

**BEFORE INDEPENDENT HEARING COMMISSIONERS
AT DUNEDIN**

**MAI I KĀ KAIKŌMIHANA MOTUHAKE
KI ŌTEPOTI**

Under the Resource Management Act 1991 ("**RMA**")

In the matter of the Proposed Otago Regional Policy Statement 2021 (non-freshwater parts) ("**PORPS**")

Memorandum of Counsel to Panel on behalf of Port Otago Limited

6 October 2023

Port Otago Limited's solicitor:

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May it please the Hearing Panel:

- 1 Counsel has been instructed to assist Port Otago Limited (Port Otago) in relation to the proposed RPS. The Hearing Panel is thanked for providing further time for Port Otago to respond to it about the implications of the Supreme Court decision following the death of Mr Andersen KC.
- 2 The Supreme Court decision in *Port Otago Limited v Environmental Defence Society Incorporated* [2023] NZSC 112 directly addresses the wording of the relevant policies in the partially operative RPS.
- 3 The principles addressed in this case about how the NZCPS should be reconciled where there are potential conflicts between the ports policy, and the avoidance policies of the NZCPS also has significant weight for the current provisions of the non-freshwater parts of the proposed RPS that the Hearing Panel is considering.
- 4 The planner engaged by Port Otago, Ms Mary O'Callahan has considered the decision and has produced a joint witness statement with Mr Langman. As their statement indicates the planners have agreed on wording for the proposed RPS to address the Port policy. This wording has adopted the wording recommended by the Supreme Court as closely as possible, while incorporating it into the current framework of the proposed RPS.
- 5 Port Otago support the wording recommended by Ms O'Callahan and commend this wording to the panel as an appropriate framework to resolve the RPS policy as it applies to the Port. This wording appropriately gives effect to the decision of the Supreme Court particularly the principles summarised in paragraph 83 of this decision.

Dated this 6th day of October 2023



Michael Garbett
Counsel for Port Otago Limited