

Minute 18 of the Non-Freshwater Hearing Panel

1. By Memorandum dated 28 August 2023, Counsel for Otago Regional Council has drawn attention to the issue of a decision of the Supreme Court, *Port Otago Limited v. EDS & ors*, which issued last week. That decision addresses the approach to be taken in a situation of potential conflict between 'avoidance' policies and enabling 'port' policies in the New Zealand Coastal Policy Statement.
2. Whilst the Supreme Court decision focuses only on the previous partially operative 2019 Policy Statement its decision has application to similar considerations in respect of the PORPS 2021 before this Hearing Panel.
3. As Counsel for ORC has pointed out, it may well be that some parties to this PORPS 2021 process "*see the judgment as having wider implications than simply settings the policy for ports.*"
4. We agree with the suggestion of Counsel for ORC that opportunity must be provided for any such implications to be raised in the non-Freshwater process, but we are also of the view that that opportunity must also be given in the freshwater process. (A separate Minute in that process will issue contemporaneously attaching this Minute.)
5. We agree with the timetable suggested by Counsel for ORC as to how that can most efficiently and expeditiously be done at this very late stage of our Hearing processes in respect of the non-Freshwater and Freshwater Hearings.
6. Any party wishing to make submissions on the possible implications of the Supreme Court decision are to do so in accordance with the following timetable;
 - (a) Submitters to make submissions by 15 September, 2023
 - (b) Otago Regional Council to reply by 29 September, 2023

Dated 29 August, 2023

Ron Crosby

Chair, non-Freshwater Hearing Panel

Minute 9 of the Freshwater Hearing Panel

1. By Memorandum dated 28 August 2023 in the non-Freshwater process, Counsel for Otago Regional Council has drawn attention to the issue of a decision of the Supreme Court *Port Otago Limited v. EDS & ors* which issued last week. That decision addresses the approach to be taken in a situation of potential conflict between 'avoidance' policies and enabling 'port' policies in the New Zealand Coastal Policy Statement.
2. Whilst the Supreme Court decision focuses only on the previous partially operative 2019 Policy statement its decision has application to similar considerations in respect of the PORPS 2021 before this Hearing Panel.
3. As Counsel for ORC has pointed out it may well be that some parties to this PORPS 2021 process "*see the judgment as having wider implications than simply setting the policy for ports.*"
4. We agree with the suggestion of Counsel for ORC that opportunity must be provided for any such implications to be raised in the non-Freshwater process, but we are also of the view that that opportunity must also be given in the Freshwater process. (A copy of a Minute in the non-Freshwater process is attached to this Minute.)
5. We agree with the timetable suggested by Counsel as to how that can most efficiently and expeditiously be done at this very late stage of our hearing processes in respect of the non-Freshwater and Freshwater hearings.
6. Any party wishing to make submissions on the possible implications of the Supreme Court decision are to do so in accordance with the following timetable;
 - (a) Submitters to make submissions by 15 September, 2023
 - (b) Otago Regional Council to reply by 29 September, 2023

Dated 29 August, 2023

Ron Crosby

Chair, Freshwater Hearing Panel