

IN THE HIGH COURT OF NEW ZEALAND
DUNEDIN REGISTRY

I TE KŌTI MATUA O AOTEAROA
ŌTEPOTI ROHE

CIV-2024-412-41

UNDER	the Resource Management Act 1991	
IN THE MATTER	of an appeal under Section 299 and Clause 56 of Schedule 1 of the Act	
BETWEEN	OCEANA GOLD (NEW ZEALAND) LIMITED	Appellant
AND	OTAGO REGIONAL COUNCIL	Respondent

SUBMISSIONS FOR THE OTAGO REGIONAL COUNCIL
Dated: 31 January 2025

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SUBMISSIONS FOR THE OTAGO REGIONAL COUNCIL

May it please the Court:

Background

- 1 The background to this appeal is set out in the Appellant's (**OGL**) submissions.
- 2 This appeal is now limited to LF-WAI-O1 in the freshwater planning instrument part of the proposed Otago Regional Policy Statement 2021 (**RPS**)¹.
- 3 OGL's appeal is brought under Clause 56 of Schedule 1 and Section 299 of the Resource Management Act 1991 (**RMA**).
- 4 Accordingly, the appeal is confined to questions of law.²

Issue

- 5 The issue is the use of the word "restored" in LF-WAI-O1.
- 6 Among other things, OGL submits that by doing so the Otago Regional Council (**ORC**) has failed to prepare the RPS in accordance with and failed to give effect to Policy 5 of the National Policy Statement for Freshwater Management 2020 (**NPSFM**)³.
- 7 The relief sought by OGL is to replace the word "restored" with the word "improved" in LF-WAI-O1.

Summary of ORC submissions

- 8 Te Mana o te Wai is the fundamental concept of the NPSFM. It protects the mauri of the wai.⁴ It is about restoring and preserving the balance between the water, the wider environment, and the community. Its principles include the obligations of tangata whenua to preserve, restore, enhance, and sustainably use freshwater for the benefit of present and future generations.

¹ Decision version of the RPS (track change), Page 3503 of the Common Bundle.

² Clause 56(3) of Schedule 1 of the RMA.

³ Page 15 of the Common Bundle

⁴ Clause 1.3(1) of the NPSFM, Page 10 of the Common Bundle.

- 9 Policy 1 of the NPSFM requires that freshwater is managed in a way that gives effect to Te Mana o te Wai.⁵
- 10 Clause 3.2(2) of the NPSFM requires ORC to give effect to Te Mana o te Wai.⁶
- 11 Clause 3.2(3) of the NPSFM requires ORC to include an objective in the RPS that describes how the management of freshwater in the region will give effect to Te Mana o te Wai.⁷
- 12 LF-WAI-O1⁸ is the RPS objective to give effect to clause 3.2(3) of the NPSFM.
- 13 Under LF-WAI-O1 Otago's water bodies and their health and well-being are to be protected, and restored where they are degraded, so that the mauri of those water bodies is protected. This gives effect to Policy 1 and clauses 3.2(2) and (3) of the NPSFM, and the fundamental concept of Te Mana o te Wai.
- 14 The RPS primarily gives effect to Policy 5 of the NPSFM⁹ in LF-FW-P7.¹⁰
- 15 LF-WAI-O1 does not specify any prior or original state water bodies, and their health and well-being are to be restored to. Nor do Policy 5 of the NPSFM and LF-FW-P7 specify to what extent degraded water bodies and freshwater ecosystems are to be improved.
- 16 Under the NPSFM, it is the National Objectives Framework (**NOF**) which will determine the extent of restoration and/or improvement.
- 17 Even if "improved" was substituted for "restored" in LF-WAI-O1 there would be no change to this position. In the present context the words can be used interchangeably.
- 18 LF-WAI-O1 does not therefore fail to give effect to Policy 5 of the NPSFM or adopt a more stringent measure than Policy 5 of the NPSFM.
- 19 Even if use of "restored" in LF-WAI-O1 is an error, it is immaterial because the standard of improvement would still be protection of the mauri of water bodies, and the specific state improvement would still be determined under the NOF.

⁵ Page 15 of the Common Bundle

⁶ Page 17 of the Common Bundle.

⁷ Page 18 of the Common Bundle

⁸ Page 3503 of the Common Bundle

⁹ Page 15 of the Common Bundle

¹⁰ Page 3515 of the Common Bundle

Relevant provisions of the NPSFM and the RPS

NPSFM

20 Te Mana o te Wai is the fundamental concept of the NPSFM. It is defined in the NPSFM to have the meaning set out in clause 1.3 of the NPSFM.¹¹

21 Clause 1.3 of the NPSFM provides:¹²

1.3 Fundamental concept – Te Mana o te Wai

Concept

- (1) *Te Mana o te Wai is a concept that refers to the fundamental importance of water and recognises that protecting the health of freshwater protects the health and well-being of the wider environment. It protects the mauri of the wai. Te Mana o te Wai is about restoring and preserving the balance between the water, the wider environment, and the community.*
- (2) *Te Mana o te Wai is relevant to all freshwater management and not just to the specific aspects of freshwater management referred to in this National Policy Statement.*

Framework

- (3) *Te Mana o te Wai encompasses 6 principles relating to the roles of tangata whenua and other New Zealanders in the management of freshwater, and these principles inform this National Policy Statement and its implementation.*
- (4) *The 6 principles are:*
 - (a) *Mana whakahaere: the power, authority, and obligations of tangata whenua to make decisions that maintain, protect, and sustain the health and well-being of, and their relationship with, freshwater*
 - (b) *Kaitiakitanga: the obligations of tangata whenua to preserve, restore, enhance, and sustainably use freshwater for the benefit of present and future generations*
 - (c) *Manaakitanga: the process by which tangata whenua show respect, generosity, and care for freshwater and for others*
 - (d) *Governance: the responsibility of those with authority for making decisions about freshwater to do so in a way that prioritises the health and well-being of freshwater now and into the future*
 - (e) *Stewardship: the obligations of all New Zealanders to manage freshwater in a way that ensures it sustains present and future generations*

¹¹ Clause 1.4(1) of the NPSFM, Page 13 of the Common Bundle.

¹² Pages 10 and 11 of the Common Bundle.

- (f) *Care and respect: the responsibility of all New Zealanders to care for freshwater in providing for the health of the nation.*
- (5) *There is a hierarchy of obligations in Te Mana o te Wai that prioritises:*
 - (a) *first, the health and well-being of water bodies and freshwater ecosystems*
 - (b) *second, the health needs of people (such as drinking water)*
 - (c) *third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.*

22 The sole objective of the NPSFM¹³, adopts the hierarchy of priorities in Te Mana o te Wai:

Objective

The objective of this National Policy Statement is to ensure that natural and physical resources are managed in a way that prioritises:

- (a) *first, the health and well-being of water bodies and freshwater ecosystems*
- (b) *second, the health needs of people (such as drinking water)*
- (c) *third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.*

23 Policy 1 of the NPSFM provides that:¹⁴

Policy 1: *Freshwater is managed in a way that gives effect to Te Mana o te Wai.*

24 Policy 5 of the NPSFM provides that:¹⁵

Policy 5: *Freshwater is managed (including through a National Objectives Framework) to ensure that the health and well-being of degraded water bodies and freshwater ecosystems is improved, and the health and well-being of all other water bodies and freshwater ecosystems is maintained and (if communities choose) improved.*

25 Under clause 3.2(1) of the NPSFM:¹⁶

Every regional council must engage with communities and tangata whenua to determine how Te Mana o te Wai applies to water bodies and freshwater ecosystems in the region.

¹³ Clause 2.1 of the NPSFM, Page 15 of the Common Bundle.

¹⁴ Page 15 of the Common Bundle.

¹⁵ Page 15 of the Common Bundle.

¹⁶ Page 17 of the Common Bundle

26 Clause 3.2(2) of the NPSFM provides that:¹⁷

Every regional council must give effect to Te Mana o te Wai...

27 Clause 3.2(3) of the NPSFM provides that:¹⁸

Every regional council must include an objective in its regional policy statement that describes how the management of freshwater in the region will give effect to Te Mana o te Wai.

28 Subpart 2 of Part 3 of the NPSFM sets out the NOF.¹⁹ The NOF process is summarised at clause 3.7(2) and (3) of the NPSFM:²⁰

(2) *By way of summary, the NOF process requires regional councils to undertake the following steps:*

- (a) *identify FMUs in the region (clause 3.8)*
- (b) *identify values for each FMU (clause 3.9)*
- (c) *set environmental outcomes for each value and include them as objectives in regional plans (clause 3.9)*
- (d) *identify attributes for each value and identify baseline states for those attributes (clause 3.10)*
- (e) *set target attribute states, environmental flows and levels, and other criteria to support the achievement of environmental outcomes (clauses 3.11, 3.13, 3.16)*
- (f) *set limits as rules and prepare action plans (as appropriate) to achieve environmental outcomes (clauses 3.12, 3.15, 3.17).*

(3) *The NOF also requires that regional councils:*

- (a) *monitor water bodies and freshwater ecosystems (clauses 3.18 and 3.19); and*
- (b) *take action if degradation is detected (clause 3.20).*

RPS

29 LF-WAI-O1 gives effect to clause 3.2(3) of the NPSFM, describing how the management of freshwater in Otago will give effect to Te Mana o te Wai:²¹

¹⁷ Page 17 of the Common Bundle

¹⁸ Page 18 of the Common Bundle

¹⁹ Pages 20 to 28 of the Common Bundle

²⁰ Pages 20 and 21 of the Common Bundle.

²¹ Page 3503 of the Common Bundle.

LF-WAI-O1 – Te Mana o te Wai

Otago's water bodies and their health and well-being are protected, and restored 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:

- (1) water is the foundation and source of all life – na te wai ko te hauora o ngā mea katoa,*
- (2) there is an integral kinship relationship between water and Kāi Tahu whānui, and this relationship endures through time, connecting past, present and future,*
- (3) each water body has a unique whakapapa and characteristics,*
- (4) fresh water, land, and coastal water have a connectedness that supports and perpetuates life,*
- (4A) protecting the health and well-being of water protects the wider environment,*
- (5) Kāi Tahu exercise rakatirataka, manaakitaka and their kaitiakitaka duty of care and attention over wai and all the life it supports, and*
- (6) all people and communities have a responsibility to exercise stewardship, care, and respect in the management of fresh water.*

30 LF-WAI-P1 gives effect to the Te Mana o te Wai hierarchy of priorities²²:

LF-WAI-P1 - Prioritisation

In all decision-making affecting fresh water in Otago, prioritise:

- (1) first, the health and well-being of water bodies and freshwater ecosystems (te hauora o te wai) and the exercise of mana whenua to uphold this,*
- (2) second, the health needs of people, (te hauora o te tangata) interacting with water through:*
 - (a) ingestion (such as drinking of water and consuming resources harvested from the water body),*
 - (b) immersive activities (such as harvesting resources and primary contact), and*
 - (c) personal hygiene activities (such as food preparation, utensil washing, oral hygiene, showering and flushing the toilet), and*
- (3) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.*

²² Pages 3503 and 3504 of the Common Bundle

31 Primarily, LF-FW-P7 gives effect to Policy 5 of the NPSFM:²³

LF-FW-P7 -Fresh water

Environmental outcomes, attribute states (including target attribute states), environmental flows and levels, and limits ensure that:

- (1) *the health and well-being of water bodies and freshwater ecosystems is maintained or, if degraded, improved,...*

32 The following table summarises how the relevant RPS provisions give effect to the relevant NPSFM provisions:

NPSFM	RPS
1.3 - The fundamental concept of Te Mana o te Wai. Must be given effect in the RPS under Policy 1 and clause 3.2(2), and under clause 3.2(3) an objective in the RPS must describe how Uses “restore” in the context described below. Does not specify a prior or original state to which there is to be restoration.	LF-WAI-O1 describes how the management of freshwater in Otago will give effect to Te Mana o te Wai. Uses “restore” in the context described below. Does not specify a prior or original state to which there is to be restoration.
2.1 - The hierarchy of priorities is the sole objective of the NPSFM, which gives first priority to the health and well-being of water bodies and freshwater ecosystems	LF-WAI-P1 applies the hierarchy of priorities to decision-making in the Otago region
2.2 – Policy 5 requires that the health and well-being of degraded water bodies and freshwater ecosystems is improved Policy 5 refers to freshwater being managed to achieve this including through the NOF.	LF-FW-P7 requires improvement of the health and well-being of degraded water bodies and freshwater ecosystems LF-FW-P7 gives policy direction for establishing environmental outcomes, attribute states (including target attribute states), environmental flows and levels, and limits, which are elements of the NOF
3.7 to 3.20 set out the NOF, the implementation of which will, among other things, determine the specific state to which restoration or improvement of degraded water bodies and freshwater ecosystems is required.	Largely the RPS does not implement the NOF because it is to be implemented in regional plans, action plans and resource consent conditions. ²⁴

²³ Page 3515 of the Common Bundle. LF-LS-P21 also gives effect to Policy 5 of the NPSFM, in context of land use.

²⁴ Some RPS provisions do relate to the NOF: The freshwater management units which must be identified under clause 3.8(1) of the NPSFM are shown on MAP1 in the RPS. LF-FW-P6 sets policy regarding the relationship between FMU’s and rohe in connection with NOF elements. LF-FW-P11, LF-FW-P12 and APP1 identify and provide for the further identification of Otago’s outstanding water bodies as required by clause 3.8(3)(d) of the NPSFM. Methods in the RPS relate to subsequent implementation of the NOF, particularly LF-FW-M6 which requires notification of a regional plan to implement the required steps of the NOF.

Submissions

The role of LF-FW-WAI-O1

- 33 The NPSFM defines Te Mana o te Wai as its fundamental concept.²⁵
- 34 Under Policy 1 of the NPSFM, freshwater must be managed in a way that gives effect to Te Mana o te Wai.
- 35 Under clause 3.2(2) of the NPSFM the ORC must give effect to Te Mana o te Wai.
- 36 Under clause 3.2(3) of the NPSFM the ORC must include an objective in the RPS that describes how the management of freshwater in Otago will give effect to Te Mana o te Wai.
- 37 LF-WAI-O1 is the RPS policy required by clause 3.2(3) of the NPSFM. It gives effect to Policy 1 and clauses 3.2(2) and (3) of the NPSFM, and the fundamental concept of Te Mana o te Wai.

Policy 5 of the NPSFM

- 38 Policy 5 of the NPSFM requires, among other things that the health and well-being of degraded water bodies and freshwater ecosystems is improved.
- 39 The RPS primarily gives effect to Policy 5 of the NPSFM in LF-FW-P7.

Restoration

- 40 In both the NPSFM and the RPS, Te Mana o te Wai includes the concept of restoration.
- 41 The NPSFM expression of Te Mana o te Wai uses restore as follows:
- Te Mana o te Wai is about restoring and preserving the balance between the water, the wider environment, and the community ...*
- Kaitiakitanga: the obligations of tangata whenua to preserve, restore, enhance, and sustainably use freshwater for the benefit of present and future generations*
- 42 In LF-WAI-O1 water bodies and their health and well-being are:
- “...restored where they are degraded, so that the mauri of those water bodies is protected”.*

²⁵ Clauses 1.4(1) and 1.3 of the NPSFM, Pages 10, 11 and 13 of the Common Bundle.

Standard of restoration

- 43 In LF-WAI-O1 the standard described is protection of the mauri of water bodies.
- 44 Protection of the mauri of water bodies aligns with the NPSFM expression of Te Mana o te Wai. Te Mana o te Wai is to protect the mauri of the wai.²⁶
- 45 Protecting the mauri of the wai is at the heart of Te Mana o te Wai. It is what the RPS must do in giving effect to Te Mana o te Wai.

Restoration to what state?

- 46 Meanings of “restore” in the Oxford Dictionary²⁷ include:

Bring back or re-establish (a previous right, practice, or situation):

Return (someone or something) to a former condition, place or position:

Repair or renovate (a building, work of art, etc.) so as to return it to its original condition:

- 47 “Restore” can be used to mean restore something to its original condition.
- 48 “Restore” can also be used to mean restoration to a former (but not original) condition.
- 49 In the context of LF-WAI-O1 “restore” has the latter meaning.
- 50 LF-WAI-O1 does not attempt to define “mauri” nor direct the specific state of restoration required. It does not specify what state is required to protect the mauri of water bodies.
- 51 That is because the NPSFM is clear that the extent of restoration (if needed) is determined through implementation of the NOF.
- 52 This aligns with Policy 5 of the NPSFM and LF-FW-P7 in the RPS. Under both provisions the health and wellbeing of degraded water bodies and freshwater ecosystems must be improved, but neither specifies to what extent improvement is to occur.
- 53 Under both policies the extent to which degraded water bodies and freshwater ecosystems must be improved is to be determined through implementing the NOF.

²⁶ Clause 1.3(1) of the NPSFM, Page 10 of the Common Bundle.

²⁷ iOS app version, accessed 26 January 2025

54 Policy 5 of the NPSFM refers expressly to the NOF. LF-FW-P7 relates to environmental outcomes, attribute states (including target attribute states), environmental flows and levels, and limits, all of which are elements of the NOF.

55 It is clear from the Freshwater Hearings Panel's (**Panel**) report²⁸ that it correctly understood this to be the position under the NPSFM.

56 At paragraph 11 of the Panel's report:²⁹

Our overall interpretation of the Te Mana o te Wai concept is that it envisages that waters may be in a degraded state, and if so they should be restored and protected in a state closer to the natural setting. However, that is not an absolute requirement, given that later provisions of the NPSFM recognise other community uses of natural and physical resources have occurred which can be beneficial to communities.

57 And at paragraph 31:³⁰

*In our view clause 3.2(3) is not intended to enable or require a regional council to override those very detailed provisions in the NPSFM requiring detailed management mechanisms to be addressed in a sequential manner following on a detailed NOF process involving community and tangata whenua input.*³¹

58 The Panel correctly understood and applied the concept of Te Mana o te Wai in its formulation of LF-WAI-O1. The ORC adopted each of the Panel's recommendations at its meeting on 27 March 2024. It made no errors of law.

Stringency

59 There is no reference in LF-WAI-O1 to a specific state to which Otago's water bodies and their health and well-being are to be restored. Rather, the standard of restoration is to protect the mauri of water bodies.

60 The extent of restoration (if needed) is determined through implementation of the NOF.

²⁸ References to the Panel's report are references to Appendix Two to the Report and recommendations of the Non-Freshwater and Freshwater Hearings Panels to the Otago Regional Council; Appendix Two being the report by the Freshwater Hearings Panel. Page 3198 of the Common Bundle

²⁹ Page 3,199 of the Common Bundle.

³⁰ Page 3203 of the Common Bundle

³¹ The "very detailed provisions" referred to are listed in the preceding paragraph 30 of the Panel's report: clauses 3.4 and 3.7 to 3.17 of the NPSFM.

- 61 If LF-WAI-O1 used the word “improved” instead of “restored”, then the extent of improvement (if needed) would still be determined through implementation of the NOF.
- 62 The used of “restored” in LF-WAI-O1 is not more stringent than the use of the word “improved” would be, because whichever word is used implementation of the NOF will determine the restoration or improvement required.
- 63 In the specific context of its use in LF-WAI-O1, the word “restored” has the same effect as the word “improved”.
- 64 There can be no error of law by choosing one word over the other in LF-WAI-O1.

Consistency with Policy 5

- 65 LF-WAI-O1 is the objective which describes how Te Mana o te Wai will be given effect to in the RPS. Policy 5 of the NPSFM is primarily given effect to by LF-FW-P7.
- 66 Nonetheless, because the word “restored” has the same effect as the word “improved” in LF-WAI-O1, the use of “restored” in LF-WAI-O1 is consistent with Policy 5 of the NPSFM.

Materiality

- 67 Even if there is an error of law in using the word “restored” in LF-WAI-O1, it is immaterial.
- 68 If LW-WAI-O1 used the word “improved” instead of “restored” the standard of improvement would still be protection of the mauri of water bodies, and the specific state for improvement to would still be determined under the NOF.
- 69 The result would be the same.

Other matters raised by OGL

LF-LS-P21

- 70 At paragraph 46 of its submissions OGL submitted that making the amendment it seeks to LF-WAI-O1 is consistent with the changes recently³² made by consent order of the High Court in these proceedings to amend LF-LS-P21.

³² The order was made on 8 January 2025

71 The relevant passage of LF-LS-P21 was amended by consent as follows:

The health and well-being of water bodies and freshwater ecosystems is maintained, or if degraded, improved to meet environmental outcomes set for Freshwater Management Units and/or rohe by: ...

72 As decided, LF-LS-P21 failed to provide for improvement of degraded water bodies and freshwater ecosystems, contrary to Policy 5 of the NPSFM. The health and wellbeing of all water bodies and freshwater ecosystems was to be “maintained”, whether degraded or not.

73 That is irrelevant to the issue in this appeal. LF-WAI-O1 requires that degraded water bodies are restored so that their mauri is protected. The only relevance of LF-LS-P21 is that it is another policy in the RPS which (as amended by the consent order) gives effect to Policy 5 of the NPSFM, in context of land use.

The Panel’s recommended amendments to LF-WAI-O1

74 At paragraph 44 of its submissions OGL cites paragraph 48 the Panel’s report and the changes recommended to LF-WAI-O1. The changes recommended by the Panel were:³³

~~The mauri of Otago’s water bodies and their health and well-being is~~ are protected, and restored where it is they are degraded, so that the mauri of those water bodies is protected, and the management of land and water recognises and reflects that:

75 At paragraph 49 of its submissions OGL submits that the amendment recommended by the Panel is a material error of law because:

75.1 the Panel did not consider Policy 5 of the NPSFM and did not consider whether its proposed wording was giving effect to the NPSFM; and

75.2 the amended wording means the requirement to protect and restore applies to degraded water bodies, rather than to mauri.

76 Regarding the errors alleged:

76.1 The Panel was not required to specifically consider Policy 5 of the NPSFM in context of LF-WAI-O1. LF-WAI-O1 is the objective which describes how the management of freshwater in the region will give effect to Te Mana o te Wai as required under clause 3.2(3) of the NPSFM. It is apparent from paragraph 44 of the Panel’s report that it (correctly)

³³ Paragraph 50 of the Panel’s report, Page 3,206 of the Common Bundle.

examined the provision and whether its proposed wording gave effect to the NPSFM against the fundamental concept of Te Mana o te Wai in the NPSFM for the purposes of clause 3.2(3) of the NPSFM:³⁴

The relevant chapter in the PORPS where the NPSFM is primarily given effect for the purposes of clause 3.2(3) of the NPSFM is entitled LF-WAI – Te Mana o te Wai. Despite some criticisms that in broad terms LF-WAI-O1 – Te Mana o te Wai effectively repeats the NPSFM provisions, there are some subtle but important differences. An immediate one is that clause 1.3 of the NPSFM utilises five sub-clauses to describe Te Mana o te Wai in terms of a concept description in subclauses (1) and (2); six principles in a framework in sub-clauses (3) and (4); and a hierarchy of priorities in sub-clause (5). The underlying concept is described in terms that Te Mana o te Wai ‘refers to the fundamental importance of water’ and proceeds to emphasise that it protects ‘the mauri of the wai’, before concluding with references to restoration and preserving of ‘the balance between the water, the wider environment, and the community’ as discussed earlier. The middle of the description in clause 1.3(1) states that Te Mana o te Wai ‘protects the mauri of the wai.’

- 76.2 The amended wording is not an error of law. The subtle change is that protection of the mauri becomes the outcome of protecting and restoring (if degraded) water bodies and their health and well-being. Under both formulations the mauri of the wai is to be protected, as required by the fundamental concept of Te Mana o te Wai in the NPSFM.
- 76.3 The Panel referred to Policy 5 of the NPSFM in various contexts at paragraphs 194, 198, 200, 392, 413, 419, 435, 436, 443, 631 and 633 of its report.³⁵
- 76.4 At paragraph 436 of its report the Panel notes that: “Policies 5 and 9 of the NPSFM are implemented through LF-FW-P7 clauses (1) and (2) respectively..”.³⁶
- 76.5 The Panel did not fail to consider Policy 5 of the NPSFM. It made no error of law.

Conclusion

- 77 LF-WAI-O1 is the objective required under clause 3.2(3) of the NPSFM which: “describes how the management of freshwater in the region will give effect to Te Mana o te Wai.”

³⁴ Page 3205 of the Common Bundle.

³⁵ Pages 3233, 3234, 3271, 3272, 3276, 3277, 3280, 3281, 3282 and 3329. Policy 5 is also referred to in the Report by the Non-Freshwater Hearings Panel.

³⁶ Page 3281 of the Common Bundle.

- 78 Te Mana o te Wai is to protect the mauri of the wai. That is the standard adopted in LF-WAI-O1.
- 79 The RPS primarily gives effect to Policy 5 of the NPSFM in LF-FW-P7.
- 80 LF-WAI-O1 does not prescribe to what specific state water bodies and their health and well-being are to be restored. Nor do Policy 5 of the NPSFM and LF-FW-P7 specify to what extent degraded water bodies and freshwater ecosystems are to be improved.
- 81 Under the NPSFM it is the NOF processes which will determine the extent of restoration and/or improvement.
- 82 Even if “improved” was substituted for “restored” in LF-WAI-O1 there would be no change to this position. In this context the words can be used interchangeably.
- 83 The RPS does not therefore adopt a more stringent measure than Policy 5 of the NPSFM.
- 84 There is no error of law.
- 85 Even if there is an error of law it is immaterial.

Outcome

- 86 The appeal should be dismissed.
- 87 Costs should follow the event.³⁷



S J Anderson
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31 January 2025

³⁷ On a category 2B basis per the Court’s minute 13 June 2024