

IN THE ENVIRONMENT COURT
AT CHRISTCHURCH
I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHĪ

Decision No. [2025] NZEnvC 206

IN THE MATTER of the Resource Management Act 1991

AND appeals under Clause 14(1) of the First
Schedule to the Act

BETWEEN DUNEDIN CITY COUNCIL

(ENV-2024-CHC-25)

AND OCEANA GOLD (NEW
ZEALAND LIMITED)

(ENV-2024-CHC-29)

AND CAIN WHĀNAU

(ENV-2024-CHC-30)

Appellants

AND OTAGO REGIONAL COUNCIL

Respondent

Environment Judge P A Steven – sitting alone under s279 of the Act

In Chambers at Christchurch

Date of Consent Order: 24 June 2025



CONSENT ORDER

DUNEDIN CITY COUNCIL & ORS v ORC – pORPS PART 3: AIR

A: Under s279(1)(b) RMA,¹ the Environment Court, by consent, orders that:

- (1) the appeals are allowed subject to the amended provisions marked in Annexure 1, attached to and forming part of this consent order; and
- (2) the appeals, as they relate to the ‘AIR – Air’ chapter of the Proposed Otago Regional Policy Statement 2021, are dismissed.

B: Under s285 RMA, there is no order as to costs.

REASONS

Introduction

[1] These proceedings concern appeals by Dunedin City Council (DCC), Oceana Gold (New Zealand) Limited (OGL) and Cain Whānau against parts of the decisions by Otago Regional Council (ORC) in respect of the proposed Otago Regional Policy Statement 2021 (PORPS).

[2] Among other relief, the appeals sought amendments to provisions in the ‘AIR – Air’ chapter located in Part 3 – Domains and topics of the PORPS (AIR chapter).

[3] At a high level, the AIR chapter covers:

- (a) air quality; and
- (b) discharges to air.

The appeals

OGL appeal

[4] In its appeal, OGL sought deletion of the requirements to avoid noxious

¹ Resource Management Act 1991.

and dangerous discharges and to ensure discharges to air did not cause offensive or objectionable effects in limbs (1) and (2) of AIR-P4.

[5] The following persons gave notice of an intention to join this aspect of OGL's appeal under s274 RMA:

- (a) Rayonier Matariki Forests, City Forests Limited, Ernslaw One Limited and Port Blakely NZ Limited (Forestry Appellants);
- (b) Otago Water Resources Users (OWRUG);
- (c) Otago and Central South Island Fish & Game Councils (Fish and Game);
- (d) Queenstown Airport Corporation Limited (QAC);
- (e) Kāi Tahu; and
- (f) Royal Forest and Bird Protection Society of New Zealand Incorporated (Forest & Bird).

DCC appeal

[6] In its appeal, DCC sought inclusion of the text “unless these can be appropriately managed” in limb (2) of AIR-P4.

[7] The following persons gave notice of an intention to join this aspect of DCC's appeal under s274 RMA:

- (a) Aurora Energy Limited, Network Waitaki Limited and PowerNet Limited (EDBs);
- (b) QAC;
- (c) Forestry Appellants; and
- (d) OGL.

[8] Both appellants identified issues with the workability of the policy as decided in the Decisions Version and/or how it would be interpreted given the strength of the language used.

Agreement reached

[9] The parties have agreed that this aspect of the appeals can be resolved by amending AIR-P4 as follows:

AIR-P4 – Managing certain discharges

Manage the adverse effects of discharges to air by:

- (1) avoiding noxious or dangerous effects,
- (2) ~~ensuring~~ managing discharges to air ~~so they~~ do not cause offensive or objectionable effects,
- (3) avoiding, remedying or mitigating other adverse effects from discharges to air, including but not limited to discharges arising from:
 - (a) outdoor burning of organic material,
 - (b) agrichemical and fertiliser applications,
 - (c) primary production activities,
 - (d) activities that produce dust, and
 - (e) industrial and trade activities.
- (4) locating new sensitive activities to avoid potential reverse sensitivity effects from existing consented or permitted discharges to air, unless these can be appropriately managed.

[10] The parties consider that the proposed amendments in limb (2) better express the policy's intent, allowing activities with potential for offensive and objectionable effects to take place, while ensuring such effects do not occur under a management regime.

[11] A consequential amendment to limb (1) of AIR-M2 is required to reflect this change, as shown in paragraph [15] of this order.

Cain Whānau appeal

[12] In their appeal, Cain Whānau sought relief with respect any provisions in the PORPS that apply to or affect Māori land, to ensure owners of Māori land can protect, occupy, subdivide, develop, and use their resources (inclusive of land, freshwater, coastal water and coastal marine area) to benefit their social, economic,

cultural, education, recreational and environmental wellbeing as their secondary alternate relief.

[13] Cain Whānau identified AIR-M2 as requiring amendment to give effect to the secondary relief sought above. Cain Whānau sought inclusion of the following text into limb (6) of AIR-M2: “or the ability of owners of native reserves and Māori land to use, develop and protect that land in accordance with MW-P4”.

[14] The following persons gave notice of an intention to join this aspect of Cain Whānau’s appeal under s274 RMA:

- (a) Kāi Tahu;
- (b) EDBs;
- (c) DCC; and
- (d) Transpower New Zealand Limited.

Agreement reached

[15] The parties have agreed that this aspect of the appeal can be resolved by amending AIR-M2 as follows:

AIR-M2 – Regional plans

Otago Regional Council must prepare or amend and maintain its regional plans to:

- (1A) set limits (including ambient air quality standards and guidelines) to maintain ambient air quality in accordance with AIR-P1, and improve ambient air quality in accordance with AIR-P2,
- (1) manage the adverse effects of discharges to air by avoiding noxious or dangerous effects and ~~managing ensuring~~ discharges to air so that they do not cause offensive or objectionable effects,
- (2) include provisions to avoid, remedy, or mitigate other adverse effects from discharges to air,
- (3) prioritise the actions set out in AIR-P2 to reduce PM₁₀ and PM_{2.5} concentrations in polluted airsheds,
- (4) mitigate the adverse effects of discharges to air in areas adjacent to polluted airsheds where the discharge will adversely affect air quality in the polluted

airshed, and

- (6) Include measures to ensure that discharges to air do not adversely affect mana whenua values or the ability of owners of native reserves and Māori land to use, develop and protect that land in accordance with MW-P4.

[16] The parties consider that inclusion of the new text in limb (6)² is consistent with MW-P4. Further, the parties consider that the amendments are within the jurisdiction of the court and give effect to the relevant parts of the Act, including ss 6(e), 7(a), 7(f) and 8 of the Act.

Consideration

[17] I have read and considered the consent memorandum of the parties dated 17 April 2025 which proposes to resolve the appeal.

[18] The court notes that the following parties have not signed the consent memorandum requesting this order:

- (a) Fish & Game;
- (b) Forest & Bird;
- (c) QAC; and
- (d) OWRUG.

[19] On 16 June 2025, court staff emailed those parties requesting that they confirm their positions as to the orders proposed by the other parties by 23 June 2025. The deadline to respond has now passed without any response having been received. Accordingly, I treat the orders as being effectively unopposed.

[20] The parties advise that all matters proposed for the court's endorsement fall within the court's jurisdiction and conform to the relevant requirements and objectives of the Act including, in particular, Pt 2. The parties consider that the

² The parties advise that the numbering of the clauses in this policy will be corrected by a Clause 16 amendment.

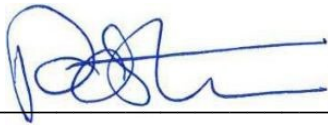
amendments give effect to the relevant parts of the Act, including ss 6(e), 7(a) and 8 RMA.

Outcome

[21] All parties consent to the orders being made. On the information provided to the court, I am satisfied that the orders will promote the purpose of the Act so I will make the orders sought.

[22] This consent order resolves all appeals as they relate to the AIR chapter of the PORPS.

[23] There is no order as to costs.



P A Steven
Environment Judge



Annexure 1

The amendments are as follows:

AIR-P4 – Managing certain discharges

Manage the adverse *effects* of *discharges* to air by:

- (1) avoiding noxious or dangerous *effects*,
- (2) ~~ensuring managing~~ *discharges* to air so they do not cause offensive or objectionable *effects*,
- (3) avoiding, remedying or mitigating other adverse *effects* from *discharges* to air, including but not limited to *discharges* arising from:
 - (a) outdoor burning of organic material,
 - (b) agrichemical and fertiliser applications,
 - (c) *primary production* activities,
 - (d) activities that produce dust, and
 - (e) industrial and trade activities.
- (4) locating new sensitive activities to avoid potential reverse sensitivity *effects* from existing consented or permitted *discharges* to air, unless these can be appropriately managed.

AIR-M2 – Regional plans

Otago Regional Council must prepare or amend and maintain its *regional plans* to:

- (1A) set limits (including *ambient air quality standards* and *guidelines*) to maintain ambient air quality in accordance with AIR-P1, and improve ambient air quality in accordance with AIR-P2,
- (1) manage the adverse *effects* of *discharges* to air by avoiding noxious or dangerous effects and ~~managing~~ ~~ensuring~~ *discharges* to air so that they do not cause offensive or objectionable *effects*,
- (2) include provisions to avoid, remedy, or mitigate other adverse *effects* from *discharges* to air,
- (3) prioritise the actions set out in AIR-P2 to reduce *PM*₁₀ and *PM*_{2.5} concentrations in *polluted airsheds*,
- (4) mitigate the adverse *effects* of *discharges* to air in areas adjacent to *polluted airsheds* where the *discharge* will adversely affect air quality in the *polluted airshed*, and
- (6) include measures to ensure that discharges to air do not adversely affect *mana whenua* values or the ability of owners of native reserves and Māori land to use, develop and protect that land in accordance with MW-P4.

