

BEFORE THE RPS HEARINGS PANEL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of submissions on the Proposed Otago Regional Policy Statement 2021 (excluding parts determined to be a freshwater planning instrument)

**SUBMISSIONS ON BEHALF OF OCEANA GOLD (NEW ZEALAND)
LIMITED – SUBMITTER ID 0115**

INTEGRATED MANAGEMENT

9 February 2023

Solicitor acting:

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

Counsel acting:

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

MAY IT PLEASE THE PANEL:

Introduction

1. In these submissions I comment briefly on the hierarchy of priorities for decision making as contained in Policy IM-P2 – Decision Priorities in the notified version of the PORPS.
2. OGNZL’s formal submission opposing this Policy states:

This direction is derived from the National Policy Statement for Freshwater Management 2020. Applying this hierarchy as mandatory to all decision making within Otago effectively usurps the requirement to promote sustainable management (or inappropriately implies that promoting sustainable management and following this hierarchy are the same thing) and is likely to cause implementation difficulties as in certain circumstances there will need to be a more nuanced approach taken to resource management within Otago.
3. OGNZL sought that the Policy be deleted or in the alternative, if the Policy is retained, that extensive changes would be required elsewhere in the document to reflect the reality that the promotion of sustainable management would often require a more nuanced approach.
4. In the section 42A version of the PORPS it is proposed to merge IM-P1 and IM-P2. The default decision making priorities originally in IM-P2 have been retained, in an amended form that conflates the first two priorities (the life-supporting capacity and mauri of the natural environment and the health needs of people). The intent is that when making decisions these matters are always to be prioritised above the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future. Only where the PORPS expressly provides otherwise is that prioritisation not to be observed.
5. This approach sets the PORPS up in a way that will not promote the sustainable management purpose of the RMA, unless it is accompanied by extensive “exceptions” in the other parts of the document that provide for all the possible instances where sustainable management might require the default prioritisation not to be observed.

6. Mineral extraction contributes in a variety of ways to the ability of people and communities to provide for their social, economic and cultural well-being.
7. The activity by its nature depletes the natural mineral resources being extracted and has effects on other resources that cannot be avoided and must be carefully managed.
8. In that context, and in the absence of appropriate provisions elsewhere in the PORPS that protect access to valuable mineral resources, recognise the functional needs of mining, and allow the use of the full effects management hierarchy (rather than just avoidance) to address adverse effects to achieve overall positive outcomes, it is entirely unclear what prioritising “the life-supporting capacity and mauri of the natural environment” above providing for the well-being of people and communities will mean in the context of mining.
9. The decision priorities appear to be borrowed from the particular context of freshwater as set out in the NPSFM. The NPSFM is to be understood as an expression of what sustainable management requires in the freshwater context, and must be given effect to in the PORPS according to its terms.
10. While the NPSFM recognises that all resources are interconnected ki uta ki tai it does not provide a basis for extending the use of the decision priorities to other contexts beyond freshwater.
11. To do so effectively flips the concept of sustainable management on its head. In the RMA sustainable management means “managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while-
 - a. sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations;
 - and

- b. safeguarding the life-supporting capacity of air, water, soil, and ecosystems;
and
- c. avoiding, remedying, or mitigating any adverse effects of activities on the environment.”¹

12. The purpose of the RMA is to promote sustainable management as defined.² The purpose is to manage natural and physical resources to enable well-being, health and safety.

13. The three “while” statements are to be understood as “bottom lines” or limits that must be observed as resources are managed to achieve well-being, health and safety.

14. Without doubt, in a natural world that has real capacity limits, observing the “whiles” has real implications for the ways in which the enabling purpose of the RMA can be achieved, and that is reflected in the particular context of freshwater as expressed in the NPSFM.

15. In my submission though, the default decision priorities in the IM chapter of the PORPS are not consistent with the sustainable management purpose of the RMA because, while using different language to express the “whiles”, they seek to promote those matters (or at least life-supporting capacity and mauri of the natural environment³) above well-being. In the case of the health needs of people, the Policy prioritises this above well-being whereas the definition in the RMA contains no such priority.

¹ Section 5(2) RMA

² Section 5(1) RMA

³ This term is not found in the definition of sustainable management and it is unclear how it relates to that definition

16. Planning evidence on the IM provisions upon which OGNZL submitted is provided
by Claire Hunter.

A handwritten signature in black ink, appearing to read 'S Christensen/J St John'. The signature is written in a cursive, flowing style.

S Christensen/J St John

Counsel for Oceana Gold (New Zealand) Limited