

15 May 2024

The Registrars
Environment Court
Christchurch Registry

Level 12
Otago House
477 Moray Place
Dunedin 9016

Private Bag 1959
Dunedin 9054
New Zealand

al.nz

Tēnā koe e te Rēhita

Appeal on decisions on the non-freshwater parts of the Otago Regional Policy Statement

- 1 We act for Port Otago Limited (**POL**).
- 2 Please see attached for filing and by way of service, a notice of appeal on behalf of the POL on the non-freshwater planning instrument parts of the Otago Regional Policy Statement 2021 (**ORPS**).
- 3 Also attached are the following annexures to the notice of appeal:
 - (a) Annexure 1 – original and further submissions of POL;
 - (b) Annexure 2 – relevant decisions on the ORPS; and
 - (c) Annexure 3 – a list of names and addresses of persons to be served with a copy of this notice.
- 4 Hard copies of all documents will be sent by courier.

Ngā mihi
Anderson Lloyd



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In the Environment Court of New Zealand
Dunedin

I Mua I Te Kōti Taiao O Aotearoa
Ōtepoti Rohe

ENV-

Under the Resource Management Act 1991

In the matter of an appeal under clause 14 of the First Schedule to the
Resource Management Act 1991

Between **Port Otago Limited**

Appellant

And **Otago Regional Council**

Respondent

**Notice of Appeal against decisions on the non-freshwater planning instrument
parts of the Proposed Otago Regional Policy Statement 2021**

15 May 2024

Appellant's solicitors:

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**anderson
lloyd.**

To: The Registrar of the Environment Court at Christchurch

And to: Otago Regional Council

- 1 Port Otago Limited (**Appellant**) appeals parts of the decisions of the Otago Regional Council (**Respondent**) on the non-freshwater planning instrument parts of the Otago Regional Policy Statement 2021 (**ORPS**)(**Decision**).
- 2 This appeal is made under clause 14 of the First Schedule of the Resource Management Act 1991 (**RMA**).
- 3 The Appellant lodged a submission on the ORPS.
- 4 The Appellant is not a trade competitor for the purposes of Section 308D of the RMA.
- 5 The Appellant received a copy of the decisions on 12 April 2024.
- 6 The decisions were made by the ORC.

Parts of the ORPS decisions appealed

- 7 The Appellant appeals the Respondent's decisions in relation to:
 - (a) Definition of 'coastal hazard';
 - (b) CE-P1 Links with other chapters;
 - (c) HAZ-NH-P1A Identifying areas subject to coastal hazards;
 - (d) HAZ-NH-P2 Risk Assessments;
 - (e) HAZ-NH-P3 New Activities;
 - (f) HAZ-NH-P4 Existing natural hazard risk;
 - (g) HAZ-NH-P10 Coastal hazards;
 - (h) APP6 Methodology for natural hazard risk assessment;
 - (i) HAZ-NH-M3 Regional plans;
 - (j) HAZ-NH-M4 District plans; and
 - (k) MAP2-EIT-TRAN-M7 Port Activities.

Reasons for appeal

Scope of application of policies to coastal hazards

- 8 The Respondent's decisions include a new definition of "coastal hazards", and a new policy HAZ-NH-P1A - "Identifying areas subject to coastal hazards". The Panel report indicates that the intention behind introducing this new definition and policy was to ensure that there is no confusion regarding the application of policies HAZ-NH-P2, P3, and P4 to coastal hazards and non-coastal hazards.
- 9 However the effect of the Respondent's decisions appears to be that policies HAZ-NH-P2, P3, P4, and P10 *do* apply to non-coastal hazards that may affect the coastal environment, but *do not* apply to "coastal hazards" as defined in the new definition that has been inserted as a result of the Respondent's decision.
- 10 CE-P1 provides that the provisions of the HAZ chapters apply within the coastal environment, except for HAZ-NH-P1, P2, P3, and P4. This exemption does not align with the above intention to delineate between "coastal hazards" and "non-coastal hazards that may affect the coastal environment".
- 11 The interrelationship between CE-P1 and HAZ-NH-P2, P3, P4 and P10, and the application of these policies in the coastal environment remains unclear as currently drafted. The drafting is complex and should be simplified.

Application of policies and methods to resource consent scenarios

New activities / Existing activities

- 12 The interrelationship between policies HAZ-NH-P3, HAZ-NH-P4 and methods HAZ-NH-M3 and HAZ-NH-M4 is also unclear when considered against potential resource consent scenarios, particularly for potential infrastructure activities.
- 13 HAZ-NH-P3 relates to "New activities" and provides that where the natural hazard risk is significant the activity should be avoided, whereas where the natural hazard risk is tolerable, the level of risk should be managed so that it does not become significant.
- 14 The heading of HAZ-NH-P4 has been amended to "Existing natural hazard risk", however it remains unclear how existing activities will be differentiated from "New activities", and therefore how these policies might apply to

resource consent applications for activities on land where natural hazard risks exist.

- 15 HAZ-NH-P10 then specifies a different test requiring avoidance of any increased risk and does not allow land use change that would increase risk. There is no consideration of essential port activities (that are enabled by Policy 9 of the NZCPS) which may need to adapt and develop, including in response to coastal hazards. If non-coastal hazards are identified in addition to coastal hazards, then all hazard policies may apply to port activities, including the APP6 process.

Risk assessment requirements

- 16 Policies HAZ-NH-P1 and P2 and Methods HAZ-NH-M3(7) & M4(7) require that where an application for resource consent is lodged for a site, prior to the natural hazard risk assessment required by HAZ-NH-M2(1) or M3(1) being completed, included in the regional plan or district plan, and made operative, a risk assessment must be provided with the application. That risk assessment must include:
 - a) an assessment of the level of natural hazard risk associated with the proposal in accordance with APP6; and
 - b) an assessment demonstrating how the proposal will achieve the outcomes set out in Policies HAZ-NH-P3 and HAZ-NH-P4
- 17 The wording of these methods indicate that they are only intended to be applied to land use change in circumstances where the regional and district plan changes to identify hazard areas have not yet been completed. However the actual wording of policies HAZ-NH-P3, HAZ-NH-P4 and HAZ-NH-P10 leaves uncertainty as to whether these policies and the APP6 process apply to any proposal, not only those where plan changes to identify hazard areas have not been completed.
- 18 Advice notes 1 and 2 have been added to APP6 to seek to provide greater clarity as to when risk assessments are needed when a resource consent is required however at this stage this is not helpful because the relevant regional plan(s) have not yet been brought into alignment with the RPS and in any case regional plans do not manage land use change. Even with the addition of these advice notes, the triggers for requiring risk assessments within the resource consent scenario remain unclear.
- 19 Given how unclear and onerous the APP6 information requirement is, the Appellant considers these provisions require clarification, and careful and proper consideration should be given to when it might be appropriate for

this high information requirement to be placed on consent applicants. This risk assessment regime is complex, and again the drafting and internal referencing is complex and should be simplified.

Mapping applicable to Port Activities

- 20 The Appellant's original submission on the ORPS noted that the Upper Harbour navigation beacons were missing from map MAP2-EIT-TRAN-M7 (Port Activities). The Upper Harbour navigation beacons are those located in the Victoria Channel, furthest from the Harbour entrance, between the Port Chalmers and Dunedin berth facilities. Also, that for operational reasons it is appropriate and necessary for the words "location indicative only" to be included after the reference to navigation beacons in the legend reference for MAP2-EIT-TRAN-M7. This submission was accepted.
- 21 The tracked change version of MAP2-EIT-TRAN-M7 in the reply report version does not depict the location of navigation beacons in the Upper Harbour, but does include the wording "location indicative only" in the legend reference after reference to "Navigation beacons".
- 22 The Panel report makes no reference to MAP2-EIT-TRAN-M7. It is therefore unclear whether the final decision version of MAP2-EIT-TRAN-M7 has been properly incorporated in the relevant maps - particularly to depict the Upper Harbour navigation beacons.
- 23 A map and a plan showing the approximate location of the Upper Harbour navigation beacons are provided in Schedule 2.

Relief sought

- 24 Whereby the Appellant seeks:
 - (a) That the definition of coastal hazards; policies CE-P1, HAZ-NH-P1A, P1, P2, P3, P4 and P10 are reviewed and appropriately amended to address the issues identified in paragraphs 8-11 above;
 - (b) That the policies P1, P2, P3, P4, P10, methods HAZ-NH-M3 and M4, and APP6 are reviewed and appropriately amended to address the issues identified in paragraphs 12-19 above; and
 - (c) That MAP2-EIT-TRAN-M7 Port Activities is amended to include the location of navigation beacons in the Upper Harbour and the map legend reference is updated to include the words "location indicative only" after the reference to navigation beacons as set out in paragraphs 20-23 above.

- (d) Such other relief that is appropriate to address the matters raised, and/or consequential on the changes sought in this appeal.
- (e) Costs.

Mediation

25 The Appellant agrees to participate in an Environment Court assisted mediation/ADR process for this appeal.

Documents attached to appeal

- 26 The following documents are attached to this notice of appeal:
- (a) Annexure 1: A copy of the submission and further submissions by the Appellant;
 - (b) Annexure 2: A copy of the relevant decision; and
 - (c) Annexure 3: A list of names and addresses of persons to be served with a copy of this notice, and the advice provided to recipients of the appeal.

Dated this 15th day of May 2024



Shelley Chadwick
Counsel for Port Otago Limited

Schedule 1: Memorandum as to service

This document is filed by Shelley Chadwick of Anderson Lloyd, solicitor for the Appellant.

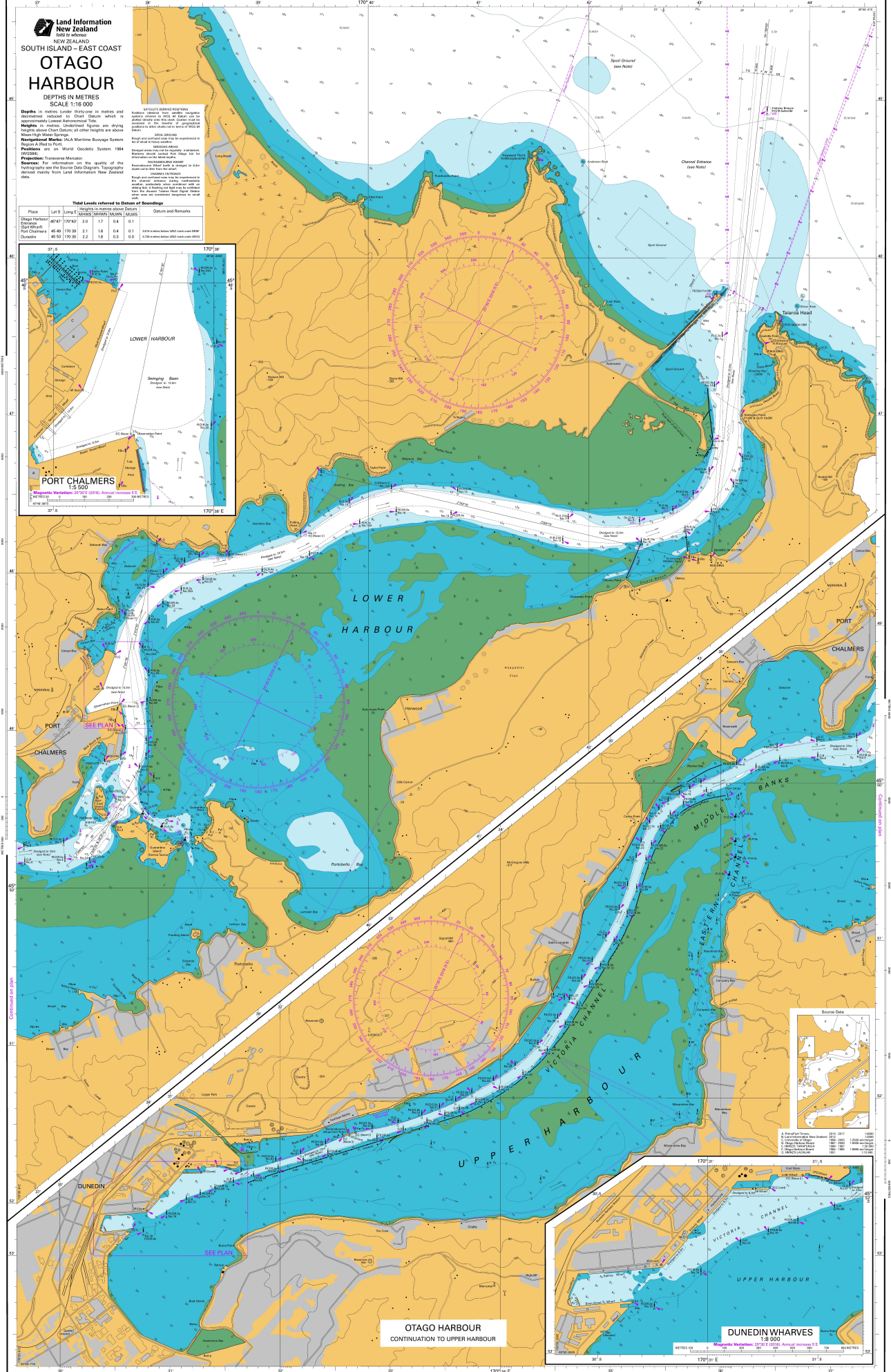
The address for service of the appellant is:

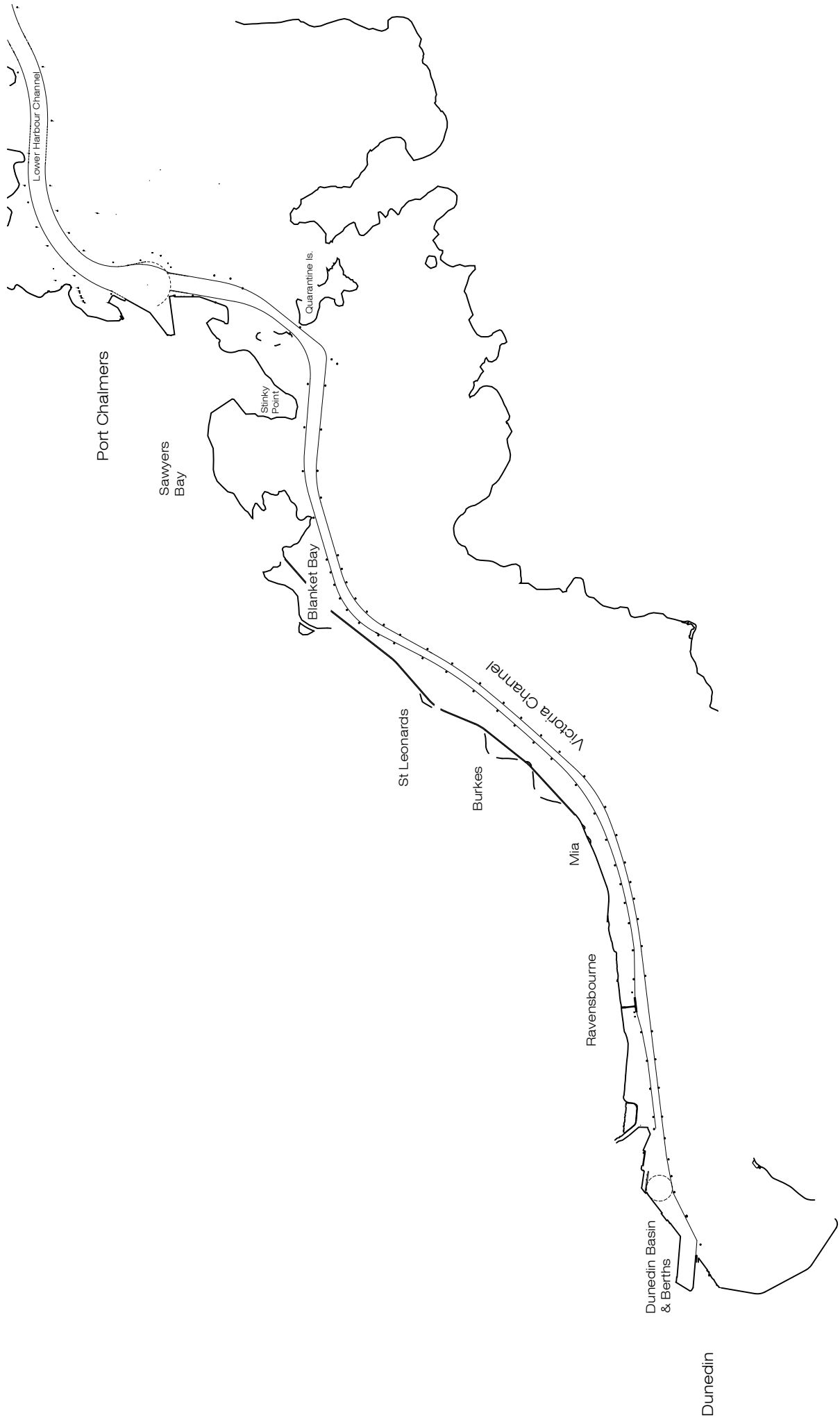
Anderson Lloyd,
Level 12, Otago House
477 Moray Place
Private Bag 1959
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Shelley.Chadwick@al.nz

Documents for service on the appellant may be:

- Left at the address for service
- Posted to the solicitor at Private Bag 1959, Dunedin 9016
- Emailed to the solicitor at Shelley.Chadwick@al.nz

Schedule 2: Map and plan showing approximate location of Upper Harbour navigation beacons





Dunedin

Schedule 3: Advice to recipients of copy of notice of appeal

How to become party to proceedings

- 1 You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.
- 2 To become a party to the appeal, you must:
 - (a) within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
 - (b) within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.
- 3 Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Act.
- 4 You may apply to the Environment Court under section 281 of the Act for a waiver of the above timing or service requirements.

How to obtain copies of documents relating to appeal

- 5 The copy of this notice served on you does not have attached a copy of the appellant's submission and (or or) the decision (or part of the decision) appealed. These documents may be obtained, on request, from the appellant.