

In the High Court of New Zealand
Dunedin Registry

I Te Kōti Matua O Aotearoa
Ōtepoti Rohe

CIV-2024-412-37
CIV-2024-412-41

Under the Resource Management Act 1991 (**RMA**)

In the matter of an appeal under clause 56 of Schedule 1 of the Resource Management Act 1991

Between **Otago Fish and Game Council and Central South Island Fish and Game Council** CIV-2024-412-37

Appellant

Oceana Gold (New Zealand) Limited CIV-2024-412-41

Appellant

Joint Memorandum of Counsel for the Appellants requesting Appeals be placed on hold

8 November 2024

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Otago Regional Council, being a regional council under
Schedule 2 of the Local Government Act 2002

Respondent

May it please the Court

- 1 Otago Fish and Game Council and Central South Island Fish and Game Council (**Fish and Game**) and Oceana Gold (New Zealand) Limited (**Oceana Gold**) (together **the Appellants**) seek to amend the timetabling directed by her Honour Justice Harland on 7 October 2024, and seek that the Appeals in respect of the proposed Otago Regional Policy Statement be placed on hold with the requirement to prepare a reporting memorandum in 4 months time.
- 2 The Fish and Game and Oceana Gold Appeals have been consolidated and are to be heard sequentially (**Consolidated Appeals**).
- 3 The current timetabling directions are:
 - (a) The Appellants must file a common bundle no later than **22 November 2024**;
 - (b) The Appellants must file and serve no later than **18 December 2024** a chronology (if relevant) and legal submissions;
 - (c) The Respondent must file and serve no later than **31 January 2025** legal submissions;
 - (d) The other parties must file and serve no later than **14 February 2025** legal submissions;
 - (e) The Appellants must file and serve no later than **21 February 2025** a right of reply.
- 4 Recent changes in circumstances material to the Consolidated Appeals are the reasons for requesting the Appeals be placed on hold. Those reasons are:

National Policy Statement for Freshwater Management review

- 5 On 10 October the Minister Responsible for RM Reform wrote to stakeholders advising that an amended package of National Direction including the National Policy Statement for Freshwater Management (**NPS-FM**) will be consulted on early in 2025 and are expected to be passed into law in mid 2025. Most of the Fish and Game Appeal, and all of the Oceana Gold Appeal points to be progressed to a hearing relate to application of current version of the NPS-FM.
- 6 With the NPS-FM likely to change by mid-2025, depending on the nature of changes some or all of the errors of law pleaded might be rendered moot. In that circumstance, it is inefficient and unnecessary to continue

preparation for a hearing, until more is known as to the nature and scale of likely changes and their relevance to the Appeals.

Resource Management (Freshwater and Other Matters) Amendment Act

- 7 On 24 October 2024, the Government passed the Resource Management (Freshwater and Other Matters) Amendment Act (**Amendment Act**). The Amendment Act specifically directed that no freshwater planning instrument that has the purpose of giving effect to the National Policy Statement Freshwater Management (NPS-FM) may be notified before the sooner of either the date on which a new NPS-FM is published under section 54 of the RMA, or 31 December 2025.¹
- 8 The Otago Regional Council had been due to vote on 24 October 2024 to notify its proposed Otago Land and Water Plan (**pLWP**). However with the passing of the Amendment Act, the pLWP was not notified.
- 9 Had the pLWP been notified, as it progressed through the submissions and hearings process one of the matters for determination would have been whether the pLWP had appropriate regard to a proposed regional policy statement², and whether it gave effect to the regional policy statement³.
- 10 Therefore, it was important for the appeals of the pRPS to be resolved as soon as practicable, in order that as the pLWP progressed, the pRPS progressed to its final form and its influence over the pLWP became certain and settled.
- 11 That time related imperative is no longer present.

Other appeals

- 12 The Court is currently considering the joint memorandum of counsel dated 30 September 2024 seeking consent orders for related appeals (Kāi Tahu CIV-2024-412-38, Queenstown Lakes CIV-2024-412-40 and Forest and Bird CIV-2024-412-42) (**related appeals**)
- 13 Should the Court determine any of these related appeals require hearing time, it may be appropriate to consolidate them also. It could therefore be more efficient for the Oceana Gold and Fish and Game Consolidated Appeals timetable to be paused until it is known whether or not any of the

¹ Amendment to clause 21A of the First Schedule to the Resource Management Act 1991.

² S 66 (2) RMA

³ S 67 (3) RMA

related appeals will require any hearing time, and whether those appeals should also be consolidated and considered sequentially.

Fixture date

- 14 The Consolidated Appeals will require a three-day fixture. On the current timetable the Consolidated Appeals will be ready for a hearing no sooner than the week beginning 3 March 2025⁴, but no fixture is currently allocated.
- 15 Counsel's experience on other High Court matters indicate it is unlikely a 3 day fixture will be able to be set down until late 2025 at the earliest. Counsel have attempted to contact the High Court registry and court scheduler to get more clarity on this matter but have been unable to get a response.

Conclusion

- 16 The Appellants submit that upcoming unknown amendments to the NPS-FM could render the main grounds for the Appeals moot. The timing imperative for the immediate progress of the Appeals is also no longer present as the pLWP will not be notified until the amended version of the NPS-FM is in place.
- 17 Both of the above remove the need for an immediate hearing.
- 18 In addition, it is not yet known whether the related appeals on the pRPS on which agreement has been reached, will need any hearing time.
- 19 Counsel understands that it is unlikely the Court will be able to set down a 3 day fixture until late 2025.
- 20 The current timetable has the significant work involved in completion of the common bundle, chronology and legal submissions by 21 February 2025. All parties will incur material, and potentially unnecessary costs complying with the directions. The costs incurred by the Respondent and Fish and Game effectively represent ratepayer and Fish and Game licence fee 'public monies'.
- 21 Given all of the above, it is respectfully submitted that it is unnecessary and will be inefficient for parties and the Court to progress with the current timetable, and to do so might result in all parties incurring unnecessary costs.
- 22 The Appellants' preference would be for the proceedings to be placed on hold, with a report back date say in four months.

⁴ Minute of Harland J, 7 October 2024.

- 23 An alternative might be for the Court to confirm a fixture date, and have the case management timetable backdated from that date.
- 24 The Appellants apologise for the short timeframe before the next event date under the current timetable. The Appellants have tried to file this Memorandum as quickly as possible since the Minister Responsible for RM Reform's announcement and the passing of the Amendment Act. Fish and Game has also consulted with the Respondent and advised that it was intending to file this Memorandum.

Directions sought

- 25 The Appellants respectfully seek the following:
- (a) The timetabling directions for the Fish and Game and Oceana appeals be vacated; and
 - (b) The Consolidated Appeals be placed on hold; and
 - (c) The Parties report to the Court within 4 months.
- Or
- (d) In the alternative that a 3 day fixture be confirmed; and
 - (e) That case management timetabling directions be issued that back date from that fixture date.

Dated this 8th of November 2024

Maree Baker-Galloway

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