

**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 1 Plan Framework, Beneficial Use and Development & Areas and sites with  
significant mana whenua values**

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

---

**Introduction**

1. My name is Lindsay John Daysh. I hold a Bachelor of Regional Planning Degree from Massey University and a graduate qualification in Transport Systems Engineering from the University of South Australia. I am a member of the New Zealand Planning Institute and the Resource Management Law Association.
2. I have 30 years' experience in town planning and resource management in New Zealand and in Britain. This includes extensive experience in central government agencies, local authorities and since 2004 as a consultant carrying out a broad range of planning matters including strategic planning, policy development, and project development particularly for infrastructure providers. I am also an experienced independent commissioner with a chairmanship endorsement.
3. My current position is as a Director of Incite, a resource management and environmental consultancy. I am based in Wellington.
4. Prior to my move to Incite in November 2010 I was New Zealand Planning Manager with GHD Ltd, where I held national responsibility for all planning matters. Preceding this I was Regional Planning Manager at Transit New Zealand for Wellington/Nelson/Marlborough/Tasman, had two periods of employment at Wellington City Council, worked for the London Borough of Hillingdon, and the former Ministry of Works and Development.
5. I am very familiar with the planning framework in Wellington having worked on a number of planning tasks in the city and the region at strategic and project consenting levels for the majority of my career. I also have strong familiarity with the practical application of a number of regional plans, in particular the operative set for the Wellington region and the Proposed Natural Resources Plan (PNRP).

6. In relation to Ports and in particular CentrePort I have had been involved with:-
- Processing of consents for the demolition of heritage listed structures on Waterloo Quay (WCC);
  - Advising on the relevant port related provisions in the first Wellington District Plan (WCC);
  - Representing Transit New Zealand on the Wellington Gateway Study considering development options for western Aotea Quay and Kaiwharawhara (TNZ);
  - Considering road access improvement options to Kaiwharawhara (TNZ);
  - Providing advice to CentrePort on redevelopment options relating to the ferry terminal at Kaiwharawhara;
  - Since 2014 I have been the planning lead for the Shipping Harbour Deepening Project;
  - Advising on Port Noise matters at the main Port area and at Miramar/Burnham Wharves; and
  - Attending prehearing meetings on port related historic heritage and on issues concerning the Hutt Valley Aquifer.
7. It should also be noted that I have also represented Interislander in both Wellington and Marlborough.
8. I was also the author of the CentrePort submission but I am also familiar with the contents of CPPL submission which was drafted concurrently.
9. I have prepared a separate statement of evidence for KiwiRail Holdings with regard to its submission.
10. 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. I also confirm that the matters addressed in this Statement of Evidence are within my area of expertise, except where relying on the opinion or evidence of other witnesses. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

### **Scope of Evidence**

11. I have been requested by CentrePort Ltd (CentrePort) and CentrePort Properties Ltd (CPPL) to provide evidence on some of the higher level PNRP Objectives and Policies that are under consideration at Hearing Stream 1. This is particularly as they relate to:-

- CentrePort's role as a core component of the Region's Significant Infrastructure assets and also as the primary user of coastal related provisions in the Plan.
  - CPPL submissions are of a more geographically limited focus primarily involving the use and development of the Northern Lambton Harbour Area.
12. As such I will concentrate my evidence on what are the key issues to be considered. These are:
- CentrePort's contribution to the region having regard to the evidence of CentrePort Chief Executive Mr Nind;
  - Consideration of the New Zealand Coastal Policy Statement;
  - Consideration of the provisions of the Regional Policy Statement;
  - Responding to the s42A reports author's recommendations and
  - Outlining the primary matters to be considered in later hearings in particular Hearing Stream 6.

### **CentrePort's Contribution to the Region**

13. Mr Nind the Chief Executive of CentrePort will outline to the Panel the role that CentrePort plays within the region, for Central New Zealand and for New Zealand as a whole. He will also discuss the current initiatives being undertaken by CentrePort in relation to recovery from damage caused by the November 2016 earthquake.
14. In summary CentrePort provides:
- Cargo handling for all manner of goods including container shipping (although slowed due to damage to wharves and cranes), logs, bulk goods, cement, new and used vehicles. This includes export and imports as well as providing for coastal shipping.
  - Terminal facilities for interisland ferries that cross Cook Strait carrying freight and private vehicles, trains on the Aratere and people either in vehicles or as foot passengers. The voyages from Wellington to Picton and return form part of the national transportation route between the North and the South Islands.
  - Fuel delivery to Seaview and Burnham Wharves.
  - Cruise ships entering Wellington Harbour. In the 2016 – 2017 season there were 85 vessels containing 220,000 passengers and crew that visited the city.
  - Some office development assisted by proximity to the Railway Station, the northern CBD and Lambton Harbour. It needs to be acknowledged that this area known as Harbour Quays sustained damage in the November 2016 earthquake.

- Port related storage such as coldstores.

## **New Zealand Coastal Policy Statement**

15. As the panel will be aware the purpose of the New Zealand Coastal Policy Statement 2010 (NZCPS) is to state policies in order to achieve the purpose of the Act in relation to the coastal environment of New Zealand.
16. Regional policy statements, regional plans and district plans must give effect to the NZCPS. Importantly GW as a consent authority, when considering an application for a resource consent and any submissions received, must, subject to Part 2 of the Act, have regard to, amongst other things, any relevant provisions of the NZCPS.
17. The role of Ports is recognised firstly through Objective 6 and then through Policies 6 (activities in the Coastal Environment) and specifically through Policy 9 (Ports). Policy 7 is also important in terms of strategic land use planning.

***Objective 6:** Provide for social, economic, and cultural wellbeing and health and safety, while recognising that protection of coastal environment does not preclude appropriate use, some uses which are important to social, economic and cultural wellbeing depend on a coastal environment location, and functionally some uses and developments must be in the CMA.*

18. Objective 6 has a focus on providing for social, economic and cultural wellbeing and health and safety. It also acknowledges that the term “functionally some uses and developments must be in the CMA”. Of all the activities and structures that are in, or adjoin, the CMA, Ports have the highest level of functional need to be located within the Coastal Environment.
19. This is further emphasised through the application of Policy 6. This is very long and I have replicated it here but bolded the key clauses of importance to the context of Port related provisions in the PNRP.

*Policy 6 Activities in the coastal environment*

*(1) In relation to the coastal environment:*

- a. recognise that the provision of infrastructure, the supply and transport of energy including the generation and transmission of electricity, and the extraction of minerals are activities important to the social, economic and cultural well-being of people and communities;***
- b. consider the rate at which built development and the associated public infrastructure should be enabled to provide for the reasonably foreseeable***

***needs of population growth without compromising the other values of the coastal environment;***

- c. encourage the consolidation of existing coastal settlements and urban areas where this will contribute to the avoidance or mitigation of sprawling or sporadic patterns of settlement and urban growth;***
- d. recognise tangata whenua needs for papakāinga, marae and associated developments and make appropriate provision for them;*
- e. consider where and how built development on land should be controlled so that it does not compromise activities of national or regional importance that have a functional need to locate and operate in the coastal marine area;***
- f. consider where development that maintains the character of the existing built environment should be encouraged, and where development resulting in a change in character would be acceptable;***
- g. take into account the potential of renewable resources in the coastal environment, such as energy from wind, waves, currents and tides, to meet the reasonably foreseeable needs of future generations;*
- h. consider how adverse visual impacts of development can be avoided in areas sensitive to such effects, such as headlands and prominent ridgelines, and as far as practicable and reasonable apply controls or conditions to avoid those effects;*
- i. set back development from the coastal marine area and other water bodies, where practicable and reasonable, to protect the natural character, open space, public access and amenity values of the coastal environment; and*
- j. where appropriate, buffer areas and sites of significant indigenous biological diversity, or historic heritage value.***

*(2) Additionally, in relation to the coastal marine area:*

- a. recognise potential contributions to the social, economic and cultural wellbeing of people and communities from use and development of the coastal marine area, including the potential for renewable marine energy to contribute to meeting the energy needs of future generations:***
- b. recognise the need to maintain and enhance the public open space and recreation qualities and values of the coastal marine area;***

- c. **recognise that there are activities that have a functional need to be located in the coastal marine area, and provide for those activities in appropriate places;**
- d. *recognise that activities that do not have a functional need for location in the coastal marine area generally should not be located there; and*
- e. **promote the efficient use of occupied space, including by:**
  - i. **requiring that structures be made available for public or multiple use wherever reasonable and practicable;**
  - ii. **requiring the removal of any abandoned or redundant structure that has no heritage, amenity or reuse value; and**
  - iii. *considering whether consent conditions should be applied to ensure that space occupied for an activity is used for that purpose effectively and without unreasonable delay.*

20. It is therefore the primary policy that outlines expectations for the use and development within the coastal environment and the coastal marine area. NZCPS Policy 6 details a number of matters relating to activities in the CMA, and generally supports the more focused NZCPS Objective 6. It details that infrastructure in the coastal environment or the CMA contributes to social, economic and cultural wellbeing, and that certain activities have a functional need to be located in the CMA, and these should be provided for, while considering and minimising the adverse effects of those activities.

*Policy 9 Ports*

*Recognise that a sustainable national transport system requires an efficient national network of safe ports, servicing national and international shipping, with efficient connections with other transport modes, including by:*

- (a) *ensuring that development in the coastal environment does not adversely affect the efficient and safe operation of these ports, or their connections with other transport modes; and*
- (b) *considering where, how and when to provide in regional policy statements and in plans for the efficient and safe operation of these ports, the development of their capacity for shipping, and their connections with other transport modes.*

21. In particular NZCPS Policy 9 recognises that Ports contribute to a sustainable and efficient national transport system, and directs Regional Policy Statements and Plans to allow for the safe and efficient operation of Ports, and the development of their capacity for shipping.

Importantly it also references the need to consider the connections of ports to other modes of transport.

22. While not completely related to Ports, Policy 7 of the NZCPS concerning Strategic Planning also is relevant especially to the interests of CPPL. This states:-

*Policy 7 Strategic planning*

- (1) *In preparing regional policy statements, and plans:*

(a) *consider where, how and when to provide for future residential, rural residential, settlement, urban development and other activities in the coastal environment at a regional and district level, and:*

(b) *identify areas of the coastal environment where particular activities and forms of subdivision, use and development:*

(i) *are inappropriate; and*

(ii) *may be inappropriate without the consideration of effects through a resource consent application, notice of requirement for designation or Schedule 1 of the Act process; and provide protection from inappropriate subdivision, use, and development in these areas through objectives, policies and rules. New Zealand Coastal Policy Statement 2010 15*

- (2) *Identify in regional policy statements, and plans, coastal processes, resources or values that are under threat or at significant risk from adverse cumulative effects. Include provisions in plans to manage these effects. Where practicable, in plans, set thresholds (including zones, standards or targets), or specify acceptable limits to change, to assist in determining when activities causing adverse cumulative effects are to be avoided.*

23. Policy 7 of the NZCPS requires regional policy statements, and plans to consider where, how and when to provide for urban development and other activities in the coastal environment at a regional and district level. In relation to Wellington City Centre the PNRP has to a large extent taken this on board.
24. In the case of CentrePort and CPPL's interests the PNRP has defined an area on Map 32 as Lambton Harbour Area (Northern Zone) which adjoins an area in the Wellington City District Plan known as the Port Redevelopment Precinct. This will also be the subject of more detailed submissions from CentrePort and CPPL scheduled to be heard in Hearing Stream 6.
25. The Northern Lambton Harbour Area and specifically its waterfront is a prime opportunity for integration of an area of the Port in close proximity to the existing Lambton Harbour public space and is of public interest in Wellington City. I comment on this further in relation to the higher level matters in response to some of the officers recommendations later in this evidence.

## Regional Policy Statement 2013

26. As the Wellington Regional Policy Statement was made operative in 2013, it was based on the direction provided by the NZCPS in relation to coastal matters. However, it is a much broader document as it also provides direction to regional and district plans on the air, land and the freshwater resource in the region. There is one objective and three specific policies of relevance to the context of Port operations and Port infrastructure.

***RPS Objective 10: Benefits of Regionally Significant Infrastructure are recognised and protected.***

27. Objective 10 states

*The social, economic, cultural and environmental, benefits of regionally significant infrastructure are recognised and protected.*

28. This objective applies to all regionally significant infrastructure and recognises that society cannot operate and sustainably develop without the recognition of the benefits of regionally significant infrastructure. The objective also applies to protecting the benefits that Regionally Significant Infrastructure provides. Of relevance under this objective are three applicable policies.

**Policy 7: Recognise benefits of Regionally Significant Infrastructure.**

*Policy 7: Recognising the benefits from renewable energy and regionally significant infrastructure – regional and district plans*

*District and regional plans shall include policies and/or methods that recognise:*

- (a) *the social, economic, cultural and environmental benefits of regionally significant*

*infrastructure including:*

- (i) *people and goods can travel to, from and around the region efficiently and safely;*

- (ii) *public health and safety is maintained through the provision of essential services:*

*- supply of potable water, the collection and transfer of sewage and stormwater, and the provision of emergency services;*

- (iii) *people have access to energy so as to meet their needs; and*

- (iv) *people have access to telecommunication services.*

**Policy 8: Protect Regionally Significant Infrastructure.**

*Policy 8: Protecting regionally significant infrastructure – regional and district plans*

*District and regional plans shall include policies and rules that protect regionally significant infrastructure from incompatible new subdivision, use and development occurring under, over, or adjacent to the infrastructure.*

**Policy 39: Recognise benefits of Regionally Significant Infrastructure.**

*Policy 39: Recognising the benefits from renewable energy and regionally significant infrastructure – consideration*

*When considering an application for a resource consent, notice of requirement or a change, variation or review of a district or regional plan, particular regard shall be given to:*

- (a) the social, economic, cultural and environmental benefits of energy generated from renewable energy resources and/or regionally significant infrastructure; and*
- (b) protecting regionally significant infrastructure from incompatible subdivision, use and development occurring under, over, or adjacent to the infrastructure; and*
- (c) the need for renewable electricity generation facilities to locate where the renewable energy resources exist; and*
- (d) significant wind and marine renewable energy resources within the region.*

- 29. Policy 7 simply directs regional plans to include policies and/or methods that recognise the benefits of renewable energy and regionally significant infrastructure. Policy 8 seeks that those benefits are protected. Policy 39 makes the recognition of the benefits of Regionally Significant Infrastructure a consideration for resource consent, notice of requirement or a change, variation or review of a district or regional plan.
- 30. As with the NZCPS, I am the view that the RPS is strongly supportive of recognising and protecting regionally significant infrastructure of which CentrePort is a key focus for the movement of freight and people.
- 31. In my view, the structure of the Plan is appropriate as it goes from:
  - the top down objectives
  - through to the policies to give effect to the objectives

- with rules and other methods being the mechanism for what particular matters require consent with assessments being made in relation to policies in the Plan and whether a real proposal is consistent with the objectives.
32. In other words if you get the objectives right, then that will flow down to getting the supporting policies and methods including rules, right as well.
33. Both the CentrePort and the CPPL submissions are broadly supportive of the objectives and policies in the Plan. Saying that there are a number of matters that can be clarified or resolved with the wording of the PNRP that CentrePort and CPPL will work through at this hearing and in the hearings to come.

### **Benefits and protection of regionally significant infrastructure**

34. As stated Mr Nind the Chief Executive of CentrePort will outline the economic importance that the Port and its facilities have to the region at the hearing.
35. This evidence covers both the benefits and needs of the port, and the benefits and needs for commercial development in the coastal environment.

### ***Objective O12 Benefits of regionally significant infrastructure***

36. In its submission CPPL is concerned “that the Proposed Plan does not adequately recognise the benefits of commercial developments in the coastal marine area”, and considers that the “Plan should recognise the benefits of other commercial infrastructure and developments in the coastal marine area that are not regionally significant infrastructure or renewable energy generation activities” (S041/014) CPPL sought the amendment of Objective O12 as follows (we note the word activities was not underlined in the submission but was an addition):

*The social, economic, cultural and environmental benefits of **regionally significant infrastructure**, ~~and~~ **renewable energy generation activities** and new commercial development activities are recognised.*

37. CentrePort sought to retain this objective in its current form (S121/024):

*The social, economic, cultural and environmental benefits of regionally **significant infrastructure** and **renewable energy generation activities** are recognised.*

38. The Officer considers that

*“addressing commercial developments is outside the definition of regionally significant infrastructure” and considers “that significant infrastructure is important infrastructure that meets the definition in the RPS and which contributes benefits nationally and/or regionally. The commercial developments in the CMA have not been identified in the definition as*

*having this benefit and so have not been included as part of the infrastructure policy platform of the proposed Plan.”<sup>1</sup>*

39. Accordingly, the Officer recommends rejection of CPPL’s submission point and does not recommend any changes to Objective O12.<sup>2</sup>
40. I can see some benefits to confine the objective to Regionally Significant Infrastructure as recommended by the officers as there is also a consistency with the RPS definitions of Regionally Significant Infrastructure. However I am supportive of pursuing a compromise option promoted by WCC so that, appropriate commercial activities in the coastal area are recognised and provided for in the policy framework. I comment further on this below.

***Objective O13 Protecting regionally significant infrastructure***

41. CPPL did not submit on Objective 13. CentrePort sought to retain this objective in its current form (S121/025). This “reverse sensitivity” objective is very important so that infrastructure providers can operate with certainty.

***Policy P8 Beneficial activities***

42. CPPL considers that “this policy appropriately recognises that beneficial activities in the coastal marine environment include the maintenance and use of existing structures and the removal of dangerous or derelict structures” and has sought to “retain Policy P8 in its current form” (S141/021):

*The following activities are recognised as beneficial and generally appropriate:*

- (a) activities for the purpose of restoring natural character, **aquatic ecosystem health, mahinga kai**, outstanding water bodies, sites with significant **mana whenua** values, and sites with significant indigenous biodiversity values, and*
- (b) activities that restore natural features such as beaches, dunes or wetlands that can buffer development from natural hazards, and*
- (c) day-lighting of piped streams, and*
- (d) removal of aquatic weeds and pest plants, and*

---

<sup>1</sup> Section 42A Officer’s Report – Beneficial Use and Development at [325].

<sup>2</sup> Section 42A Officer’s Report – Beneficial Use and Development at [349]; Section 42A Officer’s Report – Beneficial Use and Development – Appendix at page 128.

- (e) *the establishment of river crossings (culverts and bridges) or fences and fence structures that will result in the exclusion of regular **livestock** access from a water body, and*
- (f) *the retirement, fencing and planting of riparian margins, and*
- (g) *the retirement of **erosion prone land** from **livestock** access, and*
- (h) *maintenance and use of existing structures in the coastal marine area, **natural wetlands and the beds of rivers and lakes**, and*
- (i) ***removal of dangerous or derelict structures in the coastal marine area, natural wetlands and beds of lakes and rivers, and***
- (j) ***structures necessary to provide for monitoring resource use or the state of the environment in the coastal marine area, natural wetlands and beds of lakes and rivers, and***
- (k) ***activities necessary to maintain safe navigation, and***
- (l) ***artworks that support and enhance public open space.***

43. CentrePort sought to amend Policy P8 as follows (S121/043):

- h) maintenance, use and upgrading of existing structures in the coastal marine area, natural wetlands and the beds of rivers and lakes”***

44. CPPL “supports the submission to include the words “and upgrading” in Policy 8(h) to allow the policy to appropriately recognise that beneficial activities in the coastal marine environment include the maintenance, use and upgrading of existing structures”. CPPL sought to allow the whole of submission point S121/043.

45. I note that the officer has recommended this change to include the word upgrade which is supported.

***Policy P12 Benefits of regionally significant infrastructure and renewable electricity generation facilities***

46. CPPL is concerned that “the Proposed Plan does not adequately recognise the benefits of other commercial developments in the coastal marine area” and seeks the amendment of this Policy as follows (S041/022):

*The benefits of regionally significant infrastructure, ~~and~~ renewable energy generation activities, and new commercial developments are recognised by having regard to:*

- (a) *the strategic integration of infrastructure and land use, and*
- (b) *the location of existing infrastructure and structures, and*
- (c) *the need for renewable energy generation activities to locate where the renewable energy resources exist, and*
- (d) *the functional need for port activities to be located within the coastal marine area, and*
- (e) *operational requirements associated with developing, operating, maintaining and upgrading regionally significant infrastructure and renewable energy generation activities.*

47. CentrePort (S121/046) supports the intent of the policy in recognising the benefits of regionally significant infrastructure but considers specific reference to port activities and infrastructure should be given. CentrePort seeks the amendment of Policy P12 as follows:

- (d) *the functional need for port activities and infrastructure to be located within the coastal marine area, and*

48. In respect of this policy, the Officer states:<sup>3</sup>

*The intent of Policy P12 is quite clear (see section 32 report: Beneficial use and development, page 24) which is directed towards those activities which are strictly port-related that also have a functional need to be located there. The policy does not include all the ancillary activities and other commercial developments that have occurred nearby the port and do not have a functional need to be located in the CMA.*

49. The Officer rejects CPPL's and CentrePort's submissions and does not recommend any changes to Policy P12.<sup>4</sup>

50. There are two aspects to this. The first is the appropriateness of including new commercial developments in the policy and the second with the definition of port activities.

51. I have already indicated my support of an alternative policy framework for managing urban development opportunities within the coastal area. To this extent, and assuming such a framework is implemented, I accept the officer's view that the policy should be confined to regionally significant infrastructure and renewable energy generation.

52. The second matter is whether the term "port activities" also covers port infrastructure in relation to the functional need to be located in the CMA. While it may be semantics, in my experience at a District Plan level a distinction is often made between 'activities' (i.e. the use)

<sup>3</sup> Section 42A Officer's Report – Beneficial Use and Development at [333].

<sup>4</sup> Section 42A Officer's Report – Beneficial Use and Development at [349].

and built development and structures. In my view words the words should be added to avoid any future ambiguity as to their scope, particularly as Port Activities are not defined elsewhere.

***Policy P13 Existing regionally significant infrastructure and renewable electricity generation facilities***

53. CentrePort sought to retain this Policy in its current form (S121/047) as it provides recognition of the use, operation, maintenance, and upgrade of existing regionally significant infrastructure and renewable energy generation activities as beneficial and generally appropriate. The Officer does not recommend any changes to Policy P13.<sup>5</sup>

***Policy P14 Incompatible activities adjacent to regionally significant infrastructure and renewable electricity generation facilities***

54. CentrePort sought to retain this Policy in its current form (S121/048) as it recognises the reverse sensitivity effects of new incompatible use and development upon regionally significant infrastructure. The Officer accepts CentrePort's submission.<sup>6</sup>

***New objectives on benefits***

55. Fertiliser Association of New Zealand (S302/014) seeks that two new objectives are included in Section 3.2 of the Proposed Plan. One objective seeks that the use of land for cultural, social and economic activities that benefit the community and the region is enabled and provided for within the proposed Plan. The second objective seeks that efficient and productive use of land for primary production that contributes to the economic well-being of the region and New Zealand:

*Objective OX*

*The use of land for cultural, social and economic activities that benefit the community and the Region is enabled and provided for within the Plan.*

*Objective OX*

*Efficient and productive use of land for primary production that contributes to the economic wellbeing of the Region and New Zealand.*

56. CPPL (FS49/013) supported this submission, stating that it "supports new objectives relating to enabling and providing for the use of land as this is an important component of sustainable management".

---

<sup>5</sup> Section 42A Officer's Report – Beneficial Use and Development at [349] and Section 42A Officer's Report – Beneficial Use and Development – Appendix at page 116.

<sup>6</sup> Section 42A Officer's Report – Beneficial Use and Development – Appendix at page 116.

57. The Officer does not consider that there should be any new objectives for rural production activities.<sup>7</sup>
58. While I can see some benefits in an overall objective promoting efficient and productive use of rural land as part of the regional planning process I can also see the view that water management is included Objective 8. In my view efficient and productive use of land is also often reliant on the ability to take and use water. In any event land use is primarily the domain of district planning.

### ***New policy on benefits***

59. Wellington City Council sought a new policy on benefits as follows (S286/001):
- Include a new policy (or similar) in Section 4.2 Beneficial use and development: Recognise the contribution existing urban areas, identified urban growth areas and infrastructure make to the social, economic and cultural wellbeing of people and communities and provide for their ongoing use and development.*
60. CPPL “supports the inclusion of new policy (or similar) in Section 4.2 Beneficial use and development that recognises the contribution existing urban areas, identified urban growth areas and infrastructure make to the social, economic and cultural wellbeing of people and communities and provide for their ongoing use and development”. CPPL sought to allow in the whole of submission point S286/001.
61. The Officer recommends the rejection of WCC’s submission point.<sup>8</sup>
62. I have already outlined NZCPS Policy 7 and in the case of the Northern Lambton Harbour am supportive of a targeted policy framework for promoting sound outcomes in that area. I suggest this is more a matter for Hearing Stream 6.
63. However as the PNRP should be both an enabling as well as a resource use document, I can see no policy impediment to at least recognising the interface between urban development and the coastal area but extending this to the importance of the built environment applying to all parts of the plan. I would suggest that relevant planners meet to discuss this further and prepare an overarching policy recognising NZCPS Policy 7 as well as RPS Objective 22 (relating to Urban Form and Function).

### **Adverse effects**

64. This issue primarily relates to clarifying what it means to minimise adverse effects.

---

<sup>7</sup> Section 42A Officer’s Report – Beneficial Use and Development at [98].

<sup>8</sup> Section 42A Officer’s Report – Beneficial Use and Development – Appendix at page 154.

**Policy P4 Minimising adverse effects**

65. CPPL “considers that this provision is too restrictive, and does not take into account the benefits of new use and development, and where there are alternative means of addressing adverse effects” (S141/020). CPPL has sought to amend Policy P4 as follows:

*Where minimisation of adverse effects is required by policies in the Plan, minimisation means reducing adverse effects of the activity to the greatest extent reasonably practicable and ~~shall~~ may include:*

- (a) consideration of alternative locations and methods for undertaking the activity that would have less adverse effects, and*
- (b) where reasonably practicable, locating the activity 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 of the year when adverse effects may be more severe, or times when receiving environments are more sensitive to adverse effects, and*
- (d) using good management practices for reducing the adverse effects of the activity, and*
- (e) designing the activity so that the scale or footprint of the activity is as small as practicable, where it is reasonably practicable to minimise adverse effects on identified areas.*

66. CentrePort sought the amendment of Policy P4 as follows (S121/041):

*Where minimisation of adverse effects is required by policies in the Plan minimisation means reducing adverse effects of the activity to the smallest amount practicable having regard to the nature and objectives of the activity and shall include:*

- (b) if practicable considering the nature and objectives of the activity locating the activity away from areas identified in Schedule A (outstanding water bodies), Schedule C (mana whenua), Schedule E (historic heritage), Schedule F (indigenous biodiversity), and ...*

67. At [581] of Report B – Overall Policy Framework of the Proposed Plan the Officer notes the requests of CPPL and CentrePort to add a qualifier “reasonably” to Policy P4. The Officer considers that sub-clauses (a)-(e) in Policy P4 serve to clarify matters that must be considered in determining ‘practicable’, and as such also fulfil the role of the requested addition of the

term 'reasonably'. Therefore, adding the qualifier term 'reasonably' would be redundant with sub-clauses (a)-(e), which define what is 'reasonably' practicable.<sup>9</sup>

68. The Officer recommends the rejection of CPPL's and CentrePort's submissions.<sup>10</sup>
69. As the panel will recognise since the Supreme Court decision on King Salmon and the more recent Davidson case there is an accentuated emphasis on making the policy framework unambiguous particularly when Objectives and Policies have been developed with a Part 2 filter. I have also looked at this policy in respect of potential consenting scenarios which could provide regional benefits. I am also of the view that there should be a minimisation of potential policy "knockouts" to otherwise beneficial activities.
70. As can be seen from CentrePort's overall submission there has been some emphasis on the Schedule F status of the Kaiwharawhara Stream mouth which bisects the Interislander Marshalling Area and the Kaiwharawhara Point area of the Commercial Port. Port and/or Rail improvements are anticipated so the precise wording is important. Other areas of the Port are also anticipated to be developed over time.
71. The first matter is the use of the word "shall" instead of CPPL's request for the word "may" in the first sentence of the policy i.e.

*Where minimisation of adverse effects is required by policies in the Plan, minimisation means reducing adverse effects of the activity to the greatest extent reasonably practicable and ~~shall~~ may include:*

72. I support this change as clause b is particularly problematic as it doesn't refer to "considering" (like clause a does) locating the activity away, but provides an outright requirement to locate away from those locations as part of minimising effects. As is the case with the Kaiwharawhara Stream Estuary bisecting the Port, the discretionary word 'may' is preferable to the directive word 'shall' and will provide greater levels of confidence particularly given the current non-complying activity status for works affecting schedule F4.
73. The second matter is adding the words **having regard to the nature and objectives of the activity** to the first line of the policy. I can see benefit in adding this additional clarification as in some cases the extent of minimisation of adverse effects will correspond to the nature and objectives of what a proponent (particularly for regionally significant infrastructure) may propose to do.
74. There are two other real examples to illustrate this. Firstly from a Port operations perspective this includes the framework for deepening the shipping channel into Wellington. Secondly I have also considered precise policy wording from the perspective of NZTA and KiwiRail,

---

<sup>9</sup> Report B – Overall Policy Framework of the Proposed Plan at [584].

<sup>10</sup> Report B – Overall Policy Framework of the Proposed Plan – Appendix at pages 175 and 182.

where the implications for potential coastal reclamation to provide for modern and resilient walking, cycling and rail provision are very important.

75. The third matter is the repetition of the words where reasonably practicable in the clauses of the policy as the words “smallest amount practicable” are already in the first line of the policy. I accept the officer’s view on this.

***Submissions opposing the non-complying activity status***

76. Carterton District Council opposes the non-complying activity status of activities within areas identified within any of the Schedules to the Plan (S301/007). CPPL supported this submission point, stating that it “considers that the non-complying activity status of activities within areas identified within any of the Schedules to the Plan is not justified in all instances, and should be amended as sought by the Council”.
77. The Officer rejects this submission point.<sup>11</sup>
78. Related to this is the submission of Wellington City Council also sought the following regarding non-complying activity status (S286/005):

*Review the use of the non-complying activity status where activities, structures and infrastructure are an expected part of the environment and in areas that have been identified by territorial authorities as urban development areas.*

79. CPPL sought to allow in the whole of submission point s286/005.
80. The Officer recommends the rejection of WCC’s submission point.<sup>12</sup>
81. There are many risks from a consenting perspective if a component of a project falls into a non-complying category. This particularly applies to regionally significant infrastructure which is either linear or has a large footprint. Commissioner McMahon will recall the reasons behind the Transmission Gully Plan Change, heard before a Board of Inquiry, in 2011 for this very reason. You could not use the minor adverse effects arm of s104D for that project and potentially the same situation could apply to other beneficial projects in the Wellington region.
82. I agree with specifically recognising and protecting the values of the matters contained in the relevant schedules and that many are without any contention, for such sites a non-complying activity status could remain. If there are site identified with possible policy conflict then a site specific policy as has been investigated for the Lambton Harbour (Northern Zone), should be considered for those other sites. This matter will be the subject of future hearings.

---

<sup>11</sup> Report B – Overall Policy Framework of the Proposed Plan – Appendix at page 221.

<sup>12</sup> Section 42A Officer’s Report – Beneficial Use and Development – Appendix at page 154.

## Other provisions requiring qualifiers/amendments

83. This relates to other provisions which require some qualification as otherwise may restrict operations and/or future projects.

### **Objective O5 Fresh and coastal water**

84. CentrePort sought clarification on what the required consideration of safeguarding aquatic ecosystem health and Mahinga kai are, and the addition of 'where appropriate' at the start of O5(b) as follows (S121/019 and S121/020):

*Fresh water bodies and the coastal marine area, ~~as a minimum,~~ where appropriate, are managed to:*

- (a) safeguard aquatic ecosystem health and mahinga kai, and*
- (b) provide for contact recreation and Māori customary use, and ..."*

*[NB: submission point places new text as shown, not in front of (b) as stated]*

85. At [537] of Report B – Overall Policy Framework of the Proposed Plan the Officer notes that CentrePort (S121/020) seeks to amend Objective O5 as 'as a minimum, where appropriate' given that contact recreation and Māori customary use is not appropriate within the Commercial Port Area. In response, the Officer states:

*As noted in paragraph 526 above, Objective O5 is closely related to proposed Objectives O23, O24 and O25. In particular, Objectives O24 and O25 contain provisions that address many of the concerns raised in s135/036. Specifically, the term 'significant contact recreation fresh water bodies' in Objective O24(b)(i) clarifies that this term refers only to river and lakes identified in Schedule H1 and on Map 20. In addition, the water quality objectives for E. coli concentrations in Table 3.1 are specific to the stated swimming season. Also footnote 6 in Table 3.3 of Objective O24 provides an explanation that the open coastal and harbour objectives for contact recreation and Māori customary use are not applicable within the Commercial Port Area. This exception specifically recognises the Wellington Regional Navigation and Safety Bylaws 2003, which restricts diving and swimming in this area<sup>36</sup>. Therefore I consider that Objective O5 does not need to be amended because Objective O24 adequately addresses the concerns raised in s135/036 and s121/020.*

86. The Officer recommends the rejection of CentrePort's submission.<sup>13</sup>
87. I accept the Officer's clarification of this matter.

---

<sup>13</sup> Report B – Overall Policy Framework of the Proposed Plan – Appendix at page 174.

### **Objective O10 Public access**

88. CentrePort (S121/022) requested the objective be amended with the statement 'where appropriate' as follows:

*Public access to and along the coastal marine area and rivers and lakes is maintained and enhanced where appropriate.*

89. The Officer considers that the decisions requested in terms of amending and qualifying Objective O10 would reduce the effectiveness of the objective and would not be consistent with RMA s6, or give effect to the NZCPS and the RPS. For these reasons the Officer does not recommend any changes to Objective O10.<sup>14</sup>

90. Recognising that this is also a s6 (d) matter, the CentrePort submission and others including KiwiRail sought a similar qualification to Objective 10 as to Objective 9 to read:-

*Public access to and along the coastal marine area and rivers and lakes is maintained and enhanced **where appropriate**.*

91. The Officer's view<sup>15</sup> is

*The maintenance and enhancement of public access to and along rivers, lakes and rivers, and the CMA is a matter of national importance under RMA s6(d). The approach in the NZCPS is that public access is generally appropriate and the RPS recognises recreational values of lakes and rivers. I do not support the approach in the submissions; the provisions in the proposed Plan protect public access to water bodies, unless it is necessary to restrict that access, and through Method M22, will improve public access with iwi and other agencies.*

*The proposed Plan deals with the issue of public access to and along the CMA, and rivers, lakes and wetlands with an Objective that focuses on maintaining and enhancing public access, and a policy that gives guidance to decision makers where there may be circumstances where such access is not appropriate, and mitigate or offsetting may be used to address those adverse effects.*

92. As has been stated in my evidence on behalf of KiwiRail and equally applying to CentrePort both recognise the desirability of maintaining or enhancing public access where it is safe to do so. Indeed, for the NZTA led but multi-party supported cycling and walking project from Ngauranga to Petone, that also has a potential coastal reclamation, there are good opportunities for enhancement of public access and recreation.

---

<sup>14</sup> Section 42A Officer's Report – Beneficial Use and Development at [226]-[231].

<sup>15</sup> At [227] and [228].

93. Within the Operational Port due to safety and port security imperatives public access is not generally available. Adding a qualification would recognise that not all public access in all parts of the coastal areas or beds of lakes and rivers and their margins can be provided.
94. The officer's view that methods could be used to look at mitigating or offsetting any diminution of public access is problematic for the Port given the land that it operates on, is almost exclusively finite so it may not always have ready access to areas to provide for equivalent mitigation or offset without the necessity for off-site mitigation. For that reason I support retaining the qualifier particularly with the amendments to the associated Policy 9 below.

***Policy P9 Public access to and along the coastal marine area and the beds of lakes and rivers***

95. CentrePort (S121/044) supports the intent of the policy but considers that:
- There should be recognition of the need for safety, security, and biosecurity requirements of regionally significant infrastructure, particularly around port requirements.
  - In relation to the end sentence of the policy mitigation or offset outside of land owned, (by in this case CentrePort), is difficult to enforce and may not be practicable. Therefore if CentrePort was to develop, and public access was to be restricted, there would potentially be no actual means of achieving that mitigation/offset based on public safety and limited land holdings.

96. CentrePort sought the amendment of the policy as follows:

*Reduction in the extent or quality of public access to and along the coastal marine area ...*

*(b) protect public health, ~~and safety,~~ security and biosecurity, or*

*with respect to (a), (b) and (c), where it is necessary to permanently restrict or remove existing public access, and where practicable and achievable and considering the nature of the activity, the loss of public access shall be mitigated ~~or offset~~ by providing enhanced public access at a similar or nearby location or offset.*

97. The Officer notes that in respect of qualifiers such as "practicable and achievable".<sup>16</sup>

*Policy P9 clause (c) is for temporary activities whereas clause (a) and (b) are for sites of significance or for public health and safety. Clause (c) does not refer to a permanent restriction, but a temporary activity and therefore the sentence at the bottom of the policy, which manages the effects of permanent removal of public access, should not apply. I consider that the requirement to mitigate or offset, or provide alternative public access only*

---

<sup>16</sup> Section 42A Officer's Report – Beneficial Use and Development at [241].

*applies to (a) and (b) not (c), as it would be difficult to offset a temporary activity. I recommend that clause (c) is removed from the requirement to mitigate, offset or provide an alternative.*

98. The Officer considers there are sufficient provisions in the proposed Plan to manage biosecurity issues that may arise from time to time and the proposed Plan does not hinder any biosecurity actions that may be undertaken by another agency tasked with a biosecurity problem.<sup>17</sup>

99. The Officer recommends that Policy P9 is changed as follows:<sup>18</sup>

*Policy P9: Public access to and along the coastal marine area and the beds of lakes and rivers*

*Maintain and enhance ~~Reduction in~~ the extent or quality of public access to and along the coastal marine area and the beds of lakes and rivers ~~shall be avoided~~ except where it is necessary to:*

- a. protect the values of estuaries, sites with significant mana whenua values identified in Schedule C (mana whenua), sites with significant historic heritage value identified in Schedule E (historic heritage) and sites with significant indigenous biodiversity value identified in Schedule F (indigenous biodiversity), or*
- b. protect public health and safety, or*
- c. provide for a temporary activity such as construction, a recreation or cultural event or stock movement, and where the temporary restrictions shall be for no longer than reasonably necessary before access is fully reinstated, and with respect to (a) and, (b) ~~and (c)~~, where it is necessary to permanently restrict or remove existing public access, the loss of public access shall be mitigated or offset by providing enhanced public access at a similar or nearby location.*

100. Accordingly, the Officer rejects CentrePort's submission.<sup>19</sup>

101. The officers alterations to the policy significantly improve the workability. I am pleased to see the words *shall be avoided* removed and replaced with *maintain and enhance*. While there is no reference to biosecurity I am satisfied that this is covered elsewhere and can broadly fall under the category of "safety". This matter is also covered under other regulations.

<sup>17</sup> Section 42A Officer's Report – Beneficial Use and Development at [243].

<sup>18</sup> Section 42A Officer's Report – Beneficial Use and Development at [245].

<sup>19</sup> Section 42A Officer's Report – Beneficial Use and Development – Appendix at page 116.

### **Policy P3 Precautionary approach**

102. CentrePort sought the amendment of Policy P3 as follows (S121/040):

~~Use and development shall be managed with a precautionary approach where there is limited information regarding the receiving environment and the adverse effects the activity may have on this environment.~~

A precautionary approach to the management of the nature, scale and speed of use and development shall be used where there is limited information available and the potential for significant adverse effects.

103. At [342] of Report B – Overall Policy Framework of the Proposed Plan the Officer notes:

*Several submitters (CentrePort Ltd s121/040, Wellington Water s135/050, PCC s163/048, Irrigation Trust s127/015, CRU s93/046, NZTA s146/074, Kiwi Rail Holdings Limited s140/028) request that the precautionary approach be limited to where there is both an absence of information and the potential for significant adverse effects. I agree that in this way the proposed Policy would be more consistent with the approach in Policy 3 of the NZCPS.*

104. The Officer accepts in part CentrePort's submission, concluding at [344] of Report B – Overall Policy Framework of the Proposed Plan:

*Considering all of the above, I recommend the following amendment would give better effect to the NZCPS and achieve the purpose of the RMA:*

*Policy P3: Use and development shall be managed with a precautionary approach where there is limited information regarding the ~~receiving environment and the~~ effects and any adverse effects are potentially significant. ~~effects the activity may have on the environment.~~*

105. I agree with the Officer's view. With the changes it is much better aligned with the first part of Policy 3 of the NZCPS with the second part being covered in other Objectives and Policies of the PNRP.

### **Future Hearings**

106. CentrePort and CPPL's submissions at forthcoming hearings are focused on a number of matters concerning the effective, maintenance, upgrading or development of both commercial port and commercial port property assets. This also includes the policy framework for harbour deepening to support modern shipping.

107. These topics include:-

- Hearing Stream 3 – Wetlands and Biodiversity/ Natural Character Form and Function
- Hearing Stream 4 - Stormwater
- Hearing Stream 5 – Beds of lakes and rivers, Contaminated land and hazardous substances
- Hearing Stream 6 – Coast, Natural hazards, and significant historic heritage values.



**Lindsay Daysh**

**Incite**

**5 May 2017**