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**BRIEF OF SECOND SUPPLEMENTARY EVIDENCE OF MELANIE KATE  
HARDIMAN  
MINERAL EXTRACTION**

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**Qualifications and Experience**

- 1 My qualifications and experience are set out in paragraphs 3 to 9 of my section 42A report titled *Chapter 10: ECO-Ecosystems and indigenous biodiversity* 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 to the ECO-Ecosystems and indigenous biodiversity chapter of the pORPS in response to that direction.
- 5 The amendments sought by Ms Hunter can be summarised as follows:
- 5.1 ECO-O4;
  - 5.2 ECO-P2 and APP2; and
  - 5.3 ECO-P3, P4, P5, and P6

- 6 Where I have recommended additional amendments to provisions, my recommendations are shown in addition to my original section 42A recommendations. The key below sets out how these different recommendations are shown.

**Key to proposed amendments**

<b>Appearance</b>	<b>Explanation</b>
Black text	Text as notified.
Black text with <u>underlining</u> or <del>strikethrough</del>	Amendments recommended in section 42A report.
Red text with <u>underlining</u> or <del>strikethrough</del>	Amendments recommended in first statement of supplementary evidence dated 21 October 2022.
Green text with <u>underlining</u> or <del>strikethrough</del>	Additional amendments recommended in this second statement of supplementary evidence dated 24 February 2023.

- 7 In the same way as the original section 42A report recommendations and my primary supplementary evidence, the scope for all proposed amendments is included as a footnote in the amended provisions. Where the amendments were recommended in the section 42A report, the supporting explanation is in the section 42A report. Where the amendments were recommended in my primary supplementary evidence, the supporting explanation is in my primary supplementary evidence. Where the amendments are recommended through this second supplementary evidence, the supporting explanation is contained in this second supplementary evidence.

**ECO-04**

- 8 In Appendix C, Ms Hunter recommends the addition of the following new objective to the ECO chapter:

**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.

- 9 I do not recommend accepting this new objective for several reasons. The proposed new objective lacks consistency with the ECO chapter and what it is

trying to achieve, which is to maintain, protect and restore indigenous biodiversity in Otago. The ECO provisions set out a management regime for identifying significant natural areas and indigenous species and ecosystems that are taoka and seeks to protect them by avoiding particular adverse effects on them. This protection is provided for as a matter of national importance, which is consistent with section s6(c) and s6(e) of the RMA. Coupled with this, the ECO provisions respond to the functions of regional and territorial councils in sections 30(1)(ga) and 31(1)(b)(iii) of the RMA.

- 10 In my view, Ms Hunter's proposed objective does not align with the direction of the ECO chapter because the ECO chapter is not seeking to use Otago's indigenous biodiversity to provide for our social, economic and cultural well-being, which I consider is the intended outcome of proposed ECO-O4. Furthermore, I consider the wording of ECO-O4 is too broad because it does not state where the objective is to be achieved, which would make it difficult for those implementing and monitoring the plan to know whether the objective has been met. The language used in ECO-O4 is similar to Section 5 of the RMA, provisions in the pORPS21 should demonstrate how the RMA is to be applied in managing matters in the Otago region and not restate provisions of the Act. Coupled with this, Ms Hunter's evidence does not provide any specific justification for including this new objective in the ECO chapter. For the above reasons, I do not recommend accepting this new suggested objective.
- 11 I note that, since directing this evidence to be prepared, the hearing panel has invited informal caucusing on the significant resource management issues for the region amongst parties seeking an additional issue statement, including OGL. Depending on the outcome of that process, and the hearing panel's final recommendations, I consider there is potential for that process to provide some of the recognition OGL is seeking in ECO-O4.

## **ECO-P2 and APP2**

- 12 At paragraphs 11.2 – 11.12, Ms Hunter responds to my s42A and supplementary evidence recommendations in relation to ECO-P2 and APP2. The central point of her concerns is that she considers the criteria in APP2 to be broad in nature, which sets a low threshold for classifying significant natural areas in Otago. She suggests that APP2 is amended 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.

- 13 The purpose of ECO-P2 and APP2 is to protect significant indigenous vegetation and significant habitats of indigenous fauna and ecosystems that are taoka as a matter of national importance, which is consistent with sections 6(c) and 6(e) of the RMA. Otago is home to a diverse range of indigenous biodiversity, which is under threat by pest plants and animals and human activities<sup>1</sup>. Therefore, it is important that Otago's indigenous biodiversity is safeguarded, and ecosystems are restored to help support the region's indigenous biodiversity. Furthermore, Ms Hunter's evidence does not contain any specific amendments to ECO-P2 and APP2 and so I am unsure as to what amendments she seeks to APP2.
- 14 I note that there are a range of submitters that have provided evidence on these provisions. I consider it would be helpful to hear from the other experts who have provided evidence on these provisions before making any recommendations, so that Oceana Gold's evidence can be tested against the evidence of the other experts.

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

- 15 At paragraphs 11.13 – 11.32, Ms Hunter responds to my s42A and supplementary evidence recommendations in relation to ECO-P3, P4, P5, and P6.
- 16 In relation to ECO-P3, Ms Hunter, based on the advice of Dr Thorsen, raises concerns that ECO-P3(2) can only be accessed if the requirement to avoid any reduction of the area or values (even if those values are not themselves significant) is satisfied, in accordance with ECO-P3(1)(a). She considers this approach is unduly restrictive and likely to perpetuate a regulatory environment that constrains significant development in Otago. Ms Hunter recommends amendments to ECO-P4, ECO-P5 and ECO-P6 to address her concerns with ECO-P3. She recommends the following amendments to ECO-P4:

#### **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>2</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~~

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<sup>1</sup> Section 32 Evaluation Report, Proposed Regional Policy Statement 2021, paragraphs 423 to 429.

<sup>2</sup> 00016.013 Alluvium and Stoney Creek, 0017.011 Danny Walker and Others, 00321.022 Te Waihangā, 00137.009 DOC

environment),<sup>3</sup> or where they may adversely affect indigenous species and ecosystems that are taoka:

- (1) the development, operation, maintenance<sup>4</sup> or upgrade of *nationally significant infrastructure*<sup>5</sup> and *regionally significant infrastructure* that has a *functional need*<sup>6</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 Māori land Native reserves and Māori Land,<sup>7 8</sup>
- (2A) the sustainable use of mahika kai<sup>9</sup> and kaimoana (seafood) by *mana whenua*,<sup>10</sup>
- (3) the use of Māori land Native reserves and Māori land in a way that will make a *significant contribution*<sup>11</sup> to enable mana whenua to maintain their connection to their whenua and enhancing the<sup>12</sup> social, cultural or economic well-being, of *takata whenua*,<sup>13</sup>
- (3A) the development, operation, maintenance or upgrade of mineral and/or aggregate extraction activities that provide a significant national or regional benefit and that has a functional need or operational need to locate within the relevant significant natural(s) or where they may adversely affect indigenous species or ecosystems that are taoka,
- (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~~ or<sup>14</sup> immediate *risk* to public health or safety.

17 Ms Hunter considers ECO-P4 fails to recognise the locationally constrained nature of mining, which she maintains is a regionally important activity which is similar to infrastructure, because it cannot be located in other areas. Further, she suggests ECO-P4 is inconsistent with the Exposure Draft NPSIB and national direction. Ms Hunter supports the amendment within the Oceana Gold submission which sought to include a new subclause to ECO-P4 for the provision of 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.

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<sup>3</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>4</sup> 00311.022 Trustpower Limited

<sup>5</sup> 00314.001 Transpower

<sup>6</sup> 00315.046 Aurora Energy, 00138.116 QLDC

<sup>7</sup> 'Māori land' applies to land in native reserves that are held under Te Ture Whenua Māori act 1993

<sup>8</sup> 00234.009 Te Rūnanga o Ngāi Tahu, 00226.053 Kāi Tahu ki Otago, 00010.002 Cain whanau

<sup>9</sup> 00226.0038 Kāi Tahu ki Otago

<sup>10</sup> 00226.220 Kāi Tahu ki Otago

<sup>11</sup> 00234.032 Te Rūnanga o Ngāi Tahu

<sup>12</sup> 00234.032 Te Rūnanga o Ngāi Tahu

<sup>13</sup> 00234.032 Te Rūnanga o Ngāi Tahu

<sup>14</sup> 00139.130 DCC

- 18 I have reconsidered my position on the above matter in light of new national direction which recognises mineral and aggregate extraction, these being the National Policy Statement for Highly Productive Land 2022 (NPSHPL), National Policy Statement for Freshwater Management 2020 – Amended December 2022 (NPSFM) and the National Environmental Standards for Freshwater 2020 (NESF). I note that these national instruments came into effect after the s42A ECO report and supplementary evidence was written<sup>15</sup>.
- 19 The NPSHPL sets out how highly productive land will be protected from inappropriate use and development. In Clause 3.9(2)(j)(ii) mineral extraction must provide “*significant national benefit that could not otherwise be achieved using resources within New Zealand*” and in Clause 3.9(2)(j)(iv) aggregate extraction must provide “*significant national or regional benefit that could not otherwise be achieved using resources within New Zealand*”. This is similar to the mineral and aggregate extraction pathway set out in Clauses 3.11(2)(a)(ii) and 3.11(2)(a)(iii) of the Exposure Draft NBSIB.
- 20 Clause 3.22(1) of the NPSFM sets out a mandatory policy for inclusion in regional plans that manages activities within natural wetlands. Clauses 3.22(1)(d) and 3.22(1)(e) provide a pathway for mineral and aggregate extraction provided on condition that the activities “*will provide significant national or regional benefits*”. The effects of both activities must be managed through applying the applicable effects management hierarchy.
- 21 Section 45D(6) of the NESF states that a discretionary activity resource consent for mineral extractions must not be granted unless the consent authority is satisfied that the extraction activity will provide significant national or regional benefits and that there is a functional need for the extraction of minerals and ancillary activities, and the effects management hierarchy is applied.
- 22 In my view, the above approach of the NPSHPL, in regard to mineral extraction having to provide a national benefit, should be adopted in ECO-P4 because it is more stringent than the NPSFM. I consider a more stringent approach should be taken to protect significant indigenous biodiversity and taoka, which is consistent with sections 6(c) and 6(e) of the RMA as a matter of national importance.
- 23 Like the NPSFM, NESF and the NPSHPL, I consider both mineral and aggregate extraction activities must meet the following qualifier “*that has a functional need*”

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<sup>15</sup> NPSHPL came into effect 12<sup>th</sup> September 2022, NPSFM (amendments) came into effect 8<sup>th</sup> December 2022 and the NESF amendments came into effect 5<sup>th</sup> January 2023,

or operational need to locate within a significant natural area or where they may adversely affect indigenous species or ecosystems that taoka”.

- 24 In proposed Clauses ECO-P4(1A) and ECO-P4(1B) the words ‘the new use or development’ is used because I consider this wording to be clearer than the wording in the NPSFM and NPSHPL.
- 25 I also consider ECO-P4(1A) and ECO-P4(1A) should demonstrate that each step of the effects management hierarchy has been satisfied, which is consistent with higher order documents, such as the NPSFM<sup>16</sup> and NESF<sup>17</sup>. In my view, this approach is appropriate because it strengthens the protection of SNAs and taoka from adverse effects, which is consistent with sections 6(c) and 6(e) of the RMA. This has been set out in the chapeau of ECO-P4 using the words ‘*maintain Otago’s indigenous biodiversity by following the sequential steps in the effects management hierarchy (in relation to indigenous biodiversity) set out in ECO-P6...*’ and is also set out in methods ECO-M4(2) and ECO-M5(4).
- 26 For the above reasons, I recommend ECO-P4 is amended as follows:

#### **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>18</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>19</sup> or where they may adversely affect indigenous species and ecosystems that are taoka:

- (1) the development, operation, maintenance<sup>20</sup> or upgrade of *nationally significant infrastructure*<sup>21</sup> and *regionally significant infrastructure* that has a *functional need*<sup>22</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,

(1A) the new use or development of mineral extraction activities that provide a significant national public benefit that could not otherwise be achieved within New Zealand and that have a functional need or operational need to locate within

<sup>16</sup> Clauses 3.22(1)(d)(iv) & 3.22(1)(e)(iv)

<sup>17</sup> NESF section 45D(6)(c)

<sup>18</sup> 00016.013 Alluvium and Stoney Creek, 0017.011 Danny Walker and Others, 00321.022 Te Waihangā, 00137.009 DOC

<sup>19</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>20</sup> 00311.022 Trustpower Limited

<sup>21</sup> 00314.001 Transpower

<sup>22</sup> 00315.046 Aurora Energy, 00138.116 QLDC



the relevant *significant natural area(s)* or where they may adversely affect indigenous species or ecosystems that are taoka,<sup>23</sup>

- (1B) the new use or development of aggregate extraction activities that provide a significant national or regional benefit that could not otherwise be achieved within New Zealand and that have a functional need 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,<sup>24</sup>
- (2) the development of *papakāika*, marae and ancillary facilities associated with customary activities on ~~Māori land~~ Native reserves and Māori Land,<sup>25 26</sup>
- (2A) the sustainable use of *mahika kai*<sup>27</sup> and kaimoana (seafood) by *mana whenua*,<sup>28</sup>
- (3) the use of ~~Māori land~~ Native reserves and Māori land in a way that will make a significant contribution<sup>29</sup> to enable *mana whenua* to maintain their connection to their whenua and enhancing the<sup>30</sup> social, cultural or economic well-being, of ~~whenua~~ takata whenua,<sup>31</sup>
- (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~~ or<sup>32</sup> immediate risk to public health or safety.

27 I consider the above amendments to ECO-P4 resolve Ms Hunter's concerns with ECO-P3 because a pathway for mineral and aggregate extraction has been provided for in ECO-P4, meaning these activities can locate within SNAs and ecosystems that are taoka, provided they met certain qualifiers. Furthermore, the recommended amendments to ECO-P4 align with national direction in relation to the NPSHLP and NPSFM.

28 Ms Boyd is the reporting officer for the Introduction and general themes and Land and freshwater chapters and has prepared additional supplementary evidence in response to Claire Hunter's evidence for Oceana Gold. In paragraphs 40 to 51 of Ms Boyd's evidence, she responds to Ms Hunter's new recommended provision, LF-LS-Px, which seeks to provide a pathway for mineral access in SNAs. I agree with Ms Boyd's analysis in paragraphs 40 to 50 of her evidence.

### Section 32AA evaluation

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<sup>23</sup> 00115.022 Oceana Gold (New Zealand) Ltd

<sup>24</sup> 00115.022 Oceana Gold (New Zealand) Ltd

<sup>25</sup> 'Māori land' applies to land in native reserves that are held under Te Ture Whenua Māori act 1993

<sup>26</sup> 00234.009 Te Rūnanga o Ngāi Tahu, 00226.053 Kāi Tahu ki Otago, 00010.002 Cain whanau

<sup>27</sup> 00226.0038 Kāi Tahu ki Otago

<sup>28</sup> 00226.220 Kāi Tahu ki Otago

<sup>29</sup> 00234.032 Te Rūnanga o Ngāi Tahu

<sup>30</sup> 00234.032 Te Rūnanga o Ngāi Tahu

<sup>31</sup> 00234.032 Te Rūnanga o Ngāi Tahu

<sup>32</sup> 00139.130 DCC



29 I have assessed my proposed recommended amendments to ECO-P4 in accordance with s32AA as follows:

	<b>Costs</b>	<b>Benefits</b>
<b>Economic</b>	<ul style="list-style-type: none"> <li>• Potential for future remedial costs relating to the restoration of significant natural areas and ecosystems and species that are taoka due to mineral and aggregate activities degrading those areas and indigenous biodiversity values, which would fall on the applicant</li> <li>• Consenting costs could be significant for some applicants. However, they will be less than the opportunity costs that would occur under the s42A recommendation version of ECO-P4 where no provision for mineral and aggregate extraction has been provided for.</li> </ul>	<ul style="list-style-type: none"> <li>• Will provide an economic benefit due to the employment opportunities created.</li> <li>• Potential for the land value of land mapped with significant natural areas that are intended for future mineral and aggregate activities to not decrease in value due to less land use restrictions.</li> </ul>
<b>Environmental</b>	<ul style="list-style-type: none"> <li>• Will contribute to the loss of significant natural areas and ecosystems and species that are taoka</li> <li>• The protection of significant natural areas and ecosystems and species that are taoka will be weakened.</li> </ul>	<ul style="list-style-type: none"> <li>• There are no further environmental benefits identified.</li> </ul>
<b>Social</b>	<ul style="list-style-type: none"> <li>• The protection of significant natural areas and taoka ecosystems</li> </ul>	<ul style="list-style-type: none"> <li>• Employment opportunities may increase as a result of land being available for</li> </ul>

	that provide amenity and recreational values may be degraded, thus causing a loss in recreational and amenity values.	certain mineral and aggregate extraction activities.
<b>Cultural</b>	<ul style="list-style-type: none"> <li>• Has the potential to negatively impact the relationship of mana whenua with their taoka.</li> <li>• Protection of indigenous species and ecosystems that are taoka will be weakened which could impact mahika kai.</li> </ul>	• There are no further cultural benefits identified.

30 I consider my recommendation to include provision for mineral and aggregate activities in ECO-P4 is more effective and efficient at achieving IM-O1 because it enables Otago's communities to provide for their social and economic well-being of present and future generations through the management of natural and physical resources. The recommendation to ECO-P4 is also more effective and efficient at achieving UFD-O4 because it enables the development of rural areas for primary production which is consistent UFD-O4(4). This recommendation is consistent with higher order documents such as the NPSHPL and NPSFM in relation to providing a pathway for mineral and aggregate extraction activities, on the condition that qualifiers are met, and that the applicant has demonstrated that the sequential steps in the effects management hierarchy in ECO-P6 have been followed.

#### **ECO-M4 and ECO-M5**

31 In Appendix C of Ms Hunter's evidence, she has provided consequential amendments to methods ECO-M4 and ECO-M5 as a result of her suggested amendments to ECO-P4, as follows:

#### **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>33</sup> (including *infrastructure*), and
- (c) *infrastructure, mineral extraction and/or aggregate extraction* that has a *functional need*<sup>34</sup> or *operational need* to be sited or operated in a particular location, and

### **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 extraction and/or aggregate extraction* that has a *functional* or *operational need* to be sited or operated in a particular location,

32 I do not consider consequential amendments to ECO-M4 and ECO-M5 are required because it is not intended for ECO-M4(1) and ECO-M5(1) to provide an exhaustive list of activities. "Including" is non-exhaustive.

33 I recommend that 'and' in ECO-M4(1) and ECO-M1(1) should be replaced with 'to' in under Schedule 1, Clause 16(2) of the RMA to correct a minor error. Policies ECO-P3 to ECO-P6 are a management framework for the activities in SNAs and areas of indigenous biodiversity. The three policies are linked and so ECO-M1(1) and ECO-M4(1) applies to ECO-P3 to ECO-P6, not just ECO-P3 and ECO-P6.

34 I therefore recommend the following consequential amendments to ECO-M4 and ECO-M5:

### **ECO-M4 – Regional plans**

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

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<sup>33</sup> 00230.113 Forest and Bird

<sup>34</sup> 00315.046 Aurora Energy, 00138.116 QLDC

- (1) if the requirements of ECO-P3 ~~and to~~<sup>35</sup> ECO-P6 can be met, provide for the use of *lakes and rivers* and their *beds*, including:

...

### **ECO-M5 – District plans**

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

- (1) if the requirements of ECO-P3 ~~and to~~<sup>36</sup> ECO-P6 are met, provide for the use of *land* and the surface of *water bodies* including

...

### Section 32AA evaluation

- 35 The recommended amendments to ECO—M4 and ECO-M5 make the interpretation of the provisions clearer and do not change the purpose of the methods; therefore, no section 32AA assessment is considered necessary.

### **ECO-P5**

- 36 In relation to ECO-P5, Ms Hunter considers the s42A recommendations only serve to constrain the application of ECO-P5 further. She suggests extraction activities within the Macraes Mineral Zone in the Waitaki District are anticipated but may still trigger a consenting requirement. Ms Hunter recommends the following amendments to ECO-P5 to resolve these concerns:

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

~~Except as provided for by ECO-P4, provide~~<sup>37</sup> for existing activities that are lawfully established<sup>38</sup> within *significant natural areas* (outside the coastal environment)<sup>39</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>40</sup> will not lead to the loss (including through cumulative loss) of extent or degradation<sup>41</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>42</sup> are no greater in character, spatial extent, intensity or scale than they were before this RPS became operative.

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<sup>35</sup> Clause 16(2), Schedule 1, RMA

<sup>36</sup> Clause 16(2), Schedule 1, RMA

<sup>37</sup> Under RMA Schedule 1, Clause 16(2) of the RMA amend the cross-referencing error

<sup>38</sup> 00230.104 Forest and Bird

<sup>39</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>40</sup> 00230.104 Forest and Bird

<sup>41</sup> Clause 16(2), Schedule 1, RMA (remove the italics from 'degradation' as this term is not defined in the pORPS)

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

37 I consider the above amendments to ECO-P4, in part, resolve Ms Hunter's concerns with ECO-P5 because provision for mineral and aggregate extraction has been provided for in ECO-P4. The amendments to ECO-P4 gives mining access to a consenting pathway in SNAs, meaning anticipated extraction activities within the Macraes Minerals Zone can access ECO-P4. Therefore, I recommend no amendments to ECO-P5.

## ECO-P6

38 In relation to ECO-P6, Ms Hunter's evidence has raised concerns that regionally significant activities, such as mineral extraction and mining, are unable to access the effects management hierarchy within ECO-P6. I consider this issue may be resolved, in part, by the above recommended amendment to ECO-P4. Ms Hunter's evidence also raises questions in regard to the merits of the effects management hierarchy within ECO-P6. She recommends the following amendments to ECO-P6:

### ECO-P6 – Maintaining indigenous biodiversity

Maintain Otago's indigenous *biodiversity* (excluding ~~the coastal environment and~~<sup>43</sup> areas ~~managed protected~~<sup>44</sup> under ECO-P3) by applying the ~~following biodiversity effects management hierarchy (in relation to indigenous biodiversity)~~<sup>45</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.~~~~

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<sup>43</sup> Clause 10(2)(b)(i) - Consequential amendment arising from 00226.223 Kāi Tahu ki Otago

<sup>44</sup> 00230.105 Forest and Bird

<sup>45</sup> 00016.013 Alluvium and Stoney Creek, 0017.011 Danny Walker and Others, 00321.022 Te Waihanga

39 ECO-P6 responds to functions of regional and territorial councils in sections 30(1)(ga) and 31(1)(b)(iii) of the RMA for maintaining indigenous biological diversity and is also consistent with higher order documents, such as the NPSFM and NESF, in requiring an effects management hierarchy to be followed. I note that there are a range of other submitters who have provided expert evidence on the merits of the effects management hierarchy. Therefore, I would like to hear the expert evidence from other submitters, so that Oceana Gold's evidence can be tested against it before making any recommendations to ECO-P6. At this stage, I therefore recommend no amendments to ECO-P6.



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Melanie Kate Hardiman

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24 February 2023