BEFORE THE OTAGO REGIONAL COUNCIL – OCEANAGOLD SUBMISSIONS – IM CHAPTER

CLAIRE HUNTER – HEARING NOTES : 9 February 2023

1.1 My name is Claire Hunter, and I am a resource management consultant and Director with the firm Mitchell Daysh Limited. My experience and qualifications are set out in paragraphs 1.1. to 1.4 of my evidence prepared on behalf of OceanaGold.

IM CHAPTER

1.2 The provisions which are of key concern to OceanaGold in the IM Chapter are IM – P2 and IM – P14. OceanaGold also made a primary submission on IM-P10 and a number of further submissions across the Integrated Management Chapter.

1.3 OceanaGold made a submission on IM – P2, expressing concern that such provisions reflect the prioritisation set out in the National Policy Statement for Freshwater Management 2020 ("NPSFM") to all resources (rather than just freshwater), and that, in some circumstances, a more nuanced approach to resource management would need to be undertaken.

1.4 The section 42A report writer has recommended amalgamating the notified IM – P1 and IM – P2. In my view, the policy (and the subsequent amendment) is unnecessary and should be either deleted in whole 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 [now IM -P1], is, in my opinion, inappropriate (and if it is to occur, it must also give effect to other national policy statements).

1.5 Ms Paul expresses concern in her evidence that there is no available consenting pathway in the notified (or subsequent versions) of the Proposed Otago Regional Policy Statement 2021 ("PORPS"). She has explained that mining activity is locationally constrained. At Macraes mine

it has also been identified that a large portion of this site, including land currently used for farming purposes, would likely trigger a significant natural area ("SNA") status under the current application of the biodiversity significance criteria (refer Appendix 2). There is no currently available consenting pathway for mining activities under the ECO provisions of the PORPS. Nor are there any provisions in the other chapters of the PORPS that recognise the activity's benefits in terms of economic and social wellbeing.

1.6 Any new or expanded mining activity, which triggers the SNA criteria, would therefore create a direct conflict with the current provisions of the PORPS. Under this scenario, decision makers would have to be guided by the direction set out in IM- P1[1]. It is clear that if there are conflicts, they would have to prioritize the life supporting capacity and mauri of the environment *over* the ability of people and communities to provide for their social, economic and cultural wellbeing now and in the future. I think a decision maker would find it very difficult to find a pathway through this policy, which is to be read alongside specific ecological provisions that set out how the protection of biodiversity values (and arguably the life supporting capacity of the environment) is to be achieved, and that is through the avoidance of the adverse effect. Furthermore, offsetting and compensation (or enhancements) associated with a mining activity are not able to be factored into this decision-making process by virtue of the current policy drafting.

1.7 These issues reiterate OceanaGold's concerns that there is currently no pathway available within the PORPS for mineral extraction and mining activities. OceanaGold becomes less concerned with IM -P1 if provisions are inserted into the policy statement that recognise the industry's importance to the region, enable access to the effects management hierarchy and retain a consenting pathway. This would suitably address the "conflict" that would otherwise arise and therefore avoid having to defer back to IM-P1 in all instances for any further development at the site.

[1] Section 42A version

1.8 Turning now to IM – P14, OceanaGold's submission sought the deletion of this policy 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 author has recommended amendments to this policy. However, the policy still gives no clear direction about what these matters relate to and how these limits will be set and how they will be applied in the lower order planning instruments.

1.9 I also make the observation in my evidence that part of the issue with this policy may be that it appears to pre-empt the new legislative regime to be enacted through the Natural and Built Environment Bill ("NBE Bill"). While I acknowledge that we now know a little more about what this might look like and limits are a feature of that, there are inherent difficulties in trying to fit parts of this new regime into the RPS at this time. The new legislation is still within a consultative phase; and it is therefore very uncertain what the final provisions will be. Moreover, this RPS document is being prepared under the current provisions of the RMA rather than the future framework.

1.10 IM-P14 clause (3) also adds more ambiguity by requiring limits to be regularly assessed and adjusted over time. It is unclear how this is intended to be given effect to in the preparation of regional and district plans under the RMA, which will be set for a period of time. It is also unclear what this will mean for existing consent holders. Again, it appears that this may be encapsulating parts of the NBE Bill, as I understand that this legislation would give regional consent authorities, in particular, significantly expanded powers to review existing consents conditions and cancel consents (including RMA consents) if these are not consistent with future limits set under that legislative regime[2]. Alternatively, clause (3) could be interpreted to mean that the plans can set potentially less stringent or interim limits, again a matter that appears to have been derived from the NBE Bill. This is not clear and creates significant uncertainty in my view.

[2] Clause 277 and Clause 75

1.11 While I accept that limits are an embedded concept in parts of New Zealand's current resource management framework, such as for the management of freshwater, this policy appears to extend this concept to all facets of regional and district plan making obligations. It is the potentially far-reaching implications of this policy which I consider to be inappropriate.

1.12 In this regard I note that IM – M1 (6) provides further direction by requiring regional and district plans to establish limits wherever practicable to support healthy ecosystems and intrinsic values. However, that method is not clearly reflected in the drafting of this policy.

1.13 While my preference remains to delete this provision in its entirety, my concerns around this policy would be reduced if the policy was clear that the limit setting related to ecosystem health and intrinsic values as implied via the method. It may also be appropriate for this policy to acknowledge that limits are likely to derive from existing and further national direction developed under the RMA (i.e. the National Policy Statement for Freshwater and the pending National Policy for Indigenous Biodiversity). It would also be beneficial for the policy to set out that if there are locally derived limits these should be based on a high level of understanding of the state of the environment and a clear need to set specific limits in a given circumstance due to the values that prevail and the process of setting limits should account for the full suite of costs and benefits of doing so, including the actual and potential costs on economic development and opportunities.

1.14 If this policy remains it should also be coupled with an acknowledgement that in some cases there will be benefits associated with exceeding limits, and/or providing appropriate pathways for certain activities where such breaches are almost certain to arise (similar to the approach taken within the NPSFM and NESFM regarding wetlands).

Claire Hunter