

BEFORE THE FRESHWATER HEARINGS PANEL

**IN THE MATTER of the Resource
Management Act 1991**

AND

**IN THE MATTER of Submissions on The
Proposed Otago Regional
Policy Statement 2021**

**MEMORANDUM ON BEHALF OF PORT OTAGO LTD
AS TO FUTURE CONDUCT OF HEARING
DATED 12 APRIL 2022**

**MCMILLAN & CO
SOLICITORS
DUNEDIN
PO Box 5547
Phone (03) 477 2238
Fax (03) 474 5588
Solicitor acting: S L McMillan**

**L A ANDERSEN QC
BARRISTERS CHAMBERS
DUNEDIN
PO Box 5117
Phone (03) 477 3488
Fax (03) 474 0012
Email len@barristerschambers.co.nz**

To: Judge Laurie Newhook, Chair and Freshwater Commissioner

and

To: The Otago Regional Council

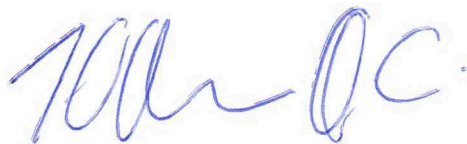
and

To: Other interested parties

MAY IT PLEASE THE PANEL:

1. Port Otago Ltd supports the approach proposed by the Otago Regional Council in relation to the proposed Otago Regional Policy Statement 2021 (“pORPS”) in its memorandum.
2. Port Otago Ltd has obtained leave to appeal to the Supreme Court in respect of the dispute that has arisen over the policies affecting its ports in the previous proposed Otago Regional Policy Statement (which have not yet been resolved) and the relationship between enabling policies for the ports and the avoidance policies in the New Zealand Coastal Policy Statement 2010. The Court hearing was scheduled to take place on 11 April 2022 but has been adjourned and a new date is likely in May 2022. Port Otago Ltd is submitting that *King Salmon*¹ has incorrectly resulted in avoidance policies (those using the word avoid) being treated as if they were rules, bottom lines or create a veto.
3. Port Otago Ltd will be seeking to delay the hearing relating to the policies relating to the coastal marine area until the Supreme Court Judgment is available as it may want to amend its evidence in the light of the decision.
4. The policies in pORPS of interest to Port Otago Ltd solely relate to the coastal marine area and they are the policies least likely to be determined by the High Court to be part of a Freshwater Instrument for two reasons:
 - (a) The RMA definition of freshwater excludes Coastal Water.
 - (b) The RMA definition of Coastal Water includes harbours.

Dated 13 April 2022



.....
L A Andersen QC
Counsel for Port Otago Ltd

¹ *Environmental Defence Society v New Zealand King Salmon Company Ltd* [2014] NZSC 38, [2014] 1 NZLR 593