



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

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MEDIA RELEASE

**PORT OTAGO LIMITED v ENVIRONMENTAL DEFENCE SOCIETY
INCORPORATED AND OTHERS**

(SC 06/2022)

Hearing in the Supreme Court Wednesday 11 May – Thursday 12 May

CASE HISTORY SYNOPSIS

This synopsis is provided to assist in understanding the history of the case and the issues to be heard by the Court. It does not represent the views of the panel that will hear the appeal in the Supreme Court. The synopsis does not comprise part of the reasons for the judgment of the Court of Appeal. A direct link to the judgment is included at the end of this synopsis.

Background

The appellant Port Otago seeks to be able to continue the operation of its ports at Port Chalmers and Dunedin. The ability to carry out activities in the coastal environment is regulated by the New Zealand Coastal Policy Statement (NZCPS). The NZCPS includes a policy recognising the national importance of ports (the ports policy). The NZCPS also includes policies requiring that adverse effects on certain significant aspects of the coastal environment be avoided (the avoidance policies). The Resource Management Act 1991 requires that these national policies be given effect to in a region-specific Regional Policy Statement (RPS).

The Otago Regional Council promulgated an Otago Regional Policy Statement in 2015. Port Otago was concerned that the RPS did not make specific provision to allow them 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 Environment Court recommended in 2018 that a ports specific policy be included in the RPS to allow Port Otago to continue to operate despite the potential for adverse effects to arise contrary to the avoidance policies.

The Environmental Defence Society Inc. subsequently appealed that decision to the High Court on the basis that the recommended policy did not give effect to the avoidance policies in the NZCPS.



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In 2019, the High Court granted the appeal and found that the avoidance policies in the NZCPS took precedence over the ports policy.

In 2021, the Court of Appeal, by majority, upheld the High Court's decision that the ports policy was subordinate to the avoidance policies. Therefore, any ports policy in the RPS was itself subordinate to the avoidance policies, thus prohibiting any activity that would have adverse effects on the relevant significant coastal areas.

This Appeal

Port Otago applied for leave to appeal the decision of the majority of the Court of Appeal. They argue that the relevant policies can be interpreted to allow for certain adverse effects of activities where those activities are necessary for the safe and efficient operation of its ports.

The Supreme Court granted leave on the question of whether the Court of Appeal was correct to dismiss the appeal.

The issue to be determined is how the ports policy in the NZCPS works with the avoidance policies in that document, and therefore, how the Otago RPS must give effect to those national policies. This will involve consideration of the correct application of the principles set out in *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, [2014] 1 NZLR 593, the leading case on the interpretation of national coastal policy documents.

The Court has also granted leave to the parties in the *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* (SC 25/2021) appeal to make submissions during the hearing of this appeal. This is because the two appeals concern similar issues regarding the correct application of the principles in *King Salmon* and the proper interpretation of avoidance and permissive policies in the NZCPS.

Remote viewing of hearing

This hearing can be viewed remotely. The [Protocol for Remote Viewing of Hearings](#) will apply. No recording is permitted.

If you wish to view this hearing remotely, please email your request with your name and phone number to the Supreme Court Registry, supremecourt@courts.govt.nz, before 1 pm on Friday 8 April.

Counsel written submissions are published online and are available one working day before the hearing at https://www.courtsofnz.govt.nz/the-courts/supreme-court/case-summaries/?Search=Port+Otago&CaseNum=&Year=2022&action_search=Search



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Court of Appeal decision: [\[2021\] NZCA 638](#) (06 July 2021)

Supreme Court leave decision: [\[2022\] NZSC 23](#) (17 March 2022)

