

**In the Environment Court
Wellington Registry**

ENV-2019-WGN-

Under the Resource Management Act 1991
And in the matter of an appeal pursuant to Schedule 1, clause 14(1) of the Act

Between

CentrePort Limited

Appellant

and

CentrePort Properties Limited

Appellant

and

Greater Wellington Regional Council

Respondent

**Notice of Appeal on behalf of CentrePort Limited and
CentrePort Properties Limited against decision on the
Greater Wellington Proposed Natural Resources Plan**

18 September 2019

BELL GULLY

BARRISTERS AND SOLICITORS
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To: The Registrar
Environment Court
Wellington

1. CentrePort Limited (**CPL**) and CentrePort Properties Limited (**CPPL**) (together **CentrePort**) appeal against parts of a decision of the Greater Wellington Regional Council (**GWRC**) on the Greater Wellington Proposed Natural Resources Plan (the **PNRP**).
2. CentrePort made two submissions and two further submissions on the **PNRP**.
3. CentrePort is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (the **RMA**).
4. CentrePort received notice of the decision on 31 July 2019.
5. The decision was made by the Independent Hearing Panel (the **Panel**) appointed by **GWRC**.
6. The parts of the decision that this appeal relates to are:
 - (a) Section 3.5 - Water Quality - Objective O24;
 - (b) Section 4.5a - Natural Hazards - Policy P27;
 - (c) Section 4.5a - Natural Hazards - Policy P28;
 - (d) Section 4.6.2 - Sites with significant indigenous biodiversity value - Policy P40;
 - (e) Section 4.6.4 - Sites with significant historic heritage value - Policy P46;
 - (f) Section 4.6.4 - Sites with significant historic heritage value - Policy P47;
 - (g) Section 4.10.1 - Primary coastal policies - Policy P134;

- (h) Section 4.10.3 - Other activities in the coastal marine area - Policy P145;
- (i) Section 5.7.2 - Coastal management general condition (u) - Noise from port-related activities;
- (j) Section 5.7.3 - Maintenance, repair, additions and alterations to existing structures - Rule R149 (and consequential amendment to Rule R174);
- (k) Section 5.7.5 - New and replacement structures (including temporary structures) - Rules R161 and R162;
- (l) Section 5.7.6 - Seawalls - Rules R166 and R167;
- (m) Section 5.7.7 - Heritage structures - Rule R168;
- (n) Section 5.7.7 - Heritage structures - Rule R169;
- (o) Section 5.7.7 - Heritage structures - Rule R171;
- (p) Section 5.7.7 - Heritage structures - Rule R172;
- (q) Section 5.7.14 - Dredging - Rules R202 and R203 and New Rule for maintenance dredging within a Commercial Port Area or navigation protection area;
- (r) Section 5.7.17 - Reclamation and drainage - Rule R214;
- (s) Section 5.7.17 - Reclamation and drainage - Rule R215;
- (t) Schedule E2 - Historic heritage wharves and boatsheds;
- (u) The 'common Schedule E deletion' - Rules R150, R151, R152, R156, R157, R163, R164, R173, R174, R168, R169 and R171; and
- (v) Map 32 - Commercial Port Area, Lambton Harbour Area and Port Noise Control Line - Lambton Harbour.

7. The reasons for the appeal and the relief sought from the Court are set out in detail below. Amendments sought by CentrePort are underlined or ~~struck through~~.

Overview of CentrePort's concerns

8. CentrePort is primarily concerned about its ability to undertake port regeneration at key strategic locations following GWRC's decisions on the PNRP, including in the Lambton Harbour Area (Northern Zone) and in the Commercial Port Areas at Kaiwharawhara, Thorndon (including Kings and Glasgow Wharves), Miramar (Burnham Wharf) and Seaview. CentrePort's appeal is focussed on obtaining viable consenting pathways to realise the strategic potential of these key locations, for the benefit of Wellington, central New Zealand, and wider New Zealand.

Section 3.5 - Water Quality - Objective O24

9. *Reason for appeal:* The Panel accepted CentrePort's submission that the Commercial Port Area should be excluded from coastal water under Objective O24 and that reference should be made to all of the Commercial Port Area, including those shown on Maps 33 and 34.¹ It made amendments to footnote 10 (9) of the Objective accordingly. However, there remains an error in footnote 10 (9). The footnote excludes the Lambton Harbour Area within the Commercial Port Area. CentrePort agrees that the Lambton Harbour Area (Northern Zone) should fall within the Commercial Port Area and sought dual zoning of the Lambton Harbour Area (Northern Zone). However, CentrePort is concerned that this footnote could lead to confusion regarding the application of PNRP provisions in these particular areas.
10. CentrePort considers that there are also errors in other footnotes to the Objective. For example, footnote 2 appears twice in the tables; next to '95th percentile' in Table 3.1 and next to 'Planktonic' in Table 3.2. Footnote 6 and footnote 9 are duplicates (which appears to be an error). Footnote 9 should be deleted, so that footnote 10 becomes

¹ Decision 4 - Objectives at [4.341].

footnote 9 (the footnote next to 'Open coast and harbours' in Table 3.3).

11. *Relief sought:* Correct the footnote numbering in Tables 3.1, 3.2 and 3.3 and amend footnote 10 (9) as follows:

Includes Wellington Harbour (Port Nicholson) and Te Awarua-o-Porirua. Excludes the ~~Lambton Harbour Area within the Commercial Port Area delineated in Maps 32, 33 and 34~~ (including the Lambton Harbour Area (Northern Zone)).

Section 4.5a - Natural Hazards - Policy P27

12. *Reason for appeal:* The Lambton Harbour Area is a high risk area by virtue of being in the coastal marine area. Policy P27 requires that use and development, including hazard mitigation methods, in high risk areas shall be avoided, with limited exceptions. This policy is inconsistent with objectives and policies that allow for appropriate use and development in the Lambton Harbour Area (Northern Zone) (for example, Objectives O53 and O57 and Policy P142). CentrePort considers that this policy should be amended to recognise that use and development can be appropriate in the Lambton Harbour Area.

13. *Relief sought:* Amend Policy P27 as follows:

Inappropriate uUse and development, including hazard mitigation methods, in **high risk areas** shall be avoided, remedied or mitigated except where: ...

...

- (b) ...mitigation or remediation measures can appropriately manage the risk to the development and/or residual risk ~~after hazard mitigation measures, assessed using a risk-based approach, is~~ low, and

Section 4.5a - Natural Hazards - Policy P28

14. *Reason for appeal:* CentrePort considers that hard engineering solutions are often the only practicable method of hazard mitigation and protection for its existing and future nationally and regionally significant infrastructure. Policy 27 of the NZCPS recognises that hard protection structures may be the only practical means to protect existing infrastructure of national or regional importance, to sustain the potential of built physical resources to meet the reasonably foreseeable needs of future generations. Accordingly, a presumption to avoid hard engineering solutions is entirely inappropriate where there is a functional need or an operational requirement to use those solutions.
15. CentrePort disagrees with the Panel that functional and operational needs, and therefore regionally significant infrastructure, are already acknowledged and provided for in Policy P27(a).² Reading the policies together, hard engineering solutions are not allowed where effects are more than minor, or not part of a hazard risk management strategy, regardless of functional and operational need.
16. CentrePort also considers that Policy P28 should enable hard engineering solutions for planned future development, consistent with Policies P12 and P13 of the PNRP which provide for the development of regionally significant infrastructure.
17. *Relief sought:* Amend Policy P28 as follows:

Hard hazard engineering mitigation and protection methods shall be avoided except where:

- (a) there is a functional or operational need to use hard hazard engineering mitigation and protection methods; or
- (b) it is necessary to protect existing and planned future development from unacceptable **hazard risk**, assessed using the **risk-based approach** and;

² Decision 15 - Natural Hazards at [3.12].

- (i) any adverse effects are no more than minor, or
- (ii) where the environmental effects are more than minor the works form part of a **hazard risk management strategy**.

Section 4.6.2 - Sites with significant indigenous biodiversity value - Policy P40

18. *Reason for appeal:* CentrePort supports the intent of Policy P40 but considers that there is a conflict between the Kaiwharawhara Stream estuary being listed in Schedule F4, the entire Wellington Harbour being listed in Schedule F2c, and the legitimate expectations of use and development of port infrastructure within the Commercial Port Area. CentrePort considers that the policy must recognise that use and development may be appropriate for activities (particularly regionally significant infrastructure) undertaken in the Commercial Port Area and the Lambton Harbour Area (Northern Zone).

19. *Relief sought:* Amend Policy P40 as follows:

Protect and restore the following ecosystems and habitats with significant indigenous biodiversity values from inappropriate use and development:

- (a) the rivers and lakes with significant indigenous ecosystems identified in Schedule F1 (rivers/lakes), and
- (b) the habitats for indigenous birds identified in Schedule F2 (bird habitats), and
- (c) significant natural wetlands, including the significant natural **wetlands** identified in Schedule F3 (identified **significant natural wetlands**), and
- (d) the ecosystems and habitat-types with significant indigenous biodiversity values in the coastal marine area identified in Schedule F4 (coastal sites) and Schedule F5 (coastal habitats).

Note

All **natural wetlands** in the Wellington Region are considered to be **significant natural wetlands** as they meet at least two of the criteria listed in Policy 23 of the Regional Policy Statement 2013 for identifying indigenous ecosystems and habitats with significant indigenous biodiversity values; being representativeness and rarity.

Section 4.6.4 - Sites with significant historic heritage value - Policy P46

20. *Reason for appeal:* CentrePort agrees with the Panel that if the list of matters in Policy P46 is interpreted as a list that proposals must meet, this would be inflexible and unrealistic, would place an unreasonable burden on applicants, and could constrain otherwise appropriate development.³ CentrePort therefore supports the replacement of the word 'and' after each listed matter with a semi-colon. However, CentrePort remains concerned that the listed matters may still constrain the appropriate redevelopment of its structures, and that without reference to the Panel's decision, the intention of the policy and how it should be interpreted may not be clear to all plan users.
21. In addition, the listed matters are unduly restrictive. Any replacement or demolition of all or part of a structure, even if essential for the operation or development of regionally significant infrastructure in the Commercial Port Area, would not meet any of the listed criteria. CentrePort would need to pit the beneficial policies for regionally significant infrastructure against this (and other) highly restrictive heritage policies. While consent sought would be for a discretionary activity, the restrictive nature of these heritage policies are likely to prevent consent from being granted. Policy P46 needs to provide a consenting pathway for appropriate use, development and demolition.
22. *Relief sought:* Amend Policy P46 as follows:

More than minor adverse effects on the significant historic heritage values identified in Schedule E1 (heritage structures), Schedule E2

³ Decision 16 - Significant Historic Heritage Values at [3.5]-[3.6].

(wharves and boatsheds), Schedule E3 (navigation aids), Schedule E4 (archaeological sites) and Schedule E5 (freshwater heritage) shall be avoided, remedied or mitigated by managing activities so that:

- (a) significant historic heritage values are not lost, damaged or destroyed;
- (b) effects are of a low magnitude or scale, or effects are reversible;
- (c) interconnections and linkages between sites are not significantly altered or lost;
- (d) previous damage to significant historic heritage values is remedied or mitigated where relevant;
- (e) previous changes that have significant historic heritage value in their own right are respected and retained;
- (f) adjacent significant historic heritage values are unlikely to be adversely affected;
- (g) unique or special materials and/or craftsmanship are retained;
- (h) the activities do not lead to cumulative adverse effects on historic heritage;
- (i) the use, development, operation, maintenance and upgrade of regionally significant infrastructure is provided for;
- (j) appropriate use and development in the Lambton Harbour Area (Northern Zone) is enabled.

Note

Policy P46 does not require all matters listed in (a)-(j) to be met for a proposal to be considered appropriate.

Section 4.6.4 - Sites with significant historic heritage value - Policy P47

23. *Reason for appeal:* In its submission on the PNRP, CentrePort was focussed on obtaining an enabling framework for the redevelopment of

Inter-Islander Wharf and Waterloo Quay Wharf (the **Finger Wharves**). It sought the amendment of Policy P47 so that it does not preclude appropriate redevelopment of the Finger Wharves. As Policy P47 has not been substantively amended, CentrePort remains concerned about the lack of a viable consenting pathway for the appropriate redevelopment of the Finger Wharves.

24. In addition, Glasgow Wharf was not included in Schedule E2 - historic heritage wharves and boatsheds in the notified version of the PNRP. Glasgow Wharf is currently used for operational port purposes and is located in the Commercial Port Area. As Glasgow Wharf is now included in Schedule E2, the heritage policies and rules, particularly Policy P47, will restrict the future efficient and safe operation of the commercial port, and means the PNRP fails to provide for the development and upgrade of regionally significant infrastructure (as required by Policy P13 of the PNRP). For example, future regeneration of the port may necessitate the demolition of Glasgow Wharf. Policy P47 imposes an unreasonably high threshold which is inconsistent with Objective O34 of the PNRP, which requires significant historic heritage values to be protected from *inappropriate* use and development.
25. As noted in respect of Policy P46, while consent sought would be for a discretionary activity, the restrictive nature of these heritage policies are likely to prevent, or at least very heavily weigh against, consent being granted. Policy P47 needs to provide a consenting pathway for appropriate use and development.
26. *Relief sought:* Amend Policy P47 as follows:

Demolition, partial demolition or removal of a structure with significant historic heritage value identified in Schedule E1 (heritage structures), Schedule E2 (wharves and boatsheds), Schedule E3 (navigation aids), or Schedule E5 (freshwater heritage) is inappropriate except where the structure:

- (a) has no on-going functional or economic use in its present state and/or configuration, or

- (b) demolition of the structure is necessary to provide for the use, development, operation, maintenance and upgrade of regionally significant infrastructure, or
- (c) is substantially damaged by fire or natural hazard or poses a significant risk to human safety and it is not reasonably practicable to repair it.

Or

Remove Glasgow Wharf from Schedule E2 - Historic heritage wharves and boatsheds and amend Policy P47 as follows:

Demolition, partial demolition or removal of a structure with significant historic heritage value identified in Schedule E1 (heritage structures), Schedule E2 (wharves and boatsheds), Schedule E3 (navigation aids), or Schedule E5 (freshwater heritage) is inappropriate except where the structure:

- (a) has no on-going functional or economic use in its present state and/or configuration, or
- (b) is substantially damaged by fire or natural hazard or poses a significant risk to human safety and it is not reasonably practicable to repair it.

Section 4.10.1 - Primary coastal policies - Policy P134

- 27. *Reason for appeal:* CentrePort largely supports Policy P134 but considers the word 'minimised' should be replaced with 'avoided, remedied or mitigated' to be consistent with the purpose of the RMA, and given the deletion of Policy P4 that sought to define the term minimise. In addition, CentrePort notes there is a minor error in the policy as the word 'of' has been omitted.
- 28. *Relief sought:* Amend Policy P134 as follows:

The adverse effects of new use and development on public open space and visual amenity viewed within, to and from the coastal marine area shall be ~~minimised~~ avoided, remedied or mitigated by:

- (a) having particular regard to any relevant provisions contained in any bordering territorial authorities' proposed and/or operative district plan; and
- (b) managing use and development to be of a scale, location, density and design which is compatible with the natural character, natural features and landscapes and amenity values of the coastal environment and the **functional needs, operational requirements** and locational constraints, of the Commercial Port Area and the Wellington International Airport, and ...

Section 4.10.3 - Other activities in the coastal marine area - Policy P145

29. *Reason for appeal:* Policy P145 requires reclamation, drainage or destruction in the coastal marine area to be avoided with limited exceptions. This policy is inconsistent with objectives and policies in the PNRP that anticipate appropriate use and development in the Lambton Harbour Area (Northern Zone) (for example, Objectives O53 and O57 and Policy P142) and has the potential to restrict such development. CentrePort considers that Policy P145 should be amended to facilitate reclamation, drainage and destruction associated with appropriate use and development in the Lambton Harbour Area (Northern Zone).

30. *Relief sought:* Amend Policy P145 as follows:

Reclamation, drainage or destruction in the coastal marine area shall be avoided except where:

- (a) the **reclamation**, drainage or destruction is associated with the development, operation, maintenance and **upgrade of regionally significant infrastructure**, and

- (b) there are no other locations outside the coastal marine area for the activity associated with the **reclamation**, drainage or destruction, ~~and~~ or
- (c) the **reclamation**, drainage or destruction is associated with appropriate use and development in the Lambton Harbour Area (Northern Zone); and
- (d) there are no practicable alternative methods of providing for the associated activity.

Section 5.7.2 - Coastal management general condition (u) - Noise from port-related activities

- 31. *Reason for appeal:* CentrePort supports the coastal management conditions relating to port noise that were essentially rolled over from the Operative Regional Coastal Plan. However, the date reference in general condition (u) should be deleted, given the Port Noise Management Plan is a living document that is required to be periodically updated. This submission point is not discussed by the Panel, and may have been overlooked.
- 32. *Relief sought:* Amend condition (u) as follows:
 - (u) CentrePort shall at all times operate in accordance with the current Port Noise Management Plan for CentrePort Ltd (~~December 2008~~).

Section 5.7.3 - Maintenance, repair, additions and alterations to existing structures - Rule R149 (and consequential amendment to Rule R174)

- 33. *Reason for appeal:* CentrePort supports Rule R149 and the addition of a note to clarify the rule applies to all existing CMA structures except those in Schedules E1-E3. However, the note does not address the relationship between Rule R149 and Rule R173, which concerns the maintenance or repair of structures inside a Commercial Port Area.
- 34. The PRNP requires that where an activity is covered by more than one rule, then the rule that applies is the rule that is more specific for the

relevant activity, area or resource. Accordingly, Rule R173 applies to structures in the Commercial Port Area. As the note in R149 does not refer to Rule R173, CentrePort considers that the note should be amended to avoid potential confusion among PNRP users, or a new note added similar to that included in Rules R150 and R151.

35. *Relief sought:* Amend the note in Rule R149 as follows:

This rule applies to all existing coastal marine area structures, including seawalls, navigation aids and port structures except those heritage structures identified in Schedule E1-E3 (in which case R168 applies), and structures in the Commercial Port Area (in which case R173 applies).

Alternatively, add the following note to Rule R149:

Rule R173 applies to the maintenance or repair of structures in the Commercial Port Area.

Make a consequential amendment to R174 as follows:

...that is not permitted by ~~Rule R149~~ or Rule R173 is a controlled activity...

Section 5.7.5 - New and replacement structures (including temporary structures) - Rules R161 and R162

36. *Reason for appeal:* CentrePort considers that there is a conflict between the Kaiwharawhara Stream and Estuary in Schedule F4 and the legitimate expectations of use and development of regionally significant port infrastructure within the Commercial Port Area.
37. CentrePort does not intend to advance any proposals that will have adverse effects on the values of the Kaiwharawhara Stream and Estuary, but is concerned that given the nature of bundling, any consents required for a wider port redevelopment that require structures within the vicinity of the Stream and Estuary (for example, structures designed to protect the values of that site) would result in the entire project becoming non-complying. CentrePort considers non-

complying activity status to be an unreasonably high threshold for obtaining consent for regionally significant infrastructure. Discretionary activity status is more appropriate, and would allow the effects of those structures on the values of the Kaiwharawhara Stream and Estuary to be considered without adversely impacting consenting of an entire project (of regional and national significance).

38. CentrePort also considers that Rule R161 should contain a cross-reference to Rule R173, which provides for additions or alterations to structures inside a Commercial Port Area.

39. *Relief sought:* Amend Rules R161 and R162 as follows:

Rule R161: New structures, additions or alterations to structures outside sites of significance – discretionary activity

The placement of a new structure, addition or alteration to a structure and the associated use of the structure outside a site or habitat identified in Schedule C (mana whenua), Schedule F4 (coastal sites) (other than in the Commercial Port Area), Schedule F5 (coastal habitats) or Schedule J (geological features) in the coastal marine area, including any associated:

- (a) occupation of space in the **common marine and coastal area**, and
- (b) disturbance of the foreshore or seabed, and
- (c) deposition in, on or under the foreshore or seabed, and
- (d) discharge of contaminants, and
- (e) diversion of open coastal water

that is not permitted by Rule R156, Rule R173, Rule R175, Rule R176, or controlled by Rule R151 or Rule R157 or Rule R174 or restricted discretionary under Rule R155 or prohibited under Rule R159 is a discretionary activity.

Note

For the avoidance of doubt, Rule R161 applies to new structures and additions and alterations to structures in the Commercial Port Area.

Rule R162: New structures, additions or alterations to structures inside sites of significance – non-complying activity

The placement of a new structure, addition or alteration to a structure and the associated use of the structure inside a site or habitat identified in Schedule C (mana whenua), Schedule F4 (coastal sites) (other than in the Commercial Port Area), Schedule F5 (coastal habitats) or Schedule J (geological features) in the coastal marine area, including any associated:

- (a) occupation of space in the **common marine and coastal area**, and
- (b) disturbance of the foreshore or seabed, and
- (c) deposition in, on or under the foreshore or seabed, and
- (d) discharge of contaminants, and
- (e) diversion of open coastal water

that is not permitted by Rule R156, Rule R175, Rule R176 or a controlled activity under Rule R151, Rule R157 and Rule R174, or a restricted discretionary activity under Rule R155 or a discretionary activity under Rule R160, or prohibited under Rule R159 is a non-complying activity.

Note

For the avoidance of doubt, Rule R161 applies to new structures and additions and alterations to structures in the Commercial Port Area.

Section 5.7.6 - Seawalls - Rules R166 and R167

40. *Reason for appeal:* CentrePort is concerned that the rule framework for the construction of and additions and alterations to seawalls does not recognise the position of the Kaiwharawhara Stream and Estuary in

the Commercial Port Area. There is a conflict between the operation, maintenance and development of the Port's regionally significant infrastructure and the values of the Stream and Estuary.

41. CentrePort also considers that non-complying activity status is unduly onerous for potential additions or alterations to existing seawalls or potential new seawalls within the Commercial Port Area and the rule should contain an exception relating to sites within the Commercial Port Area to enable these to be considered as either a controlled or discretionary activity.
42. *Relief sought:* Amend Rules R166 and R167 as follows:

Rule R166: Seawalls outside sites of significance – discretionary activity

The placement of a new **seawall**, or the addition to or alteration or replacement of an existing **seawall**, and the associated use of the structure outside a site or habitat identified in Schedule C (mana whenua), Schedule F4 (coastal sites) (other than in the Commercial Port Area), Schedule F5 (coastal habitats) or Schedule J (geological features) in the coastal marine area including any associated:

- (a) occupation of space in the **common marine and coastal area**, and
- (b) disturbance of the foreshore or seabed, and
- (c) deposition in, on or under the foreshore or seabed, and
- (d) discharge of contaminants, and
- (e) diversion of open coastal water

that is not a controlled activity under Rule R165 is a discretionary activity.

Note

For the avoidance of doubt, Rule R166 applies to the placement of a new seawall, or the addition to or alteration or replacement of an existing seawall in the Commercial Port Area.

Rule R167: Seawalls inside sites of significance – non-complying activity

The placement of a new **seawall**, or the addition to or alteration or replacement of an existing **seawall**, and the associated use of the structure inside a site or habitat identified in Schedule C (mana whenua), Schedule F4 (coastal sites) (other than in the Commercial Port Area), Schedule F5 (coastal habitats) or Schedule J (geological features) in the coastal marine area including any associated:

- (a) occupation of space in the **common marine and coastal area**, and
- (b) disturbance of the foreshore or seabed, and
- (c) deposition in, on or under the foreshore or seabed, and
- (d) discharge of contaminants, and
- (e) diversion of open coastal water

that is not a controlled activity under Rule R165 or a discretionary activity under Rule R166, is a non-complying activity.

For the avoidance of doubt, Rule R166 applies to the placement of a new seawall, or the addition to or alteration or replacement of an existing seawall in the Commercial Port Area.

Section 5.7.7 - Heritage structures - Rule R168

43. *Reason for appeal:* CentrePort agrees that it is appropriate to provide for some alteration to heritage structures as a permitted activity, and sought to retain Rule R168 in its notified form in its submission on the PNRP. However, Glasgow Wharf was not listed in Schedule E2 - Historic heritage structures and boatsheds in the notified version of the PNRP.

44. Glasgow Wharf is presently a key feature of the commercial port, being essential to the BlueBridge ferry operation. Longer term, the location of this structure is likely to remain a critical operational area of the Port (potentially for ferries and/or cruise ships) and needs to respond appropriately to changes in technology and ship design. If Rule R168 applies instead of Rule R173, CentrePort will need consent every time it needs to undertake repairs and maintenance to the wharf. This is because for structural resilience and functionality reasons, materials other than timber must be used. CentrePort is also concerned that the scope of the decision's version of Rule R168, which now includes the maintenance and repair of structures, may also adversely affect CentrePort's ability to repair and maintain the Interslander Wharf, which is also used for operational port purposes.
45. If, notwithstanding this appeal, Rule R168 continues to apply to Glasgow Wharf, this will interfere with the efficient and safe operation of the commercial port.
46. For completeness, CentrePort notes that in the notified version of the PNRP, Rule R173 was not subject to a condition that the structure is not inside a site identified in Schedule E.
47. *Relief sought:* Add a new note to Rule R168 as follows:

Maintenance or repair or additions or alterations to structures, including heritage structures identified in Schedule E1-E3 inside a Commercial Port Area are either a permitted activity under Rule R173, a restricted discretionary activity under Rule R169 or a discretionary activity under Rule R171.

Amend Rule R168 to provide greater flexibility as to the types and extent of maintenance, repair and alterations that can be undertaken on Schedule E2 wharves.

Section 5.7.7 - Heritage structures - Rule R169

48. *Reason for appeal:* CentrePort considers that when determining whether additions or alterations to heritage structures are appropriate consideration should also be given to the purpose and benefits of the

additions and alterations. It therefore sought additional matters of discretion in Rule R169 in order to provide for appropriate use and development of the Finger Wharves in the Lambton Harbour Area (Northern Zone). These additional matters have not been included in the decisions version of the rule.

49. As a result of the scheduling of Glasgow Wharf in Schedule E2 of the PNRP, CentrePort is also concerned that Rule R169 will restrict the appropriate use and maintenance of regionally significant infrastructure. For the same reasons set out in relation to Rule R168 above, CentrePort considers a note is required to ensure Rule R173 applies to additions and alterations to all structures in the Commercial Port Area.

50. *Relief sought:* Amend Rule R169 as follows:

The addition or alteration to a structure identified in Schedule E1 (heritage structures) or Schedule E2 (wharves and boatsheds) and the associated use of the addition in the coastal marine area, including any associated:

- (a) occupation of space in the **common marine and coastal area**, and
- (b) disturbance of the foreshore or seabed, and
- (c) deposition in, on or under the foreshore or seabed, and
- (d) discharge of contaminants

that is not permitted by Rules R173 or R168, is a restricted discretionary activity, provided the following conditions are met:

- (e) the structure is not a **seawall**, and
- (f) the activity shall comply with the coastal management general conditions specified above in Section 5.7.2.

Matters for discretion

1. Use of the structure

2. Effects on public access
3. Effects on public open space and visual amenity
4. Effects of disturbance, deposition and discharge associated with construction
5. Effects on the historic heritage values of structures identified in Schedule E1 (heritage structures) or Schedule E2 (wharves and boatsheds)
6. Lighting and noise
7. Effects on coastal **natural processes** including effects on shoreline stability in the vicinity and adjacent areas
8. Whether the additions or alterations are for the purpose of appropriate development in the Lambton Harbour Area (Northern Zone)
9. Operational and functional requirements of **regionally significant infrastructure**

Note

Additions or alterations to **seawalls** are either a controlled activity under Rule R165, a discretionary activity under Rule R166 or a non-complying activity under Rule R167.

Maintenance or repair or additions or alterations to structures, including heritage structures identified in Schedule E1-E3 inside a Commercial Port Area are either a permitted activity under Rule R173, a restricted discretionary activity under Rule R169 or a discretionary activity under Rule R171.

Section 5.7.7 - Heritage structures - Rule R171

51. *Reason for appeal:* For the same reasons set out in relation to Rule R168 above, CentrePort considers a note is required to ensure Rule R173 applies to additions and alterations to all structures in the

Commercial Port Area. CentrePort has also identified a minor error in Rule R171.

52. *Relief sought:* Amend Rule R171 as follows:

The addition or alteration to a structure identified in Schedule E1 (heritage structures), Schedule E2 (wharves and boatsheds) or Schedule E3 (navigation aids) and the associated use of the addition in the coastal marine area, including any associated:

- (a) occupation of space in the **common marine and coastal area**, and
- (b) disturbance of the foreshore or seabed, and
- (c) deposition in, on or under the foreshore or seabed, and
- (d) discharge of contaminants

that is not permitted by Rule R173, Rule R168 or Rule R170 or restricted discretionary ~~restricted~~ under Rule R169 is a discretionary activity.

Maintenance or repair or additions or alterations to structures, including heritage structures identified in Schedule E1-E3 inside a Commercial Port Area are either a permitted activity under Rule R173, a restricted discretionary activity under Rule R169 or a discretionary activity under Rule R171.

Section 5.7.7 - Heritage structures - Rule R172

53. *Reason for appeal:* CentrePort has also identified the following errors in Rule R172:

- (a) There is a reference to Schedule E6 (Lambton Harbour Heritage Area) which is not a schedule of the PNRP. This should be deleted;
- (b) The rule refers to Rule R165 twice, including as a permitted activity rule. Rule R165 is a controlled activity rule. The

reference to Rule R165 as a permitted activity rule should be deleted;

- (c) The rule refers to R153, whereas Rule R153 refers to Rule R172. This results in the rule framework being circular, so that it is not possible to determine which rule applies. CentrePort understands that Rule R172 is intended to apply to historic heritage structures as the more specific rule. Accordingly, the reference to Rule R153 should be deleted;
- (d) The rule refers to Rules R149, R152 and R157. As discussed below, the Panel has made a 'common Schedule E deletion' across rules in the coastal chapter of the PNRP to resolve ambiguity in rule cascades and relationships and to remove unnecessary duplication and the potential for uncertainty about the rules applicable. The intention is that buildings and structures with scheduled heritage significance will be managed by Rules R168-R172, while all other buildings and structures are administered by Rules R149 - R167.⁴ Rules R149, R152 and R157 are not intended to apply to historic heritage structures. However, by their inclusion in the rule, they do. CentrePort therefore considers that the references to Rules R149, R152 and R157 should be deleted.
- (e) The rule refers to Rule R173 twice. The rule should instead refer to both Rule R173 (a permitted activity) and Rule R174 (a controlled activity). This relief is consistent with the relief sought by CentrePort in relation to the interaction between Rules R173 and R174 (which relate to additions and alterations to structures in the Commercial Area), and Rules R168 to R172 (which relate to additions and alterations to historic heritage structures).

⁴ Decision 14 - Coastal Management at [6.27]. Noting that there is no reference to the relationship between these rules and Rules R173 and R174.

54. *Relief sought:* Amend Rule R172 as follows:

The removal, demolition or replacement of a structure or part of a structure identified in Schedule E1 (heritage structures), Schedule E2 (wharves and boatsheds) or Schedule E3 (navigation aids) ~~or Schedule E6 (Lambton Harbour Heritage Area)~~ and the associated use of a structure in the coastal marine area, including any associated:

- (a) occupation of space in the common marine and coastal area, and
- (b) disturbance of the foreshore or seabed, and
- (c) deposition in, on or under the foreshore or seabed, and
- (d) discharge of contaminants

that is not permitted by ~~Rule R152, Rule R165, Rule R168, Rule R149, Rule R170, or R173~~ or controlled under ~~Rule R157 or Rule R165,~~ or restricted discretionary under ~~Rule R153, R169, or R174~~3 is a discretionary activity.

Section 5.7.14 - Dredging - Rules R202 and R203 and New Rule for maintenance dredging within a Commercial Port Area or navigation protection area

55. *Reason for appeal:* Rule R202 allows maintenance dredging outside a Commercial Port Area or navigation protection area as a controlled activity. However, in practice, within Wellington Harbour the rule can never be utilised because it requires the activity not to be in a site or habitat identified in Schedule F2c (birds-coastal). All of the Commercial Port Areas and navigation protection areas are located in Schedule F2c (birds-coastal), as is all of Wellington Harbour - inland waters. CentrePort considers that the rule must be amended so that it can take effect.

56. Secondly, CentrePort is concerned that there is no rule that provides for maintenance dredging within a Commercial Port Area or navigation protection area. CentrePort considers this omission to be problematic, given that it is more likely that maintenance dredging will be required in

those areas. The lack of a rule for maintenance dredging (including specification of what this involves) in the Commercial Port Area and navigation protection area is likely to impact on the efficient and safe operation of the commercial port.

57. *Relief sought:* Amend Rule R202 and add the following new rule:

Rule R202: Maintenance dredging outside a Commercial Port Area or navigation protection areas – controlled activity

Destruction, damage, disturbance or deposition 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, including any associated:

- (a) deposition in, on or under the foreshore or seabed, and
- (b) discharge of contaminants, and
- (c) diversion of open coastal water

is a controlled activity, provided the following conditions are met:

- (d) the activity shall comply with any related current resource consent conditions and the area of the coastal marine area that this consent(s) specifies, and
- (e) the activity shall not occur inside a site or habitat identified in Schedule C (mana whenua), ~~Schedule F2c (birds-coastal)~~, Schedule F4 (coastal sites) or Schedule F5 (coastal habitats), and
- (f) the activity shall comply with the coastal management general conditions specified above in Section 5.7.2, excluding condition (b).

Matters of control

5. Effects on sites and habitats identified in Schedule F2c (birds-coastal) or Schedule J (geological features)

New Rule

Destruction, damage, disturbance or deposition associated with maintenance dredging inside 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, including any associated:

- (a) deposition in, on or under the foreshore or seabed, and
- (b) discharge of contaminants, and
- (c) diversion of open coastal water

is a permitted activity, provided the following conditions are met:

- (d) the activity will not cause or exacerbate erosion within the coastal marine area or on adjacent land;
- (e) the activity will not cause damage to any existing lawful structures;
- (f) the activity will not result in the permanent loss of any habitat of a rare or endangered species;
- (g) the activity will not result in significant adverse effects on sites identified in Schedules E1 to E3 (historic heritage) and/or Schedule F4 (coastal sites); and
- (h) the activity will not result in any seabed disturbance and resulting turbidity other than that which is localised and limited in duration.

Section 5.7.17 - Reclamation and drainage - Rule R214

58. *Reason for appeal:* As noted above in respect of Policy P145, there is no consenting pathway in the PNRP for reclamation and drainage associated with appropriate use and development in the Lambton Harbour Area (Northern Zone). This is inconsistent with provisions in the PNRP that provide for appropriate use and development in that area (for example, Objectives O53 and O57 and Policy P142).

59. There is also a conflict between the Kaiwharawhara Stream and Estuary in Schedule F4 of the PNRP and the legitimate expectations of use and development of port infrastructure within the Commercial Port Area. CentrePort considers reclamation and drainage should be assessed as discretionary activity, not a non-complying activity, in this area.

60. *Relief sought:* Amend Rules R214 and R215 as follows:

Rule R214: Reclamation and drainage for regionally significant infrastructure outside of sites of significance - discretionary activity

Reclamation and drainage for **regionally significant infrastructure activities** and use and development inside the Lambton Harbour Area (Northern Zone) outside a site or habitat identified in Schedule C (mana whenua), Schedule E4 (archaeological sites), Schedule F4 (coastal sites) (other than in the Commercial Port Area), Schedule F5 (coastal habitats) or Schedule J (geological features) in the coastal marine area, including any associated: ...

Note

For the avoidance of doubt, Rule R214 applies to reclamation and drainage for regionally significant infrastructure activities in the Commercial Port Area.

Rule R215: Reclamation and drainage ~~inside of sites of~~ significance - non-complying activity

Reclamation and drainage in the coastal marine area, including any associated:

- (a) occupation of space in the **common marine and coastal area**,
and
- (b) destruction of the foreshore or seabed, and
- (c) disturbance of the foreshore or seabed, and

- (d) deposition in, on or under the foreshore or seabed, and
- (e) discharge of contaminants
- (f) diversion of open coastal water

that is not a discretionary activity under Rule R214 is a non-complying activity.

Note

For the avoidance of doubt, Rule R214 applies to reclamation and drainage for regionally significant infrastructure activities in the Commercial Port Area.

Schedule E2 - Historic heritage wharves and boatsheds

- 61. *Reason for appeal:* Glasgow Wharf has been included in Schedule E2 of the decisions version of the PNRP at the request of Heritage New Zealand. CentrePort opposes the scheduling of Glasgow Wharf given the wharf's strategic location in the Commercial Port Area and the implications the scheduling will have on the efficient and safe operation of the commercial port as well as potential opportunities for port regeneration, particularly if the relief CentrePort seeks in respect of restrictive heritage policies and rules is not granted.
- 62. Glasgow Wharf is currently used for operational port purposes (Cook Strait ferries). Glasgow Wharf is located in the part of the Commercial Port Area that is currently the subject of considerable attention as part of port regeneration planning relating to future ferry options, port capacity for cruise ships and port city integration. The inclusion of Glasgow Wharf in Schedule E2 would preclude potential cruise ship berthage options, which if realised could bring significant benefits to Wellington and central New Zealand.
- 63. CentrePort considers that the inclusion of Glasgow Wharf in Schedule E2 was ill-considered and the wharf should be removed from Schedule E2.

64. *Relief sought:* Remove Glasgow Wharf from Schedule E2 - Historic heritage wharves and boatsheds.

The ‘common Schedule E deletion’ - Rules R150, R151, R152, R156, R157, R163, R164, R173, R174, R168, R169 and R171

65. *Reason for appeal:* The Panel has made a ‘common Schedule E deletion’ across rules in the coastal chapter of the PNRP to resolve ambiguity in rule cascades and relationships and to remove unnecessary duplication and the potential for uncertainty about the rules that are applicable. The intention is that buildings and structures with scheduled heritage significance will be managed by Rules R168- R172, while all other buildings and structures are administered by Rules R149 - R167.⁵
66. CentrePort is concerned that there remains ambiguity in the rule framework. As noted above, CentrePort supports the inclusion of a note in Rule R149 which clarifies the rule’s application. CentrePort considers a similar note is required in other rules where reference to Schedule E has been deleted (including in Rules R150, R151, R152, R156, R157, R163, R164 and R174).
67. Further, it is not clear whether maintenance or repair or additions or alterations to a heritage structure in the Commercial Port Area is subject to Rules R168-171, or Rules R173-174. The PNRP requires that where an activity is covered by more than one rule, then the rule that applies is the rule that is more specific for the relevant activity, area or resource, rather than a more general rule. Here, Rules R168-171 are specific to the resource (the heritage structure), whereas Rules R173-174 are specific to the area (the Commercial Port Area).
68. CentrePort notes that when Rule R173 was included in the notified version of the PNRP it did not reference Schedule E2. Additions and alterations to structures in the Commercial Port Area could be undertaken as a permitted activity regardless of whether they were heritage structures, provided they complied with the general coastal

⁵ Decision 14 - Coastal Management at [6.27].

management conditions in Section 5.7.2 of the PNRP, were not in Schedule C, F4 or F5 sites or habitats, and added no more than 30m horizontal projection and 10m vertical projection to the structure. Further, Rule R172 now cross-refers to Rule R173 twice - on a plain reading of the PNRP, that heritage rule only applies if Rule R173 does not.

69. CentrePort considers it is appropriate that additions or alterations to structures inside the Commercial Port Area are permitted activities to facilitate the ongoing efficient operation of the Port. CentrePort supports the permitted (Rule R173), restricted discretionary (Rule R169) and discretionary (Rule R171) framework for its structures in the Commercial Port Area. Rule R173 should be amended to make it clear that it applies to heritage structures in the Commercial Port Area.
70. *Relief sought:* Add a note to Rules R150, R151, R156, R157, R163 and R164 as follows:

This rule applies to all existing coastal marine area structures, including seawalls, navigation aids and port structures except those heritage structures identified in Schedule E1-E3 (in which case Rules R168-R172 apply), and structures in the Commercial Port Area (in which case R173 applies).

Amend Rule R152 as follows:

This rule applies to all existing coastal marine area structures, including seawalls, navigation aids and port structures except those heritage structures identified in Schedule E1-E3 (in which case Rule R172 applies).

Add a note to Rule R173 as follows:

This rule applies to all existing structures in the Commercial Port Area, including those heritage structures identified in Schedules E1-E3.

Add a note to Rule R174 as follows:

This rule applies to all existing structures in the Commercial Port Area, except those heritage structures identified in Schedules E1-E3.

Add a note to Rules R168, R169 and R171 as follows:

Maintenance or repair or additions or alterations to structures, including heritage structures identified in Schedule E1-E3 inside a Commercial Port Area are either a permitted activity under Rule R173, a restricted discretionary activity under Rule R169 or a discretionary activity under Rule R171.

Map 32 - Commercial Port Area, Lambton Harbour Area and Port Noise Control Line - Lambton Harbour

71. *Reason for appeal:* CentrePort supports the inclusion of the area surrounding and including the Finger Wharves in the Lambton Harbour Area (Northern Zone), but also seeks that the Commercial Port Area continues to apply to the wharves given they are currently utilised for port operations. This dual zoning request was not addressed by the Panel in its decision, with Decision Reports 14 and 16 cross-referring to each other as being responsible for addressing the submission.⁶
72. CentrePort considers that the decisions version of Map 32 of the PNRP is unclear as to whether the Lambton Harbour Area (particularly the Northern Zone) falls within the Commercial Port Area. In particular, and as discussed above, the footnote to Objective O24 refers to “the Lambton Harbour Area *within* the Commercial Zone”. Secondly, Map 30.i delineates the “Commercial Port Area Boundary” as including the Lambton Harbour Area (including the Northern Zone). The legend for GWRC’s online GIS mapping system also categorises the Commercial Port Area, the Lambton Harbour Area and the Lambton Harbour Area (Northern Zones) as being “Commercial Port Areas (Wellington Harbour)”. CentrePort considers Map 32 should be amended to make it clear that the Lambton Harbour Area (including the Northern Zone) falls within the Commercial Port Area.

⁶ Decision 14 - Coastal Management at [3.21] and Decision 16 - Significant Historic Heritage at [5.44].

73. *Relief sought:* Amend Map 32 to make it clear that the Lambton Harbour Area (including the Northern Zone) falls within the Commercial Port Area.

Relief Sought

74. CentrePort seeks the following relief from the Court:
- (a) The relief specified in this notice of appeal under each heading '*relief sought*'; and/or
 - (b) Such further, consequential or alternative relief as may be necessary or appropriate to address the reasons for appeal or give effect to the relief sought.
75. The following documents are attached to this notice of appeal:
- (a) a copy of CentrePort's submissions and further submissions (with a copy of the submissions opposed or supported by CentrePort's further submissions);
 - (b) a list of names and addresses of persons to be served with a copy of this notice.



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Dated 18 September 2019

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Advice to recipients of copy of notice of appeal*How to become party to proceedings*

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court within 15 working days after the period for lodging a notice of appeal ends.

Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the appellant's submissions or the parts of the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.