

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

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

CIV-2024-412-41

BETWEEN OCEANA GOLD (NEW ZEALAND)
LIMITED
Appellant

AND OTAGO REGIONAL COUNCIL
Respondent

Hearing: On the papers

Counsel: J St John and S Christensen for Oceana Gold (New Zealand)
Limited (Appellant)
S J Anderson and T M Sefton for Otago Regional Council
(Respondent)
A M Cameron for Kāi Tahu

Date of Minute: 19 December 2024

**MINUTE OF HARLAND J
(Application by Kāi Tahu for s 301 status)**

[1] Kāi Tahu have filed an interlocutory application to extend the time for filing a notice under s 301 of the Resource Management Act 1991 (RMA) in this appeal. The fact of the application was signalled in a joint memorandum of counsel dated 27 September 2024 prepared for the first case management conference and was referred to in my minute of 26 November 2024.

[2] At para 11 of the joint memorandum, as reproduced in [1] of my minute, the following appeared:

Kāi Tahu is not currently an interested party in the unresolved appeal point in Oceana Gold's appeal. However, the parties are aware that Kāi Tahu may consider applying to the Court (out of time) to become a party. The parties to those appeals would not object to such an application, and requests a direction

be given that if Kāi Tahu seeks to become a party to the Oceana Gold appeal they must file and serve an application to become a party by 31 October 2024.

[3] Kāi Tahu filed its interlocutory application on 31 October 2024. I directed that any party who opposed the application was to do so no later than 5.00 pm on 2 December 2024, otherwise the application would be dealt with by me in chambers on the papers.

[4] No party has filed a response to the application. Accordingly, I proceed to deal with it on the papers.

[5] The application by Kāi Tahu seeks an order extending the time period for it to file a notice of intention to appear on the appeal by Oceana Gold against decisions on the proposed Otago Regional Policy Statement 2021 under s 301 of the RMA to within two working days of an order being made by the Court to that effect.

[6] The grounds on which the order is sought are:

- (a) Kāi Tahu are parties to an appeal by the Otago Fish and Game Council and Central South Island Fish and Game Council (CIV-2024-412-37) which was consolidated with the subject appeal by Oceana Gold by order of Harland J on 7 October 2024;
- (b) the appeals are due to be heard at the same time, but sequentially;
- (c) Kāi Tahu also attended mediation of the extant appeals before retired Environment Court Judge Borthwick between Monday 19 August and Monday 26 August 2024;
- (d) the remaining ground of appeal (which has not otherwise been settled at mediation) arising from the Oceana Gold appeal relates to LF-WAI-O1 - Te Mana o te Wai, which is a requirement of cl 3.2(3) of the National Policy Statement for Freshwater Management 2020 (NPSFM);
- (e) clause 3.2(1) of the NPSFM requires that regional councils 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. Kāi Tahu,

therefore, have played an integral part in the framing of LF-WAI-O1 to date, including through the Proposed Otago Regional Policy Statement 2021 hearings;

- (f) if the order sought is granted, Kāi Tahu intend to adopt a neutral position on the appeal by Oceana Gold;
- (g) the Kāi Tahu parties' interest in the appeal is in ensuring that reference in the objective to "so that the mauri of those water bodies is protected" is retained, regardless of the relief sought in relation to the use of the word "restored" within the objective;
- (h) the Kāi Tahu parties will maintain a watching brief over the parties' positions, and (depending on the submissions filed) may seek to make brief submissions limited to the above issue;
- (i) Kāi Tahu had not anticipated, until very recently, that a possible outcome of the Oceana Gold appeal could be an amendment to the objective that altered the above reference to the protection of mauri. If that were to occur, Kāi Tahu would want to be heard on issues of scope and jurisdiction. That explains the reason for the delay;
- (j) as the proceedings have only (again, very recently) been timetabled to a hearing, there is limited, if any, prejudice that would arise from the extension sought; and
- (k) furthermore, all parties to the Oceana Gold appeal consent to the making of the order sought.

[7] I am satisfied that it is appropriate to make the order sought, however, given the time of year, I extend the requirement for Kāi Tahu to file its s 301 notice to 17 January 2025.

Result

[8] The application is granted, extending the time period within which Kāi Tahu can file a notice of intention to appear on the appeal by Oceana Gold (New Zealand)

Ltd against decisions on the Proposed Otago Regional Policy Statement 2021 under s
301 of the RMA to *17 January 2025 at .500 pm.*

Harland J

Counsel:

J St John and S Christensen for Oceana Gold (New Zealand) Ltd

S J Anderson and T M Sefton, Ross Dowling Marquet Griffin for Otago Regional Council.

Interested Parties in proceeding CIV-2024-412-41:

M Downing and P Anderson for Royal Forest & Bird Protection Society Inc

J Campbell and B Watts, Meredith Connell for Queenstown Lakes District Council

L Burkhardt for Manawa Energy Limited

C Thomsen and K Simonsen, Fletcher Vautier Moore for Beef and Lamb New Zealand Ltd

B Irving and P Page, Gallaway Cook Allan for Otago Water Resource User Group Inc.

H Jopp for Federated Farmers of New Zealand Incorporated

M Baker-Galloway and L McLaughlan, Anderson Lloyd for NZSki Limited and Real Group Limited.