

BEFORE THE ENVIRONMENT COURT

ENV-2019-WLN-000118

AT WELLINGTON

I MUA I TE KOOTI TAIAO

O AOTEAROA

IN THE MATTER

of an appeal under clause 14
of Schedule 1 of the Resource
Management Act 1991

BETWEEN

**CentrePort Limited and
CentrePort Properties
Limited**

Appellant

AND

**Wellington Regional
Council**

Respondent

**NOTICE OF WISH TO BE A PARTY TO PROCEEDINGS BY THE
MINISTER OF CONSERVATION**

Dated: 9 October 2019

Department of Conservation
Solicitor acting: K Anton/M Downing
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Notice of person's wish to be a party to proceedings

Section 274 Resource Management Act 1991

To: The Registrar
Environment Court
WELLINGTON

1. The **Minister of Conservation** (the **Minister**) wishes to be a party to the following proceedings:
 - 1.1. CentrePort Limited and CentrePort Properties Limited v Wellington Regional Council, ENV-2019-WLN-000118
2. The Minister made submissions and appeared at the Council hearing on the proposed Natural Resources Plan for the Wellington Region (proposed Plan). The Minister also has an interest greater than the interest the general public has, specifically regarding conservation values and the implementation of the New Zealand Coastal Policy Statement.
3. The Minister is not a trade competitor for the purposes of section 308C or 308CA of the Resource Management Act 1991 (RMA).
4. The Minister is interested in part of the proceedings.
5. The Minister is interested in the following particular issues:
 - 5.1. Policy P28 – Hazard mitigation measures;
 - 5.2. Policy P40 – Ecosystems and habitats with significant indigenous biodiversity values;
 - 5.3. Policy P47 – Appropriate demolition or removal;
 - 5.4. Policy P145 – Reclamation, drainage and destruction;

- 5.5. Rules R161 and R 162 relating to new structures, additions or alterations to structures outside and inside sites of significance – discretionary activity and non-complying activity;
- 5.6. Rules R166 and R167 relating to seawalls outside and inside sites of significance – discretionary activity and non-complying activity;
- 5.7. Rule R202 & new permitted activity rule or maintenance dredging;
- 5.8. Rule 214 reclamation and drainage for regionally significant infrastructure outside sites of significance – discretionary activity.

6. The Minister opposes the relief sought because:

- 6.1. Policy P28: The Minister submitted in support of Policy P28 which requires avoidance of hard hazard engineering mitigation and protection measures with some limited exceptions. The appellant seeks to relax the policy by disapplying it where there is a functional or operational need to use hard hazard engineering mitigation and protection methods, and also in relation to “planned future” development. These suggested amendments would result in the plan not implementing the New Zealand Coastal Policy Statement (NZCPS). In particular, policy 27 of the NZCPS (strategies for protecting significant existing development from coastal hazard risk) is heavily focussed on existing development and infrastructure.
- 6.2. Policy P40: The Minister submitted in support of this policy. The appellant seeks to qualify the policy so that significant indigenous biodiversity values are protected “from inappropriate use and development”. Section 6(c) of the RMA and policy 11 of the NZCPS give direction to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna. Neither of those directions are limited as applying in relation to “inappropriate use and development”. Accordingly, making this change as sought would be inconsistent with the Act.
- 6.3. Policy P47: This policy sets out when demolition or removal of listed historic heritage items is appropriate. The appellant seeks to add that this is appropriate when there is “no ongoing functional or economic use in its present state and/or configuration”. However, that broad exception has the potential to undermine the policy,

which implements Policy 17 of the New Zealand Coastal Policy Statement.

- 6.4. Policy P145: This policy directs avoidance of reclamation, drainage and destruction of the coastal marine area other than that associated with regionally significant infrastructure. The appellant seeks an exception for the Lambton Harbour Area (Northern Zone). Policy P145 should be considered on its own terms alongside other objectives and policies which recognise the value of redevelopment of the Lambton Harbour Area (Northern Zone).
- 6.5. Rules R161 and R 162: These rules regulate new structures and additions or alterations to structures. This activity is discretionary outside of a scheduled site and non-complying inside a scheduled site. The appellant seeks an exemption where the Commercial Port Area coincides with a Schedule F4 site – sites with significant indigenous biodiversity values in the coastal marine area. Making this exemption would result in these provisions not giving effect to the NZCPS, nor to the Proposed plan's own objectives and policies.
- 6.6. Rules 166 and 167: These rules regulate new seawalls and additions or alterations to seawalls. This activity is discretionary outside of a scheduled site and non-complying inside a scheduled site. The appellant seeks an exemption where the Commercial Port Area coincides with a Schedule F4 site – sites with significant indigenous biodiversity values in the coastal marine area. Making this exemption would result in these provisions not giving effect to the NZCPS, nor to its own objectives and policies.
- 6.7. Rules R202 and new permitted activity rule for maintenance dredging: The new permitted activity rule for maintenance dredging inside the Commercial Port Area and navigation protection area can happen in scheduled sites, which is inappropriate. The NZCPS requires avoidance of adverse effects, not just significant adverse effects, on sites meeting the criteria in policies 11, 13(a) and 15(a).
- 6.8. Rule 214: This rule regulates reclamation and drainage for regionally significant infrastructure outside significant sites as a discretionary activity. The appellant seeks the rule also apply to use and development inside the Lambton Harbour Area (Northern Zone) and also an exemption where the Commercial Port Area

coincides with a Schedule F4 site – sites with significant indigenous biodiversity values in the coastal marine area. Making this exemption would result in these provisions not giving effect to the NZCPS, nor to its own objectives and policies.

7. The Minister agrees to participate in mediation or other alternative dispute resolution of the proceedings.



Katherine Anton/May Downing
Solicitor for the Minister of Conservation

9 October 2019

Address for service of person wishing to be a party:

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Contact persons

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Advice

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