcomes of the pre-hearing meetings and Dr Mzila's technical evidence, I recommend amending Rule R146 to include a 5m depth condition. I also recommend introducing a new rule to control activities deeper than 5m in the Hutt Valley as follows:*

Rule R146A: Construction and excavation activities 5m below ground level in the Hutt groundwater system – discretionary activity

The use of land within the Hutt Valley aquifer system shown on Figure XX for the construction or removal of building foundations and earth retention structures or excavation (permanent or temporary) where the depth below the natural ground level exceeds 5m including any associated:

(a) Diversion of water

(b) Dewatering

(c) Discharge of water and contaminants

is a discretionary activity.<sup>16</sup>

76. Dr Mzila's technical evidence (referred to in the Officer's commentary above) states at:

*Through prehearing meetings and workshops, Centreport Ltd provided alternative explanations to the presence of shallow coarse sands in the Commercial Port Area (CPA). It was agreed that the aquifer does not extend into the CPA and bores to any depth within the CPA area (Map 32 in the PNRP) and the rule does not apply to the CPA<sup>17</sup>.*

77. I consider that the solution discussed through two prehearing meetings is appropriate. CentrePort has been able to provide significant evidence that the Hutt Valley Aquifer does not extend to the primary or Thorndon locations of the Commercial Port Area within the CMA. As the Port often needs to carry out piling works to maintain or enhance their operations the exclusion of the CPA is sensible.

78. Dr Mzila's evidence also discusses Rule R146 and proposed new rule R146A.

***Rule R146: Geotechnical investigation bores and Rule R147: Drilling, construction or alteration of any bore***

79. CPPL sought amendments to Rules R146, R147 and R148 so that the Lambton Harbour Area (Northern Zone) is removed from the Hutt Valley aquifer zone and/or that the provisions be amended. The Officer recommends that this submission is accepted in part, stating:

<sup>16</sup> S42A report, Water Allocation, paragraphs 658-663.

<sup>17</sup> Evidence of Dr Doug Mzila, para 47.

*CentrePort Properties Limited (S141/037, 141/038, 141/039) submits that there is no reference to the General Conditions in Section 5.7.2 of the proposed Plan which state that there shall be no disturbance below 0.5m within the Hutt Valley aquifer zone (defined in Map 30) in Rules R146, R147 and R148. S141 requests that the Lambton Harbour Area (Northern Zone) should be removed from the Hutt Valley aquifer zone (Map 30- Hutt Valley aquifer zone in Wellington Harbour (Port Nicholson)) as this will have implications on any developments because the bore depth will be restricted. S141 is concerned that there is insufficient justification for the restriction generally and that the delineation of the extent of the aquifer zone is arbitrary. A further submission by WWL (FS25/047) considers that the aquifer could be in this area and a precautionary approach should be taken until the aquifer extent is clarified. WWL (S135/179) requests that Map 30 be included in Rule R146 (a).*

*While submissions on Map 30 will be covered in the coastal topic (Hearing Stream 6), Map 30 is relevant in the context of the bore rules R146 and R147 as submitters have asked for these rules to reference the map. Rules R146 to R148 apply on land and in the CMA.*

*The extent of the Hutt Valley aquifer zone is relatively well established on land and recent investigations have shown the potential of the aquifer to extend under the Wellington Harbour. I therefore consider it appropriate, taking a precautionary approach, the same controls and depth limitations suggested in paragraph 671 above should also apply to the aquifer in the CMA delineated by Map 30. However, investigations undertaken by CentrePort Properties Limited have shown that Hutt Valley aquifer like materials are not in the vicinity of Aotea Quay Wharf and Interislander Wharf and so could be excluded from Map 30.*

*Two pre-hearing meetings were held with WWL and CentrePort Properties Limited. Agreement was reached that Rule R146 should not permit geotechnical bores (or investigation and monitoring bores if the above recommend changes are adopted) deeper than 5m below the sea bed in the area delineated by Map 30. The parties also agreed that this 5m restriction does not need to apply to the Commercial Port Area shown in Map 32 as long there was sufficient evidence available to show the Hutt Valley aquifer zone is not present in this location.*

*For clarity and plan user friendliness, I recommend including a new map that shows the Hutt Valley aquifer zone excluding the Commercial Port Area so that it can be*

*referred to in Rule R146. This map could be combined with the new map recommended in paragraph 672 above.*

*I also consider it appropriate to add a new condition to Rule R146 for investigation and monitoring bores occurring in the CMA. I recommend the condition refer to compliance with Section 5.7.2 Coastal management general conditions of the proposed Plan, except for conditions (b) and (c). In my view there are a number of other environmental effects when drilling or constructing an investigation or monitoring bore in the CMA, that do not occur on land. It is therefore necessary to ensure these effects are managed to ensure they are no more than minor. In my view, it is also necessary to refer to coastal management general conditions as a matter of control for Rule R147 for those situations where a bore is being constructed in the CMA. However, it is not necessary for Rule R148 as this is a full discretionary rule.*

*Rule R146 includes the associated discharge of water or contaminants for the drilling of the bore, however, there are no conditions on the rule to ensure the effects of the discharge are managed. To be consistent with other rules in section 5.6, I recommend an additional condition be added to Rule R146 so that the discharge must comply with the conditions of Rule R42, a permitted activity that deals with minor discharges.<sup>18</sup>*

80. The Officer's changes are supported and represents a practical approach for CentrePort in respect of its Thorndon assets, including the Lambton Harbour Area (Northern Zone) delineated on Map 32, where there is evidence that deeper bores in this location including piling will not breach the Hutt Valley Aquifer.



**Lindsay Daysh**

**Incite**

**22 August 2017**

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<sup>18</sup> S42A Report, paragraphs 673-679.