

IN THE HIGH COURT OF NEW ZEALAND  
DUNEDIN REGISTRY

I TE KŌTI MATUA O AOTEAROA  
ŌTEPOTI ROHE

CIV-2024-412-000037 /  
000038 / 000040 / 000041 / 000042

UNDER the Resource Management Act 1991

IN THE MATTER of appeals under Section 299 and Clause 56 of Schedule 1 of the Act

BETWEEN KĀI TAHU

AND OTAGO FISH AND GAME COUNCIL AND CENTRAL SOUTH ISLAND FISH AND GAME COUNCIL

AND OCEANA GOLD (NEW ZEALAND) LIMITED

AND QUEENSTOWN LAKES DISTRICT COUNCIL

AND ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED

AND OTAGO REGIONAL COUNCIL

Appellants

Respondent

ORDER OF THE HIGH COURT

Dated: 8 January 2025

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TMS-266090-1019-3-V1

HIGH COURT

06 DEC 2024

CHRISTCHURCH

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## ORDER OF THE HIGH COURT

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Before the Honourable Justice Harland on \_\_\_\_\_:

After reading the notices of appeal by:

- a. Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga (collectively, “Kāi Tahu ki Ōtākou” or “Kā Rūnaka”); Te Ao Marama Incorporated on behalf of Waihopai Rūnaka, Te Rūnanga o Ōraka Aparima, and Te Rūnanga o Awarua (collectively, “Ngāi Tahu ki Murihiku”); and Te Rūnanga o Ngāi Tahu together referred to as “**Kāi Tahu**” dated 22 April 2024 (CIV-2024-012-000038); and
- b. Otago Fish and Game Council and Central South Island Fish and Game Council (“**Fish and Game**”) dated 22 April 2024 (CIV-2024-012-000037); and
- c. Oceana Gold (New Zealand) Limited (“**Oceana Gold**”) dated 22 April 2024 (CIV-2024-012-000041); and
- d. Queenstown Lakes District Council (“**Queenstown Lakes**”) (CIV-2024-012-000040); and
- e. Royal Forest and Bird Protection Society of New Zealand Incorporated (“**Forest & Bird**”) (CIV-2024-012-000042)

collectively (“**the appellants**”) against the respondent’s decisions on the Proposed Ōtākou Regional Policy Statement (“PORPS”), the attachments to those notices, and the joint memoranda of counsel dated 2 September 2024 and 7 October 2024, this court orders (by consent):

1. The following appeals CIV-2024-012-000038, CIV-2024-012-000037, CIV-2024-012-000041, CIV-2024-012-000040 and CIV-2024-012-000042 are consolidated.
2. The appeals are allowed in part.
3. LF-WAI-P1 is amended as follows (with amendments shown in red underline and strikethrough):



## 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 contribution of this to the health and well-being of the environment (te hauora o te taiao) together with~~ and the exercise of *mana whenua* to uphold this-these,
  - (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*), and
    - (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 wellbeing, now and in the future.
4. LF-FW-O9 is amended as follows (with amendments shown in red underline and strikethrough):

## LF-FW-O9 – Wetlands

Otago's wetlands are protected from inappropriate subdivision, use and development and, where degraded, restoration is promoted so that:

- (1) mahika kai and other *mana whenua* values are sustained and enhanced now and for future generations,
- (2) ~~there is no net decrease, and preferably an increase,~~ in relation to the extent and diversity of ~~wetland~~ indigenous ecosystem types and habitats; ~~and~~
  - (a) for wetlands outside the coastal marine area, there is no net decrease, and preferably an increase, and
  - (b) for natural inland wetlands, there is no decrease, and preferably an increase, other than as provided by the NPSFM, and
- (3) there is no reduction and, where degraded, there is an improvement in wetland ecosystem health, hydrological functioning, *amenity values*, extent or *water* quality, and
- (4) their flood attenuation and water storage capacity is maintained or improved.



5. Policy LF-FW-P10A is amended as follows (with amendments shown in red underline and strikethrough):

**LF-FW-P10A – Managing wetlands**

Otago's wetlands are managed:

- (1) in the coastal environment, in accordance with CE – Coastal environment ~~the NZCPS in addition to (2) and (3) below, and~~
  - (2) by applying clause 3.22(1) to (3) of the NPSFM to ~~all~~ natural inland wetlands, and
  - (3) to improve the ecosystem health, hydrological functioning and extent of *wetlands* that have been degraded or lost by promoting:
    - (a) an increase in the extent and condition of habitat for indigenous species,
    - (b) the restoration of hydrological processes,
    - (c) control of pest species and vegetation clearance, and
    - (d) the exclusion of stock, except where stock grazing is used to enhance wetland values., and
- (4) to sustain and enhance Māori freshwater values.

6. LF-FW-P16 is amended as follows (with amendments shown in red underline and strikethrough):

**LF-FW-P16 – Discharges containing animal effluent, sewage, greywater and industrial and trade waste**

Minimise the adverse effects of direct and indirect discharges of wastewater, ~~containing~~ animal effluent, sewage, greywater and industrial and trade waste to fresh water by:

- (1) phasing out existing discharges of wastewater, ~~containing~~ sewage or industrial and trade waste directly to fresh water to the extent practicable,
- (2) requiring:
  - (a) new discharges of wastewater, ~~containing~~ sewage or industrial ~~and~~ trade waste to be to land, unless:
    - (i) the adverse effects associated with a discharge to land are demonstrably greater than a discharge to fresh water, or
    - (ii) the adverse effects associated with a discharge to water are significantly less than, and replace, an existing discharge(s), or
    - (iii) the discharge is to a constructed water body from which there is



no discharge of water or contaminants

- (b) discharges of animal effluent from land-based primary production to be to land,
  - (c) that all discharges containing sewage or industrial and trade waste are discharged into a reticulated wastewater system, where one is made available by its owner, unless alternative treatment and disposal methods will result in improved outcomes for fresh water,
  - (d) implementation of methods to progressively reduce the frequency and volume of wet weather overflows and minimise the likelihood of dry weather overflows occurring from reticulated wastewater systems,
  - (e) on-site wastewater systems and animal effluent systems to be designed and operated in accordance with best practice standards,
  - (f) that any discharges do not prevent water bodies from meeting any applicable water quality standards set for FMUs and/or rohe,
- (3) to the greatest extent practicable, requiring the reticulation of wastewater in urban areas, and
- (4) promoting source control as a method for reducing contaminants in discharges.
7. LF-FW-M6 is amended as follows (with amendments shown in red underline and ~~strikethrough~~):

**LF-FW-M6 – Regional plans**

Otago Regional Council must publicly notify a Land and Water Regional Plan and, after it is made operative, maintain that regional plan to:

- (1A) implement the required steps in the NOF process in accordance with the NPSFM,
- (3) identify water bodies that are over-allocated and the methods and timeframes for phasing out that over-allocation (including through environmental flows and levels and limits) within the timeframes required to achieve the relevant freshwater vision,
- (5A) provide for the allocation and use of fresh water in accordance with LF-FW-P7A, including by providing for off-stream water storage,
- (7) identify and manage wetlands in accordance with LF-FW-P7, ~~LF-FW-P9~~ and LF-FW-P10<sup>A</sup> while recognising that some activities in and around wetlands are managed under the NPSFM, NESF and the NESCF,
- (8) manage the adverse effects of stormwater and discharges containing animal effluent, sewage, or industrial and trade waste in accordance with LF-FW-P15 and LF-FW-P16, and



- (9) recognise and respond to Kāi Tahu cultural and spiritual concerns about mixing of water between different catchments.
8. LF-LS-P1 is amended as follows (with amendments shown in red underline and ~~strikethrough~~):

#### LF-LS-P21 – Land use and fresh water

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:

- (1) reducing or otherwise ~~managing maintaining~~ the adverse effects of direct and indirect discharges of contaminants to water from the use and development of land,
  - (2) managing land uses that may have adverse effects on the flow of water in surface water bodies or the recharge of groundwater,
  - (3) recognising the drylands nature of some of Otago and the resulting low water availability, and
  - (4) maintaining or, where degraded, enhancing the ~~habitat and biodiversity~~ values of riparian margins.
9. LF-VM-O2 is amended as follows (with amendments shown in red underline and ~~strikethrough~~):

#### LF-VM-O2 – Clutha Mata-au FMU vision

In the Clutha Mata-au FMU, and in addition to the matters in LF-FW-O1A:

- (1) management of the FMU recognises that:
  - (a) the Clutha Mata-au is a single connected system ki uta ki tai, and
  - (b) the source of the wai is pure, coming directly from Tāwhirimātea to the top of the mauka and into the awa,
- (1A) sustainable abstraction occurs from lakes, river main stems or groundwater in preference to tributaries, to the extent reasonably practicable,
- (6) the national significance of the ongoing operation, maintenance and upgrading of the Clutha hydro-electricity generation scheme, including its generation capacity, storage, and operational flexibility and its contribution to climate change mitigation is recognised, provided for, and protected, and potential further development of the scheme in Lake Hāwea, on the Hāwea River, and on the Clutha River/Mata-au mainstem upstream of Roxburgh (within existing consented upper operating levels as at the date this Regional Policy Statement is made operative) is provided for ~~within this modified catchment~~.



- (6A) water bodies support a range of outdoor recreation opportunities,
- (7) in the Upper Lakes rohe, the high quality waters of the lakes and their tributaries are protected, and if degraded are improved recognising the significance of the purity of these waters to Kāi Tahu and to the wider community,
- (7A) in the Lower Clutha rohe, opportunities to restore the natural form and function of water bodies are promoted wherever practicable, and
- (8) the outcomes sought are to be achieved within the following timeframes:
- (c) by 2030 in the Upper Lakes rohe,
  - (d) by 2045 in the Dunstan and Roxburgh rohe, and
  - (e) by 2050 in the Manuherekia and Lower Clutha rohe
10. LF-VM-O4 is amended as follows (with amendments shown in red underline and strikethrough):

**LF-VM-O4 – Taiari FMU vision**

By 2050 in the Taiari FMU, and in addition to the matters in LF-FW-O1A:

- (3) the upper and lower catchment wetland complexes, including the Waipōuri/Waiholā wetland complex, Upper Taiari wetland complex, and connected tussock areas are protected, restored or enhanced where they have been degraded or lost,
  - (4) the gravel bed of the lower Taiari is restored and sedimentation of the Waipōuri/Waiholā wetland complex is reduced,
  - (4A) the national significance of the Waipōuri hydro-electricity generation scheme, and the regional significance of the Deep Stream and Paerau / Patearoa hydro-electricity generation schemes is recognised and their operation, maintenance and upgrading is provided for, and while potential future development of these schemes is provided for, in so far as is consistent with LF-FW-O1A(1)-(6) and LF-VM-O4(3).
  - (5) creative ecological approaches contribute to reduced occurrence of didymo.
11. The appeals by the appellants on the above parts of PORPS are at an end.
12. There are no issues as to costs in relation to the above appeals resolved by consent.

Date: 08/01/2025  
Deputy Registrar

*A. Nicholson*

TMS-266090-1019-3-V1

**A. Nicholson**

