
**SECOND BRIEF OF SUPPLEMENTARY EVIDENCE OF ANDREW
MACLENNAN: HAZ & NFL (MINERAL EXTRACTION)**

Qualifications and Experience

- 1 My qualifications and experience are set out in paragraphs 9 to 11 of my section 42A report titled *Chapter 14: NFL – Natural features and landscapes* and dated 4 May 2022.

Code of Conduct

- 2 I have read and agree to comply with the Environment Court’s Code of Conduct for Expert Witnesses, contained in the Environment Court Practice Note 2023. I have complied with the Code in preparing my evidence. Other than where I state that I am relying on the advice of another person, I confirm that the issues addressed in this statement of evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

Scope of Evidence

- 3 On 27 January 2023 the Hearing Panel directed:

“...s.42A report writers to reconsider whether to advance potential amendments to various affected chapters of the pOPRS to address effects arising from any potential consent pathway for mineral extraction activities, in response to evidence advanced by Claire Hunter for Oceana Gold (NZ) Limited”.

- 4 This supplementary statement of evidence provides my response to the amendments sought by Ms Claire Hunter for Oceana Gold (NZ) Limited (OGL) associated with the following chapters of the pORPS:

- 4.1 HAZ – Hazards and risk;
- 4.2 NFL – Natural features and landscapes;
- 4.3 CE – Coastal environment: and
- 4.4 Ms Boyd’s evidence.

HAZ – Hazards and risk

Policy HAZ-NH-P3 and APP6 - Methodology for natural hazard risk assessment

- 5 At paragraph 12.3 of her evidence, when providing her opinion on HAZ-NH-P3, Ms Hunter states that she considers activities can be managed in a way that reduces significant natural hazard risks to a lower risk level and that the potential consequences can be mitigated. Accordingly, she suggests that APP6 (in conjunction with HAZ-NH-P3) should not prevent resource users from undertaking activities where a conservative hazard risk management approach is employed.
- 6 Very briefly, Appendix APP6 sets out a four-step process to determine the natural hazard risk associated with an activity. Once the level of natural hazard risk associated with an activity has been determined HAZ-NH-P3 provides direction on how the level of risk is to be managed:
- 6.1 where the natural hazard risk is significant, the activity is avoided,
 - 6.2 where the natural hazard risk is tolerable, manage the level of risk so that it does not exceed tolerable, and
 - 6.3 where the natural hazard risk is acceptable, maintain the level of risk.
- 7 I agree with Ms Hunter that APP6 and HAZ-NH-P3 should not prevent activities where a conservative hazard risk management approach is employed. In my view, this is the way APP6 and HAZ-NH-P3 would be implemented. As set out in my s42A report,¹ if an activity is undertaken in an area of natural hazard risk, but given the nature of the activity or the mitigation measures proposed (such as the conservative risk management approaches noted in Ms Hunter evidence), the likelihood and consequences of a natural hazard event occurring are not considered 'significant' in the context of APP6, then the 'avoid' test in HAZ-NH-P3 would not apply.
- 8 Provided mitigation measures are in place to reduce the consequences of a natural hazard event, I consider the direction within HAZ-NH-P3 and APP6 provide a potential consent pathway for mineral extraction activities.

¹ Chapter 12: HAZ – Hazards and risks, paragraph 132

NFL – Natural features and landscapes

- 9 At paragraphs 14.1 – 14.7 of Ms Hunter’s evidence, she summarises the OGL submission points in relation to the management of highly valued natural features and landscapes (HVNFL). She supports the removal of objective NFL-O1(2) and policy NFL-P3 that manage these areas.
- 10 Ms Hunter’s key criticism of the HVNFL provisions relates to the identification of these areas. She notes that APP9 (the identification criteria for outstanding and highly valued natural features, landscapes and seascapes) uses the same assessment criteria to identify HVNFL as well as outstanding natural features and landscapes (ONF/Ls), but does not provide any form of threshold, or other indicator, to distinguish between outstanding and highly values areas. In addition, Ms Hunter notes that there is no directive under the RMA to identify and manage HVNFL.
- 11 These points were also raised by OGL in its original submission. In my s42A report² I responded to these submission points as well as those from other submitters seeking similar amendments. I retain the view set out in my s42A report that APP9 is appropriate and NFL-P3 contributes to implementing sections 7(c) and (f) of the RMA. I would also highlight that using the same identification criteria for identifying ONF/Ls and HVNFL is common. I note that HVNFL have been identified in in the Proposed Queenstown Lakes District Plan (as Rural Character Landscapes) using a similar set of criteria to that listed within the APP9. Dunedin City Council’s Second Generation District Plan has also identified Significant Natural Landscapes using similar criteria to APP9.
- 12 Finally, I have considered whether the policy framework within NFL-P3 provides a potential consent pathway for mineral extraction activities. The s42a version of NFL-P3 reads as follows:

Maintain or enhance highly valued natural features and landscapes outside the coastal environment³ by:

- (1) avoiding significant adverse effects on the values of the natural feature or landscape, and*

² Paragraphs 148 – 152

³ 00301.054 Port Otago

(2) *avoiding, remedying or mitigating other adverse effects.*

13 In my view, this is not a 'no change' policy. The drafting of this policy provides for some modification of these landscapes or features provided the adverse effects associated with an activity can achieve the effects tests within subclauses (1) and (2). In the context of a consenting pathway for a mineral extraction activity, it would be up to the potential applicant to demonstrate that the activity can achieve these effects thresholds. I consider this is an appropriate framework for implementing sections 7(c) and (f) of the RMA.

CE – Coastal Environment

14 For completeness, I note that Ms Hunter's evidence does not seek amendments to the CE chapter to provide a potential consent pathway for mineral extraction activities. As such, this supplementary statement of evidence has not considered any amendments to the CE chapter.

Evidence of Ms Boyd

15 Finally, I note that policy 'LF-LS-PX – Access to Mineral Resources' proposed by Ms Hunter includes 'carve outs' from the CE and NFL chapters for mineral or aggregate extraction activities. The merits of this proposed policy have been considered within Ms Boyd's supplementary evidence.

16 I have reviewed the supplementary evidence of Ms Boyd in response to Minute 5. Within paragraphs 52 to 49 of Ms Boyd's supplementary evidence, she assesses the merits of the proposed 'carve outs' in LF-LS-Px from the management of natural landscapes and natural features. In the context of the coastal environment, I agree with Ms Boyd that the drafting of proposed policy LF-LS-Px does not give effect to the requirements in Policy 15 of the NZCPS.

17 In relation to outstanding natural features and landscapes outside the coastal environment, I agree with Ms Boyd that LF-LS-Px is less stringent than the pORPS equivalent in NFL-P2. I also agree that achieving the protection required by section 6(b) of the RMA, may, in some cases, require avoiding particular types of adverse effects, particularly for an activity such as mineral or aggregate extraction. This avoidance would not be achieved with the proposed drafting of policy LF-LS-Ps.

- 18 Within paragraphs 64 to 66 of Ms Boyd's supplementary evidence, she assesses the merits of the carve outs to the CE chapter related to the management of natural character areas within proposed policy LF-LS-Px. I agree with Ms Boyd that the drafting of proposed policy LF-LS-Px does not give effect to the requirement in Policy 13 of the NZCPS.



Andrew Cameron MacLennan

24 February 2023