



NZCPS 2010 Guidance note

Policy 9: Ports

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Policy 9

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.
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Overview of the policy

Policy 9 of the New Zealand Coastal Policy Statement 2010 (NZCPS 2010) recognises the importance of a network of efficient ports as part of New Zealand's national transport system.

All readers of this policy guidance note should also refer to the NZCPS 2010 Implementation Guidance Introductory note¹. The Introductory note contains general information and guidance that is important for implementing all of the objectives and policies in the NZCPS 2010.

¹ <http://www.doc.govt.nz/nzcps-introductory-note>

Rationale

New Zealand is a remote island trading nation. Ports are vital infrastructure and are essential for New Zealand's well-being. Ports are one of the largest commercial activities on the coastline, with around 99% of the country's exports and imports travelling by sea and passing through New Zealand's import/export ports. Ports are also part of the national transport system for distributing goods around New Zealand and for ferrying people between the North Island, South Island, and Stewart Island, and also within the Hauraki Gulf. (Please see the glossary and the beginning of 'Implementing the policy' for discussion of the type of port or port activity relevant to implementation of Policy 9.)

Ports must be located on the coast, and have specific needs such as deep water. They can only function efficiently if they are well connected to goods storage areas and the remainder of the national transport system so that goods (and people) can be efficiently moved into and out of the port facilities by rail or road.

Ports also need to adapt and develop to meet the changing nature of trade, shipping (notably ship size), and goods handling systems. In future, some ports may have to expand while other ports may become confined to domestic coastal trade.

In addition, ports are often 24-hour-a-day businesses involving large machinery and lighting, and this can create conflict with other nearby activities such as residential development.

These characteristics mean that achieving the efficient operation and ongoing development of ports into the future to maintain New Zealand's well-being, while also addressing conflict with other activities, will require a proactive and strategic approach to the management of activities and resources in and around ports.

Related objectives, policies and provisions

This section covers the links (in terms of ports) between the various provisions of the NZCPS 2010, the Resource Management Act 1991 (RMA), and other legislation.

NZCPS 2010

Implementing Policy 9 of the NZCPS 2010 requires careful consideration of all NZCPS 2010 objectives and policies. Objective 6, and Policies 4, 6, 7, 10, 12, 19, and 23 of the NZCPS 2010 are particularly relevant to planning and decision-making regarding ports. These links are considered below.

Key related objectives and policies	Other related objectives	Other related policies
Objective 6 Policies 4, 6, 7,10, 12, 19 and 23		Policies 18, 21 and 27

Objective 6

Objective 6 focuses on enabling people and communities to provide for their well-being through subdivision, use and development. Some ports are an integral part of the national and international transport system, and their efficient operation is important for the well-being of communities (and of New Zealand as a whole). Ports are very dependent on access to coastal resources (such as land and water space) as many aspects of port operations must be located on the coastline.

The Policy 9 requirement that the operation and development of ports should not be adversely affected by other development is related to that part of Objective 6 which seeks to ensure that the potential to use and develop resources in the coastal marine area should not be compromised by activities on land.

Policy 4: Integration

Policy 4 promotes integration through coordinated management of natural and physical resources in the coastal environment, and activities that affect the coastal environment. The particular characteristics of ports are such that an integrated approach will be important to sustainably manage the resources and activities in and around ports, as detailed in Policy 4.

One particular integration issue signalled in Policy 9 is integration with the wider transport system.

Policy 6: Activities in the coastal environment

Policy 6 focuses on enabling people and communities to provide for social, economic and cultural well-being and their health and safety.

Policy 6 includes several clauses that are closely related to Policy 9:

- 6(1)(a) recognises infrastructure as one of the activities important to community well-being.
- 6(1)(e) seeks control of development on land so that it does not compromise important activities that must locate and operate in the coastal marine area. Ports must locate and operate in the coastal marine area (as well as on land).
- 6(2)(a) recognises the potential contribution to community well-being from use and development of the coastal marine area.
- 6(2)(c) recognises that there are activities that have a functional need to be located in the coastal marine area, and seeks to provide for those activities in appropriate places.
- 6(2)(e) promotes the efficient use of space by requiring that structures in the coastal marine area be made available for public or multiple use wherever reasonable and practicable. In some cases, port facilities can be made available for public or multiple use without compromising the safe and efficient operation of the port. For example, a wharf may be able to be used by fishing boats, recreational boats, or the general public, when not needed by cargo ships or ferries. Similarly, cleaning and pump out facilities could be made available to all vessels when these facilities are not in use by the port. There may also be space on a wharf that could be permanently occupied by viewing platforms, cafés, public toilets, etc.

Policy 7: Strategic planning

Policy 7 promotes strategic planning by directing local authorities to consider where, how and when to provide for future residential, rural residential, settlement, urban development and other activities in the coastal environment and to identify where particular activities and development are inappropriate. It also requires policies and plans to identify where resources or values are under threat.

A strategic approach to coastal management is likely to assist implementation of Policy 9. This will in part be by careful consideration of the operational and development needs of a port, and in part by identifying where port operations or development may be compromised by other activities.

Policy 10: Reclamation and de-reclamation

Policy 10 sets out criteria for determining whether reclamation is a suitable use of the coastal marine area, and promotes good design when it is found to be a suitable use.

Several parts of Policy 10 are relevant where a proposed port development includes reclamation:

- **Policy 10(1)**, concerning whether there is a need for reclamation, includes criteria that need to be assessed in light of Policy 9 and the options available for efficient port operation and meeting port development needs. Particular care will be needed to determine which parts of the port operation need to be located at the land-water interface, and what the safety and efficiency effects would be of alternative locations. For example, the development of ‘inland ports’ (as discussed later) provides an opportunity to carry out some traditional port activities (e.g. container marshalling, and goods storage pending ship arrival) well away from the coastal port and any coastal reclamation.
- **Policy 10(2)** requires that careful consideration be given to a reclamation’s form and design. In relation to Policy 10(2)(d), public access to and along the coastal marine area within many parts of a port may not be practicable for security or public safety reasons. However, in other parts of a port area, valuable waterfront public access may be practicable and achievable (see also the Policy 19 discussion below).
- **Policy 10(3)** requires that particular regard be given to the extent to which a reclamation would provide for the efficient operation of infrastructure, including ports.

Policy 12: Harmful aquatic organisms

Ports can be a significant source of harmful aquatic organisms because of the type and number of vessels coming into ports from overseas and from other New Zealand ports. In policies and plans, providing for ports will have to be integrated with managing the risk of any release and spread of harmful aquatic organisms.

Policy 19: Walking access

Policy 19 recognises people’s expectation of free, safe and generally unrestricted walking access to and along the coast. There are, however, specified circumstances when imposing restrictions is appropriate. Within some parts of a port, restricting public access along the waterfront may be necessary to protect public health and safety (Policy 19(3)(e)), or to ensure a level of security consistent with port activities Policy 19(3)(i).

As set out in Policy 19(4), where waterfront public walking access is not appropriate, it may be practicable to provide alternative routes for walkers, including to maintain linkages between waterfront public open space.

Policy 23: Discharge of contaminants

Policy 23, in addition to addressing the general management of discharges, specifically addresses what is required for managing discharges from ports and other marine facilities.

Resource Management Act 1991

Apart from a transitional provision addressing the right of port companies to occupy the coastal marine area (section 384A), there are no Resource Management Act 1991 (RMA) provisions directly addressing the role or management of ports.

Part 2 of the RMA addresses sustainable management in relation to all activities, including ports.

RMA section 30(1)(gb) specifies that one of the functions of regional councils is the strategic integration of infrastructure with land use through objectives, policies, and methods.²

Other legislation

Marine and Coastal Area (Takutai Moana) Act 2011³

Many of the reclamations around New Zealand's coastline have been undertaken for port development. The vesting of coastal reclamations is now dealt with under the Marine and Coastal Area (Takutai Moana) Act 2011.

When councils are considering applications by ports (or any other person) for developments involving reclamations, there can be a parallel vesting process underway. Developers who are applying to reclaim land can (whether before or after the reclamation is approved or undertaken) apply to have ownership or leasehold interests in the reclamations vested in them by the Minister of Land Information under the Marine and Coastal Area (Takutai Moana) Act 2011. Subpart 3 of that Act deals with reclaimed land, and sections 34-41 cover most aspects of the vesting of reclamations.

Section 37 establishes a presumption that port companies and port operators will be granted a freehold interest unless there is good reason for the Minister not to grant freehold.

Please also see the guidance note for 'Policy 10: Reclamation and de-reclamation'.

Maritime Transport Act 1994⁴ ***and Maritime Security Act 2004***⁵

The Maritime Transport Act 1994 and Maritime Security Act 2004 and associated regulations are also important for port management and planning.

² Refer to the glossary of terms for the definition of 'infrastructure'.

³ <http://www.legislation.govt.nz/act/public/2011/0003/latest/DLM3213131.html>

⁴ http://www.legislation.govt.nz/act/public/1994/0104/latest/DLM334660.html?search=ts_act%40bill%40regulation%40deemedreg_Maritime+Transport+Act+1994_resel_25_h&p=1

⁵ http://www.legislation.govt.nz/act/public/2004/0016/latest/DLM241099.html?search=ts_act%40bill%40regulation%40deemedreg_Maritime+Security+Act+2004_resel_25_h&p=1

Origins of the policy

The NZCPS 1994 contained policies that provided for use and development in a general way, notably that 'Policy statements and plans should define what form of subdivision, use and development would be appropriate in the coastal environment, and where it would be appropriate' (Policy 3.2.1). It did not explicitly address particular infrastructure and commercial activities, such as ports, or their importance for New Zealand's well-being.

The recommendations of the Board of Inquiry⁶ did not include a specific policy on ports.

Policy 9 was included in the NZCPS 2010 on the recommendation of the Minister of Conservation to recognise the importance of ports in the national transport system, plan for their development, and take care that other activities do not hamper port operations.

⁶ <http://www.doc.govt.nz/getting-involved/consultations/results/new-zealand-coastal-policy-statement/proposed-new-zealand-coastal-policy-statement-2008-board-of-inquiry-report-and-recommendations/>

Implementing the policy

While guidance is provided here on implementing Policy 9, it is also necessary to consider the entire NZCPS 2010 when implementing each policy. Please also refer to the NZCPS 2010 Implementation Guidance Introductory note⁷, which covers the matters that are relevant in giving effect to the NZCPS 2010.

Implementing Policy 9 of the NZCPS 2010 requires local authorities to ensure that their policy statements and plans explicitly and carefully consider the needs of ports. Such consideration is part of the integrated and strategic approach to management of the coastal environment that is promoted by ‘Policy 4: Integration’ and ‘Policy 7: Strategic planning’.

Scope of Policy 9

There is no definition of ‘port’ in the NZCPS 2010 for the purposes of Policy 9. The wording of Policy 9 makes it clear that the policy is directed towards ports that play an important role in New Zealand’s national (and international) transport system. That does not include, for example, harbours and wharf facilities that are primarily used to service recreational boats, commercial fishing boats, tourism boats, and/or aquaculture operations. The important question is not: ‘Is this port/harbour/wharf a port for the purposes of Policy 9?’ Rather, the pertinent question is: ‘What, if any, planning is required for this port in order to contribute to a sustainable national transport system as detailed in Policy 9?’

Definitions and classifications in other legislation have their own purposes and should not be relied upon, but may be of assistance depending on the circumstances: The Maritime Security Act 2004⁸ applies to ports used by passenger ships engaged in international trade, and to ports used by cargo ships in international trade of 500 gross tonnes or more. The Maritime Transport Act 1994⁹ classifies New Zealand’s ports. One classification is of those ports with adjacent compulsory pilotage areas declared under maritime rule Part 90—Pilotage¹⁰.

Policy 9 provides specific guidance on the particular needs of ports in the context of a national network of ports contributing to a sustainable national transport system. Therefore, consideration of where, how and when to provide for ports in a strategic and integrated way will have to take account of that national context. In planning for their particular port or ports, local authority planning processes will specifically need to take account of the larger picture. That larger picture includes considering what is required for the national network of ports to develop their capacity for shipping and

⁷ <http://www.doc.govt.nz/nzcps-introductory-note>

⁸ http://www.legislation.govt.nz/act/public/2004/0016/latest/DLM241099.html?search=ts_act%40bill%40regulation%40deemedreg_Maritime+Security+Act+_resel_25_h&p=1

⁹ http://www.legislation.govt.nz/act/public/1994/0104/latest/DLM334660.html?search=ts_act%40bill%40regulation%40deemedreg_Maritime+Transport+Act+1994_resel_25_h&p=1

¹⁰ <http://www.maritimenz.govt.nz/Rules/List-of-all-rules/Part90-maritime-rule.asp>

maintain and develop efficient connections to the rest of the national transport system.

Policy 9 also seeks to ensure that other activities do not adversely affect the efficient and safe operation of ports and their connections with other transport modes.

Policy 9 does not require councils to make provision for ports regardless of environmental effects. Rather, it requires that councils carefully consider where, when and how provision should be made.

Policy 9 is aimed at the efficient and safe operation of ports as part of the transport network, the development of their capacity for shipping, and their connections with other transport modes. It is not relevant for activities that do not contribute to achieving those goals, and therefore does not apply to all activities that may occur, or be proposed, by port operators or in port areas.

The overall goal of Policy 9 is New Zealand's network of ports contributing to a sustainable national transport system. That requires more than just the commercial efficiency of, and public safety within, ports. Planning for efficient ports should involve a range of efficiency goals including: commercial efficiency; the efficient movement of supplies and people to assist in community recovery after a natural hazard event or other emergency; and efficient transport connections from the perspective of impacts on communities, including impacts on urban roads, amenity values and public coastal access.

Port zones

Port zones in district plans and regional coastal plans are one mechanism that can be used to address the needs of a port (and where, how and when to provide for the port) as part of an integrated and strategic approach by councils to management of the coastal environment. A port zone is a zone in which there are objectives, policies, rules, and other methods explicitly addressing port operations and port development activities. Other strategic planning approaches are discussed further in the guidance note on 'Policy 7: Strategic planning'.

Whether the development of port zone provisions is warranted will depend on the issues arising, or likely to arise, from a port's operations or development. A number of councils had already established port zones prior to the NZCPS 2010 coming into effect, including for the commercial ports in Tauranga, Nelson and Bluff¹¹.

Particularly in a district plan, it may be helpful to have more than one port zone so that the plan can efficiently and effectively address the different port-related issues that are occurring, or are assessed as likely to arise, in different areas in and around the port. There may also be port zones in both the district plan and regional coastal plan. Regional and district councils are encouraged to collaborate in the development of the policy and plan provisions related to their ports.

¹¹ Refer to the Resources section for examples of port zones in regional coastal plans.

Recognising the issues beyond the immediate boundaries of a port will often be necessary to address the potential development/expansion needs of a port and its transport links, as well as reverse sensitivity¹² issues. Such consideration might lead to identification of a 'buffer zone', or similar, within the relevant plans. Policies and rules within a reverse sensitivity buffer zone may be different to those in a zone where potential port development is also an issue.

Reverse sensitivity problems – such as noise and light from port operations – can sometimes be avoided (or mitigated) by controlling the establishment of activities in the vicinity of ports. Of concern are those activities that may be adversely affected by existing port activities and that would in the future lead to pressure on councils to limit port activities in order to reduce those adverse effects. An example of a new activity would be new residential development near an established port that will in future lead to pressure on councils to stop or limit the 24-hour activities of the port (for example, in order to reduce noise and lighting effects on the newly-established and nearby residential areas).

The development (including expansion) needs of a port and its transport links can be addressed in a port zone by a consideration of the type and permanence of activities that are appropriate in areas that have potential for the development of the port or its transport linkages.

However, councils will need to exercise some caution with the scope of plan provisions to control non-port activities in port zones, particularly in district plans. The implementation of Policy 9 cannot, outside the coastal marine area, achieve the same control over activities on private land that can be achieved where a designation has been made under Part 8 of the RMA (for example, for a proposed highway or airport development).

Inland ports

Whether through zoning or otherwise, the planning for safe and efficient port operations should extend well beyond the coastal port to encompass, for example, 'inland ports' and transport links. See also the guidance on 'Policy 7: Strategic planning'.

'Inland ports' are inland sites where goods destined for a coastal port are delivered and held, before being marshalled onto rail for delivery to the port just in time for being loaded on the relevant ship. Similarly, goods coming off a ship can be delivered by rail to the inland port to be marshalled and held before being distributed via other transport networks.

A number of 'inland ports' (and similar goods marshalling areas) have been developed in New Zealand. Examples include the Wiri inland port for Ports of Auckland and Fonterra's Crawford Street dairy freight hub in Hamilton.

¹² Refer to the glossary of terms for a definition of 'reverse sensitivity'.

Inland ports can improve the efficiency and safety of overall port operations, with both commercial and wider socio-economic benefits. The development of such a concept highlights that a strategic approach to where, how and when to provide for the operation and development of ports has to look beyond the immediate vicinity of a port and be part of a wider spatial planning approach. It also highlights the value of considering whether there are practicable alternative methods to provide for activities that are part of the efficient and safe operation of ports (cf. Policy 10(1)(c): ‘Avoid reclamation of land ... unless ... there are no practicable alternative methods of providing the activity’).

An inland port removes some of a port’s operations from the limited land resource on the coastline, and can have a range of other benefits:

- Less expensive land can be used for marshalling/holding containers.
- The need to reclaim land for marshalling and goods storage is reduced (cf. Policy 10(1)).
- It is easier to delay to the last minute the decision on which port will be used.
- Trucking companies will increase the efficiency of their fleet use by reducing the risk of trucks being delayed in peak urban traffic (e.g. around Auckland port).
- Vehicle movements through urban areas, and impacts on urban roads, will be reduced.
- Fuel use (and therefore freight costs) will be reduced by having goods delivered to a convenient site and by transferring those goods to rail for part of their journey.

Does Policy 9 give special status to all port development proposals?

As stated above, Policy 9 only applies to those port operations and developments that contribute to:

- The efficient and safe operation of the port
- Developing capability for shipping
- Efficient connection with other transport modes

Policy 9 does not apply to activities and development within commercial port areas that do not relate directly (or at all) to the primary business of the port.

Policy 9(a) may be relevant to some non-port-related development proposals on port land, i.e. councils may want to be satisfied that the proposed developments will not adversely affect the port’s operations or development into the future.

Other NZCPS 2010 policies are relevant to council consideration of non-port-related development proposals on port land. Examples include Policy 6 for other infrastructure development; Policy 8 for land-based facilities for aquaculture ventures; and Policies 18 and 19 for proposals that will provide more (or better) public open space or enhance public walking access.

Related and ongoing work

National Infrastructure Plan 2011 implementation

Ports are an important part of New Zealand's infrastructure. The Government has established the following:

- National Infrastructure Unit (NIU), as a Unit within the Treasury
<http://www.infrastructure.govt.nz/>
- National Infrastructure Advisory Board, comprising members outside central government, to advise the Minister for Infrastructure.
<http://www.infrastructure.govt.nz/advisoryboard>

The NIU released the National Infrastructure Plan 2011 in July 2011, which outlines the Government's intentions for infrastructure development over a 20-year timeframe, including a framework for infrastructure development.

The National Infrastructure Plan 2011, and other ongoing work by the NIU, are relevant for local authorities when planning strategically for infrastructure, including ports. <http://www.infrastructure.govt.nz/plan>

Resources

Examples of port provisions in regional coastal plans

Regional Coastal Plan for Southland

<http://www.es.govt.nz/publications/plans/coastal-plan/>

Bay of Plenty Regional Coastal Plan

<http://www.boprc.govt.nz/knowledge-centre/plans/regional-coastal-environment-plan.aspx>

Nelson Resource Management Plan

<http://www.nelsoncitycouncil.co.nz/download-the-nrmp-2/>

Reports, websites and additional information

New Zealand Productivity Commission Inquiry into international freight transport services

<http://www.productivity.govt.nz/inquiry-content/1508>

In April 2012, the New Zealand Productivity Commission released its report on its inquiry into international freight transport services. This report includes recommendations to the Government about the efficient operation of ports and regulation under the RMA.

Glossary of terms and definitions

NZCPS 2010 glossary

Infrastructure: In section 30, means—

- (a) pipelines that distribute or transmit natural or manufactured gas, petroleum, biofuel, or geothermal energy:
- (b) a network for the purpose of telecommunication as defined in section 5 of the Telecommunications Act 2001:
- (c) a network for the purpose of radiocommunication as defined in section 2(1) of the Radiocommunications Act 1989:
- (d) facilities for the generation of electricity, lines used or intended to be used to convey electricity, and support structures for lines used or intended to be used to convey electricity, excluding facilities, lines, and support structures if a person—
 - (i) uses them in connection with the generation of electricity for the person's use; and
 - (ii) does not use them to generate any electricity for supply to any other person:
- (e) a water supply distribution system, including a system for irrigation:
- (f) a drainage or sewerage system:
- (g) structures for transport on land by cycleways, rail, roads, walkways, or any other means:
- (h) facilities for the loading or unloading of cargo or passengers transported on land by any means:
- (i) an airport as defined in section 2 of the Airport Authorities Act 1966:
- (j) a navigation installation as defined in section 2 of the Civil Aviation Act 1990:
- (k) facilities for the loading or unloading of cargo or passengers carried by sea, including a port related commercial undertaking as defined in section 2(1) of the Port Companies Act 1988:
- (l) anything described as a network utility operation in regulations made for the purposes of the definition of network utility operator in section 166.

(Definition from section 2 of the RMA)

Other definitions

Reverse sensitivity: One definition cited in a recent Environment Court decision is:

... the legal vulnerability of an established activity to complaint from a new land use. It arises when an established use is causing adverse environmental impact to nearby land, and a new, benign activity is proposed for the land. The 'sensitivity' is this: if the new use is permitted, the established use may be required to restrict its operations or mitigate its effects so as not to adversely affect the new activity.

(Definition from 'Reverse sensitivity—The common law giveth and the RMA taketh away', by Bruce Pardy and Janine Kerr, and quoted by the Environment Court in *Hudson Bay Holdings Ltd v Auckland Council* Decision [2011] NZEnvC 141¹³.)

¹³ <http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZEnvC/2011/141.html?query=NZEnvC%20141>