

IN THE HIGH COURT OF NEW ZEALAND
DUNEDIN REGISTRY

I TE KŌTI MATUA O AOTEAROA
ŌTEPOTI ROHE

CIV-2024-412-41
[2025] NZHC 2934

UNDER	the Resource Management Act 1991
IN THE MATTER	of an appeal under sch 1 of the Act
BETWEEN	OCEANA GOLD (NEW ZEALAND) LIMITED Appellant
AND	OTAGO REGIONAL COUNCIL Respondent
AND	ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND First Interested Party
AND	KĀI TAHU Second Interested Party

Hearing:	On the papers
Counsel:	S W Christensen for Appellant S J Anderson and T M Sefton for Respondent P Anderson and M Downing for First Interested Party A M Cameron for Second Interested Party
Judgment:	6 October 2025

JUDGMENT OF DUNNINGHAM J

*This judgment was delivered by me on 6 October 2025 at 3 pm, pursuant to
r 11.5 of the High Court Rules*

*Registrar/Deputy Registrar
Date:*

Introduction

[1] This judgment deals with the proposed resolution of an appeal in respect of an objective in the land and freshwater (LF) chapter of the Proposed Otago Regional Policy Statement 2021 (the PORPS).

[2] The appeal is Oceana Gold (New Zealand) Limited's appeal (OGL) in respect of the objective set out at LF-WAI-01. It is the only appeal remaining that has not been resolved or withdrawn, and it was set down for hearing on 13 October 2025. While a number of parties filed notices under s 301 of the Resource Management Act 1991 (RMA), most have withdrawn. The only remaining parties, aside from the Otago Regional Council (ORC) are Royal Forest and Bird Protection Society of New Zealand (Forest and Bird) and Kāi Tahu (the remaining parties).

[3] The remaining parties have now agreed that the introductory words to LF-WAI-01 should be amended by the insertion of the words "or improved" to read as follows:

LF-WAI-01 – Te Mana o te Wai

Otago's water bodies and their health and wellbeing are protected, and restored or improved where they are degraded, so that the mauri of those water bodies is protected, and the management of land and water recognises and reflects that:...

Jurisdiction

[4] The parties acknowledge that there is no jurisdiction to make an order unless the Court finds that there has been an error of law. Furthermore, if there has been an error of law, it is for the Court to determine whether, and on what terms, an order should be made, notwithstanding any agreements reached between the parties.

The parties' positions

[5] In their submissions, OGL submitted that there had been an error of law in the wording of this objective. ORC and Forest and Bird submitted that there had not been an error of law and Kāi Tahu did not express a view.

[6] None of the remaining parties contend that the use of the words “restore” in LF-WAI-01 means that all degraded water bodies must be restored to their natural pre-human state as an absolute outcome which must be achieved. However, in its submissions, OGL was concerned that the decisions version of the PORPS could be interpreted as requiring that.

[7] All the remaining parties accept that in the context of the National Policy Statement for Freshwater Management 2020 (NPSFM) and the PORPS, the use of “restore” or “improve” in LF-WAI-01 must encompass a range of outcomes. This is clear from the National Objectives Framework in subpt 2 of Pt 3 of the NPSFM (NOF) which prescribes, in detail, how outcomes to improve the quality and quantity of freshwater are to be set and achieved.

[8] The remaining parties agree that there is a relevant distinction between “restore” and “improve”. They also accept that, in the context of LF-WAI-01, restoration would be to a former state closer to the natural state preceding degradation, whereas improvement could provide for a range of outcomes and could be to a former state or some other improved state so that the mauri of those water bodies is protected.

The error of law

[9] The error of law identified is that, by using only the word “restore”, the prospect of improvement other than to a former state is excluded. This is important because when water bodies are degraded, restoration to a former state is not always possible. Sometimes there can be improvement, but not to a former state.

[10] LF-WAI-01 is the objective in the PORPS, required under cl 3.2(3) of the NPSFM, to describe how the management of fresh water in the region will give effect to Te Mana o te Wai. When the objective was originally drafted, the focus was on the restoration of the mauri of Otago’s water bodies, rather than of the water bodies themselves. However, through amendments, the restoration objective came to be applied to the water bodies themselves as opposed to the mauri of those water bodies. This was not the outcome that the appellant, Kāi Tahu or the ORC had contended for.

[11] The parties agree that to align with the concept of Te Mana o te Wai, LF-WAI-01 must be expressed broadly enough to include improvement to water body health and wellbeing, even if that is not restoration to a natural pre-degradation state. The failure to do so is, in their submission, an error of law.

[12] The parties say it is apparent from the NPSFM that giving effect to Te Mana o te Wai in connection with the degraded water bodies may require improvement other than to a former (more natural) state and the fundamental concept of Te Mana o te Wai and the NPSFM is broader than restoration of a water body to a former state. The concept speaks to “restoring and preserving the balance between the water, the wider environment and the community” and the parties point out that that is different to a requirement to restore all water bodies to a former state.

[13] The parties set out the principles of Te Mana o te Wai in their joint memorandum, noting they are broader in focus than restoration to a former state. In addition, they identify there are 15 NPSFM policies intended to achieve the objective of Te Mana o te Wai, only one of which refers to restoration, being Policy 6 which states “There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted”. Others, such as Policy 5, specifically provide for the improvement of the health and wellbeing of degraded water bodies and freshwater ecosystems.

[14] The parties point out that it is apparent from aspects of the NOF that sometimes there must be improvement which is not restoration to a former state. Accordingly, LF-WAI-01 cannot be limited to restoring degraded water bodies to a former state but must be broad enough to include other forms of potential improvement.

[15] Given that background, the parties submit that the proposed amendment, set out at [3] above, is an amendment which corrects the error, and the Court can substitute its own judgment for that of the ORC, in order to correct that error.

Outcome

[16] I am satisfied that, with the careful and fulsome explanation the parties have provided in their joint memorandum, and which is summarised above, that the

proposed wording ensures that LF-WAI-01 is consistent with the NPSFM policies and achieves the objective of Te Mana o te Wai.

[17] Accordingly, I am satisfied it is appropriate to direct that LF-WAI-01 of the PORPS be amended as set out at [3] above, and I order accordingly.

[18] As a consequence, this appeal is at an end and the hearing scheduled for 13 October 2025 is vacated.

[19] I also record that there is no issue as to costs, with the remaining parties agreeing that costs should lie where they fall.

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