Before the Hearings Panel
At Wellington

Under the Resource Management Act 1991

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

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Legal Submissions for Hearing Stream 6 - Right of Reply

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MAY IT PLEASE THE PANEL:

1 Hearing Stream 6 (**HS6**) dealt with issues of:

1.1 Historic heritage (section 42A report provided by Ms Legarth),

1.2 Management of the Coastal Marine Area (section 42A report provided by Mr Denton),

1.3 Activities in the Coastal Marine Area (section 42A report provided by Mr Blackman),

1.4 Natural Hazards (section 42A report provided by Mr Shield),

1.5 Contaminated Land (section 42A report provided by Mr Loe), and

1.6 Community Drinking Water Supplies (section 42A report provided by Mr Loe).

2 The following legal issues arose during the hearing which are addressed in these submissions:

2.1 Validity of a 'dual zone' as proposed by CentrePort.

2.2 Rules in relation to sites of significance (in light of jurisdiction issues raised regarding rules on historic heritage).

2.3 Rule R191 of the proposed Plan and the note relating to the Marine Reserves Act 1971.

2.4 Rule R202 of the proposed Plan and the ability to

decline dredging in a Schedule C site.

2.5 Scope issues relating to:

2.5.1 Including all items in the New Zealand Archaeological Association database in the heritage list in the proposed Plan.

2.5.2 Changing the activity status for Rule R202 when in a Schedule C site.

2.5.3 Changing the seven rules referred to by Mr Blackman into two rules.

2.5.4 Amendment to the definition of 'soft engineering' to include beds of lakes and rivers, as well as the coast.

2.5.5 Removing structures from the heritage list that no longer exist.

2.5.6 The scope for decision makers to make changes compared to scope for submitters to seek changes.

VALIDITY OF A 'DUAL ZONE' AS PROPOSED BY CENTREPORT

3 We understand that CentrePort is seeking that:

3.1 The provisions that apply in the Commercial Port Area (**CPA**) and the provisions that apply to the Lambton Harbour Area (Northern Zone) (**LHA**) both apply to the Waterloo Quay and Railway (Interisland) Wharves (**Wharves**) until such time as the Wharves are redeveloped.

Supplementary statement of evidence of Lindsay Daysh for Centreport at [4] and [13]

3.2 An amended policy and rule framework is put in place for the use and development of the two Wharves. Above at [3]

4 Mr Daysh has referred to both the CPA and LHA provisions applying to the wharves as a 'dual zoning' of the wharves. We submit that this is an unhelpful description of the approach proposed by CentrePort for the following reasons. Above at [10]

5 The proposed Plan does not provide for 'zones', and the CPA and LHA are not 'zones' in the proposed Plan in the usual sense. The CPA is defined in the proposed Plan as 'the areas shown on Map 32, Map 33 and Map 34', and the LHA is defined as 'the area shown on Map 32.' The purpose of defining these areas is for policy and rule interpretation. For example, Policy P142 refers to use and development of the LHA, and Rules R173-175 relate to structures in the CPA. To correctly apply those policies and rules there needs to be clarity about where the CPA and LHA are. However, this does not mean that the CPA and the LHA are zones in the way that a zone may exist in a District Plan. Page 22 Redline version; Page 30 Redline version; Page 59 Redline version; Page 230 Redline version

6 Rather than a dual zoning, we understand that CentrePort is seeking to apply the provisions that relate to the CPA and the LHA to the Wharves, together with amending the provisions which do apply.

7 From a legal perspective, there is no issue with applying a range of provisions to an identified area. However, while it is difficult to follow exactly what CentrePort is seeking, it seems to suggest that both sets of provisions (CPA and LHA) would apply to the two Wharves and at the time of consent, a choice is made about which ones apply based on the type of development proposed.

8 Mr Daysh stated in his supplementary evidence:

> I have also considered how the consent authority would know which planning regime to apply at any given time. Again, I consider that this is straightforward with a location specific policy and an activity specific rule. If the Wharves are solely used or developed for Port operational purposes, the Commercial Port provisions would apply. If a commercial redevelopment of the Wharves was applied for, the revised rule and policy which I discuss below would apply.

Supplementary statement of evidence of Lindsay Daysh for Centreport at [14]

9 The provisions suggested by Mr Daysh do not reflect the above statement and how one decides which set of provisions to apply is not clear. It is submitted that it is not appropriate that an officer or an applicant can pick and choose which provisions apply to an area based on the proposed use of the area. That is a bit like saying in a Residential Area you use the residential provisions in the District Plan if building residential, but the commercial activity provisions if building commercial.

10 As stated in our legal submissions in reply for Hearing Stream 5, rules in a plan, and the provisions of the plan in general must be sufficiently certain to be understandable and functional.

Hearing Stream 5, legal submissions in reply at [54] - [56]

11 It is submitted that to enable picking and choosing of relevant provisions in the proposed Plan would be uncertain, and would not be understandable, or functional. It would provide a discretion to the decision-maker and the applicant to pick and choose the relevant provisions.

12 It is also suggested by CentrePort that the CPA provisions would 'fall away' (ie, no longer be applicable to any consent application for development of the wharves) at the practical completion of redevelopment of both wharves, incorporated via a note within Policy P142 explaining the method by which this would occur.

Supplementary statement of evidence of Lindsay Daysh for CentrePort at from [13]

13 We understand that proposed wording for this method has not been provided by CentrePort. It is also not clear how the 'practical completion' of the Wharves would be assessed, given it is not clear at this stage what the redevelopment would consist of. It is unlikely that this approach will be sufficiently clear and certain.

14 CentrePort has proposed a range of alternative rules and policies for consideration by the Panel. This is open to CentrePort to do, provided scope for these proposed changes exists in CentrePort's submission. It is then for the Panel to determine whether these proposed changes are appropriate when undertaking their deliberations. We have not commented on that aspect.

Supplementary statement of evidence of Lindsay Daysh for Centreport at from [18] and Statement of Evidence of Mr Daysh from [196]

15 We have considered whether CentrePort has scope for the outcomes it seeks in our submissions on scope below.

RULES IN RELATION TO SITES OF SIGNIFICANCE (IN LIGHT OF JURISDICTION ISSUE RAISED REGARDING RULES ON HISTORIC HERITAGE)

16 In the legal submissions for Hearing Stream 6, the issue of jurisdiction for making rules in relation to historic heritage in the beds of lakes and rivers was addressed. In short, because of section 68(1)(a) of the RMA, the Regional Council cannot create rules for the purpose of carrying out its functions under sections 30(1)(a) and 30(1)(b) of the RMA (but it can create objectives and policies).

Hearing Stream 6 legal submissions 25 May 2018, paras 19-28

17 This means that the Regional Council's ability to make rules relating to the use of land in beds of lakes and rivers is restricted to the specific matters set out in section 30(1)(c) of the RMA. Accordingly, the Council cannot make rules specifically for the purpose of protecting historic heritage in beds of lakes and rivers, as it is not specifically provided for

in section 30(1)(c) of the RMA:

> **30 Functions of regional councils** under **this Act**
>
> (1) Every regional council shall have the following functions for the purpose of giving effect to this Act in its region:
>
> (c) The control of the use of land for the purpose of—
>
> (i) Soil conservation:
>
> (ii) The maintenance and enhancement of the quality of water in water bodies and coastal water:
>
> (iii) The maintenance of the quantity of water in water bodies and coastal water:
>
> (iiia) The maintenance and enhancement of ecosystems in water bodies and coastal water:
>
> (iv) The avoidance or mitigation of natural hazards:
>
> (v) The prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances:

18 The CMA is different because section 30(1)(d) of the RMA provides wider functions in relation to the use of land in the CMA and section 68(1)(a) does not exclude making rules for section 30(1)(d) purposes, as it does for section 30(1)(a) and (b) purposes.

19 The Panel raised the question of whether this same restriction applies to sites with significant mana whenua values in the beds of lakes and rivers (contained in Schedule C).

20 As noted in the section 32 report on Sites with Significant Historic Heritage Values, the definition of historic heritage in the RMA includes sites of significance to Māori. However, after consultation with mana whenua, the sites of significance to Māori went through a different process and

Para 1.1.

resulted in a different Schedule in the proposed Plan identifying these sites.

21 In terms of Schedule C sites, the section 32 report on Maori Values states that ' these places have been specified because of mana whenua concern that they require additional protection and or restoration from the impacts of land use, works in the beds of lakes and rivers and direct and non-point discharges'.

Page 12 and referred to at para 68 of Ms Guest's section 42A report on sites with significant mana whenua values

22 As set out in Ms Guest's section 42A report on sites with significant mana whenua values the guiding Objective in the Proposed Plan for sites of significance to mana whenua is Objective O33 (now proposed to be part of Objective O14), which provides for the protection and restoration of Schedule C sites. This, along with Policies 44 and 45, a suite of rules and Methods M25 and M26 work together to manage these sites. Her report states that these provisions derive from the RPS - Objective 16 and Policies 23 and 24, which all relate to ecosystems with significant biodiversity values, which include tangata whenua values. This was also reflected in Mr Grace's evidence.

Para 116 of Ms Guest's section 42A report on sites with significant mana whenua values

Para 118

Para 69 Grace evidence

23 Policy 23 (specifically sub-clause e) of the RPS is particularly relevant:

> District and regional plans shall identify and evaluate indigenous ecosystems and habitats with significant indigenous biodiversity values; these ecosystems and habitats will be considered significant if they meet one or more of the following criteria:
>
> (e) Tangata whenua values: the ecosystem or habitat contains characteristics of special spiritual, historical or cultural significance to tangata whenua, identified in accordance with tikanga Māori.

24 The process of engaging with iwi and the process for identifying these sites of significant is set out in the evidence

of Mr Mike Grace. It reflects that these tangata whenua values were identified through a rigorous process over several years.

25 Accordingly, as the proposed sites with significant mana whenua values are identified because of their indigenous biodiversity values (which includes tangata whenua values as you can see from Policy 23(e) above) it is submitted this falls within section 30(1)(ga) of the RMA:

> The establishment, implementation and review of objectives, policies and methods for maintaining indigenous biological diversity.

26 This means that unlike historic heritage, rules can be made under section 68 of the RMA (and objectives and policies) in beds of lakes and rivers in relation to sites with significant mana whenua values. As noted in the Hearing Stream 6 legal submissions, this was confirmed in *Property Rights in NZ Inc v Manawatu-Wanganui Regional Council*, which stated:

[2012] NZHC 1272 at [30]

> First, s68(1) plainly empowers the Council to make rules for the purposes of carrying out any functions conferred on it under the Act, save those in s30(1)(a) and (b). Parliament did not see fit to also except s30(1)(ga). By virtue of the latter provision, one of its functions is the establishment, implementation and review of objectives, policies and methods for maintaining indigenous biological diversity. So plainly the Council may make rules in its regional plan…for that purpose.

RULE R191 OF THE PROPOSED PLAN AND THE NOTE RELATING TO THE MARINE RESERVES ACT 1971

27 Rule R191 of the proposed Plan contains the following note:

> While the removal of natural materials from a marines reserve (unless authorised for research purposes) is prohibited under the Marine Reserves Act 1971, a memorandum of understanding between the Department of Conservation and Wellington City Council

enables beach grooming within the Taputeranga Marine Reserve with particular conditions.

28 The Panel asked what impact the Marine Reserves Act 1971 (**MRA**) and memorandum of understanding have in relation to RMA controls. That is, Rule R191 provides for beach grooming as a permitted activity (subject to conditions) and Mr Blackman suggested in his section 42A report (paragraph 323) that the memorandum of understanding would override Rule R191.

29 Under section 18I(3)(d) of the MRA it is an offence to remove from marine reserve any sand or other natural material, without lawful authority.

30 The Marine Reserve (Taputeranga) Order 2008 (the Order) is the mechanism by which the Governor General (under section 4(1) of the MRA) declares an area a marine reserve and sets out the conditions that apply in the reserve.

31 Clause 3 of the Order declares the Taputeranga area described in Schedule 1 to be a marine reserve. Clause 7 sets out the conditions the marine reserve is subject to. This includes allowing removal of 'beach cast seaweed and debris':

Beach cast seaweed is defined as seaweed of any species that is unattached and cast ashore.

31.1 After a storm, and

31.2 For the purpose of enhancing public enjoyment of the marine reserve, and

31.3 After 24 hours' notice to the Department of Conservation, and

31.4 If in compliance with all other legal requirements relating to the removal.

32 This order provides 'lawful authority' and therefore, as long as those conditions are met, no offence under the MRA will arise.

33 This is a separate issue from whether the proposed Plan requirements apply. As can been seen from clause 7 above, all other legal requirements need to be met so regardless of the Order, the proposed Plan requirements will still apply, in addition to any requirements in the MRA or the Order.

34 Mr Blackman has addressed, in his right of reply, his suggested amendments to reflect the above legal position and in response to submissions and evidence on behalf of the Minister of Conservation.

RULE R202 AND THE ABILITY TO DECLINE DREDGING IN A SCHEDULE C SITE

35 Rule R202 of the proposed Plan is a controlled activity for maintenance dredging outside of the Commercial Port Area. One of the matters of control is 'effects on sites and habitats identified in Schedule C' (and other Schedules). The Panel asked the question of whether you can decline a consent under this Rule due to the effects on a Schedule C site.

36 As this is a controlled activity, there is no ability to decline consent because of the level of effects on the Schedule C site. There is only the ability to impose conditions that remedy or mitigate those effects.

37 This is because section 87A(2) of the RMA requires a controlled activity must be given consent, unless one of two exceptions apply. One relates to subdivision and is not relevant and one prevents consent being granted if it is an activity to be carried out in a protected customary rights area, the adverse effects will be more than minor and there is no

Section 55(2) of the Marine and Coastal Area (Takutai Moana) Act 2011

written approval from the relevant protected customary rights group.

38 The Panel's secondary question of whether there is scope to change maintenance dredging outside of the Commercial Port Areas, but within Schedule C sites, to another activity is addressed below under the scope heading.

SCOPE ISSUES

39 We have extensively addressed the Panel on the law on scope in respect of making decisions on the proposed Plan and we do not repeat those submissions here, other than to note that the test is whether any amendment made to the proposed Plan as notified goes beyond what is fairly and reasonably raised in submissions. Accordingly, 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 2017at [41]-[42]; and the Memorandum of Counsel regarding scope, 22 December 2017 at [5]-[8].

Westfield (New Zealand) Ltd v Hamilton City Council [2004] NZRMA 556 (Westfield) at [73] and [74].

Including all items in the Archaeological Association database in the heritage list in the proposed Plan

40 We understand that Rangitāne o Wairarapa Inc (**Rangitane**) sought the inclusion of all sites recorded in the New Zealand Archaeological Association (**NZAA**) database in Schedule E of the proposed Plan. We have considered whether there is scope for this inclusion provided in Rangitane's submission.

41 In their submission (S279) Rangitane sought the following relief in relation to Schedule E:

> Add archaeological and historic heritage sites of significance to mana whenua. As a minimum, this should include the sites

Page 110 S279

recorded in the New Zealand Archaeological Association database.

42 The reasons for this relief was set out in the submissions as:

> The current schedule in the plan provides very few historic heritage sites associated with Maori history. While some archaeological sites are not able to be made public for cultural reasons, a large number of archaeological sites are public and should be included in the Plan to provide appropriate protection for them. As a minimum, the sites recorded in the New Zealand Archaeological Association database should be included in the Plan.

Page 110 S279

43 The submission point is clearly aimed at historic heritage sites associated with Maori history, or of significance to mana whenua. However, the issue with the submission is that:

43.1 It did not include any indication of what from the NZAA database should be included. That is, it only seeks sites on that list with archaeological and historic significance to mana whenua, but it did not identify which sites those are.

43.2 The NZAA database is not easily publicly available. You have to subscribe to Archsite to access the details of the list. To do this, there is a subscription fee of $800 per year or if you want information on a particular site, $50 per site.

44 This means that no submitter could easily identify what sites might be captured by the request to include all sites on the list into the proposed Plan and therefore, could not make further submissions on the additions proposed by Rangitane. There is also no information before the Panel about the robustness of that list (ie, what sort of research or process is followed for a site to be included on that list) or whether the list has been amended over the time from when the proposed Plan was notified (ie, a submission can only ask for things

that existed at the time of their submission).

45 It is submitted that it not reasonably foreseeable that sites listed on the NZAA database may be included in the proposed Plan because no submitter could understand what sites were being sought for inclusion.

Changing the activity status for Rule R202 when in a Schedule C site

46 Rule R202 of the proposed Plan provides that:

> Destruction, damage or disturbance associated with maintenance dredging outside a **Commercial Port Area** shown on Map 32, Map 33 and Map 34 or a **navigation protection area** shown on Map 49, in the coastal marine area,
>
> …
>
> is a controlled activity …

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47 This allows for maintenance dredging inside a site of significance as a controlled activity. In his section 42A report Mr Blackman noted that a controlled activity cannot be declined consent. He raised a concern with this approach, and considered that if adverse effects from maintenance dredging cannot be mitigated, then the activity will not give effect to the objectives of the proposed Plan which seek to protect sites of significance. However, he could not identify any scope to enable an amendment to R202.

Section 42A Report Activities in the CMA at [448] - [450]

48 The Minister of Conservation sought in evidence that R202 be amended to provide for maintenance dredging outside the CPA as a discretionary activity. The Minister of Conservation did not submit on R202, but considers that the Rangitane submission provides scope for the amendment.

Supplementary evidence of Ms Cooper dated 12 June 2018 at [18]

Legal submissions on behalf of Minister for Conservation at [33]

49 In its submission, Rangitane sought that in relation to the

S279

rules in section 5.7:

> The rules in this section that require discretionary or non-complying consent for activities within sites identified in Schedule A to F are supported. Where rules do not require discretionary or non-complying consent for activities within sites in those schedules, rules should be amended or added to do so.

Page 105 S279

50 Rule R202 is within section 5.7 of the proposed Plan. The submission would apply to R202, as it does not provide for a discretionary or non-complying activity status of activities within a site of significance (Schedule C). Given this, it is submitted that it is a foreseeable consequence that R202 might be amended under this 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.

Change the 7 rules referred to by Mr Blackman into 2 rules

51 In his section 42A Report Mr Blackman identified 7 rules which he considered resulted in unnecessary duplication - R194 R195, R204, R205, R208, R209 and R216. He identified that these could be potentially combined into 2 rules. He identified that scope for this change was unclear.

Section 42A Report Activities in the CMA at [389], [391] and [392]

52 In his Right of Reply Report, Mr Blackman retains the position that scope is not provided by any submission for the combination of the above rules. However, he considered that the amendment would be of minor effect, and therefore could be done under clause 16 of the RMA.

HS6 Right of Reply, Activities in the CMA at [150]

53 We have previously addressed the Panel on clause 16 of the RMA. Under the RMA, an amendment can be made at any time to the proposed Plan where such an alteration is of minor effect, or where it corrects a minor error. This is a

Hearing Stream1 legal submissions at [117] - [121]

power that is independent of scope.

54 Mr Blackman considers that is proposed change would be of minor effect. The test for 'minor effect' is whether the amendment affects the rights of some members of the public, and therefore might have drawn a submission, or whether it is merely neutral. Only if it is neutral, and therefore would not have drawn a submission, may such an amendment be made.

Re an Application by Christchurch City Council (1996) 2 ELRNZ 431, at p440.

55 We understand that the change proposed would not change the effect of the rules, and there will be no change in how the relevant objectives and policies apply. In other words, there will be no change in how an application for consent will be assessed, the only change will be that it will be easier to identify which default rules apply to the application.

HS6 Right of Reply, Activities in the CMA at [150] and [154]

56 Given this, we submit that the change proposed by Mr Blackman is one that can be authorised by clause 16 of the RMA, as it is a change of minor effect.

Amendment to the definition of 'soft engineering' to include beds of lakes and rivers as well as the coast

57 In his Right of Reply Mr Sheild has proposed an amendment to the definition of 'soft engineering'. The current definition of 'soft engineering' in the proposed Plan is:

> Works such as beach nourishment and dune rebuilding that use non-structural materials (e.g. sand, cobbles, native plants) to mimic natural coastal features that can act to mitigate the impacts from natural hazards.

Page 39 Redline version

58 Mr Sheild proposes to amend the definition to make it clearer to plan users that soft engineering is applicable to both the coastal environment and the beds of lakes and rivers. His amendment is to include reference to riparian planting as an example, and to specify that soft engineering can mimic both

HS6 Right of Reply Natural Hazards at [181] and [185]

coastal *and* riverine features.

59 As set out above, an amendment can be made at any time to the proposed Plan where such an alteration is of minor effect, or where it corrects a minor error. This is a power that is independent of scope.

Hearing Stream1 legal submissions at [117] - [121]

60 Mr Sheild considers that proposed change would be of minor effect.

HS6 Right of Reply Natural Hazards at [181]

61 It is submitted that regardless of whether the change can be made, the question is more what is the purpose of making the change? There are no rules that refer to 'soft engineering' and the objectives and policies are aimed at avoiding hard mitigation in high hazard areas (which includes beds of lakes and rivers). For example:

61.1 O22 - **Hard engineering** mitigation and protection methods are only used as a last practicable option.

61.2 P28 - **Hard engineering** mitigation and protection methods shall be avoided except: …

62 The only time soft engineering is mentioned is in P139, which deals with seawalls and is clearly a coastal issue. Accordingly, changing the definition is of no effect.

Removing structures from the heritage list that no longer exist

63 There is a structure identified in Schedule E that no longer exists - ie, the Ngatiawa Bridge, Mangaone South Road, Reikorangi. Given this, Ms Legarth has recommended that that the Ngatiawa Bridge should be removed from Schedule E5.

HS6 Right of Reply Significant Historic Heritage at [8.10]

64 It is submitted that such a removal can be authorised by clause 16, as a change with minor effect. The relevant

provisions currently relate to a non-existing structure and therefore cannot be implemented in any event. For example, P46 requires that more than minor effects on the significant historic heritage values identified in Schedule E5 shall be avoided, remedied or mitigated by managing activities so that significant historic heritage values are not lost. The removal of the bridge from Schedule E5 will be of no effect as P46 will not be able to be applied because the heritage values have already been lost.

The scope for decision makers to make changes compared to scope for submitters to seek that changes

65 As you have heard in previous submissions, the scope of decision makers to make changes generally lies between the provisions of the notified version of the proposed Plan, and the relief sought in submissions in the proposed Plan.

Hearing Stream 1 legal submissions at [105]

66 The powers of the decision maker are set out in clause 10 of schedule 1 of the RMA as being the ability to make a decision on 'the provisions and matters raised in submissions'.

Clause 10(1) of the RMA

67 We have previously provided the Panel with extensive submissions on what is meant by a matter raised in a submission, which is also referred to as the 'scope' of a submission. In summary, it is whatever can fairly be said to be a foreseeable consequence of any change directly proposed in the submission.

68 Accordingly, the Panel may rely on *any* submission made by *any* submitter to provide scope for any change to the notified version of the proposed Plan that the Panel thinks is required to meet the plan changes tests.

Clause 16 of the RMA

Hearing Stream 1 legal submissions at [117]- [121]

69 In terms of the scope for a submitter to raise matters referenced in other submissions and not their own, the

situation is slightly different. While the convention is that submitters are only heard and call evidence in relation to their submission, section 40(1) of the RMA does not actually impose such a restriction. Every person who has made a submission and stated they wish to be heard at the hearing 'may speak… and call evidence'. Section 40 does not limit this to matters raised in their submission.

70 Of course, the Panel has the power to establish whatever procedure it sees as appropriate and fair in the circumstances and the Panel may limit the circumstances in which a party may speak or present evidence if it considers that there is likely to be excessive repetition.

Section 39(1) and 40(2) of the RMA

71 However, a submitter is constrained in other ways. Firstly, when making a submission, under clause 6 of the RMA, that submission must be on the plan change. If the submission is not on the plan change, then it is not a valid submission.

Clause 6 (1)of the RMA

72 Submitters are also limited in terms of their scope for appeals by what was in their submission. Clause 14(2)(a) limits submitters rights of appeal to provisions that were referred to in the appellant's submission. In summary to have the ability to appeal, the appellant:

72.1 must have made a submission on the proposed plan;

Re Vivid Holdings Limited (1999) 5 ELRNZ 264 at [17] and clause 14 of First Schedule

72.1 must appeal a provision or matter addressed in that proposed plan;

72.2 must raise a resource management issue in the general sense; and

72.3 must have referred to the provision or matter in

their submission on the proposed Plan..

73 However, as the hearings have now concluded, the submitters have presented their submissions and evidence and the issue now is really whether the Panel is able to use scope from *any* submission when deciding on the most appropriate provisions. The short answer is 'yes'. The Panel can rely on any submission to provide scope for a change.

Scope for changes sought by CentrePort re 'dual zoning'

74 In its submission CentrePort made a submission on the 'objectives, policies and rules relating to the development of Waterloo Quay Wharf and Interisland Wharf', seeking amendments to the objectives, policies and rules relevant to the Waterloo Quay Wharf and the Interisland Wharf (**Wharves**) to: S141

> a. …
>
> b. Retain underlying provisions relating to port operations in the Commercial Port Area, until such time as mixed use redevelopment of the Wharves occur and for as long as they remain utilised for Port related activities. This could be achieved by an overlay mechanism or similar.

S141 at page 4

75 The question is whether this part of the submission provides scope for the 'dual zoning' proposed by CentrePort. It is submitted that it is a potentially foreseeable outcome from that submission that the provisions of the Commercial Port Area would be retained and apply to the wharves, until there is a mixed use development of them. While the submission does not set out the mechanics of that, it is submitted it does raise the issue enough for there to be 'notice' of the intention of the development of the wharves determining when the Commercial Port Area provisions would 'drop away' (and presumably, the provisions of the proposed Plan apply). .

76 Accordingly, it is submitted that the submission provides scope for the 'dual zoning' approach sought by CentrePort.

77 In addition, CentrePort seek further amendments to the heritage provisions which relate to the wharves, and respond to what is described by Mr Daysh as a' conflict between the stringent heritage related provisions and the more enabling provisions of the Lambton Harbour Area', particularly: Supplementary evidence of Mr Daysh dated 15 June 2018 at [17]

77.1 Amendments to P46, P47 and R169 to remove reference to the wharves. At [18], [23]

77.2 The addition of a new policy P142A. At 20]

77.3 The addition of a new Policy P47A. At [22]

77.4 The addition of a new rule R169A. At [24]

77.5 Amendments to R171 and R172. At [25]

77.6 Consequential amendments to discretionary activity rule R171 and R172.

78 This is addressed from a policy perspective by Ms Legarth. HS6 Right of Reply Significant Historic Heritage at [38]

79 In terms of scope, CentrePort's submission does not specifically set out the changes sought above. For example, it seeks that the wharves be excluded from P46 in evidence, whereas its specific submission on P46 only sought that P46 be amended to ensure that listed outcomes do not unduly constrain opportunities for redevelopment of historic heritage sites.

80 However, CentrePort's submission includes a relatively wide submission on the 'objectives, policies and rules relating to

the development of Waterloo Quay Wharf and Interisland Wharf'. The submission sought that the objectives, policies and rules be amended to:

> a. Provide for the mixed use redevelopment of the Wharves, the Coastal Marine Area around the Wharves and adjacent land areas for retail, office, residential, short term accommodation/hotel. Food/beverage, marine and/or pleasure/commercial boat facility activities, either as a complete change of use or in combination with Port related activities; and
>
> b. Retain underlying provisions relating to port operations in the Commercial Port Area, until such time as mixed use redevelopment of the Wharves occur and for as long as they remain utilised for Port related activities. This could be achieved by an overlay mechanism or similar.
>
> c. Apply appropriate controls over the redevelopment of the Wharves including such matters as building design and envelopes (including height), provision for open space and access, landscaping etc.
>
> CentrePort seeks such further, consequential or alternative relief as may be necessary, desirable, or appropriate to give effect to the decision sought.

81 The submission point incorporates all objectives, policies and rules relevant to the wharves, and therefore includes the policies and rules outlined above. It is also a broad submission. It does not seek specific outcomes or changes to the policies, objectives and rules but rather seeks that they be changed to 'provide for mixed use development', and to 'apply appropriate controls over the redevelopment'.

82 Given the broad nature of the submission it is submitted that it is foreseeable that changes would occur to the above listed objectives, policies and rules. In addition, we understand that the purpose of those changes is for the redevelopment of the wharves. Given this, we consider that, given the broad nature of the submission, the changes sought by CentrePort

in evidence are within scope of the submission.

83 We note that Mr Beatson for CentrePort also relies on the above section of the CentrePort submission to authorise scope for the changes which relate to historic heritage. Mr Beatson also refers to the submission to amend P142(j) to seek an exception for use and development in the Lambton Harbour Area (Northern Zone)

Supplementary legal submissions of Mr Beatson dated 15 June 2018 at [20]

Date: 20 July 2018

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Kerry Anderson/Kate Rogers
Counsel for Greater Wellington Regional Council