

BEFORE THE HEARINGS PANEL

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

**AND**

**IN THE MATTER OF** submissions on the Proposed Otago Regional Policy  
Statement 2021 (non-freshwater parts)

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**STATEMENT OF EVIDENCE BY CLAIRE ELIZABETH HUNTER**

**ON BEHALF OF OCEANA GOLD (NEW ZEALAND) LIMITED**

**INTRODUCTION AND GENERAL THEMES, DEFINITIONS, SRMR, IM, AIR, LF, ECO  
AND APP 2, APP 3 AND APP 4, HAZ, HCV, NFL AND APP 9, UFD**

23 NOVEMBER 2022

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## **1. INTRODUCTION AND BACKGROUND**

- 1.1 I am a resource management consultant and Director of Mitchell Daysh Limited, a nation-wide resource management and environmental planning consultancy firm. I have over 18 years' experience in this field.
- 1.2 I hold an honours degree in Environmental Management from the University of Otago. I am a member of the Resource Management Law Association and an Associate Member of the New Zealand Planning Institute.
- 1.3 Over the past four years I have been involved in projects for Oceana Gold New Zealand Limited (**OceanaGold**). I am familiar with the company's Macraes mine site and with its operations at Waihi in the Bay of Plenty. My recent work for OceanaGold has included preparing the resource consent application for the Deepdell North project and I gave evidence in support of that application at the Council hearing. A summary of my recent project and consenting experience is set out in **Appendix A**.
- 1.4 Through my work, I am familiar with the now partially operative Otago Regional Policy Statement, and I assisted various clients, including OceanaGold with their submissions on the Proposed Otago Regional Policy Statement 2021 (**PORPS**).
- 1.5 Although this is not an Environment Court hearing, I have read and agree to comply with the Environment Court's Code of Conduct for Expert Witnesses. This evidence is within my area of expertise, except where I state that I am relying upon material produced by another person. I have not omitted to consider material facts known to me that might alter or detract from my opinions.

## **2. EXECUTIVE SUMMARY**

- 2.1 This statement of evidence is provided on behalf of OceanaGold in relation to its submission on the PORPS and the subsequent recommendations set out in the section 42A reports.
- 2.2 The PORPS has adopted a number of provisional changes which differ from the previous Regional Policy Statement (2019). While the PORPS seeks to better promote the sustainable management and efficient use and development of natural and physical resources, these changes will significantly constrain, and in some cases prohibit, such as the ECO provisions, mining activities in areas where previously reasonable allowances were made.
- 2.3 The key areas of concern which are highlighted in this evidence stem primarily around the changes which, whether intentional or not, constrain the legitimate mining activities in the Otago region. It is agreed that managing the effects on natural resources is necessary; however, as a regionally strategic document, the PORPS also needs to achieve this, alongside recognising and providing for extractive industries which benefit the region and the people and communities within that region, and ensure that activities can be continued within appropriate environmental parameters.
- 2.4 In this regard, OceanaGold has sought to include provisions which are specific to mining activities. These are attached as **Appendix B**.
- 2.5 This evidence follows the themes and chapters of the PORPS, with the main issues surrounding the topics of ecosystems and biodiversity, historical heritage, and natural features and landscapes. OceanaGold made submissions on other chapters, and where appropriate I also discuss these in my evidence.

### **Ecosystems and Indigenous Biodiversity**

- 2.6 The ECO chapter generated several concerns for the extractive industries. OceanaGold's submission on this chapter centred around

concerns that the provisions, in conjunction with criteria set out in APP2, will result in a large portion of the Otago region (and, within the Macraes Ecological District) being recognised as a significant natural area (SNA). The Policy sets a requirement that SNAs be identified in accordance with the criteria set out in APP2, raising concerns that this approach lacks the necessary precision and that a large portion of the region is effectively “locked out” to future development. The current extent of SNAs in the region is therefore unknown. As noted above, the current drafting of the ECO provisions does not currently provide a pathway for extractive industries where this activity is co-located within an SNA. This is of significant concern to OceanaGold.

- 2.7 Additionally, changes to the effects management hierarchy (for instance, APP3 and APP4) contain criteria as to when both offsetting and compensation are not available. This bottom-line criterion leads to offsetting and / or compensation being removed as an option within an effects management strategy which will play a significant part in further inhibiting future developments.

### **Heritage**

- 2.8 OceanaGold’s submissions on the heritage chapter are founded on the basis that the Policy is likely to be overly restrictive and has the potential to significantly constrain development on sites which may be proximal to or contain historic heritage. Mining at Macraes has a long-standing history in the area and the deposit is considered a “world-class” gold mine. The mine is in a unique situation where artefacts or historic relics which are sometimes discovered there, often represent similar activities to present-day mining activities in the area. This situation requires planning provisions which enable the protection of historical heritage without impeding endeavours that are characteristic of the area and zone.

### **Natural Features and Landscape**

- 2.9 The Natural Features and Landscape chapter details the use of a criteria-based schedule (APP9) which is, unfortunately, lacking the necessary

defining characteristics needed to distinguish between landscape and feature types. Employing the new criteria has the potential to create overreaching assessments on lesser-valued landscapes which will further prevent development in areas that otherwise could be undertaken.

- 2.10 It is notable to point out that OceanaGold is not seeking an exemption or a permissive framework, rather it is seeking that the PORPS appropriately recognises that mineral extraction activities are locally constrained and that the PORPS must provide a clear pathway for such activities to be appropriately considered by a decision maker under the RMA framework.
- 2.11 In this evidence, I outline a number of recommendations which address the above points.

### **3. OUTLINE OF EVIDENCE**

- 3.1 By way of summary, in this statement of evidence I will:
- 3.1.1 Provide a brief overview of the background context of OceanaGold's submission to the PORPS;
  - 3.1.2 Discuss the proposed amendments in OceanaGold's letter of 21 July 2022; and
  - 3.1.3 Consider OceanaGold's submissions with respect to the PORPS and the recommendations set out in the relevant section 42A reports (and associated evidence where relevant). I have sought to largely focus my evidence on key areas which are of concern to OceanaGold. For this reason I note that OceanaGold wishes to generally reserve its position on all of its other submission and further submission points which I (or its other experts) have not specifically commented on.
- 3.2 My evidence will primarily focus on the outcomes sought by OceanaGold that relate to:

- 3.2.1 The introduction and general themes, including ensuring that the PORPS provides a pathway for mineral and the extractive industry in Otago;
  - 3.2.2 The ECO provisions and those relating to other natural resources such as the Land and Freshwater Provisions, Air and Natural Features and Landscapes.
  - 3.2.3 I also comment on the provisions relating to Natural Hazard Management and Historic Heritage.
- 3.3 In preparing this brief of evidence, I can confirm that I have read:
- 3.3.1 The PORPS as notified;
  - 3.3.2 OceanaGold's submissions and further submissions on the PORPS;
  - 3.3.3 The relevant section 32 reports prepared in support of the PORPS;
  - 3.3.4 The relevant section 42A reports prepared on behalf of the Otago Regional Council (**ORC**);
  - 3.3.5 The updated PORPS and relevant supplementary statements of evidence prepared by / on behalf of the Otago Regional Council; and
  - 3.3.6 The evidence called on behalf of OceanaGold including the Statements of Evidence by Ms Paul, Mr Christensen, Mr Eaqub, Dr Hooson and Dr Thorsen.

#### **4. BACKGROUND TO OCEANAGOLD'S SUBMISSION**

- 4.1 Ms Paul has provided a detailed description of OceanaGold as a company operating in New Zealand and provides background on its mining operations.

- 4.2 Both Ms Paul and Mr Eaqub set out the economic significance of the Macraes Mining Operation.
- 4.3 Ms Paul explains that the Macraes Mining Operation is the largest goldmine in New Zealand. Presently, the company directly employs around 600 people at the site. The company holds more than 200 resource consents for the Macraes Mining Operation, mostly granted by the Otago Regional Council.
- 4.4 Ms Paul also explains that the mine is situated within a predominately rural environment, which while modified due to historic and ongoing activities, retains significant terrestrial and aquatic biodiversity values, as well as important historic heritage values. The co-location of these historic and cultural, terrestrial and aquatic biodiversity values with the known unique mineral deposits that support the mine, creates a need for tailored, fit-for-purpose planning policies and rules.
- 4.5 Ms Paul also sets out the biodiversity and enhancement projects that are occurring at and surrounding the mine.
- 4.6 Against this background, it is clear that OceanaGold has a significant interest in the PORPS.

## **5. INTRODUCTION AND GENERAL THEMES**

### **Primary Production and Mineral Extraction**

- 5.1 The definition of primary production in the PORPS is as follows:

*Primary Production*

*Has the same meaning as in Standard 14 of the National Planning Standards 2019 (as set out in the box below)*

*Means:*

*An aquaculture, agricultural, pastoral, horticultural, mining, quarrying, or forestry activities; and*

- a) Includes initial processing, as an ancillary activity, of commodities that result from the listed activities in a);*



- b) *Includes any land and buildings used for the production of the commodities from a) and used for the initial processing of the commodities in b); but*
- c) *Excludes further processing of those commodities into a different product.*

- 5.2 Ms Boyd, in her Supplementary Evidence dated 11 October 2022 on behalf of the Regional Council, recommends that the term “primary production” be replaced with the term “food and fibre production” in the context of highly productive land (being provisions LF-LS-O11, LF-LS-P19, LF-LS-E4, LF-LS-PR4 and UFD-P7). Specifically, Ms Boyd recommends using the term “food and fibre production” to exclude mining, quarry and permanent forest from being prioritised on highly productive land. Upon the National Policy Statement for Highly Productive Land (**NPSHPL**) taking effect, Ms Boyd recommends adopting the term “land based primary production” defined in that document. I agree with Ms Boyd that it is necessary to ensure consistency with the NPSHPL, and that it would not be appropriate for the Regional Council to adopt more stringent measures than required by this NPS.
- 5.3 It is apparent that this amendment would mean that none of the notified provisions as they relate to “primary production” would apply to mining and other extraction industries. In my opinion, this results in a significant gap in the drafting of the PORPS, and I agree with OceanaGold’s submission that new objectives and policies need to be inserted into the policy document to recognize and provide for the significance of mining in the Otago Region specifically.
- 5.4 On 21 July 2022, OceanaGold wrote to ORC and proposed a suite of amendments to the Land and Soil (**LF-LS**), Biodiversity (**ECO**) and the Urban Form and Development (**UFD**) chapters to better recognise the strategic and economic importance of mining and extractive activities in Otago. The letter was a response to the pre-hearing meetings held in 2022 and ORC’s section 32 report which said that OceanaGold had not provided proposed wording for all its submissions. These provisions are attached as **Appendix B** to my evidence and are discussed below. Ms

Boyd has made some comments on these proposed provisions in her Supplementary Evidence dated 11 October 2022.

### **Amendments to the Land and Soil Chapter**

- 5.5 OceanaGold proposes an amendment to “LF-LS-O11 – Land and Soil” to recognise the importance of providing access to land for primary production. A new Objective “LF-LS-O13 – Resource Use and Development” is proposed to recognise the important role of resource use and development in Otago.
- 5.6 The other proposed change is the inclusion of a new Policy which ensures that management of the region’s land recognises the need for mineral resources to be available, and the functional and operational constraints of accessing mineral resources and the potential benefits of further mineral development in appropriate locations. The proposed Policy then sets out an effects management hierarchy for managing adverse effects. The proposed Policy directly refers to managing effects in accordance with the National Policy Statement for Indigenous Biodiversity (**NPSIB**) when the activity is in a significant natural area, and in accordance with the National Policy Statement for Freshwater Management (**NPSFM**) and the National Environmental Standards for Freshwater (**NESF**) when the activity is in a waterbody or natural wetland.
- 5.7 Ms Boyd is concerned that drafting this proposed Policy seeks to essentially “exempt” mining and extractive industries from the policy framework in the PORPS in certain locations.
- 5.8 OceanaGold is not seeking an exemption or a permissive framework, rather it is seeking that the PORPS appropriately recognises that mineral extraction activities are, as Ms Boyd reinforces, constrained in terms of where they can locate<sup>1</sup> and that the PORPS needs to provide a clear pathway for such activities to be appropriately considered by a decision maker under the RMA framework.

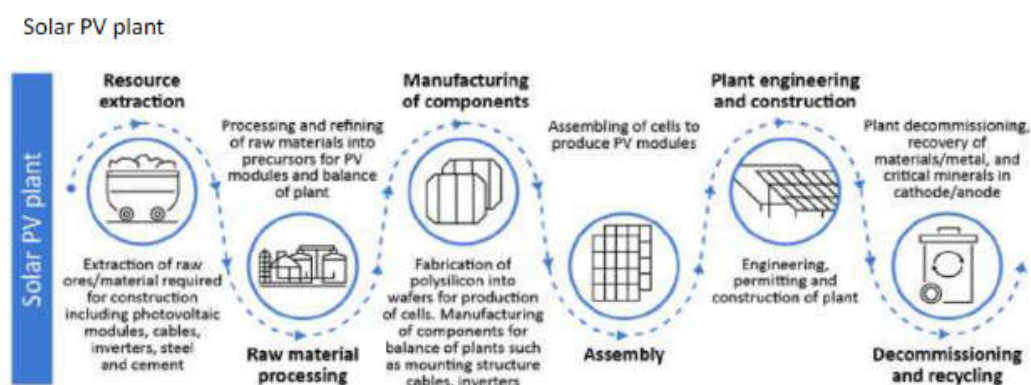
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<sup>1</sup> Paragraph 75, Supplementary Evidence 01.

- 5.9 Mineral extraction can only occur where the minerals are physically located, and where the industry is able to access them in a cost-effective way. These constraints have been recognised in the development of the NPSHPL. Clause 3.9(2)(j) of the NPSHPL lists a range of infrastructure, the New Zealand Defence Force and mineral extraction activities that are locationally constrained in terms of where they can locate and may necessarily be located on HPL in certain circumstances. In further justifying the pathway for mineral extraction in the NPSHPL, the section 32 reporting for that document recognised that mineral activities could deliver significant economic and social benefits to people and communities. In both the exposure drafts of the NPSIB and the changes to the NPSFW and NESFW, the Government has also sought to specifically recognise that mining can only occur where the resource is located, and a consenting pathway specific to mineral extraction activities has been developed where the applicant must then comply with the effects management hierarchy.
- 5.10 The drafting which OceanaGold has proposed is similar to the approach that has been adopted by the ORC in the development of the energy and infrastructure chapters. Both chapters contain a provision specific to the management of effects associated with electricity generation and infrastructure activities, attempting to provide a consenting pathway specific to these activities. The section 32 reporting sets out that these provisions have been drafted, *by having regard to the functional and operational needs of generation activities and recognises the needs of infrastructure and their importance to communities.*
- 5.11 In my view, these same statements apply equally to mineral extraction activities and therefore justify a bespoke approach being developed for such activities, similar to the intent and drafting of EIT-INF-P13. Extraction activities are locationally constrained, and the products of mining are essential to economic and social wellbeing. For example - aggregates are necessary for infrastructure and housing developments (e.g., roads, concrete) and in some cases, form the foundations for the very infrastructure that is provided for under EIT-INF-P13. Gold, copper, cobalt,

lithium and vanadium are necessary for electronics, use in medical equipment and treatments, hybrid cars, solar panels and batteries.

5.12 A report by the World Bank, *The Growing Role of Minerals and Metals for a Low Carbon Future*, has also predicted increased demand for many minerals as we move to a lower carbon economy. The importance of decarbonisation and climate change mitigation is a key feature of the PORPS. As the following diagram seeks to demonstrate, the supply chain for renewable electricity generation activities will all stem from access to a mineral resource. This illustrates that access to such resources is vitally important for our current and future social and economic wellbeing. In my view the PORPS needs to suitably recognise the value and locational constraints on the mining and extractive industry, and similar to the approach adopted for infrastructure and energy activities, allow access to a consenting pathway and the effects management hierarchy.



Source: International Energy Agency (IEA)

5.13 Within the Otago Region specifically, it also needs to be recognised that a significant mineral asset lies within the Marcaes mine. Ms Paul explains in her evidence the significance of the Macraes mining operation to the Otago Region and Mr Eaqub quantifies the economic value of the operation. The significance of this operation has also been recognised in the Operative Waitaki District Plan and again in the latest draft of the Waitaki District Plan. A special purpose zone for mining is expressly provided for in both plans. On the basis that the Waitaki District Plan is required to give effect to the PORPS, without any recognition of the

mining industry and its unique local and functional constraints and requirements in the PORPS, OceanaGold is concerned that there will be a disconnect between the PORPS and these lower order plans. In my view, this could result in perverse outcomes not anticipated or justified in terms of section 32 of the RMA.

- 5.14 In this regard, I note that the partially operative 2019 Otago RPS, in contrast to the PORPS, contains specific provisions relating to mineral resources in Otago. Importantly for OceanaGold, Policy 5.4.8 of the 2019 Otago RPS enabled an ability to apply for a resource consent to undertake a mining activity, and to have this tested via a discretionary consenting process. The policy framework in the 2019 Otago RPS appropriately recognised the importance of the mining and extraction activities in Otago, acknowledged its locational constraints and provided a consenting pathway for such projects. As set out in Ms Paul's evidence, these provisions resulted from two Environment Court hearings and a High Court decision and were only finalized in 2020. It is unclear to me from the section 32 reporting, or the subsequent section 42A reports, why these settled provisions (or some form of them) were not carried forward into the 2021 PORPS. That would have been efficient and suitably respectful of the Court process completed as part of settling the provisions within the 2019 RPS.

#### **Amendments to ECO – Ecosystems and Indigenous Biodiversity Provisions**

- 5.15 OceanaGold also provided some suggested re-drafting of the provisions within the ECO Chapter. These are attached as **Appendix C** to this evidence. Ms Boyd also addresses these in her supplementary evidence relating to general themes.
- 5.16 OceanaGold seeks an amendment to ECO-P4 to include provision for the development, operation, maintenance, or upgrade of mineral or aggregate extraction activities that provide significant national or regional benefit and that have a functional or operational need to locate within SNAs.

- 5.17 The wording of this Policy aligns with the draft NPSIB, and the NPSHPL which took effect on 17 October 2022. Ms Boyd does not accept OceanaGold’s amendments to the ECO Chapter because the draft NPSIB has no legal weighting, and the Council is not required to implement its direction until (and if) it comes into force.
- 5.18 Contrary to this view, the discussion throughout section 32 report indicates that the Regional Council intends to ensure that the PORPS aligns with the draft NPSIB, acknowledging the uncertainty due to the document’s draft status.<sup>2</sup> I understand it was also the Regional Council’s intention to review relevant PORPS provisions in light of any later versions of the NPSIB.<sup>3</sup>
- 5.19 The section 32 report also notes that the draft NPSIB provides a pathway for particular activities within significant natural areas (**SNA**). It is unclear why ECO-P4 has been drafted in such a way as to provide a pathway for only a select few of the activities that are listed in Clause 3.11 of the exposure draft NPSIB. Ms Boyd’s evidence explains that the *other activities listed in ECO-P4 largely relate to supporting the social and cultural well being of people and communities, and their health and safety, rather than economic development*. In my view, this approach has resulted in a very narrow selection of activities, which appear to have been chosen by the ORC on a highly subjective basis, rather than objectively considering the locational and functional constraints of certain activities, and how they might be further enabled or constrained by the drafting to the ECO provisions.
- 5.20 The Government released an exposure draft of the NPSIB in June 2022 (“**exposure draft**”). The exposure draft takes into consideration feedback on the draft NPSIB. As set out in Ms Paul’s evidence, an exposure draft will usually be provided where the Government policy has been determined, and the wording or implementation is being tested. In my opinion, the exposure draft now provides the best indication of future

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<sup>2</sup> Paragraphs 434, 436, Section 32.

<sup>3</sup> Paragraph 794, Section 32.

policy direction and is the framework against which alignment of the PORPS and the management of SNAs should be sought. It is evident from the NPSHPL and the exposure draft of the NPSIB and NESF that the Government is clearly seeking to provide a pathway for mineral and other extractives. I see no valid reason why the PORPS should be inconsistent with this.

5.21 OceanaGold also sought to streamline the drafting of ECO-P6 and future-proof it so that it could be consistent with the NPSIB definition of an “effects management hierarchy”, via the following amendments:

*Maintain Otago’s indigenous biodiversity (excluding the coastal environment and areas managed protected<sup>45</sup> under ECO-P3) by applying the following biodiversity effects management hierarchy (in relation to indigenous biodiversity)<sup>46</sup> in decision-making on applications for resource consent and notices of requirement.:*

- (1) avoid adverse effects as the first priority,*
- (2) where adverse effects demonstrably cannot be completely avoided, they are remedied,*
- (3) where adverse effects demonstrably cannot be completely avoided or remedied, they are mitigated,*
- (4) where there are residual adverse effects after avoidance, remediation, and mitigation, then the residual adverse effects are offset in accordance with APP3, and*
- (5) if biodiversity offsetting of residual adverse effects is not possible, then:*
  - (a) the residual adverse effects are compensated for in accordance with APP4, and*
  - (b) if the residual adverse effects cannot be compensated for in accordance with APP4, the activity is avoided.*

5.22 Ms Boyd is concerned that there is no explanation for deleting the hierarchy set out in ECO – P6 and that it is unclear whether OceanaGold intended to remove a central plank of the policy framework or understood the implications of deleting the hierarchy for the protection of SNAs.

5.23 The amendments being sought by OceanaGold are not intended to remove an obligation to apply an effects management hierarchy; rather, they seek to avoid prematurely locking in a management approach in the

Policy which is inconsistent with higher order and national documents such as the NPSFM 2020 and the pending NPSIB.

- 5.24 Mr Christensen proposes that additional definitions are added to the PORPS which provide for terrestrial ‘biodiversity offsets’ and ‘biodiversity compensation’, the wording of which is aligned with the definitions of aquatic offset and aquatic compensation in the NPSFM. He also considers that the existing definition of the ‘effects management hierarchy’ in the PORPS should be amended so that it applies to both terrestrial and aquatic offsets and compensation. I agree with these amendments and consider that my drafting of ECO-P6 enables the application of an effects management hierarchy in accordance with relevant and appropriate definitions of what this requires. I discuss further issues with the ECO provisions later in this evidence.

#### **Amendments to UFD – Urban Form and Development Provisions**

- 5.25 OceanaGold’s concerns surrounding this chapter stem mainly from the potential prohibition of activities consistent with the character of the rural environment and what appears as an unbalanced and short-sighted view of the significant (and positive) social and economic benefits which mineral extraction generates.
- 5.26 The provision *UFD-O4 – Development in rural areas*, for example, is strongly worded in its use of “avoid” when relating to all impacts on significant values and features as well as land identified as highly productive, to which OceanaGold consider this all-encompassing reference to be too restrictive for rural areas. There is no allowance, for example, for other proven alternatives to manage the potential impacts or effects which might otherwise be effective and appropriate. These alternatives would include mitigation, remediation, offsetting, or compensation / enhancement measures and can be highly effective effects management techniques. An example of such is the Middlemarch Wetland Offset Agreement at the Macraes Operation, where an agreement was established with a local landowner to preserve and enhance 5.4 hectares of ephemeral wetlands for the purpose of



offsetting impacts to ephemeral wetlands associated with the Deepdell Open pit expansion. The agreement is for a 50-year term and provides access for research and management of the wetland to achieve biodiversity goals and objectives as agreed in the Deepdell North resource consent.

- 5.27 As I have already discussed, Ms Boyd has recognised that the NPSHPL definition is contrary to the reasoning for the recommendation in the section 42A report, where the recommended definition is more limiting than the NPSHPL definition.
- 5.28 As such, Ms Boyd considers that consistency with the NPSHPL is appropriate in relation to the activities included in the definition and therefore recommends adopting the term “land-based primary production” for highly productive land as outlined in the NPSHPL. As discussed above I agree with Ms Boyd’s recommendation to replace this definition instead of the one included in the section 42A report. However, there remains a gap in the drafting of the PORPS in providing for mining to be recognised as part of primary production activities. Mining and extractive industries are also legitimate rural activities. These activities also require a legitimate means of being assessed in the consenting realm, according to their merits. The provisions I have developed and attached as **Appendix B** seek to provide a suitably balanced pathway for mineral extraction activities.
- 5.29 OceanaGold has also shown that rural areas can be developed for use by the extractive industries and still prioritise agricultural and other primary production activities concurrently.
- 5.30 For example, in Waihi, where the active Martha Underground Mine is in operation, the batters (slopes of the embankments acting as retaining walls) to Tailing Storage Facilities 1 and 1A are sectioned into paddocks and have been successfully rehabilitated with topsoil, native plantings and pasture. These different ‘uses’ provide multipurpose outcomes to the area, including improved landscapes and regeneration of native

plantings, but importantly for the above point, the pasture paddocks are leased out to local farms for cattle grazing.

- 5.31 The ability to promote secondary uses within an area allocated to mining proves that these activities can be conducted in ways that both promote land uses for primary production and generate indirect economic benefits to the community. To assume that an area will be developed for a single activity (i.e., mining) and the assumption that subsequent primary production cannot be prioritised is limiting in itself.
- 5.32 I am of the view that the POPRS needs to expressly acknowledge the importance of the mineral and extractives industry in Otago. Establishing barriers either directly (or inadvertently) at this policy level will not appropriately provide for social and economic wellbeing, nor will it achieve the sustainable management purpose of the RMA.
- 5.33 I note that Ms Boyd agrees that there is merit in some parts of the amendments being sought by OceanaGold. These relate to:
- 5.33.1 Recognition of the benefits of mineral and aggregate extraction for the provision of infrastructure and the social and economic wellbeing of Otago's communities; and
- 5.33.2 Recognition of the locational constraints faced by these activities.
- 5.34 Ms Boyd goes on to say that *“mining and aggregate extraction does not clearly fit within any of the chapters of the pORPS. The two most appropriate, in my opinion, are the LF-LS subsection and the UFD chapter, as identified by OGNZL. Having considered the proposed amendments, as well as the scope and intent of both chapters, I consider that the UFD chapter is the most appropriate place for additional policy direction. This is primarily because the UFD chapter manages rural areas and the activities likely to occur within them, including primary production (which includes mining and quarrying).”*

5.35 Ms Boyd therefore agrees with an amendment to UFD-P7 – Rural Areas insofar as it supports mineral and aggregate extractive activities where they relate to the provision of infrastructure. I cannot find any environmental or economic justification as to why this should be limited to the provision of infrastructure. In my view, this provision has the potential to constrain the Macraes Mining Operation significantly, and I do not consider that the economic costs of this have been suitably justified in section 32 terms. The provisions I have set out in **Appendix B** are therefore preferred. I also think that these provisions are better suited to the Land and Soil Chapter, on the basis that minerals may exist on land anywhere, not just within the rural environment.

## **6. DEFINITIONS**

6.1 OceanaGold made submissions on the definition of both Rural and Urban Areas. OceanaGold sought to delete these definitions on the basis that they were too simplistic, and it was unclear how such terms would be used in the context of the Macraes Mineral Zone, for example. I agree that these definitions appear unnecessary, and they could result in implementation issues, particularly in drafting lower order plans. It is too simplistic to assume all land which is not “urban” is “rural” and vice versa. I support OceanaGold’s submission to delete these definitions.

## **7. SRMR – SIGNIFICANT RESOURCE MANAGEMENT ISSUES FOR THE REGION**

**SRMR-I10 – Economic and domestic activities in Otago use natural resources but do not always properly account for the environmental stresses or the future impacts they cause.**

7.1 OceanaGold submitted that the PORPS does not adequately recognise and provide for existing natural and physical resources such as the Macraes Mining Operation. While OceanaGold agrees that it is important to balance these activities with effects on natural resources, the PORPS as a regionally strategic document, also needs to recognise and provide for the benefits of such industry in the region and ensure that it can be continued within appropriate environmental parameters.

- 7.2 While the context section of this issue statement refers to the region’s important economic activities (including mining contributing 4.5% of the regional GDP), the issue focuses heavily on the adverse effects that can be associated with these activities. OceanaGold submitted that this needs to be better balanced with an issue also identifying that economic activities like mining are important to the region, and these need to be similarly recognised and provided for in the PORPS so that the overall sustainable and enabling purpose of the RMA is also achieved.
- 7.3 As I have outlined earlier, I agree with OceanaGold that mineral and aggregate extraction activities are important to the social, economic and health and wellbeing of people and communities. As a key resource management issue in Otago, and with the existence of the Macraes Mine in particular, this should be suitably recognised in amendments to this issue statement, supported by the provisions which are attached as **Appendix B** to this evidence.
- 7.4 OceanaGold also submitted on RMIA-WAI-15 which does not appear to be part of the proposed freshwater planning instrument. OceanaGold opposes the reference to water quality being adversely impacted by mining activities. Where poor land management practices associated with mining (as with all other land uses) causes a deterioration in water quality this is already addressed in the first bullet point under this heading.

## **8. IM – INTEGRATED MANAGEMENT**

### **IM- P1 Integrated Management and IM-P2**

- 8.1 OceanaGold submitted on IM-P2, expressing concern that such provisions reflect the prioritization set out in the National Policy Statement for Freshwater Management 2020 (**NPSFM**) to all resources, rather than just freshwater.
- 8.2 With respect to IM-P1 and IM-P2, the section 42A report writer agrees with various submitters concerns in that “the ordinary principles of interpretation apply to the IM chapter. When considering the provisions of

an RPS, I consider it is standard practice to consider all of the provisions together and according to the terms in which they are expressed... and I also agree that IM-P1 is more akin to guidance".<sup>4</sup>

8.3 The report goes on to conclude that "despite this, I do not recommend deleting the policy...given that that this chapter is relevant to all other chapters of the pORPS, I consider it may assist plan readers to retain the policy so that there is clarity on this relationship"<sup>5</sup>. Furthermore, in later discussions, it is noted that "IM-P1 provides direction for decision-makers on applying the provisions of the pORPS and consider that the type of direction provided by IM-P2 would be better included in that policy. In my view, IM-P1 sets out the basic approach to interpretation of provisions (i.e. readers are to consider all relevant provisions and then consider them on the terms in which they are expressed). I consider that the intent of IM-P2 as described in the section 32 evaluation report is the next step in this process of consideration and recommend incorporating IM-P2 into a new clause (3a) in IM-P1".<sup>6</sup>

8.4 As such, IM-P1 and IM-P2 were recommended to be included within the one policy.

8.5 In my view, the policy (and the subsequent amendment) is unnecessary and should be either deleted in full, or further amended to make it clear that this relates only to freshwater, given that it reflects the prioritisation of considerations stated within the NPSFM. A broader application of the NPSFM prioritisation to all resources, as set out in IM-P2 is, in my opinion, inappropriate.

#### **IM-P14 – Human Impact**

8.6 OceanaGold's submission sought the deletion of IM-P14 due to the inherently uncertain nature of the drafting, with a lack of clarity behind references to various limits and states of degradation. The section 42A

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<sup>4</sup> Paragraph 157

<sup>5</sup> Section 6.13.3.1, paragraph 192, pages 40-41 of Chapter 6 of the Section 42A Report.

<sup>6</sup> Paragraph 167

author has recommended amendments to this Policy. However, no clear clarification has been given about how these limits will be set and operate in the lower order planning instruments.

- 8.7 IM-P14(2) is still framed as requiring that activities occur within limits. This approach is not consistent with the RMA's sustainable management purpose. Section 5 enables activities to provide for people's wellbeing, as long as any adverse effects of activities on resources, and the resources themselves, are managed sustainably. Some environmental change can be appropriate to enable a net positive outcome.
- 8.8 I also note that IM-P14(3) adds more ambiguity insofar as it is unclear how "regularly assessing and adjusting" limits would affect existing uses and consented activities beyond the review of consent conditions under section 128 of the RMA.
- 8.9 I acknowledge that IM-M1(6) requires regional and district plans to establish limits wherever practical to support healthy ecosystems and intrinsic values. The section 42A report writer has also clarified that with respect to freshwater, the term limit has the meaning defined in the NPSFM, and elsewhere limit has its natural and ordinary meaning. I do not agree that this latter interpretation is appropriate in the context of the RMA. I agree with OceanaGold that this Policy should be deleted due to the lack of clarity and likely issues with its implementation.

## **9. AIR - AIR**

### **Amendments to AIR – Air**

- 9.1 The author of the section 42A report maintains that AIR – P4 should require the avoidance of discharges that cause noxious and dangerous effects. I agree with that recommendation. However, the subsequent sentence in the Policy which states "*... and avoidance, as the first priority of discharges to air that cause offensive or objectionable effects.*", is too limiting and relies on a subjective assessment being made in any given circumstance. I agree with OceanaGold's submission which emphasises that to "avoid" all offensive or objectionable discharges, which, can be

subjective, and are sometimes generated as a function of operational need, or as occasionally required in the short-term, is too onerous without the option to manage effects via mitigation, remediation, offsetting or other amenity compensatory means.

9.2 Additionally, the PORPS 2019 contains provisions<sup>7</sup> that seek to maintain or enhance ambient air quality, manage offensive or objectionable discharges, and provide for offsetting. It is unclear to me why provision AIR – P4 has deviated to a more restrictive state when the outcomes sought in PORPS 2019 remain appropriate.

9.3 Following my reasons above and to avoid mis-interpretation issues which may arise from the section 42A report wording, I recommend Policy **AIR – P4 Avoiding Certain Discharges**, and subsequently **AIR-M2 – Regional plans** to be amended as follows:

*AIR – P4 Avoiding Certain Discharges*

*Avoid discharges to air that cause noxious or dangerous effects and avoid, ~~as the first priority, remedy, or mitigate~~ discharges to air that cause offensive, or objectionable effects.*

*AIR-M2 – Regional Plans*

*No later than 31 December 2024, Otago Regional Council must prepare or amend and maintain its regional plans to:*

*(1) avoid discharges to air that cause noxious or dangerous effects and avoid, ~~as the first priority, remedy, or mitigate~~ discharges to air that cause offensive, or objectionable effects,*

*[...]*

## **10. LF – LAND AND FRESHWATER**

10.1 OceanaGold lodged submissions on the Land and Freshwater provisions of the PORPS. Some of these provisions have now been notified as part of the Freshwater Planning Instrument and I understand that OceanaGold’s submissions on those provisions are null and void. Those

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<sup>7</sup> Policy 3.1.6.

provisions, where I disagree with the recommendations of the section 42A reports, and which are subject to the Schedule 1 process, are discussed below.

### **LF-FW-P13 – Preserving Natural Character**

- 10.2 The submission of OceanaGold identified concerns with the cross-references to and implications arising from the application of policies ECO-P3 and ECO-P6 (and consequently APP3 and APP4), resulting in a lack of clarity about how and when biodiversity offsetting and compensation become available as part of the effects management hierarchy. Without clear recourse to these opportunities, many development proposals would default to a requirement where effects must be avoided. Similar to the amendments proposed to ECO-P6 discussed above, I agree with OceanaGold’s amendment to LF-FW-P13 to simply refer to the requirement to apply an “effects management hierarchy” for addressing the effects of an activity on natural character.
- 10.3 OceanaGold also submitted that Clause 4 to this Policy should be deleted. This provision seeks that natural character is preserved wherever possible by sustaining the form and function of a water body that reflects its natural behaviours. To enable the development and mining of Macraes Mine Operation, changes to the natural form and function of waterbodies has occurred and will likely do so into the future. A number of smaller tributaries have been reclaimed as a result of the construction of waste rock stacks, and some larger diversions have occurred throughout the site. The effects of these activities have been appropriately considered as part of various consenting processes and found to be acceptable by decision makers.
- 10.4 I agree with OceanaGold’s concerns and note that it will always be “possible” for a proposal to sustain the natural form and function of a waterbody by avoiding the particular activity that is affecting it. This may not always be practicable where an activity is locational and operationally constrained such as within a mineral or aggregate extraction site. I also consider this Clause to be superfluous given the intent of Clause (1) which



seeks to avoid the loss of values or extent of a river, unless there is functional need for the activity in that location, which appropriately recognises that there may be circumstances where locating within or affecting a waterbody will occur and therefore affect the natural form and function of that resource. I therefore consider that this provision should be amended as follows:

*Preserve the natural character of lakes and rivers and their beds and margins by:*

- (1) avoiding the loss of values or extent of a river, unless:
  - (a) there is a functional need for the activity in that location, and*
  - (b) the effects of the activity are managed by applying:
    - ~~*(i) for effects on indigenous biodiversity, either ECO-P3 or ECO-P6 (whichever is applicable), and*~~
    - (ii) for other effects, the effects management hierarchy,***
- (2) not granting resource consent for activities in (1) unless Otago Regional Council is satisfied that:
  - (a) the application demonstrates how each step of the effects management hierarchies in (1)(b) will be applied to the loss of values or extent of the river, and*
  - (b) any consent is granted subject to conditions that apply the effects management hierarchies in (1)(b),**
- (3) establishing environmental flow and level regimes and water quality standards that support the health and well-being of the water body,*
- ~~*(4) wherever possible, sustaining the form and function of a water body that reflects its natural behaviours,*~~
- (5) recognising and implementing the restrictions in Water Conservation Orders,*
- (6) preventing the impounding or control of the level of Lake Wanaka,*
- (7) preventing modification that would reduce the braided character of a river, and*
- (8) controlling the use of water and land that would adversely affect the natural character of the water body.*

## **LF-LS-O11 Land and Soil; LF-LS-P19 Highly Productive Land**

- 10.5 OceanaGold made submissions on these provisions, essentially seeking that the land and soil provisions within the PORPS appropriately recognise and provide for mineral and aggregate extraction activities as a highly productive land use. While OceanaGold sought amendments to these particular provisions, I note that the issues raised in the submission are primarily addressed via the provisions I have attached as **Appendix B**. The rationale for these provisions is set out earlier in my evidence.

## **Removal of Montane Tall Tussock Grassland**

- 10.6 OceanaGold opposed an amendment being sought by Forest and Bird seeking to amend “minimising” to “avoiding” in LF-LS-M12(1)(b) which relates to the management of montane tall tussock grasslands. Ms Boyd explains in her supplementary evidence that initially she supported this amendment, but has since reconsidered this because this vegetation appears to occupy a large area of the region and it may not be possible to always avoid its removal. Ms Boyd also sought to clarify that the purpose of the discouragement of its removal in this method is to recognise its importance in capturing and holding precipitation. I support Ms Boyd’s proposed LF-LS-M12(1)(b) amendments.

## **11. ECO – ECOSYSTEMS AND INDIGENOUS BIODIVERSITY**

### **Mining consenting pathway within an ecological context**

- 11.1 As outlined in its submission, OceanaGold has significant concerns with the drafting and potential implementation of the ECO provisions in the PORPS. Under the revised PORPS, these pathways likely will no longer be available, given that the proposed significance criteria in the PORPS are more stringent and restrictive than those in higher order policy (NPSIB), and effectively rule out any activity which would result in effects on SNAs and Indigenous biodiversity. This outcome will put enormous pressure on the feasibility of an already locationally constrained activity and will likely become too onerous to achieve, resulting in the termination

of future development and the loss of social and economic benefits in its wake.

### **ECO-P2 and APP2**

- 11.2 OceanaGold's submission on ECO-P2 centres around concerns that the Policy, in conjunction with criteria set out in APP2, will result in a large portion of the Otago region (and in particular, within the Macraes Ecological District) being recognised as an SNA. The Policy requires that SNAs be identified in accordance with the criteria set out in APP2, rather than a requirement to clearly map and schedule such areas in lower-order plans, raising concerns that this approach lacks the necessary precision. Amendments to this provision were sought to require mapped areas to be scheduled in lower-order plans.
- 11.3 Ms Hardiman disputes this amendment because she considers that the above point is covered in ECO-M2 and ECO-M3, which states that local authorities are required to work collaboratively to identify and map SNAs. However, she does recommend amending ECO-P2 to specify that SNAs should be identified and mapped. I agree that these changes are necessary to assist clarity and accuracy. However, it appears that until such mapping has occurred, all resource consents will still need to defer to the criteria in APP2 by virtue of the ECO-methods, which state that:
- Until significant natural areas are identified and mapped in accordance with (1) and (2), require ecological assessments to be provided with applications for resource consent and notices of requirement that identify whether affected areas are significant natural areas in accordance with APP2.*
- 11.4 The issues with the criteria will therefore continue for some time into the future as it will take some time for the mapping to be established in the lower order plans.
- 11.5 The criteria set out in APP2 also appear to differ from the criteria that were recommended to the ORC by its consultants, Wildlands (refer Appendix 17 to the section 32 report). It appears that the Wildlands

criteria were used for informing the section 32 analysis, however, there is no clear understanding provided in the documentation as to why there has been a shift to what was subsequently notified. Consequently, OceanaGold is concerned that the criteria set out in APP2 have not been evaluated and found to be suitably robust under section 32 of the RMA.

- 11.6 OceanaGold also expressed the concerns that the only significant mapping which was submitted as part of the supporting documentation relates to faunal SNA values, noting that mapping of flora SNAs has not yet been undertaken. Additionally, in his evidence on the extent of SNAs within Otago <sup>8</sup>, Dr Thorsen highlights that neither the PORPS nor the s32 report makes an assessment on the likely extent of SNAs within Otago if the proposed provisions are adopted, and, therefore, the impact of these policies on economic and social issues have not been considered or addressed.
- 11.7 As previously noted in its submission, OceanaGold is concerned that by applying the criteria in APP2 large areas of the region would trigger one or more of the criteria and become an SNA. The extent of SNAs in the region is therefore currently unknown. As evidenced in other regions such as Northland, approximately 42% of the Far North District contains SNAs. This equates to nearly half of the land area within the district. In his evidence Dr Thorsen has estimated that approximately 9.8% of freehold land in Otago (not already protected under DoC or by a covenant) could qualify as a SNA under APP2. OceanaGold is concerned that assigning half the land area to SNA within the Otago region (in conjunction with the associated ECO policies) will likely result in significant developmental constraints. The associated costs of applying a policy suite that could effectively inhibit significant development opportunities in such areas is also unknown, and subsequent discussion in the section 32 reports has not adequately accounted for these potential losses.
- 11.8 An example of the above situation is best outlined by a series of seepage and ephemeral wetlands which are classified as being “historically rare

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<sup>8</sup> Paragraph 31 – Evidence of Dr. Thorsen.

and nationally endangered ecosystems” within the Deepdell North Stage III project area.

- 11.9 A mapping exercise was undertaken within the Macraes Ecological District and showed that there are at least 1,360 examples of such wetlands greater than one hectare, as well as an unknown number of features in the similar likeness of less than one-hectare present. Of the other known examples throughout Otago, there are reports of at least 3,000 of these categories of wetlands. For context, the recently consented Deepdell mining project affected approximately 0.38 hectares of these wetland types, with the associated effects being provided for through offset/enhancement of an area over 5 hectares. Under the proposed suite of provisions, the development of this project would have been prevented due to the requirement to avoid the effects on these environments, without any recourse being available to mining activities through the current drafting of the PORPS to offset or provide compensation.
- 11.10 I consider that there is the potential for undue restriction with ECO-P2 on the basis that in situations similar to the above, the loss of habitat must be avoided without consideration of the significance of the physical effects on the habitats, the economic benefits of the proposal, or the overall biodiversity improvements (and possible net-gain) that could be offered.
- 11.11 I note that it does not appear that these concerns have been addressed in the section 42A report by Ms Hardiman.
- 11.12 Given that the criteria in APP2 is to remain as something that will inform resource consent applications until such time as the formal mapping exercises are completed. I consider this needs to be drafted so that it is at least consistent with best practice and/or national direction, such as the criteria which are set out in the Exposure Draft NPSIB.

**ECO- P3, P4, P5 and P6**

- 11.13 OceanaGold expressed concerns that ECO-P3, as drafted, is highly likely to restrict significant development in the Otago Region. The Policy requires all SNAs be protected by avoiding adverse effects that result in any reduction of area or value, without consideration for whether those effects are significant on the species, the surrounding area or the ecological district. There are also no provisions that enable the ability for remedying, mitigating, offset, or compensating effects associated with mineral extraction activities.
- 11.14 In the section 42A report, it appears Ms Hardiman does not directly address OceanaGold's submission to delete provision ECO-P3. However, based on her feedback on other submissions where she has stated "... *The purpose of ECO-P3 is to protect SNAs and taoka by avoiding adverse effects that result in either a reduction of the identified area or values or loss of taoka*" it can be assumed that she disagrees with OceanaGold on this provision.
- 11.15 As outlined in his evidence, Dr Thorsen assessed the impact of Topic ECO on future OceanaGold mining activities and identifies the issue that ECO-P3 is "... *structured so that access to the effects management hierarchy in P6 occurs subsequent to the requirement to avoid any reduction of the area or values (even if those values are not themselves significant) identified under ECO-P2(1). As avoidance is not possible with commercial activities such as mining (which is locationally constrained) and as mining is not provided for in ECO-P4, it effectively means that any new mining, such as that indicated by the Areas of Interest (AOI), cannot occur. This is particularly concerning given the large areas of land affected by the broad criteria used to identify SNAs.*"
- 11.16 Taking into account the submission of OceanaGold and the evidence provided by Dr Thorsen, I consider that this Policy is unduly restrictive and likely to perpetuate a regulatory environment that constrains significant development in the Otago region. While I appreciate that the Policy is designed to protect significant natural areas and indigenous biodiversity in Otago from further degradation and decline (which I agree

is an important area of work and one which must be carefully balanced when drafted into Policy), I do not, however, consider that ECO-P3 executes this effectively. Notwithstanding this, I note that the amendments I propose in **Appendix C** to this evidence also resolve OceanaGold's concerns with ECO-P3.

- 11.17 In reference to ECO-P4, OceanaGold is concerned that this Policy is inconsistent with national direction, such as the Exposure Draft NPSIB. Subsequently, OceanaGold sought an amendment to include provision for the development, operation, maintenance, or upgrade of mineral or aggregate extraction activities that provide significant national or regional benefit and that have a functional or operational need to locate in these areas. These amendments are shown in **Appendix C**.
- 11.18 Ms. Hardiman and Ms Boyd, in their section 42A report<sup>9</sup> and supplementary evidence,<sup>10</sup> do not recommend adopting this amendment because they believe widening the planning pathway for these activities would weaken the purpose of the ECO-O1. Ms Boyd also considers that the Exposure Draft NPSIB has no legal status, and that Council is not required to implement its direction until (and if) it becomes operative. I have discussed the issues with this approach earlier in my evidence.
- 11.19 It remains unclear to me why the PORPS has retained a consenting pathway for some of the activities recognised in the Exposure Draft of the NPSIB, such as nationally and regionally significant infrastructure, but not mineral and aggregate extraction, which are similarly constrained by location and function, and in the context of Marcaes Mining Operation, in particular, provides a substantial contribution to the social and economic wellbeing of people and communities in Otago.
- 11.20 The approach of ECO-P4 also fails to recognise the locationally constrained nature of mining, a regionally important activity similar to infrastructure, which cannot be redirected to other areas. Minerals are

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<sup>9</sup> Paragraph 190, section 42A Report.

<sup>10</sup> Paragraph 66, Supplementary Evidence – Intro and General Themes.

only located in certain areas and sometimes co-located with areas of indigenous biodiversity that could be classified as SNAs. The PORPS should recognise in these instances the aim must be to strike a balance and that avoidance of activities which may have adverse effects on SNAs, may not always be the optimal solution for leading to the protection and maintenance of indigenous biodiversity. Management techniques such as remediation, mitigation, offsetting and/or compensation can lead to net-gain biodiversity outcomes while also enabling economic and social outcomes as discussed in Mr Christensen's evidence.

11.21 OceanaGold sought for Policy ECO-P5 to be either deleted or amended in the PORPS because it is unclear what defines existing activities. There is uncertainty as to whether 'existing activities' refer to those entitled to s10 and s20 rights under the RMA, or whether it would apply to areas zoned for that activity. The amendment sought was to provide for the development of new and existing mineral extraction activities in appropriately zoned areas.

11.22 Ms Hardiman does not recommend accepting these amendments, stating that ECO-P4 provides for new activities within SNAs and that ECO-P5 is designed to provide a framework for lower order plans where specific zone provisions are to sit. For these reasons, she states that the amendments are too detailed and while she does not recommend accepting the submission, she proposes the following amendments;

*ECO-P5 – Existing activities in significant natural areas*

*Except as provided for by ECO-P4, provide for existing activities that are lawfully established within significant natural areas (outside the coastal environment) and that may adversely affect indigenous species and ecosystems that are taoka, if:*

*(1) the continuation, maintenance and minor upgrades of an existing activity that is lawfully established will not lead to the loss (including through cumulative loss) of extent or degradation of the ecological integrity of any significant natural area or indigenous species or ecosystems that are taoka, and*



*(2) the adverse effects from the continuation, maintenance and minor upgrades of an existing activity that is lawfully established are no greater in character, spatial extent, intensity or scale than they were before this RPS became operative.*

- 11.23 In my view, the proposed section 42A amendments only serve to constrain the application of this Policy further. Extraction activities within the Macraes Minerals Zone in the Waitaki District are anticipated yet may still trigger a consenting requirement. As a result, new or expanded mining activities in this zone may not always be “lawfully established” and therefore be covered by this policy. I have therefore suggested amendments to this Policy in **Appendix C**.
- 11.24 I would like to emphasise here however the importance of allowing and providing for activities to continue operations where they are already largely in-situ. This is due to, not only the economical efficiencies but also the environmental and societal practicalities that arise from the pre-established infrastructure in the Macraes Mineral Zone, highlighting again the locational constraints of mineral resources.
- 11.25 In its submission, OceanaGold supports utilising the effects management hierarchy outlined in Policy ECO-P6 and the cascading approach that is taken. However, OceanaGold expressed concerns around this Policy's limitations and sought amendments to allow regionally significant activities, such as mineral extraction and mining, to access this hierarchy. In addition, OceanaGold is concerned that the effects management hierarchy of ECO-P6 is unavailable to their activities due to the likelihood that significant impacts to biodiversity are often unavoidable due to the locational and functional constraints of mining.
- 11.26 Ms Hardiman does not recommend accepting the amendments in the section 42A report stating that creating a ‘carve-out’ for mining will weaken ECO-P6 and its purpose. She also says that an applicant can propose something else, and it will be tested against the provisions in PORPS or lower order plans.

- 11.27 I disagree with Ms Hardiman on her position that OceanaGold is seeking a carve out for mining. OceanaGold is not trying to achieve dispensation for impacts on biodiversity but rather, they are seeking a lawful pathway for current (and new) activities to continue development while simultaneously achieving appropriate (and wherever practicable, positive) environmental outcomes for biodiversity. I agree that for locationally constrained activities, such as infrastructure and mineral extraction, this pathway should at least be available to enable a future consenting process to assess the pros and cons of such a proposal.
- 11.28 In general, I agree with the principles of this cascading approach that has been developed for ECO-P6. However, as I note earlier, I am concerned that drafting this hierarchy in the Policy renders it inconsistent with higher-order national planning documents.
- 11.29 I would also like to draw attention to the fact that when the effects management hierarchy of ECO-P6 is regarded alongside the limitations and bounds set out in APP3 and APP4 (in relation to when biodiversity offsetting and compensation are available outcomes), the Policy becomes unworkable in certain situations.
- 11.30 For instance, APP3 and APP4 contain a set of criteria as to when both offsetting and compensation is not available. This criterion effectively acts as a bottom line or limit, and if triggered (say, for the clearance of indigenous flora for minerals extraction) offsetting and / or compensation will not be an option as part of any effects management strategy resulting in a need to resort to the first management tier of avoidance. This is discussed in the evidence of Mr Christensen.
- 11.31 Importantly, the Policy should recognise that the most important result is ultimately the biodiversity outcome that is achieved. Following the hierarchy in sequence may not always achieve the best outcomes for biodiversity, and in complex proposals, the best outcome is often delivered by a suite of actions that encompass all or most of the elements in the hierarchy.

11.32 The amendments that I have made to ECO-P6 in **Appendix C** seek to address these concerns.

### **APP3 and APP4**

11.33 Mr Christensen has addressed the issues with APP3 and APP4 in detail in his evidence. He observes that APP3 as notified appears more as a prohibited activity rule rather than Policy which sets out assessment matters against which a decision maker can exercise discretionary judgement on the appropriateness of a proposed offset, having considered all the evidence.

11.34 Similar concerns apply to APP4, in that a provision in a statutory planning document which directs that a decision-maker can only consider biodiversity compensation which is defined by way of specific criteria (as the PORPS purports to do) is not as useful as a provision which defines biodiversity compensation in terms of its purpose and then provides a framework of principles against which the appropriateness of any proposed compensation can be assessed.

11.35 Mr Christensen in Appendix 4 to his evidence recommended amendments to these appendices, which I support.

## **12. HAZ – HAZARDS AND RISKS**

### **Amendments to HAZ – NH – Natural Hazards**

12.1 The Council Officer, in response to several queries, has advised that to determine and quantify whether a risk is “*tolerable*”, a methodology for natural hazard risk assessment is provided through APP6. The Council Officer has also recommended that **HAZ-NH-O1 – Natural hazards** be amended to outline that risks may be maintained and managed to remain at an acceptable and tolerable level, to which I agree with these recommendations.

12.2 In relation to **HAZ-NH-P3 – New Activities**, OceanaGold recognises that the intent of the Policy is to prevent the occurrence of significant natural hazards resulting from an activity but considers that natural hazard risks

(of which some may be significant) can be appropriately managed through conservative hazard risk management.

- 12.3 In response to OceanaGold’s request that the Policy be amended to acknowledge that natural hazard risk, even significant risk, may exist but activities can be managed to reduce natural hazard effects, the Council Officer directs to APP6 which requires an assessment of natural hazard risk. The risk assessment also requires an assessment of the likelihood of an event occurrence and the subsequent consequences. In my opinion, activities can be managed in a way that significant risks are reduced to a lower risk level and that the potential consequences can be mitigated. Accordingly, APP6 should not prevent resource users from undertaking activities where a conservative hazard risk management approach is employed.

#### **Amendments to HAZ-CL Contaminated Land**

- 12.4 The section 42A report writer disagrees with OceanaGold’s submission that the provision **HAZ-CL-P15 – New contaminated land** should be deleted. The Council Officer considers that the Policy is necessary to achieve the direction set out in objective HAZ-CL-O1 to protect human health, mana whenua values and the environment in Otago, however, acknowledges the term “minimise” has an element of uncertainty.
- 12.5 While I recognise that the Council Officer offers some amendments to the aforementioned Policy to address the submitters concerns, I consider that “remedy or mitigate” would be more appropriate than to “minimise to the smallest extent practicable”. I propose the following amendments to the section 42A policy recommendation:

#### ***HAZ-CL-P15 – New contaminated land***

*Avoid the creation of new contaminated land or, where this is not practicable, minimise to the smallest extent practicable manage land so that adverse effects on the environment and mana whenua values are reduced, remedied or mitigated.*

12.6 Drafting the Policy in this way not only captures the adverse effects of newly contaminated land and requires subsequent remedial and/or mitigation efforts, but it also is more consistent with language used in the RMA.

### **13. HCV – HISTORICAL HERITAGE**

#### **Amendments to HCV-HH- Historic Heritage**

13.1 OceanaGold’s submission on **HCV-HH- Historic Heritage** to oppose policy **HCV-HH-P5** was founded on the basis that the Policy is likely to be overly restrictive and has potential to significantly constrain development on sites which may be proximal to, or contain, historic heritage.

13.2 The section 42A reporting officer recommends rejecting this submission because it was “...*seeking exemptions and carve-outs for particular activities*”.

13.3 Given the long-standing nature of the mining activity within the Macraes area, there are examples of historic mining sites within the Macraes Mining operation. I find it difficult to agree with the section 42A report recommendations in this instance, particularly in reference to the view that OceanaGold are seeking carve-outs. OceanaGold’s position has nuance here because the mining activities of today are similar in nature to the historic activities in which generate historic heritage sites. (i.e., the types of activities that took place at Macraes in the past, and that have subsequently led to potential heritage sites or artefacts, are the same activities that are being undertaken onsite for present-day mining). Therefore, appropriate methods to manage historic heritage for mining need to be considered.

13.4 It is important to note that while OceanaGold seeks to enhance its early history where this is practicable and appropriate to do so, there may be some artefacts or sites which bear significance which may be affected by present day mining activities. If this situation were to arise, OceanaGold seeks, where practicable, to adopt measures such as the removal of

significant artefacts, remediation and/or enhancement of other historic areas and features as part of its overall and ongoing site management.

- 13.5 This approach has been proven to be effective, and often historic sites, artefacts or features are better preserved and recognised as a result of these actions. This is particularly notable in the case of Callery's Battery, a heritage listed site with a type 1 historic place category. The battery is located within Golden Point Historic Reserve set against the present-day mining operations at Macraes and is New Zealand's best surviving example of a working stamper battery.<sup>11</sup>
- 13.6 OceanaGold has made significant investments to preserve and protect this heritage site, in addition to providing public access to the site, which traverses active mining operations, to ensure this site is accessible and can be enjoyed by many.
- 13.7 To this end, I support the recommended amendments in the section 42A report to the inclusion in Clause (2) reference to HCV-HH-P7, which seeks to maintain historic heritage values through the integration of such values into new activities and the adaptive reuse or upgrade of historic heritage places and areas. I do, however, think that this addition creates a contradiction between this and Clauses (3) and (4) and consider that they can be deleted, as follows:

*Protect historic heritage by:*

- (1) requiring the use of accidental discovery protocols in accordance with APP11,*
- (2) avoiding adverse effects on areas or places with special or outstanding historic heritage values or qualities, except in the circumstances where HCV-HH-P7 applies,*
- ~~*(3) avoiding significant adverse effects on areas or places with historic heritage values or qualities,*~~
- ~~*(4) avoiding, as the first priority, other adverse effects on areas or places with historic heritage values or qualities,*~~

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<sup>11</sup> Callery's Battery | Heritage New Zealand (2022).

(5) *and where it is demonstrated that adverse effects demonstrably cannot be completely avoided, they are remedied or mitigated remedying or mitigating them, and*

(6) *recognising that for infrastructure, EIT-INF-P13 applies instead of HCV-HH-P5(1) to (5).*

## **14. NFL – NATURAL FEATURES AND LANDSCAPES**

### **Amendments to NFL – Natural Features and Landscapes**

- 14.1 Mr. MacLennan in the section 42A report has summarised concerns of several submitters on **NFL-P3 – Maintenance of highly valued natural features and landscapes** which highlight the difficulty in distinguishing between the assessment of Outstanding Natural Features (**ONF**), Outstanding Natural Landscapes (**ONL**) and Highly Valued Natural Features and Landscapes (**HVNFL**).
- 14.2 OceanaGold has expressed concerns that there is little guidance to distinguish between these categories and what management is required for these types of landscapes from those recognised as ONL or ONF. This difficulty stems from APP9, which provides the assessment criteria to identify each feature class within the region but does not provide any form of threshold, or other indicator, to distinguish between outstanding natural features and landscapes and those that are highly valued or significant.
- 14.3 It is the view of Mr MacLennan that these assessments will be addressed on a case-by-case basis by a suitably qualified person which appears, in my view, to overcomplicate things where an alternative approach could simply include clearer guidance from the outset. There is also no directive under the RMA to identify and manage highly valued natural features and landscapes.
- 14.4 Ultimately, the outcome of employing a criteria-based schedule like APP9 with no defining characteristic to distinguish between landscape and feature types has potential to create over-reaching assessments on lesser-valued landscapes preventing development in areas that

otherwise could be undertaken. The costs and benefits resulting from its implementation on such activities are not sufficiently justified under section 32 of the RMA. I, therefore, agree with OceanaGold that this policy should be deleted, or otherwise it be amended to address the concerns of submitters.

- 14.5 In his supplementary evidence, Mr Maclennan has reconsidered the submission which sought to amend objective NFL-O1 to acknowledge the benefits of restoring outstanding and highly valued natural features and landscapes on the basis that it aligns NFL-O1 with the policies and methods designed to achieve it.
- 14.6 I have reservations about this recommended addition, which ties into the points outlined above in response to the recommended amendments to NFL-P3. While I acknowledge this amendment's intent is to restore these important landscapes, without clear guidance on defining characteristics between outstanding and highly valued features and landscapes, companies and individuals may be subjected to the associated costs of overreaching restoration efforts. These restoration efforts could prove too onerous for landowners and developers in some instances and may inhibit further development and economic benefits due to a redirection of capital and resources to achieve this clause. Also, as NFL-O1(3) requires both outstanding and highly valued natural features and landscapes to be restored it is very onerous. There is no directive under the RMA to identify and manage highly valued natural features and landscapes.
- 14.7 I therefore consider that Clause (3) should be deleted from NFL-O1.

**Claire Hunter**

**23 November 2022**



## Appendix A – Claire Hunter Recent Project Experience

- Contact Energy Limited – Preparation of submissions on the 2021 Proposed Otago Regional Policy Statement, and further submissions.
- Contact Energy Limited – Provisions of advice on landscape and amenity conditions associated with the Clutha Hydro Scheme consents, and the Otago Regional Council section 128 review.
- Bathurst Resources Limited – Preparation of application to close and rehabilitate the Canterbury Coal Mine. This includes preparing and presenting planning evidence at the Council hearing.
- OceanaGold (New Zealand) Limited – Peer review role in various project and activities at the Macraes Gold Project, in Otago. This includes reviewing of the Deepdell North Stage III Project resource consent applications, and the Golden Point Underground resource consent applications, and preparing and presenting planning evidence at the Deepdell North Stage III Council hearing.
- OceanaGold (New Zealand) Limited – Preparation of a submission on the Proposed Otago Regional Policy Statement 2021.
- Contact Energy – Preparation of a submission on the Proposed Otago Regional Policy Statement 2021.
- Federation Mining Limited – Project lead and planning advisor on a proposal by Federation Mining Limited to further develop the Snowy Gold Mine situated near Reefton on the West Coast, South Island.
- Blue Sky Pastures – Planning advice relating to the preparation of applications to renew its key water and discharge consents for its plant in Southland.
- Silver Fern Farms – Preparation of the resource consent applications to renew its key discharge and water related permits associated with the ongoing operation of its Finegand Plant, near Balclutha. This includes an application to continue to maintain a closed land fill within the property.
- Wellington International Airport Limited –
  - Ongoing day to day planning advice,
  - Most recently prepared an application for a new retail development within commercial land owned by the Airport; and
  - I prepared the notice of requirements for two new designations to enable the protection and ongoing use of the main site at Wellington Airport via a designation, and to enable growth of WIAL facilities and infrastructure to an adjacent site, currently occupied by the Miramar Golf Course.

- Alliance Group Limited – Planning advice and preparation of applications with regard to the renewal of key discharge consents (water, land and air) for its Lorneville Plant.
- Alliance Group Limited – Review of Canterbury Proposed Regional Air Plan, preparation of submission and evidence.
- Alliance Group Limited – Review of various Southland Regional and District Plan changes and preparation of submissions. Participation in Environment Court mediation to resolve Alliance Group Limited’s appeal on the Southland Proposed District Plan.
- Alliance Group Limited – Preparation of resource consent application for the renewal of its Maitai Plant’s hydroelectric power scheme.
- Alliance Group Limited – Preparation of statutory assessment to accompany resource consent application to renew its Pukeuri Plant biosolids discharge consent.
- Aurora Energy Limited – Successfully obtained a resource consent and subdivision for a new large scale substation in Camp Hill, Hawea, Queenstown Lakes District.
- Wellington International Airport Limited – management of technical inputs and reports for the proposed runway extension, preparation of regional and district council resource consent applications.
- Wellington International Airport Limited – preparation of advice and submissions on the Greater Wellington Proposed Natural Resources Plan. Active involvement in preparing evidence for the various hearing streams on behalf of WIAL.
- Liquigas Limited – Preparation of submissions and planning evidence on the Second-Generation Dunedin City Plan in order to protect the existing and proposed operational capacity of its LPG Terminal in Dunedin.
- Liquigas Limited – Reconsenting of its significant South Island LPG Terminal located at Port Otago, Dunedin. The application sought to increase the storage of LPG significantly at the site.
- Environmental Protection Authority – NZTA Expressway between MacKays Crossing to Peka, Kapiti Coast project; Transmission Gully project plan change and Notices of Requirements and resource consents – Assisting in the review and section 42A report writing for the notice of requirement and various consents required.
- Ravensdown Fertiliser Limited – Preparation of regional council resource consents (air and coastal discharges) to enable the ongoing operation of the Plant in Ravensbourne in Dunedin City.
- Queenstown Airport Corporation – Provision of resource management advice for the airport and its surrounds in particular the runway end safety area extension and preparation of the notice of requirement, gravel extraction applications to both regional and district councils and other alterations required to the aerodrome designation.

- LPG Association of New Zealand Limited – Preparation of evidence and hearing attendance representing the LPGA with respect to Dunedin City Council’s Plan Change 13 – Hazardous Substances and participation in Environment Court mediation to resolve LPGA appeal.
- LPG Association of New Zealand Limited – Preparation of planning evidence on the Second-Generation Dunedin City Plan.
- Invercargill Airport Limited – Preparation of plan change provisions and section 32 analysis to provide for the future growth and expansion of Invercargill Airport in the Invercargill District Plan.
- Invercargill Airport Limited – Preparation of notices of requirement to amend a number of existing designations in the Invercargill District Plan including obstacle limitation surfaces and the aerodrome.
- Southdown Holdings Ltd – Preparation of proposed conditions of consent for large scale irrigation in the Upper Waitaki catchment, Canterbury.
- Trustpower Limited – Review of Otago Regional Council Plan Change 6A and preparation of submissions and evidence at the hearing on behalf of Trustpower Limited. Participation in Environment Court mediation to resolve issues.
- Trustpower Limited – Review of Clutha District Plan Energy Generation Plan Change and preparation of submissions and evidence at the hearing on behalf of Trustpower Limited.
- Trustpower Limited – preparation of proposed conditions of consent for the Wairau Hydroelectric Power Scheme.
- Trustpower Limited – management of the necessary technical inputs, consultation and preparation of resource consents necessary to enable the ongoing operation of the Wahapo Hydroelectric Scheme on the West Coast, South Island.
- Meridian Energy Limited – preparation of the regional and district council consents for the Proposed Project Hayes Wind Farm in Central Otago.
- Meridian Energy Limited – preparation of the regional and district council consents for the Proposed Mokihinui Hydro Scheme on the West Coast, South Island.
- SouthPort Limited – Prepared and presented evidence on behalf of SouthPort in regard to proposed plan changes to the Invercargill District Plan.

## APPENDIX B - New Provisions inserted into LF-LS Chapter (preferably)

### LF-LS-O13 – Resource Use and Development

To recognise the role of resource use and development within the Otago region and its contribution to enabling people and communities to provide for their social, economic and cultural wellbeing.

### LF-LS-PX – Access to Mineral Resources

Management of the region’s land appropriately recognises:

- (1) The need for mineral and aggregate resources to be available for lifeline utilities; infrastructure and housing; economic development; or to be used for environmental remediation;
- (2) The functional and operational constraints in terms of accessing mineral and aggregate resources in the region;
- (3) The potential benefits of further development of the region’s minerals and aggregate resources in appropriate locations and providing for the continued operation and maintenance of existing activities;
- (4) The need to manage the adverse effects of mineral or aggregate extraction activities by:
  - a. Avoiding, as the first priority, locating in any of the following:
    - i. Significant natural areas;
    - ii. Outstanding natural features and landscapes;
    - iii. Natural wetlands;
    - iv. Outstanding water bodies;
    - v. Areas of high or outstanding natural character;
    - vi. Area of places of significant or outstanding historic heritage;
    - vii. Wāhi tupuna and areas with protected customary rights, and
    - viii. Area of high recreational and high amenity value.
  - b. If it is not practicable to avoid locating in areas listed in (a) above because of the functional needs or operational needs of the mineral extraction activity, manage adverse effects as follows:
    - i. In significant natural areas, in accordance with National Policy Statement for Indigenous Biodiversity;
    - ii. In waterbodies and natural wetlands in accordance with the relevant provisions in the National Policy Statement for Freshwater Management and the NESF;
    - iii. In relation to wāhi tupuna in accordance with HCV-WT-P2;

- iv. In areas of outstanding natural character or landscapes in the coastal environment in accordance with the New Zealand Coastal Policy Statement; and
- v. In all other areas remedy or mitigate the adverse effects of the mineral extraction activity on the values that contribute to the area's importance.
- c. Avoiding unmitigated risk on the health and safety of people and the community, including through appropriate natural hazard management.

## APPENDIX C – PROPOSED AMENDMENTS TO THE ECO CHAPTER

Key to the changes:

Black underline or strikethrough – Original ORC Section 42A Report Amendments

Red underline or strikethrough – Supplementary evidence ORC Amendments

Blue underline or strikethrough – OceanaGold Proposed Amendments

# ECO – Ecosystems and indigenous *biodiversity*

## Objectives

### ECO-01 – Indigenous *biodiversity*

Otago's indigenous *biodiversity* is healthy and thriving and any net<sup>1</sup> decline in quality condition,<sup>2</sup> quantity and diversity is halted.

### ECO-02 – Restoring ~~or~~ and<sup>3</sup> enhancing

Restoration ~~or~~ and enhancement activities result in a net increase in the extent and occupancy<sup>4</sup> of Otago's indigenous *biodiversity* ~~results from restoration or enhancement~~.<sup>5</sup>

### ECO-03 – *Kaitiakitaka*<sup>6</sup> and stewardship

Mana whenua are able to exercise their role ~~recognised~~<sup>7</sup> as kaitiaki of Otago's indigenous *biodiversity*, and Otago's communities are recognised as stewards, who are responsible for:

- (1) te hauora o te koiora (the health of indigenous *biodiversity*), te hauora o te taoka (the health of species and ecosystems that are taoka), and te hauora o te taiao (the health of the wider *environment*), while
- (2) providing for te hauora o te takata (the health of the people).

### ECO-04 – Social, economic and cultural wellbeing

Protect and manage indigenous biodiversity in such a way that provides for the social, economic, and cultural wellbeing of people and communities now and in the future.

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<sup>1</sup> 00024.010 City Forests Limited

<sup>2</sup> 00306.042 Meridian

<sup>3</sup> 00226.215 Kāi Tahu ki Otago

<sup>4</sup> 00223.099 Ngāi Tahu ki Murihiku, 00226.215 Kāi Tahu ki Otago

<sup>5</sup> 00322.026 Fulton Hogan

<sup>6</sup> 00234.031 Te Rūnanga o Ngāi Tahu

<sup>7</sup> 00226.216 Kāi Tahu ki Otago, 00234.031 Te Rūnanga o Ngāi Tahu

## Policies

### ECO-P1 – *Kaitiakitaka*

Recognise the role of Enable<sup>8</sup> Kāi Tahu to exercise their role<sup>9</sup> as kaitiaki of Otago's indigenous *biodiversity* by:

- (1) involving Kāi Tahu in the management of indigenous *biodiversity*, ~~and~~
- (1A) working with Kāi Tahu in<sup>10</sup> the identification of indigenous species and ecosystems that are taoka,
- (2) incorporating the use of mātauraka Māori in the management and monitoring of indigenous *biodiversity*, and
- (3) ~~providing for~~ facilitating<sup>11</sup> access to and use of indigenous biodiversity by Kāi Tahu, including *mahika kai*,<sup>12</sup> according to tikaka.

### ECO-P2 – Identifying *significant natural areas* and taoka

Identify and map.<sup>13</sup>

- (1) the areas and indigenous *biodiversity*<sup>14</sup> values of *significant natural areas* in accordance with APP2, and
- (2) where appropriate,<sup>15</sup> indigenous species and ecosystems that are taoka in accordance with ECO-M3.

### ECO-P3 – Protecting *significant natural areas* and taoka

Except as provided for by ECO-P4 and ECO-P5, protect *significant natural areas* (~~outside the coastal environment~~)<sup>16</sup> and indigenous species and ecosystems that are taoka by:

- (1) first<sup>17</sup> avoiding adverse *effects* that result in:
  - (a) any reduction of the area or indigenous *biodiversity*<sup>18</sup> values identified and mapped under ECO-P2(1),<sup>19</sup> (even if those values are not themselves significant but contribute to an area being identified as a *significant natural area*<sup>20</sup>) ~~identified under ECO-P2(1), or~~<sup>21</sup> and

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<sup>8</sup> 00226.217 Kāi Tahu ki Otago

<sup>9</sup> 00226.217 Kāi Tahu ki Otago

<sup>10</sup> 00226.217 Kāi Tahu ki Otago

<sup>11</sup> 00239.099 Federated Farmers

<sup>12</sup> 00226.0038 Kāi Tahu ki Otago

<sup>13</sup> 00020.018 Rayonier Matariki

<sup>14</sup> 00226.218 Kāi Tahu ki Otago, 00230.101 Forest and Bird

<sup>15</sup> 00226.218 Kāi Tahu ki Otago

<sup>16</sup> 00237.007 Beef & Lamb and DINZ, 00137.016 DOC, 00226.035 Kāi Tahu ki Otago, 00120.011 Yellow-eyed Penguin Trust, 00230.016 Forest and Bird

<sup>17</sup> 00223.100 Ngāi Tahu ki Murihiku

<sup>18</sup> 00226.219 Kāi Tahu ki Otago

<sup>19</sup> 00230.102 Forest and Bird

<sup>20</sup> 00230.102 Forest and Bird

<sup>21</sup> 00230.102 Forest and Bird

- (b) any loss of Kāi Tahu taoka<sup>22</sup> values identified and mapped under ECO-P2(2)<sup>23</sup>, and
- (2) after (1), applying the biodiversity *effects management hierarchy (in relation to indigenous biodiversity)*<sup>24</sup> in ECO-P6, and
- (3) prior to *significant natural areas* and indigenous species and ecosystems that are taoka being identified and mapped<sup>25</sup> in accordance with ECO-P2, adopt a precautionary approach towards activities in accordance with IM-P15/IM-P6(2).<sup>26</sup>

#### ECO-P4 – Provision for new activities

Maintain Otago's indigenous *biodiversity* by following the sequential steps in the *effects management hierarchy (in relation to indigenous biodiversity)*<sup>27</sup> set out in ECO-P6 when making decisions on plans, applications for *resource consent* or notices of requirement for the following activities in *significant natural areas* (~~outside the coastal environment~~),<sup>28</sup> or where they may adversely affect indigenous species and ecosystems that are taoka:

- (1) the development, operation, maintenance<sup>29</sup> or upgrade of *nationally significant infrastructure*<sup>30</sup> and *regionally significant infrastructure* that has a *functional need*<sup>31</sup> or *operational need* to locate within the relevant *significant natural area(s)* or where they may adversely affect indigenous species or ecosystems that are taoka,
- (2) the development of *papakāika*, marae and ancillary facilities associated with customary activities on [Native reserves and Māori land](#),<sup>32</sup>
- (2A) the sustainable use of *mahika kai*<sup>33</sup> and kaimoana (seafood) by *mana whenua*,<sup>34</sup>
- (3) the use of [Native reserves and Māori land](#) in a way that will make a significant contribution<sup>35</sup> to enable *mana whenua* to maintain their connection to their whenua and enhancing the<sup>36</sup> social, cultural or economic well-being of ~~takata whenua~~,<sup>37</sup>
- (3A) [the development, operation, maintenance or upgrade of mineral and/or aggregate extraction activities that provide significant national or regional benefit and that has a functional need or operational need to locate within the relevant significant natural areas\(s\) or where they may adversely affect indigenous species or ecosystems that are taoka,](#)

<sup>22</sup> 00139.129 DCC

<sup>23</sup> 00138.033 QLDC

<sup>24</sup> 00016.013 Alluvium and Stoney Creek, 0017.011 Danny Walker and Others, 00321.022 Te Waihanga, 00137.009 DOC

<sup>25</sup> 00020.018 Rayonier Matariki

<sup>26</sup> 00139.040 DCC, 00121.027 Ravensdown

<sup>27</sup> 00016.013 Alluvium and Stoney Creek, 0017.011 Danny Walker and Others, 00321.022 Te Waihanga, 00137.009 DOC

<sup>28</sup> 00237.007 Beef & Lamb and DINZ, 00137.016 DOC, 00226.035 Kāi Tahu ki Otago, 00120.011 Yellow-eyed Penguin Trust, 00230.016 Forest and Bird

<sup>29</sup> 00311.022 Trustpower Limited

<sup>30</sup> 00314.001 Transpower

<sup>31</sup> 00315.046 Aurora Energy, 00138.116 QLDC

<sup>32</sup> ['Māori land' applies to land in native reserves that are held under Te Ture Whenua Māori act 1993](#)

<sup>33</sup> 00226.0038 Kāi Tahu ki Otago

<sup>34</sup> 00226.220 Kāi Tahu ki Otago

<sup>35</sup> 00234.032 Te Rūnanga o Ngāi Tahu

<sup>36</sup> 00234.032 Te Rūnanga o Ngāi Tahu

<sup>37</sup> 00234.032 Te Rūnanga o Ngāi Tahu



- (4) activities that are for the purpose of protecting, restoring or enhancing a *significant natural area* or indigenous species or ecosystems that are taoka, or
- (5) activities that are for the purpose of addressing a severe ~~and~~ <sup>or</sup><sup>38</sup> immediate *risk* to public health or safety.

#### **ECO-P5 – Existing activities in *significant natural areas***

Except as provided for by ECO-P4, provide<sup>39</sup> for existing activities that are lawfully established<sup>40</sup> within *significant natural areas* (outside the coastal environment)<sup>41</sup> and that may adversely affect indigenous species and ecosystems that are taoka, if:

- (1) the continuation, maintenance and minor upgrades of an existing activity that is lawfully established<sup>42</sup> will not lead to the loss (including through cumulative loss) of extent or degradation<sup>43</sup> of the ecological integrity of any *significant natural area* or indigenous species or ecosystems that are taoka, and
- (2) the adverse *effects* from the continuation, maintenance and minor upgrades of an existing activity that is lawfully established<sup>44</sup> are no greater in character, spatial extent, intensity or scale than they were before this RPS became operative.

#### **ECO-P6 – Maintaining indigenous *biodiversity***

Maintain Otago’s indigenous *biodiversity* (~~excluding the coastal environment and~~ areas ~~managed protected~~<sup>45</sup> under ECO-P3) by applying the following *biodiversity effects management hierarchy (in relation to indigenous biodiversity)*<sup>46</sup> in decision-making on applications for *resource consent* and notices of requirement.:

- ~~(1) — avoid adverse effects as the first priority,~~
- ~~(2) — where adverse effects demonstrably cannot be completely avoided, they are remedied,~~
- ~~(3) — where adverse effects demonstrably cannot be completely avoided or remedied, they are mitigated,~~
- ~~(4) — where there are residual adverse effects after avoidance, remediation, and mitigation, then the residual adverse effects are offset in accordance with APP3, and~~
- ~~(5) — if *biodiversity* offsetting of residual adverse effects is not possible, then:
 
  - ~~(a) — the residual adverse effects are compensated for in accordance with APP4, and~~~~

<sup>38</sup> 00139.130 DCC

<sup>39</sup> Under RMA Schedule 1, Clause 16(2) of the RMA amend the cross-referencing error

<sup>40</sup> 00230.104 Forest and Bird

<sup>41</sup> 00237.007 Beef & Lamb and DINZ, 00137.016 DOC, 00226.035 Kāi Tahu ki Otago, 00120.011 Yellow-eyed Penguin Trust, 00230.016 Forest and Bird

<sup>42</sup> 00230.104 Forest and Bird

<sup>43</sup> Clause 16(2), Schedule 1, RMA (remove the italics from ‘degradation’ as this term is not defined in the pORPS)

<sup>44</sup> 00230.104 Forest and Bird

<sup>45</sup> 00230.105 Forest and Bird

<sup>46</sup> 00016.013 Alluvium and Stoney Creek, 0017.011 Danny Walker and Others, 00321.022 Te Waihangā

~~(b) — if the residual adverse effects cannot be compensated for in accordance with APP4, the activity is avoided.~~

### **ECO-P7 – Coastal indigenous biodiversity**

~~Coastal indigenous biodiversity is managed by CE-P5, and implementation of CE-P5 also contributes to achieving ECO-O1.~~

~~Indigenous biodiversity in the coastal environment is managed by the relevant provisions of this chapter, except that:~~

~~(1) — significant natural areas in the coastal environment are managed by CE-P5(1) instead of ECO-P3 to ECO-P5, and~~

~~(2) — other indigenous biodiversity in the coastal environment that is not part of a significant natural area are also managed by CE-P5(2).<sup>47</sup>~~

~~Indigenous biodiversity and taoka species and ecosystems in the coastal environment are managed by CE-P5 in addition to all objectives and policies of the ECO chapter except ECO-P3, ECO-P4, ECO-P5 and ECO-P6.1~~

### **ECO-P8 – Restoration and Enhancement<sup>48</sup>**

The extent, *occupancy*<sup>49</sup> and condition of Otago's indigenous biodiversity is increased by:

- (1) restoring and enhancing habitat for indigenous species, including taoka and *mahika kai*<sup>50</sup> species,
- (2) improving the health and *resilience* of indigenous biodiversity, including ecosystems, species, ~~important~~<sup>51</sup> ecosystem function, and *intrinsic values*, and
- (3) buffering or linking ecosystems, habitats and ecological corridors, *ki uta ki tai*.<sup>52</sup>

### **ECO-P9 – Wilding conifers**

Reduce the impact of *wilding conifers* on indigenous biodiversity by:

- (1) avoiding ~~afforestation~~ the planting<sup>53</sup> and replanting of plantation forests and permanent forests<sup>54</sup> with *wilding conifer* species listed in APP5 within:
  - (a) areas identified as *significant natural areas*, and
  - (b) buffer zones adjacent to *significant natural areas* where it is necessary to protect the *significant natural area*, and
- (2) supporting initiatives to control existing *wilding conifers* and limit their further spread.

<sup>47</sup> 00226.223 Kāi Tahu ki Otago, 00230.106 Forest and Bird

<sup>48</sup> 00226.224 Kāi Tahu ki Otago

<sup>49</sup> 00223.099 Ngāi Tahu ki Murihiku, 00226.215 Kāi Tahu ki Otago

<sup>50</sup> 00226.0038 Kāi Tahu ki Otago

<sup>51</sup> 00137.091 DOC

<sup>52</sup> 00138.037 QLDC

<sup>53</sup> 00137.092 DOC

<sup>54</sup> 00137.092 DOC

## ECO-P10 – ~~Integrated management~~ Co-ordinated approach

Implement an integrated and co-ordinated approach to managing Otago’s ecosystems and indigenous *biodiversity* that:

- (1) ensures any permitted or controlled activity in a *regional plan*<sup>55</sup> or *district plan* rule does not compromise the achievement of ECO-O1,
- (2) recognises the interactions *ki uta ki tai* (from the mountains to the sea) between the terrestrial *environment, fresh water, and the coastal marine area*, including:
  - (a) the migration of fish species between *fresh and coastal waters, and*<sup>56</sup>
  - (b) the effects of land-use activities on the coastal environment,<sup>57</sup>
- (2A) acknowledges that *climate change* will affect indigenous *biodiversity*, and manages activities which exacerbate the effects of *climate change*,<sup>58</sup>
- (3) promotes collaboration between individuals and agencies with *biodiversity* responsibilities,
- (4) supports the various statutory and non-statutory approaches adopted to manage indigenous *biodiversity*,
- (5) recognises the critical role of people and communities in actively managing the remaining indigenous *biodiversity* occurring on private *land*, and
- (6) adopts regulatory and non-regulatory regional pest management programmes.

## Methods

### ECO-M1 – Statement of responsibilities

In accordance with section 62(1)(i)(iii) of the RMA 1991, the *local authorities* responsible for the control of *land* use to maintain indigenous *biological diversity* are:

- (1) the Regional Council and *territorial authorities* are responsible for specifying objectives, policies and methods in *regional and district plans* for managing the margins of *wetlands, rivers and lakes*,
- (2) the Regional Council is responsible for specifying objectives, policies and methods in *regional plans*:
  - (a) in the *coastal marine area*,
  - (b) in *wetlands, lakes and rivers*, and
  - (c) in, on or under the *beds of rivers and lakes*,

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<sup>55</sup> Clause 16(2), Schedule 1, RMA

<sup>56</sup> 00226.226 Kāi Tahu ki Otago

<sup>57</sup> 00226.226 Kāi Tahu ki Otago

<sup>58</sup> 00234.033 Te Rūnanga o Ngāi Tahu

- (3) in addition to (1), *territorial authorities* are responsible for specifying objectives, policies and methods in *district plans* outside of the areas listed in (2) above if they are not managed by the Regional Council under (4), and
- (4) the Regional Council may be responsible for specifying objectives, policies and methods in *regional plans* outside of the areas listed (1) above if:
  - (a) the Regional Council reaches agreement with the relevant *territorial authority* or *territorial authorities*, and
  - (b) if applicable, a transfer of powers in accordance with section 33 of the RMA 1991 occurs from the relevant *territorial authority* or *territorial authorities* to the Regional Council.

## ECO-M2 – Identification of *significant natural areas*

*Local authorities* must:

- (1) in accordance with the statement of responsibilities in ECO-M1, identify the areas and indigenous biodiversity<sup>59</sup> values of *significant natural areas* as required by ECO-P2, and
- (2) map and verify<sup>60</sup> the areas and include the indigenous biodiversity<sup>61</sup> values identified under (1) in the relevant *regional plans*<sup>62</sup> and *district plans*, no later than 31 December 2030,<sup>63</sup>
- (3) recognise that indigenous *biodiversity* spans jurisdictional boundaries by:
  - (a) working collaboratively to ensure the areas identified by different *local authorities* are not artificially fragmented when identifying *significant natural areas* that span jurisdictional boundaries, and
  - (b) ensuring that indigenous *biodiversity* is managed in accordance with this RPS,
- (4) until *significant natural areas* are identified and mapped in accordance with (1) and (2),<sup>64</sup> require ecological assessments to be provided with applications for resource consent and notices of requirement ~~that requirement~~ that identify whether affected areas are *significant natural areas* in accordance with APP2, and<sup>65</sup>
- (5) in the following areas, prioritise identification under (1) no later than 31 December 2025:
  - (a) intermontane basins that contain indigenous vegetation and habitats,
  - (b) areas of dryland shrubs,
  - (c) braided *rivers*, including the Makarora, Mātukituki and Lower Waitaki Rivers,
  - (d) areas of montane tall tussock grasslands, and
  - (e) limestone habitats.

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<sup>59</sup> 00226.228 Kāi Tahu ki Otago

<sup>60</sup> 00020.018 Rayonier Matariki

<sup>61</sup> 00226.228 Kāi Tahu ki Otago

<sup>62</sup> Clause 16(2), Schedule 1, RMA

<sup>63</sup> 00139.036 DCC

<sup>64</sup> 00311.014 Queenstown Airport

<sup>65</sup> Clause 16(2), Schedule 1, RMA

### ECO-M3 – Identification of taoka

Local authorities must:

- (1) work together with *mana whenua* to agree a process for:
  - (a) identifying indigenous species and ecosystems that are taoka,
  - (b) describing the taoka identified in (1)(a),
  - (c) mapping or describing the location of the taoka identified in (1)(a), and
  - (d) describing the values of each taoka identified in (1)(a), and
- (2) notwithstanding (1), recognise that *mana whenua* have the right to choose not to identify taoka and to choose the level of detail at which identified taoka, or their location or values, are described, and
- (3) to the extent agreed by *mana whenua*, amend their *regional* and *district plans* to include matters (1)(b) to (1)(d) above.

### ECO-M4 – Regional plans

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

- (1) if the requirements of ECO-P3 and ECO-P6 can be met, provide for the use of *lakes* and *rivers* and their *beds*, including:
  - (a) activities undertaken for the purposes of pest control or maintaining or enhancing the habitats of indigenous fauna, and
  - (b) the maintenance and use of existing structures that are lawfully established<sup>66</sup> (including *infrastructure*), and
  - (c) infrastructure, mineral extraction and/or aggregate extraction that have a *functional need*<sup>67</sup> or *operational need* to be sited or operated in a particular location,
- (1A) ~~control~~ manage the clearance or modification of *indigenous vegetation*, while allowing for *mahika kai*<sup>68</sup> and kaimoana (seafood) activities,<sup>69</sup>
- (2) require:
  - (a) resource consent applications to include information that demonstrates that the sequential steps in the *effects management hierarchy (in relation to indigenous biodiversity)*<sup>70</sup> in ECO-P6 have been followed, and
  - (b) that consents are not granted if the sequential steps in the effects management hierarchy (in relation to indigenous biodiversity)<sup>71</sup> in ECO-P6 have not been followed, and

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<sup>66</sup> 00230.113 Forest and Bird

<sup>67</sup> 00315.046 Aurora Energy, 00138.116 QLDC

<sup>68</sup> 00226.0038 Kāi Tahu ki Otago

<sup>69</sup> 00226.230 Kāi Tahu ki Otago / Aukaha

<sup>70</sup> 00016.013 Alluvium and Stoney Creek, 0017.011 Danny Walker and Others, 00321.022 Te Waihangā, 00137.009 DOC

<sup>71</sup> 00016.013 Alluvium and Stoney Creek, 0017.011 Danny Walker and Others, 00321.022 Te Waihangā, 00137.009 DOC

- (3) provide for activities undertaken for the purpose of restoring or enhancing the habitats of indigenous fauna.

### ECO-M5 – District plans

*Territorial authorities* must prepare or amend and maintain their *district plans* to:

- (1) if the requirements of ECO-P3 and ECO-P6 are met, provide for the use of *land* and the surface of *water bodies* including:
  - (a) activities undertaken for the purposes of pest control or maintaining or enhancing the habitats of indigenous fauna, and
  - (b) the maintenance and use of existing *structures* (including *infrastructure*), and
  - (c) *infrastructure*, [mineral and/or aggregate extraction](#) that have a *functional* or *operational need* to be sited or operated in a particular location,
- (2) ~~control~~ **manage** the clearance or modification of indigenous vegetation, while allowing for *mahika kai*<sup>72</sup> activities,<sup>73</sup>
- (3) promote the establishment of *esplanade reserves* and *esplanade strips*, particularly where they would support ecological corridors, buffering or connectivity between *significant natural areas*, or access to *mahika kai*,<sup>74</sup>
- (4) require:
  - (a) resource consent applications to include information that demonstrates that the sequential steps in the *effects management hierarchy (in relation to indigenous biodiversity)*<sup>75</sup> in ECO-P6 have been followed, and
  - (b) that consents are not granted if the sequential steps in the *effects management hierarchy (in relation to indigenous biodiversity)*<sup>76</sup> in ECO-P6 have not been followed, and
- (5) provide for activities undertaken for the purpose of restoring or enhancing the habitats of indigenous fauna, ~~and~~<sup>77</sup>
- (6) prohibit the planting of *wilding conifer* species listed in APP5 within areas identified as *significant natural areas* and buffer zones adjacent to *significant natural areas*, and<sup>78</sup>
- (7) require buffer zones adjacent to *significant natural areas* where it is necessary to protect the *significant natural area*.<sup>79</sup>

### ECO-M6 – Engagement

*Local authorities*, when implementing the policies in this chapter, will:

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<sup>72</sup> 00226.0038 Kāi Tahu ki Otago

<sup>73</sup> 00226.231 Kāi Tahu ki Otago

<sup>74</sup> 00226.231 Kāi Tahu ki Otago, 00226.0038 Kāi Tahu ki Otago

<sup>75</sup> 00016.013 Alluvium and Stoney Creek, 0017.011 Danny Walker and Others, 00321.022 Te Waihanga, 00137.009 DOC

<sup>76</sup> 00016.013 Alluvium and Stoney Creek, 0017.011 Danny Walker and Others, 00321.022 Te Waihanga, 00137.009 DOC

<sup>77</sup> 00140.026 Waitaki DC

<sup>78</sup> 00226.231 Kāi Tahu ki Otago

<sup>79</sup> 00140.026 Waitaki DC

- (1) work collaboratively with other *local authorities* to adopt an integrated approach to managing Otago's *biodiversity* across administrative boundaries,
- (2) engage with individuals (including landowners and *land* occupiers), community groups, government agencies and other organisations with a role or an interest in *biodiversity* management, and
- (3) consult directly with landowners and *land* occupiers whose properties potentially contain or are part of *significant natural areas*.

## ECO-M7 – Monitoring

*Local authorities* will:

- (1) establish long-term monitoring programmes for areas identified under ~~ECO-P1~~ECO-P2<sup>80</sup> that measure the net loss and gain of indigenous *biodiversity*,
- (2) record information (including data) over time<sup>81</sup> about the state of species, vegetation types and ecosystems, including *mahika kai*<sup>82</sup> species and ecosystems,<sup>83</sup>
- (3) to the extent possible, use mātauraka Māori and tikaka Māori monitoring methods, as well as scientific monitoring methods, and
- (4) regularly report on matters in (1) and (2) and publish these reports.

## ECO-M8 – Other incentives and mechanisms

*Local authorities* are encouraged to consider the use of other mechanisms or incentives to assist in achieving Policies ECO-P1 to ECO-P10, including:

- (1) providing information and guidance on the maintenance, restoration and enhancement of indigenous ecosystems ~~and~~,<sup>84</sup> habitats, taoka and *mahika kai*<sup>85</sup> species and ecosystems,<sup>86</sup>
- (2) funding assistance for restoration projects (for example, through Otago Regional Council's ECO Fund),
- (3) supporting the control of pest plants and animals, including through the provision of advice and education and implementing regulatory programmes such as the Regional Pest Management Plan,
- (4) financial incentives,
- (5) covenants to protect areas of indigenous *biodiversity land*<sup>87</sup>, including through the QEII National Trust,

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<sup>80</sup> 00137.095 DOC, 00226.233 Kāi Tahu ki Otago

<sup>81</sup> 00226.233 Kāi Tahu ki Otago

<sup>82</sup> 00226.038 Kāi Tahu ki Otago

<sup>83</sup> 00226.233 Kāi Tahu ki Otago

<sup>84</sup> 00226.234 Kāi Tahu ki Otago

<sup>85</sup> 00226.038 Kāi Tahu ki Otago

<sup>86</sup> 00226.234 Kāi Tahu ki Otago

<sup>87</sup> 00230.117 Forest and Bird

- (6) advocating for a collaborative approach between central and local government to fund indigenous *biodiversity* maintenance and enhancement, and
- (7) gathering information on indigenous ecosystems, ~~and~~<sup>88</sup> habitats, and taoka and *mahika kai*<sup>89</sup> species and ecosystems,<sup>90</sup> including outside *significant natural areas*.

## Explanation

### ECO-E1 – Explanation

The first policy in this chapter outlines how the kaitiaki role of Kāi Tahu will be recognised in Otago. The policies which follow then set out a management regime for identifying *significant natural areas* and indigenous species and ecosystems that are taoka and protecting them by avoiding particular adverse *effects* on them. The policies recognise that these restrictions may be unduly restrictive for some activities within *significant natural areas*, including existing activities already established. To maintain ecosystems and indigenous *biodiversity*, the policies set out mandatory and sequential steps in an effects management hierarchy to be implemented through decision making, including providing for *biodiversity* offsetting and compensation if certain criteria are met.

Although the objectives of this chapter apply within the coastal environment, the specific management approach for *biodiversity* is contained in the CE – Coastal environment chapter. Given the *biodiversity* loss that has occurred in Otago historically, restoration or enhancement will play a part in achieving the objectives of this chapter and these activities are promoted.

*Wilding conifers* are a particular issue for *biodiversity* in Otago. Although *plantation forestry* is managed under the NESPF, the NESPF allows plan rules to be more stringent if they recognise and provide for the protection of *significant natural areas*. The policies adopt this direction by requiring *district plans*<sup>91</sup> and *regional plans* to prevent ~~afforestation~~ planting of conifer species<sup>92</sup> within *significant natural areas* and establish buffer zones where they are necessary to protect *significant natural areas*.

The policies recognise that managing ecosystems and indigenous *biodiversity* requires co-ordination across different areas and types of resources, as well as across organisations, communities and individual landowners. This articulates the stewardship role of all people and communities in Otago in respect of indigenous *biodiversity*.

## Principal reasons

### ECO-PR1 – Principal reasons

The health of New Zealand's *biodiversity* has declined significantly since the arrival of humans and remains under significant pressure. ~~Mahika kai~~ *Mahika kai*<sup>93</sup> and taoka species, including their

<sup>88</sup> 00226.234 Kāi Tahu ki Otago

<sup>89</sup> 00226.038 Kāi Tahu ki Otago

<sup>90</sup> 00226.234 Kāi Tahu ki Otago

<sup>91</sup> Clause 16(2), Schedule 1, RMA

<sup>92</sup> 00239.111 Federated Farmers

<sup>93</sup> 00226.0038 Kāi Tahu ki Otago



abundance, have been damaged or lost through resource use, *land* use change and development in Otago. The provisions in this chapter seek to address this loss and pressure through providing direction on how indigenous *biodiversity* is to be managed.

The provisions in this chapter assist in maintaining, protecting and restoring indigenous *biodiversity* by:

- stating the outcomes sought for ecosystems and indigenous *biodiversity* in Otago,
- requiring identification and protection of *significant natural areas* and indigenous species and ecosystems that are taoka, and
- directing how indigenous *biodiversity* is to be maintained.

This chapter will assist with achieving the outcomes sought by *Te Mana o te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020*. Implementation of the provisions in this chapter will occur primarily through *regional* and *district plan* provisions, however *local authorities* may also choose to adopt additional non-regulatory methods to support the achievement of the objectives.

## Anticipated environmental results

<b>ECO-AER1</b>	There is no further decline in the quality, quantity or diversity of Otago’s indigenous <i>biodiversity</i> .
<b>ECO-AER2</b>	The quality, quantity and diversity of indigenous <i>biodiversity</i> within Otago improves over the life of this Regional Policy Statement.
<b>ECO-AER3</b>	Kāi Tahu are involved in the management of indigenous <i>biodiversity</i> and able to effectively exercise their <i>kaitiakitaka</i> .
<b>ECO-AER4</b>	Within <i>significant natural areas</i> , the area of <i>land</i> vegetated by <i>wilding conifers</i> is reduced.

