

IN THE HIGH COURT OF NEW ZEALAND
DUNEDIN REGISTRY

I TE KŌTI MATUA O AOTEAROA
ŌTEPOTI ROHE

CIV-2021-412-000089

IN THE MATTER of application under the Declaratory Judgments Act
1908

BETWEEN **OTAGO REGIONAL COUNCIL**, a regional council
under Schedule 2 of the Local Government Act
2002

Plaintiff

AND **ROYAL FOREST AND BIRD PROTECTION
SOCIETY OF NEW ZEALAND INCORPORATED**,
an incorporated society having its registered office
at 205 Victoria St, Wellington

Defendant

**PLAINTIFF'S REPLY TO AFFIRMATIVE DEFENCES PLEADED BY PORT
OTAGO LIMITED IN STATEMENT OF DEFENCE**

Dated: 3 November 2021

Next Event date: Hearing, 8 and 9 February 2022
Case Manager: Rebecca Lau

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**PLAINTIFF'S REPLY TO AFFIRMATIVE DEFENCES PLEADED BY PORT
OTAGO LIMITED IN STATEMENT OF DEFENCE**

In response to the affirmative defences pleaded by Port Otago Limited, the Plaintiff by its solicitors say: –

General

1. The proposed Otago Regional Policy Statement 2021 ("PORPS") is a freshwater planning instrument under section 80A(1) - (3) of the Resource Management Act 1991 ("RMA")
2. The issue in these proceedings is whether the Plaintiff is correct that the PORPS is a freshwater planning instrument.
3. The proceedings do not relate to the Plaintiff's decision-making process.

Notification was invalid

Statement of defence, paragraphs 4, 9 and 10

4. The Plaintiff denies that the notification of the PORPS on 26 June 2021 was invalid.
5. The Plaintiff denies that it failed to comply with the obligations under clause 5(2A) of Part 1, Schedule 1 of the Resource Management Act 1991 ("RMA").
6. The Plaintiff says that in accordance with clause 5(2A)(a), the public notice published on 26 June 2021 stated:

"The Otago Regional Council is satisfied that the whole PORPS 2021 is a freshwater planning instrument and will therefore be subjected to the freshwater planning process set out in Section 80A of the Resource Management Act 1991"

7. The Plaintiff did not need to state which parts will undergo the process in Part 1 of Schedule 1 (and the reasons why)¹, as the whole instrument was subject to the freshwater planning process; clause 5(2A)(b)(ii) was not applicable.

¹ Section 5(2A)(b) of Part 1, Schedule 1 of the RMA

Coastal Environment Chapter not capable of being included in freshwater planning instrument

Statement of defence, paragraphs 5, 6(a) & (b)

8. The Plaintiff denies that the provisions in the CE-Coastal Environment chapter are not able to be included in a freshwater planning instrument.
9. While the Plaintiff agrees that the definition of “*freshwater*” excludes “*coastal water*”, it is not correct that “*freshwater*” cannot relate to “*coastal water*”.
10. Integration is the central tenet for the PORPS; seeing the environment as a single connected system, *ki uta ki tai*.²
11. Coastal waters are a receiving environment for freshwater. Recognising the interconnection is consistent with *ki uta ki tai*.
12. The interconnected nature between fresh and coastal water, *ki uta ki tai*, means that the Coastal Environment Chapter is able to be included in a freshwater planning instrument.
13. The National Policy Statement for Freshwater Management 2020 directs every regional council must:
 - a. adopt an integrated management approach, *ki uta ki tai*³, and
 - b. recognise the interconnectedness of the whole environment;⁴ and
 - c. recognise the interactions between freshwater and receiving environments⁵ (such as the coastal environment).
14. Te Mana o te Wai must also inform the interpretation of the provisions required by the National Policy Statement for Freshwater Management 2021 to be included in regional policy statements⁶.

² PORPS 21 page 2

³ National Policy Statement for Freshwater Management 2020 at 3.2

⁴ Ibid at 3.5(a)

⁵ Ibid at 3.5(b)

⁶ Ibid at 3.2(4)(b)

Mistake

Statement of defence, paragraph 7

15. The Plaintiff denies that the recommendation was only able to be made because the definition of freshwater in the RMA was overlooked.
16. The Plaintiff denies that it is incorrect that section 80A(2) sets out the definition of a freshwater instrument. Section 80A(2) begins:

“A freshwater planning instrument means –”

17. The Plaintiff repeats paragraphs 8 to 14 above.

Illegality

Statement of defence, paragraphs 8 and 11(b)

18. The Plaintiff denies that the Council's decision was wrong in law because the PORPS cannot be a freshwater planning instrument when it contains policies relating to coastal water.
19. The Plaintiff repeats paragraphs 8 to 14 above.