

**BEFORE THE FRESHWATER HEARINGS PANEL**

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of submissions on the Proposed Otago Regional  
Policy Statement 2021

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**MEMORANDUM ON BEHALF OF OCEANA GOLD NEW ZEALAND  
LIMITED**

**Dated 12 April 2022**

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**Solicitor acting:**

Jackie St John  
In-house counsel  
22 Maclaggan St  
Dunedin 9016  
Jackie.stjohn@oceanagold.com

**Counsel acting:**

Stephen Christensen  
Project Barrister  
421 Highgate, Dunedin 9010  
P 027 448 2325  
stephen@projectbarrister.nz

## **MAY IT PLEASE THE COMMISSIONERS:**

### **INTRODUCTION**

- 1 This Memorandum is filed on behalf of Oceana Gold (New Zealand) Limited (**OGNZL**). OGNZL made a submission and further submissions on the Proposed Otago Regional Policy Statement (**PORPS**), and is also a Defendant in the High Court declaration proceedings (**the High Court matter**)<sup>1</sup>.
- 2 We refer to the Freshwater Hearing Panel's Minute 2 dated 18 March 2022 (**the Minute**). The Freshwater Hearing Panel has sought responses from the parties about the preferred approach for allowing the hearing of the PORPS to proceed, bearing in mind that there may not be a decision on the High Court matter until after June.
- 3 OGNZL has seen a draft memorandum circulated by the Otago Regional Council (**the Draft Memo**), and we refer to this below.

### **OGNZL's PREFERRED APPROACH**

- 4 OGNZL's preferred approach is that suggested at paragraphs 25-27 of the Minute, i.e the appointment of a second panel to consider those parts of the PORPS that are not able to be lawfully considered by the Freshwater Hearings Panel under the standard Schedule 1 process, with the second panel to have the same membership as the Freshwater Hearings Panel. We understand that the ORC also prefers this approach.
- 5 We submit the second panel approach is the most efficient way to proceed, and will allow all participants to plan, prepare and allocate time (and resources) for the preparation and filing of the section 42A report; preparation of evidence; mediation and scheduling of hearing time;

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<sup>1</sup> *Otago Regional Council v Royal Forest and Bird Protection Society of New Zealand* CIV 2021-412-0089.

whilst minimising the effect of the High Court decision on timeframes for finalising the PORPS.

- 6 As is noted at paragraph 26 of the Minute, the decision-making and appeal provisions differ between the two processes and it will be important that by the time the Panel(s) conduct a hearing there is clarity for all participants as to which provisions are being considered under the FPP and which are being considered under the standard process.

### **ALTERNATIVE APPROACH**

- 7 The option of having ORC state which parts of the PORPS clearly relate to freshwater is not tenable given the position which the ORC has adopted in the High Court declaration proceedings. ORC has steadfastly maintained that no parts of the PORPS were severable and that all parts relate to freshwater. This is demonstrated by the following paragraph from ORC's submissions to the High Court<sup>2</sup>:

*Accordingly, as a whole, the pRPS is a freshwater planning instrument. It is not possible to sever sections of the pRPS as unrelated to freshwater. Every chapter has a freshwater element.*

- 8 In the absence of a decision from the High Court, ORC cannot be expected to complete a severing exercise it told the High Court it could not undertake. Its prevarication on that issue is therefore not surprising but leaves the process in some difficulty. OGNZL does not consider that a process based on gradients of relevance to freshwater is practically achievable.

### **PROPOSED TIMETABLE**

- 9 In the Draft Memo, ORC proposes to publish the section 42A report on 27 April. It would then follow that evidence in chief would be filed on 16 May. OGNZL would agree to this. However, OGNZL seeks a direction

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<sup>2</sup> Submissions on behalf of the Otago Regional Council dated 24 December 2021 at paragraph 244.

to clarify “that the section 42A report is made available on the website by 5pm on 27 April for parties and their experts to download.”

- 10 If there is a delay between the filing of the section 42A report and posting it to the website so that it does not actually become available to parties until after 27 April, then the 16 May date would need to be extended to give parties ample time to consider the section 42A report before filing evidence in chief.

## **PROPOSED TOPICS**

- 11 The Draft Memo proposed the following list of topics which ORC consider most obviously relate to freshwater and which should be heard first.
- a. Introduction and general themes (including whole of PORPS submissions)
  - b. Part 1: Introduction and general provisions (excluding Definitions and Mana Whenua)
  - c. Part 2: Resource management overview
  - d. MW- Mana Whenua
  - e. IM – Integrated Management
  - f. Land and Freshwater
    - i. LF-WAI – Te Mana o te Wai
    - ii. LF-VM – Visions and management
    - iii. LF-FW – Freshwater
    - iv. LF-LS – Land and soils
- 12 Further to our comments in paragraph 8, OGNZL considers there are difficulties in creating a gradient of what is related to freshwater and OGNZL disagrees with ORC’s assessment as to what topics “most obviously relate to freshwater”. OGNZL submitted on the following provisions, which come within the topics in para 11:

- a. Part 2 – SRMR Significant Resource Management Issues for the Region Overview/introduction:
- b. SRMR-I10
- c. RMIA-WAI-I1
- d. IM- P10
- e. IM-P14
- f. LF-LS-O11
- g. LF-LS-P19

13 OGNZL presented submissions to the High Court that these provisions do not relate to freshwater and therefore object to these provisions being heard first.

Dated this 12<sup>th</sup> day of April 2022



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S Christensen/J St John

Counsel for Oceana Gold (New Zealand) Limited