

Before the Independent Hearing Panel
Appointed by the Southland Regional Council

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

In the matter of an application by **South Port NZ Limited** to undertake
dredging of the Bluff Harbour

Legal submissions in reply on behalf of South Port NZ Limited

10 August 2022

Applicant's solicitors:

Michael Garbett
Anderson Lloyd
Level 12, Otago House, 477 Moray Place, Dunedin 9016
Private Bag 1959, Dunedin 9054
DX Box YX10107 Dunedin
p + 64 3 477 3973
michael.garbett@al.nz

**anderson
lloyd.**

May it please the Commissioners:

- 1 These submissions in reply close the case for the Applicant.
- 2 Since the hearing was adjourned further evidence has been provided by:
 - (a) Dr Childehouse
 - (b) Ms Miller
 - (c) Mr Beale
- 3 Also attached is a final set of proposed conditions dated 10 August 2022 produced by Mr Beale, and offered on behalf of the Applicant.

Soft sediment and dredging the swinging basin

- 4 It is important to the Applicant to remind Commissioners that the dredging from the swinging basins is estimated to comprise approximately 20,000 m³ of fine settlement (see Ms Miller's evidence dated 27 July 2022 at paragraph 11). This volume is estimated to take approximately seven days to dredge using the trailer suction hopper dredge. This is not an activity that will be on-going over a prolonged period of time.
- 5 Ms Miller has identified what are submitted to be appropriate mitigation measures for the dredging of these fine sediments. Principally this involves dredging on an outgoing tide. There is of course a range of monitoring proposed to ensure that adverse effects on the seagrass beds do not arise. These have been fully explained by Ms Miller resulting in her identification of quantitative trigger levels in her evidence dated 7 July 2022. These trigger levels have been incorporated into the sediment control conditions 15-18 by Mr Beale in the final set of proposed conditions.
- 6 It is submitted that this approach is a thorough and professional approach to manage the potential adverse effects that may arise from dredging fine sediment in the swinging basins over the short duration that this work is intended to take.

Written approval from Awarua Rūnanga

- 7 In opening legal submissions (paragraph 18-22) it was pointed out that Awarua Rūnanga through its consenting arm Te Ao Marama provided an unconditional written approval to the application.

- 8 Despite this Mr Peacock at the hearing expressed his view that he did not accept this approval is unconditional and evaluated it is not a written approval.
- 9 In reply the submissions given in opening are repeated. It is pointed out that the letter providing the written approval expressly stated that Rūnanga provide their unconditional written approval to the application. The clear text and meaning of this approval is that it is unconditional. No other meaning can reasonably be taken from this letter on behalf of the Rūnanga. It is submitted any effect on the Rūnanga is required to not be taken into account in accordance with section 104(3)(a)(ii) RMA. As stated at the hearing the Applicant has been working hard with the Rūnanga on the details of this application for a long time and is quite satisfied that the Rūnanga understands the proposal, its effects and the written approval is provided as a consequence of the ongoing consultation and work that is going on between the Applicant and the Rūnanga.

The conditions

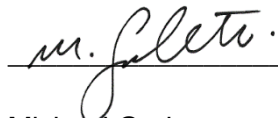
- 10 Mr Beale and Mr Peacock have worked through the conditions. Mr Peacock has provided a range of constructive and helpful suggestions to the draft conditions Mr Beale produced.
- 11 The Applicant supports the views of Mr Beale and accepts almost all of Mr Peacock's latest round of suggestions.
- 12 The only substantive recommendation Mr Peacock has made that has not been accepted is in relation to the noise conditions. Mr Peacock identified that the noise control condition 43 applies to drilling, rock breaking and dredging work and does not expressly apply to blasting. This is intended because blasting is specifically addressed by condition 45 with an air over pressure limit.
- 13 These conditions have both been recommended by Mr Styles in his evidence dated 29 March 2022. As summarised by Mr Styles in paragraph 64 of that evidence he distinguishes between the noise standards that apply to the project noise such as drilling, dredging and backhoe operations. The blasting has a specific over pressure limit recommended by Mr Styles based on the relevant New Zealand standard. The Applicant relies on Mr Styles expertise in this specialised field and submits that the distinction between the noise generation from long duration activities is properly distinguished from blasting. It is understood the long duration activities are governed by the Leq measure, and blasting by the air over pressure control. Those two types of activities result in different noise controls to ensure effects on nearby residents are appropriately managed.

- 14 It is also noted that the Applicant has offered a substantial payment to the Bluff Hill Motupōhue Environment Trust to compensate for any potential residual effects of the works on Little Penguin. The wording of condition 39 addressing the payment of this by instalments has been adjusted to reflect the fact that the first instalment of \$20,000 has already been paid by the Applicant.

Conclusion

- 15 Overall it is submitted that this project provides a range of benefits to the Applicant to enable the dredging of the entrance channel. This provides resilience to the Port and the ability for cargo operators to better load vessels and reduce calls at New Zealand ports to top up vessels with cargo. This contributes to the efficiency of the Port and the transport network, providing a range of significant tangible and intangible benefits.
- 16 The Applicant volunteers the conditions attached to these submissions. It is submitted that these are appropriate conditions to properly regulate and manage the effects of the proposed activity.
- 17 It is submitted that you should grant consent to the application, subject to these conditions.

Dated this 10th day of August 2022



Michael Garbett
Counsel for the Applicant