

BEFORE THE HEARINGS COMMISSIONERS

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the proposed Otago Regional Policy Statement
2021 ("pORPS") (Non-Freshwater Parts)

**MEMORANDUM FOR THE OTAGO REGIONAL COUNCIL ON PORT OTAGO
LIMITED v ENVIRONMENTAL DEFENCE SOCIETY INCORPORATED [2023]
NZSC 112**

Dated 28 August 2023

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MEMORANDUM OF COUNSEL FOR THE OTAGO REGIONAL COUNCIL

May it please the Commissioners:

Introduction

1. On 24 August 2023, the Supreme Court gave its decision in the *Port Otago Limited v Environmental Defence Society and Others* litigation¹. A copy of the decision is **attached**.

Outcome

2. Port Otago Limited's appeal was successful. The decision of the Court of Appeal is set aside.
3. The Regional Council is directed to consult the parties and any other persons it considers appropriate on a redrafted policy 4.3.7(d)-(e) for the partially operative Regional Policy Statement 2019.
4. The formal Order provides that the policy is either along the lines set out in paragraph [87] of the Supreme Court's judgment or to similar effect, or otherwise gives appropriate effect to the policies of the NZCPS and their inter-relationships.

What now?

5. The Regional Council will proceed as directed.
6. The decision is directly concerned with the policy provision for ports operated by Port Otago Limited in the Otago harbour in the partially operative Regional Policy Statement 2019.
7. The Court's decision is also directly applicable to provision for ports in the proposed Otago Regional Policy Statement 2021.
8. Otago Regional Council proposes to report to the Panel on the outcome of the port provision by Friday 22 September 2023.
9. It is possible that some parties see the judgment as having wider implications than simply setting the policy for the ports.

¹ [2023] NZSC 112.

10. If so, those parties might want to make submissions on how the decision impacts the proposed Regional Policy Statement.
11. It is suggested the following timetable be adopted:
 1. Submitters to make submissions by 15 September 2023;
 2. Otago Regional Council to reply by 29 September 2023.



A J Logan
Counsel for Otago Regional Council
Dated 28 August 2023