

**IN THE HIGH COURT OF NEW ZEALAND
DUNEDIN REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
ŌTEPOTI ROHE**

**CIV-2024-412-37
CIV-2024-412-38
CIV-2024-412-40
CIV-2024-412-41
CIV-2024-412-42**

BETWEEN

OTAGO FISH AND GAME COUNCIL
AND CENTRAL SOUTH ISLAND FISH
AND GAME COUNCIL,
KĀI TAHU RŪNANGA,
QUEENSTOWN LAKES DISTRICT
COUNCIL,
OCEANA GOLD (NEW ZEALAND)
LIMITED,
ROYAL FOREST AND BIRD
PROTECTION SOCIETY OF NEW
ZEALAND INCORPORATED
Appellants

AND

OTAGO REGIONAL COUNCIL
Respondent

Hearing: On the papers

Date of Minute: 7 October 2024

MINUTE OF HARLAND J

[1] In my minute of 13 June 2024, I directed that a further case management conference of these appeals occur on 2 October 2024 at 2.15 pm. I also directed that a memorandum be filed, joint if possible, by 5.00 pm on 27 September 2024. Counsel filed such a joint memorandum which was comprehensive and helpful. As a result of it, I adjourned the case management conference and indicated that this minute would issue. I now summarise and make the directions sought by consent.

Appeals potentially settled

[2] In the joint memorandum, counsel underlined that the mediation of the five appeals before the Court in relation to the proposed Otago Regional Policy Statement 2021 (the RPS) were the subject of a mediation undertaken with the assistance of former Environment Judge Borthwick. The mediation occurred from Monday 19 August to Monday 26 August 2024.

[3] As a result of the mediation, it appears there is agreement in relation to the Kāi Tahu appeal (CIV-2024-412-38), the Queenstown Lakes appeal (CIV-2024-412-40) and the Forest and Bird appeal (CIV-2024-412-42). In respect of these appeals, a joint memorandum of counsel has been filed dated 30 September 2024 seeking consent orders. These will require further consideration by the Court.

[4] Accordingly, in respect of the case management conference, counsel sought a direction for those three appeals to be adjourned to a further case management conference.

Appeals not settled

[5] The two remaining appeals, the Fish and Game appeal (CIV-2024-412-37) and the Oceana Gold appeal (CIV-2024-412-41), require a hearing. The parties to these appeals request that they be consolidated and heard sequentially.

[6] Rule 10.12 of the High Court Rules 2016 (HCR) enables the Court to make an order consolidating the proceedings. In my view, the appeals qualify for consideration under r 10.12 and it is persuasive that the parties to the appeals have agreed that consolidation is desirable. This means that the appeals should be heard at the same time but sequentially. Further directions can be made at a later date about the need for counsel involved to attend for the entirety of each other's appeals if required.

[7] A remaining issue concerns the Oceana Gold appeal. Kāi Tahu is not currently an interested party in the unresolved appeal point in Oceana Gold's appeal. However, the parties have become aware that Kāi Tahu may wish to apply to the Court out of time to become a party to the appeal. The joint memorandum indicates that the parties

to the Oceana Gold appeal would not object to such an application. However, directions are requested to provide a timeframe for Kāi Tahu's position to be clarified. Such a request is reasonable and the directions sought are also reasonable.

[8] Although a number of sch 6 directions were made by me and outlined in my minute of 13 June 2024, there are other directions which are now sought by consent. These directions relate to the filing and serving of the documentation needed for the hearing of the appeals.

Directions

[9] I make the following directions:

- (a) on the appeals potentially settled (see paras [2]–[4] above), a further case management conference is to be convened at ***9.15 am on Friday 25 October 2024***.
- (b) in relation to the appeals not settled (see paras [5]–[8] above):
 - (i) an order is made under r 10.12 of the HCR consolidating the appeals which are to be heard sequentially;
 - (ii) the consolidated appeals are to be allocated a three-day fixture no sooner than the week beginning 3 March 2025, in Dunedin if possible;
 - (iii) the appellants must file and serve electronically, no later than ***22 November 2024***, a common bundle of paginated and indexed copies of all relevant documents, including, if applicable:
 - the reasons for the decision; and
 - the decision appealed from; and
 - the statements of evidence; and
 - the exhibits; and
 - any other relevant documents in date sequence;

one hard copy of the common bundle must also be filed with the Court;

- (iv) any party who wishes to include a document in the common bundle that is objected to by another party may include the document in the bundle but the objection is to be recorded in case it is relevant to any subsequent award of costs;
- (v) each appellant must file and serve, no later than **18 December 2024**, a chronology (if relevant) and its submissions which are not more than 30 pages in length, unless otherwise permitted by the Court, and use 1.5 line spacing, and must contain:
 - references to any specific passages in the evidence that the appellants will refer to at the hearing; and
 - a list of the names and correct citations of any authorities mentioned;
- (vi) the respondent must file and serve, no later than **31 January 2025**, submissions which are not more than 30 pages in length, unless otherwise permitted by the Court, and use 1.5 line spacing, and must contain:
 - references to any specific passages in the evidence that the respondent will refer to at the hearing; and
 - if the respondent disagrees with the appellants' chronology, a separate chronology noting areas of disagreement;
- (vii) the other parties to the appeal must file and serve no later than **14 February 2025** submissions which are not more than 30 pages in length, unless otherwise permitted by the Court, and use 1.5 line spacing, and must contain:
 - references to any specific passages in the evidence that the party will refer to at the hearing; and

- if a party disagrees with either the appellants' or the respondent's chronology, a separate chronology noting areas of disagreement;
- (viii) the appellants must file and serve a right of reply by *21 February 2025*; and
- (ix) each appellant must prepare a bundle of any authorities referred to in the submissions that the appellants, respondent or other parties consider ought to be produced to the Court. An electronic copy must be filed and served, and one hard copy must be filed with the Court. The bundle can be produced at the hearing of the appeal or filed before the appeal is heard.
- (c) A further case management conference can be requested by any party, to be convened at short notice, any time prior to the allocated hearing date.

Harland J