

**EDS News
February 2022**

Port Otago takes EDS to the Supreme Court

Port Otago Ltd has sought leave to appeal to the Supreme Court against the Court of Appeal's *Port Otago v Environmental Defence Society* [2021] NZCA 683 decision.

The Court of Appeal's decision considered the relationship between Policy 9 (Ports) and the avoidance policies (Policies 11, 13 and 15 addressing indigenous biological diversity, natural character and natural features and landscapes) in the New Zealand Coastal Policy Statement 2010. Applying the interpretation principles set down in the *King Salmon* case, the Court held that the ports policy was subject to the avoidance policies, and that adverse effects of inappropriate activities on outstanding natural landscapes, outstanding natural character and areas of significant indigenous biodiversity in the coastal environment must be avoided. The application to the Supreme Court follows two unsuccessful appeals by Port Otago Ltd and Marlborough District Council in the High Court and Court of Appeal. In essence, the appeal seeks to ignore the *King Salmon* precedent in the port context and to relitigate *King Salmon* in its entirety. An adverse outcome here would be concerning. EDS is seeking donations to assist with running the case, which can be made [here](#).

Breach of the Rakaia River Water Conservation Order

EDS has put Environment Canterbury and Trustpower on notice of our intention to file declaration and related enforcement order proceedings in the Environment Court, unless apparent shortcomings in their compliance with the Rakaia Water Conservation Order can be rectified to our satisfaction. The proceedings would ask whether the current management regime for Lake Coleridge is a breach of that conservation order. Senior counsel for EDS is Simon Berry who acted for us in the original application for the water conservation order in the 1980s.

New Advocacy Project

With the expected new system of resource management coming into play imminently, there's a need to consider whether the existing system of public interest advocacy is up to the challenge. Over the next few years we will have regional councils rolling out new freshwater plans and new combined plans under the Natural and Built Environments Act and the Strategic Planning Act. These will need to be knocked into shape and that will place an enormous burden on existing environmental advocates like EDS, Forest & Bird and Fish and Game. It begs the question as to whether we need a government funded Environmental Defenders Office or similar. EDS is having a fresh look at advocacy in the new resource management system and would welcome any constructive input to the project which is running from February to July 2022: greg@eds.org.nz

Native Forests Coalition

A number of organisations have recently joined the Native Forests Coalition, sharing concern at the way current policy favours short-term exotic plantations over native forest restoration, including for carbon sequestration. This issue has brought sometimes differing parties together over the same cause. A key outcome sought by the Coalition is a cross-agency review of government policy settings to address the climate and biodiversity crises in a joined-up way. At present they are siloed. This is a

complicated exercise that will need to be driven hard and fast given the rapid conversion of thousands of hectares of farmland to pines. Areas needing attention include the Overseas Investment Act (currently under a Treasury-led review), the National Environmental Standards – Plantation Forestry (to tighten sediment controls on plantation forestry), the creation of a biodiversity grant scheme to provide further encouragement for natives, requiring Forestry Environment Plans and a significant number of changes to the Emissions Trading Scheme. Support for the Coalition is welcome: sasha@eds.org.nz

Forestry needs a wake-up call in Marlborough and Tasman

EDS is investigating whether the National Environmental Standards for Plantation Forestry are permitting significant adverse effects on the marine environment in Tasman and Marlborough districts. EDS has been approached by a number of experts concerned that the Standards are allowing forestry activities on highly erodible soils which is causing serious sedimentation issues in sensitive receiving waters. Central to the issue is the Standards' use of an unreliable erosion risk tool that does not accurately assess susceptibility to erosion at a local scale. EDS will be approaching the Crown and both councils shortly to discuss potential Environment Court proceedings. This project forms part of an ongoing effort by EDS to reduce sediment pollution from forestry.

Climate Change Conference postponed

Due to the changing Covid-19 landscape, we've decided to postpone this year's Climate Change & Business Conference. It'll now be held on **Monday 19 and Tuesday 20 September 2022**. We recognise that tackling climate change is a priority. We also acknowledge that key to a successful event is networking in-person, so our preference is to hold the conference in this mode rather than virtually. This is the premier event of its kind in Aotearoa and will be a great opportunity to take stock of our emerging pathway to net zero. Please register if you haven't already at www.climateandbusiness.com.

New website for EDS

We have refreshed our website to make it more accessible and user-friendly. It contains an online bookshop where EDS publications and reports can be accessed and bought. Many of these are available as free online PDFs and explore the key environmental issues of our time. Take a look at www.eds.org.nz and please let us have any feedback on the website, especially regarding further improvements that can be made: katharina@eds.org.nz