BEFORE THE HEARINGS COMMISSIONERS

UNDER THE	Resource Management Act 1991
AND	
IN THE MATTER	of the Proposed Otago Regional Policy Statement 2021 ("PORPS") (Non-Freshwater Parts)

REPLY EVIDENCE OF MARCUS HAYDEN LANGMAN PLANNING RESPONSE TO THE HEARING PANEL REGARDING THE PORT OTAGO DECISION FROM THE SUPREME COURT

Dated 29 September 2023

ROSS DOWLING MARQUET GRIFFIN
SOLICITORS
DUNEDIN

Telephone: (03) 477 8046
Facsimile: (03) 477 6998
PO Box 1144, DX YP80015

Solicitor: S J Anderson

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Qualifications and Experience

1 My qualifications and experience are set out in paragraphs 1 to 8 of the supplementary s42A report on the Energy, Infrastructure and Transport (**EIT**) chapter of the Proposed Otago Regional Policy Statement (pORPS), dated 11 October 2022.[1]

Code of Conduct

2 I have read and agree to comply with the Environment Court's Code of Conduct for Expert Witnesses, contained in the Environment Court Practice Note 2023. I have complied with the Code in preparing my evidence. Other than where I state that I am relying on the advice of another person, I confirm that the issues addressed in this statement of evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

Scope of Evidence

3 In its Minute 18, the Hearing Panel noted that it agreed with ORC that opportunity must be provided to parties in both the freshwater and non-freshwater pORPS hearings for submissions regarding the Port Otago decision (**the Ports decision**).[2] It directed that any parties wishing to make submissions on the possible implications of the Supreme Court decision are to do so by 15 September 2023, with a response by ORC by 29 September 2023.

4 Responses were received from the following eight parties:

4.1 Memorandum of Counsel for Environmental Defence Society (**EDS**);[3]

4.2 Memorandum of Counsel for Kai Tahu;[4]

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[1] https://www.orc.govt.nz/media/13025/11-supplementary-evidence-eit.pdf
[2] *Port Otago Limited v Environmental Defence Society* [2023] NZSC 112
[3] https://www.orc.govt.nz/media/15112/eds-memo-to-panel-re-port-otago.pdf
[4] https://www.orc.govt.nz/media/15127/memorandum-of-counsel-on-behalf-of-ka-i-tahu-in-response-to-minutes-9-15-and-18-15-9-23.pdf

4.3 Submissions of Counsel for OWRUG, Federated Farmers New Zealand Limited, and DairyNZ (**the Farming Group**);[5]

4.4 Submissions of Counsel for Transpower;[6]

4.5 Legal submissions of Counsel for Dunedin City Council (**DCC**);[7]

4.6 Legal submissions of Counsel for the Director-General of Conservation;[8]

4.7 Memorandum of Counsel for Meridian Energy Limited;[9] and

4.8 Legal submissions on behalf of the Royal Forest and Bird Protection Society (**RFBPS**).[10]

5 This evidence provides a planning response to the parties responses regarding the Supreme Court decision.

6 In response to the Ports decision, I have also been working with Port Otago Limited's witness, Ms Mary O'Callahan, with a view to filing a Joint Witness Statement (**JWS**) on any consequential amendments as a result of the decision. The key policy likely to be addressed through the statement is EIT-TRAN-P23 – Commercial Port Activities.

7 I am also cognisant that a number of submitters have filed evidence and legal memoranda in relation to the National Policy Statement on Indigenous Biodiversity (**NPSIB**), referencing the Ports decision, in relation to the interaction of the NPSIB and other national policy statements.[11] These are addressed in the supplementary reply evidence of Mr Maclennan.[12]

The Ports decision and its application to the partially operative ORPS 2019

8 The Ports decision directs amendment to Policy 4.3.7 of the partially operative ORPS 2019, which seeks to recognise the functional needs of

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[5] https://www.orc.govt.nz/media/15155/bridget-irving-federated-farmers-sc-non-freshwater.pdf
[6] https://www.orc.govt.nz/media/15156/matt-conway-transpower-sc.pdf
[7] https://www.orc.govt.nz/media/15159/rebecca-kindiak-dcc-sc.pdf
[8] https://www.orc.govt.nz/media/15158/pene-williams-doc-sc.pdf
[9] https://www.orc.govt.nz/media/15014/memorandum-on-behalf-of-meridian-energy.pdf
[10] https://www.orc.govt.nz/media/15157/may-downing-f-b-sc.pdf
[11] Meridian, Oceana Gold Limited, OWRUG, Director-General of Conservation, Transpower
[12] https://www.orc.govt.nz/media/15289/reply-evidence-of-andrew-maclennan-npsib-final.pdf

port activities at Port Chalmers and Dunedin, as set out below in the decision of the Council:

Policy 4.3.7 Recognising port activities at Port Chalmers and Dunedin

Recognise the functional needs of port activities at Port Chalmers and Dunedin and manage their effects by:

(a) Ensuring that other activities in the coastal environment do not adversely affect port activities;

(b) Providing for the efficient and safe operation of these ports and effective connections with other transport modes;

(c) Providing for the development of those ports' capacity for national and international shipping in and adjacent to existing port activities;

(d) Providing for those ports by:

(i) Recognising their existing nature when identifying outstanding or significant areas in the coastal environment;

(ii) Having regard to the potential adverse effects on the environment when providing for maintenance of shipping channels and renewal/replacement of structures as part of ongoing maintenance;

(iii) Considering the use of adaptive management as a tool to avoid adverse effects;

(e) Where the efficient and safe operation of port activities cannot be provided for while achieving the policies under Objective 3.1 and 3.2 avoid, remedy or mitigate adverse effects as necessary to protect the outstanding or significant nature of the area; and

(f) Otherwise managing effects by applying policy 4.3.4.

9 Port Otago appealed the Council's decision. Port Otago was concerned that the RPS did not make specific provision to allow it to carry out activities necessary for the safe and efficient operation of its ports, whether presently or in the future. Port Otago appealed to the Environment Court. The appeal was joined by EDS and RFBPS, who were concerned that the relief sought did not give effect to the New Zealand Coastal Policy Statement (**NZCPS**), in particular the avoidance policies (Policy 11, 13, 15 and 16) as they relate to indigenous vegetation, natural character, outstanding natural features and landscapes, and surfbreaks.

10 The appeal was allowed by the Environment Court, which proposed the following wording to be inserted after 4.3.7(c):

(d) if any of the policies under objective 3.2 cannot be implemented while providing for the safe and efficient operation of Port Otago activities then apply policy 4.3.4 which relates to nationally and regionally significant infrastructure and prevails (in certain circumstances) over objective 3.2;

(e) if in turn (d) cannot be achieved because the operation or development of Port Otago may cause adverse effects on the values that contribute to the significant or outstanding character identified in policy 4.3.4(1)(a)(i) to (iii) then, through a resource consent process, require consideration of those effects and whether they are caused by safety considerations which are paramount or by transport efficiency considerations and avoiding, remedying or mitigating the effects (through adaptive management or otherwise) accordingly;

(f) in respect of [nationally]significant surf breaks to avoid, remedy or mitigate the adverse effects of port activities.

11 The Environment Court decision was appealed by EDS. The Port decision describes the intervening decisions of the High Court and Court of Appeal, and the position of the parties on the appeal to the Supreme Court.

12 In making its decision, the Supreme Court concluded that the avoidance policies and the Ports policy in the NZCPS are all directive,[13] noting that the ports are part of an existing network necessarily operating in the coastal environment, and that there is potential for conflict between the ports policy and the avoidance policies. The Court said that the issue of reconciliation of any potential conflict should be addressed at the regional policy statement and plan level as far as possible.[14] It noted that where there is a potential conflict between the policies with regard to a particular project, the decision-maker would have to be satisfied that:

12.1 The work is required (and not merely desirable) for the safe and efficient operation of the ports;

[13] At [71] and [83](a)
[14] At [72] and [83](b)

12.2 If the work is required, all options for dealing with these safety or efficiency needs have been evaluated and, where possible, the option chosen should not breach the avoidance policies; and

12.3 Where a breach of the avoidance policies is unable to be averted, any breach is only to the extent necessary to provide for the safe and efficient operation of the ports.[15]

13 The Supreme Court stated that its judgment is limited to the efficient and safe operation of existing ports, and is not to be understood as dealing with new ports.[16] Because it was not before it, the Court did not deal with the expansion of the operation of the ports, noting that the line between expansion and efficiency will not always be fixed. It appeared to endorse the Environment Court's observation that "even existing ports cannot necessarily expand indefinitely and whenever their operators want".[17]

14 It also said that even where a decision-maker is satisfied that the matters in my paragraph 12 are met, this does not mean that a resource consent will necessarily be granted, and there can be no presumption that one directive policy will prevail over another.[18] The Court noted that the appropriate balance between the avoidance policies and the ports policy must depend on the particular circumstances, considered against the values inherent in the various objectives and policies in the NZCPS (and any other relevant planning instruments), and that all relevant factors must be considered in a structured analysis to decide whether, in the particular factual circumstances, a resource consent should be granted.[19]

15 The Supreme Court noted that a structured analysis is not the same as the "overall judgment" approach that the court rejected in *King Salmon*.[20]

16 The Court provided suggested drafting for consideration by the parties, as set out below:

(d) if any of the policies under objective 3.2 cannot be implemented while providing for the safe and efficient operation of Port Otago activities then

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[15] At [76] and [83]©
[16] At FN 75
[17] At FN 78
[18] At [77]
[19] At [78] and [79]
[20] At [81]

apply policy 4.3.4 which relates to nationally and regionally significant infrastructure and prevails (in certain circumstances) over objective 3.2;

(e) if in turn (d) cannot be achieved because the operation or development of Port Otago may cause adverse effects on the values that contribute to the significant or outstanding character identified in Policy 4.3.4(1)(a)(i) to (iii) or to surf breaks identified as being nationally significant, Port Otago may apply for a resource consent for the operation or development where:

> *i. the proposed work is required for the safe and efficient operation of its port or ports; and*
>
> *ii Port Otago establishes that the adverse effects from the operation or development are the minimum necessary in order to achieve the efficient and safe operation of its port or* ports.

Position of the parties in relation to the Ports decision

Environmental Defence Society

17 EDS does not consider the decision has wider implications than simply setting the policy for the ports. EDS notes that the policies as expressed in the NZCPS address the conflict between the "avoid" policy and the "recognise" and "require" component of the Ports policy. EDS notes that this interpretation is limited to the Ports Policy, as no other policy in the NZCPS links the verbs "recognise" and "requires" together. It also notes that the decision relates to already established ports, and not to new ports. EDS re-iterated the approach taken in *King Salmon*, where the Court noted that the area of conflict between policies should be kept as narrow as possible.

Kai Tahu ki Otago

18 Kai Tahu made similar submissions. It noted that the language in which policies are expressed remains significant, and differences in expression matter. Policies may be expressed in such directive terms that a decision-maker has no choice but to follow it "assuming no other conflicting directive", and that conflicts between policies are likely to be rare if policies are properly construed, and any apparent conflict may dissolve if close attention is paid to the way in which policies are expressed. Counsel for Kai Tahu also noted that none of the other policies in the NZCPS use the

word "require. Counsel observed that the NPS-REG requires decisions makers to "recognise and provide for", "have particular regard to" and "provide for to the extent applicable to the region or district" on a range of different matters. Counsel also noted that the policies of the National Policy Statement on Electricity Transmission (**NPSET**) are written in a similar vein. The benefits of the National Grid must be recognised and provided for. Certain matters must be considered or had regard to. They noted that arguably, the only truly directive policy in the NPSET relates to established electricity transmission assets, where decision-makers "must enable the reasonable operational maintenance and minor upgrade requirements" of those assets.

19 For the reasons outlined in its legal submissions, counsel for Kai Tahu considered that the Ports decision is one that turns on its own particular facts, rather than upsetting the established orthodoxy which has existed since *King Salmon*. When considering the potentially competing policy directives, including between the avoidance policies in the NZCPS, the NPS-FM, and more recently the NPSIB, and the enabling but less directive policies in relation to electricity transmission, renewable energy and other non-national level directives, greater weight should still be given to those policies which require avoidance of adverse effects on particular environments or species. Attention is drawn to issues with the ECO policies and MW-P4, as well as management of indigenous biodiversity on Māori land in the coastal environment. These are addressed in the evidence of Mr Bathgate in relation to the implications of the NPSIB.[21]

OWRUG, Federated Farmers NZ and Dairy NZ New Zealand

20 Counsel for the Farming Group submitted that although the Ports decision only engages with the NZCPS policies, the rationale that underpins the decision applies to all national policy statements and subordinate documents, and this is particular so when such policies are *directive* and *conflicting* as in the Ports decision. They note that the language in which policies are expressed is significant, particularly in determining how directive they are intended to be and thus how much flexibility a sub-ordinate decision-maker might have. They highlight potential conflict in the NPSIB in particular policies 10 and 11, which provides that activities

[21] https://www.orc.govt.nz/media/15128/porps-response-on-nspib-michael-bathgate.pdf

contributing to social, cultural and economic wellbeing are "recognised and provided for", while Geothermal Significant Natural Areas (**SNAs**) are "protected" (this was provided as an example by Counsel, although it is not, as far as I am aware, relevant to the Otago context). It considers both are mandatory directions, and submits there is conflict between the policies. They submit that the rationale clearly applies beyond the NZCPS, to all national directions that contain conflicting and directive policies, and that the appropriate forum for reconciliation of such issues is in the regional policy statement and plan as far as possible. They note that it is not appropriate for an RPS to simply 'protect the environment and let the rest follow', and that the RPS needs to recognise the conflict that exist or are likely to arise and either reconcile them, or at least provide a framework for doing so which is to be applied through the lower order documents. The farming group submits that the provisions sought by Ms Perkins assist in that exercise for the reasons set out in its memorandum.

Transpower

21 Counsel for Transpower submits that the Ports decision provides further authority and reinforcement for interpreting a national policy statement in light of its purpose and context, which in relation to Transpower is the NPSET. In relation to the current context, they note this includes the need to increase electrification to transition to a zero-carbon economy. They note that the Ports decision provides guidance on addressing conflicts, both actual and apparent, between competing directive policies, and that this guidance applies within the NPSET as well as with its interaction with other national policies statements. Counsel also considers that the bespoke carve-out for managing effects of the National Grid properly achieves, in an efficient and clear manner, the Supreme Court's direction that competing directive policies should be addressed at the regional policy statement as far as possible.

22 The legal submissions highlight Policies 1, 2 and 5 of the NPSET. Policy 1 requires decision-makers to "recognise and provide for national, regional and local benefits of sustainable, secure and efficient electricity transmission". It submits that Policy 2 requires the pORPS to "recognise and provide for the effective operation, maintenance, upgrading and development of the electricity transmission network", and Policy 5 requires the pORPS to enable the reasonable operational, maintenance and minor

upgrade requirements of established assets. They also note that Policy 10 is highly directive, providing that, to the extent reasonably necessary, decision-makers must avoid reverse sensitivity effects on the National Grid. Counsel continues to support the bespoke approach to management of the National Grid, and recommends the amendments to Policy EIT-INF-P13A in Ms McLeod's evidence, to recognise avoidance of "material" effects on the values and characteristics of some areas is required, including by the use of mitigation or other measures to reduce the level of effects. Consequential amendments are recommended to EIT-INF-PX recommended in Ms McLeod's evidence, as set out in the submissions.

Dunedin City Council

23 Counsel for DCC noted that the RPS, where it can anticipate situations where conflict within or between national policy instruments exists, should, as far as possible, appropriately resolve those tensions or create a set of principles for resolution of the conflict at the consent stage. They note one matter traversed by the planning witnesses was the degree to which either policies use directive language such as avoid, or enable, should include qualifies such as "avoid...unless" to direct situations where avoidance or enablement is not required, or that policies should read as a whole meaning that balancing matters do not need to be included. Counsel provided the example where infrastructure must proceed to accommodate growth required to give effect to the National Policy Statement on Urban Development (**NPSUD**), but that such work can have a tension with the notified provisions of the RPS where it is sought in places where certain effects are sought to be avoided, creating an irreconcilable tension. DCC note that Ms White's reply evidence responded to this issue, promoting a number of changes to amend language to ensure the RPS does not create unresolved conflicts, and it supported the shift.

Director-General of Conservation

24 Counsel for the Director-General of Conservation provides an analysis of the Ports decision. They note that the Supreme Court refers to its decision in *Trans-Tasman* and applies the standard of "protection from material harm", and submits that applying the Ports decision, the correct way of looking at whether harm is "material" is to consider whether the harm is

relevant to the values which are to be protected. They note that the Supreme Court found the Port Policy to be directive, but that whether a policy is directive or not will depend on its wording, noting the combination of "recognise" and "requires" in relation to the safe and efficient operation of ports. The NPSFM is highlighted, noting that there are particular policies in the NPSFM which can be considered directive. Counsel suggests that in order for the ports Policy to be resolved, it would be helpful for supplementary evidence to be provided on EIT-TRAN-P13, with the opportunity for reply. The Director-General agrees with the ORC that the Ports decision does not impact on the Freshwater Planning Instrument (**FPI**) parts, and that the NPSFM expressly contemplates and provides a method for resolving conflict with the National Policy Statement for Renewable Electricity Generation (**NPSREG**) should this be necessary for the FPI.

25 In response to Meridian, Counsel submits that while the word "shall" is used frequently in the NPSREG, they note that "shall" is used in the context of ensuring decision-makers "recognise and provide" for the national significance of renewable electricity generation activities, and "provide" for these in planning documents by including appropriate provisions and "having particular regard" to them in decisions. They submit that this is not equivalent to "recognise" and "require" as used in the NZCPS ports policy.

Meridian

26 Counsel for Meridian filed submissions outlining four key principles it submits are found in the Ports decision:

26.1 The avoidance policies in NPSs and RMA 6(c) do not trump other policies that can be characterised as 'directive', irrespective that avoidance policies may be expressed using stronger verbs directing action or because, on a purely textual analysis, they may appear firmer or the policies reflect section 6;

26.2 Policies can be directive and forceful by requiring decision-makers to recognise and provide for certain specified use values and stating that achieving these use values is a necessary element of sustainable management, and submits that the NPSREG is replete with directive objectives and policies;

26.3 The fact that renewable electricity generation (**REG**) infrastructure exists is important, and should be adequately reflected in the policy regime, including expressly providing for the operation, maintenance and upgrading of those facilities; and

26.4 The RPS must address and advance the resolution of the tensions inherent in a mix of directive policies aimed at using and protecting resources according to the context and circumstances of the Region.

27 Counsel submits that this is best done by confronting those tensions in a discrete section on renewable energy, in a similar way to the Ports, as sought in evidence.

Royal Forest and Bird Protection Society

28 Counsel for RFBPS made legal submissions that were supplementary to its legal submissions on the Freshwater Planning Instrument. Counsel noted the relevance of the NPSET, and NPSREG, noting the language used in the NPSs are less directive than the NPSFM, when compared to the conflicting policies in the NZCPS which are the subject of the Port decision. They submit that "recognise and provide for" is broad and flexible, as it gives decision-makers choice as to where, how and when the National Grid (and REG) can occur. They consider that reference to "reasonable" in the NPSET must be informed by the context, including standards for environmental protection contained in other applicable national policy statements such as the NPSFM.

29 Counsel submits that the Ports decision on addressing conflicts between competing policies does not apply to the NPSFM, and NPSET and NPSREG, as the policies do not conflict at the same scale as the NZCPS avoidance policies and the ports policy. They also set out reasons as to why the reference to "material harm" in Port Otago do not apply to policy formulations under the NPSFM.

Planning response

30 Having considered the various submissions of Counsel, and placing this in a planning context to inform drafting, I consider there are some important

factors that need to be taken into account as a result of the Ports decision. I address these below:

a) The Ports decision requires amendment to EIT-TRAN-P23 to pick up on the matters identified by the Court to resolve the conflict between the directive policy to avoid adverse effects in certain circumstances (and other give effect to the NZCPS), which also recognising that ports *require* a safe and efficient national transport network;

b) The Supreme Court was explicit that its decision was limited to the consideration of existing ports, as that was the only matter before it;[22]

c) The Court held there are three matters about which decision-makers have to be satisfied (see my paragraph 12);

d) It remains important that conflicts between policies are likely to be rare if those policies are properly construed, even where they appear to be pulling in different directions, and that any apparent conflict may dissolve if close attention is paid to the way those policies are expressed, with those expressed in more directive terms having greater weight than those allowing more flexibility;[23] and

e) Avoidance policies must be interpreted in light of what is sought to be protected including the relevant values and areas and, when considering any activity, whether measures can be put in place to avoid material harm to those values and areas.

31 I have taken into account Mr Maclennan's supplementary reply evidence (as well as the legal submissions and evidence filed), which addresses the potential for conflict between the NPSIB, and the NPSET and NPSREG, in particular as they relate to the relationship between EIT-INF-P13, and the need to protect significant natural areas under section 6(c) of the RMA. I support the drafting of ECO-P4 and ECO-P6, and the related amendments to the definition of the effects management hierarchy (in relation to indigenous biodiversity).

[22] At [71] and [76](a)
[23] At [63]

32 I have considered this in the context of the language that is used in the current NPSREG and NPSET, and also taken into account the conflict that was identified in the Ports decision between Policy 9 of the NZCPS 2010 and the avoidance policies (Policies 11, 13, 15 and 16). The Court found that that Policy 9 is directive, in that Policy 9 states that it is necessary to recognise that a sustainable national transport system requires an efficient national network of safe ports. I understand the Court to limit its application to efficient and safe operation of existing ports. In addition, the Court recommended drafting that is very confined; the project is required to ensure safe and efficient operation (not merely desirable), all options to deal with safety and efficiency must be considered, where possible the option chosen should be one that does not breach an avoidance policy, and if a breach of an avoidance policy cannot be averted any breach of an avoidance policy is only to the extent required to provide for the safe and efficient operation of the ports. This provides a confined pathway, in my opinion, to considering how the conflicting policies are to be resolved through a resource consent process.

33 In relation to submissions from Transpower, and other submissions and evidence related to the NPSIB, I make the following observations:

- Decision-makers must recognise and provide for the protection of SNAs (s6(c)). The policies can further specify how protection is achieved;
- In relation to the NPSET – decision-makers must recognise and provide for the benefits of electricity transmission (**ET**) (Policy 1). The preamble notes that the NPS does not substitute for or prevail over the RMA's purpose or statutory tests already in existence and is subject to Part 2 of the Act, and that the preamble can be used for interpretation purposes; and
- In relation to the NPSREG – decision-makers shall recognise and provide for the national significance and benefits of REG (Policy A), shall have particular regard to designing measures which allow operational requirements to complement and provide for mitigation opportunities (Policy C1), when considering residual effects have regard to offsetting measures or compensation which benefit the local environment and community affected (Policy C2), and shall include objectives, policies and methods in regional policy statements to provide for the development, operation, maintenance and upgrade of new and existing generation (Policies E1-E4).

34 I consider the language used in s6(c) and the NPSs is important. The language of s6(c) is mandatory and directive. Decisions-makers *must recognise and provide* for the protection of SNAs. In doing so, the benefits of REG and ET must also be *recognised and provided for.* However, I do not consider that this means REG and ET needs to be provided for in all situations. Other wording in the NPSs is less directive, referring to the need to have particular regard to effects and management of REG and ET. As noted in the preamble for the NPSET, the provisions are still subject to Part 2 of the RMA.

35 As such, I consider that the solution proposed by Mr Maclennan provides the most appropriate solution in the interim, until such time as the reviews of the NPSET and NPSREG are completed, and new NPSs are promulgated. I note that while the NPSs are being reviewed, there is no certainty that the NPSs will be amended or replaced. Mr Maclennan's recommended amendments also fill the gap that was highlighted in the evidence of Ms McLeod for Transpower, that the NPSIB was prepared with the exception for renewable electricity generation and electricity transmission on the basis of the preparation of revised NPSs that would directly address significant natural areas, and how they are to be treated for the purpose of those types of infrastructure.

36 I do not consider that consequential changes should be made in response to the farming groups. I note that apart from the NPSFM, there are no other relevant NPSs. Reading those provisions in context, it is possible to recognise and provide for activities that contribute to social, cultural, and economic wellbeing while, to use the example put forward by Counsel, also achieving protection of geothermal SNAs. Those activities (such as farming activities) can be provided for in a broad sense through plans in a range of rural areas, and in locations that do not materially impact the values of the SNAs generally. They may even be able to be provided within the SNAs, without impacting on their values. That, in my opinion, is a matter for assessment, through appropriate consent requirements.

37 Apart from amendments to EIT-TRAN-P23 (and the reserving the potential for consequential amendments following discussion with Port Otago's witness), I do not consider that the pORPS is otherwise impact by the Ports decision. The general concepts in *King Salmon* have informed drafting to

date, were upheld in the Ports decision, and as such, it is my view that no further amendments are required, except as expressed below.

Amendments to EIT-TRAN-P23

38 As noted earlier, recommended amendments to EIT-TRAN-P23 will need to incorporate the policy direction recommended by the Supreme Court, as outlined in para 12 above. The final amendments (and any consequential amendments) with be filed as with a JWS between myself, and Port Otago's witness, Ms O'Callahan, on 6 October 2023 (subject to the Hearing Panel's agreement to an extension of time).

Marcus Hayden Langman

29 September 2023