

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)

**SUPPLEMENTARY STATEMENT OF EVIDENCE BY CLAIRE ELIZABETH HUNTER
ON BEHALF OF OCEANA GOLD (NEW ZEALAND) LIMITED**

31 MARCH 2023

1. INTRODUCTION AND BACKGROUND

- 1.1 My name is Claire Elizabeth Hunter. I set out my qualifications and experience, and role in this matter in paragraphs 1.1 to 1.4 of my primary statement of evidence dated 23 November 2022.
- 1.2 I reconfirm my obligations in terms of the Environment Court's Code of Conduct for Expert Witnesses. I reconfirm that the issues addressed in this brief of evidence are within my area of expertise. I reconfirm that I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.
- 1.3 I have read the supplementary evidence, dated 24 February 2023, from the relevant section 42A report authors including:
- 1.3.1 Ms Boyd – Chapter 1: Introduction and general themes;
 - 1.3.2 Ms Todd – Chapter 5: Significant Resource Management Issues for the Region;
 - 1.3.3 Ms Goslin – Chapter 7: Air;
 - 1.3.4 Mr Maclennan – Chapters 8, 12 and 14: Coastal environment, Hazards and risks, and Natural features and Landscapes;
 - 1.3.5 Ms Hardiman – Chapter 10: Ecosystem and indigenous biodiversity;
 - 1.3.6 Ms Fenemor – Chapter 13: Historic and cultural values;
 - 1.3.7 Ms White – Chapter 15: Urban Form and development
- 1.4 I have also read the suggested changes to the Proposed Regional Policy Statement (PORPS) as a result of this further evidence (dated 24 February 2023). Where appropriate I respond to matters which have been raised in this evidence in the following sections of my evidence.

2. INTRODUCTION AND GENERAL THEMES

- 2.1 Ms Boyd disagrees that there is a gap in the current drafting of the PROPS for mining activities in Otago¹. She therefore does not support the suggestions I made for inclusions in the LF-LS chapter to address what I consider to be a clear gap in the PORPS' coverage.
- 2.2 Ms Boyd refers to a number of provisions which provide a general reference to either primary production or rural industry to support this view². From my review of these provisions, only one policy directly recognises the importance of mineral and aggregate resources – Policy UFD -P7. However, this may be of limited utility as the drafting of UFD-P7(4)(a) appears to only recognise the benefits of such resources where they are necessary for infrastructure purposes. This may not be the intention however, and as such, I think it would be preferable if this was amended as follows:

Facilitates primary production, rural industry and supporting activities and recognises:

(a) The importance of mineral and aggregate resources for the ~~provision of infrastructure and the social and economic wellbeing of Otago's communities, including for the provision of infrastructure.~~

- 2.3 However, the balance of the other provisions identified by Ms Boyd are related to protecting primary production from reverse sensitivity effects or are relevant only to activities in coastal areas.
- 2.4 Ms Boyd also addresses the proposed amendments which OceanaGold is seeking to provide a consenting pathway for mineral extraction within the Otago region. Ms Boyd is concerned that these provisions are too broad, and she was “not convinced by the justification provided by OceanaGold for needing all of the types of ‘carve-outs’ provided by this

¹ Paragraph 13 of Ms Boyd's Supplementary Evidence, dated 24 February 2023

² Paragraph 16 of Ms Boyd's Supplementary Evidence, dated 24 February 2023 and Appendix 1

policy³. At paragraph 24 Ms Boyd refers to Mr Christensen’s legal submissions which state that “unlike the Partially Operative RPS, the PORPS fails to make appropriate provision for the ongoing needs of mining in Otago, and at Macraes Mine in particular”. She further notes that the inference here is that the Partially Operative RPS does make appropriate provision and has undertaken a comparative exercise between the policy I have drafted, and Policy 5.4.8 of the Partially Operative RPS. Ms Boyd considers that Policy 5.4.8 is considerably more stringent than what OceanaGold is now seeking, and that there is insufficient justification in the evidence from OceanaGold to seek a more permissive regime compared to the Partially Operative RPS⁴.

2.5 The departure from the Partially Operative RPS was observed in OceanaGold’s submission on the PORPS. More specifically, the following points were made in its submission:

2.5.1 *Paragraph 15: This is a departure from the existing ORPS 2019 – Policies 5.4.3 (“Recognise the functional needs of mineral exploration, extraction and processing activities to locate where the resource exists) and 5.4.8.*

2.5.2 *Paragraph 47: Following Environment Court mediation relating to OceanaGold’s and others appeals on the decisions version of the RPS, changes to key policy provisions affecting mineral resources in Otago were agreed between various parties. This resulted in the following policies being inserted into the RPS:*

Policy 5.3.4 – Mineral and petroleum exploration, extraction and processing

Recognise the functional need of mineral exploration, extraction and processing activities to locate where the resource exists.

Policy 5.4.8 – Adverse effect from mineral and petroleum exploration, extraction and processing...

³ Paragraph 23 of Ms Boyd’s Supplementary Evidence, dated 24 February 2023.

⁴ Paragraph 24

- 2.5.3 *Paragraph 53 – As a final note on the PORPS 2019, and notwithstanding the above and its concerns with Policy 5.4.6A in particular (which remain), OceanaGold is not opposed to the intent of the effects management hierarchy which was developed in Policy 5.4.8. This is accepted as good management practice.*
- 2.5.4 *Paragraph 54 – Most importantly for OceanaGold Policy 5.4.8 enabled (despite its imperfections) an ability to apply for resource consent for its proposal and to have this heard and tested via a thorough discretionary consenting process. In other words, this policy and others in the existing RPS at the very least recognised the importance of mining activities, acknowledged its location and functional constraints and attempted to provide a consenting pathway for such projects.*
- 2.5.5 *Page 113 - The Macraes mining operation is also a significant activity within the Waitaki District and wider Otago region. It is of such significance that the Waitaki District Plan currently includes a designated zone for mining, referred to as the “Macraes Mining Zone”. On the basis that the Waitaki District Plan is required to give effect to the PORPS, without any recognition of the importance of the mining industry, and/or its unique local and functional constraints and requirements, OceanaGold is concerned that this draws into question the ongoing existence and future of the Macraes Mining Zone in the District Plan in accordance with section 32 of the RMA. This is not appropriate and is of concern particularly as national direction with regard to the National Planning Standards specifically refers to the Macraes Mining Zone as being a clear example of when a special purpose zone is a good fit.*
- 2.6 As far as I am aware the section 42A report writers did not directly respond to these submission points, nor has there been any justification provided within the section 32 documentation as to why the existing pathway in the Partially Operative RPS for mining activities in Otago has

been removed from the PORPS. On this basis, it was assumed that the ORC did not support these provisions. Also, Ms Boyd has not addressed the economic evidence of Mr Eaqub that Macraes Mine is a large economic entity at national, regional and district levels⁵, nor the evidence of Ms Paul that “the nature of mining at Macraes makes it disproportionately vulnerable to avoidance-based “bottom lines” and bright-line tests”⁶.

- 2.7 My drafting which Ms Boyd has criticised as being too broad, was seeking to align with the approach that has been adopted for infrastructure activities in the PORPS, which are also often similarly locationally and/or functionally constrained, and which I proposed when the ORC made it clear through the pre-hearing meeting process that it was not going to address the topic. My proposal was also to circumvent deficiencies identified in the drafting and/or intent of other provisions within the various chapters in the PORPS. This was achieved by referring, for example, to the pending National Policy Statement for Indigenous Biodiversity (NPSIB) instead of deferring to the ECO provisions, which did not recognise or provide a pathway at the time of drafting for mineral extraction activities.
- 2.8 Ms Boyd correctly notes however that the infrastructure provisions in the PORPS distinguish between nationally and regionally significant infrastructure and all other infrastructure, and a higher bar is set for infrastructure that is not nationally or regionally significant⁷. Ms Boyd further states that if the Panel is minded to adopt the policy that I have proposed, its scope should be limited to activities with regionally and/or nationally significant benefits only⁸. I agree with Ms Boyd that this would be an appropriate outcome and would be consistent with the National Policy Statement for Freshwater Management 2020 (NPSFM), National Environmental Standard for Freshwater 2020 (NESF) and the National Policy Statement for Highly Productive Land 2022 (NPSHPL).

⁵ Evidence of Shamubeel Eaqub dated 24 November 2022 at paragraphs 3.10 – 3.12.

⁶ Evidence of Alison Paul dated 24 November 2022 at paragraph 16.

⁷ Paragraph 29

⁸ Paragraph 34

2.9 I also note that if the Otago Regional Council prefers⁹ the policy drafting that is contained within the Partially Operative RPS (as set out in Appendix 2 of Ms Boyd’s evidence), then OceanaGold would not be opposed to this, as outlined in its submission. However, this is subject to amendments being made to the ECO provisions, which I discuss further below.

3. SRMR – SIGNIFICANT RESOURCE MANAGEMENT ISSUES FOR THE REGION

3.1 The SRMR chapter does not currently recognise and provide for existing natural and physical resources such as the Macraes Mining Operation and the rare, “world class” mineral resource (known as the Hyde-Macraes Shear Zone) that is being mined there. Ms Todd does not propose any further changes in her further evidence. However, it is recognised that this may change in light of caucusing invited by the Hearing Panel on 10 February 2023 in its Minute 6. This caucusing has now occurred, and a revised SRMR issue statement relating to industry in Otago has been agreed¹⁰. I understand that this is now back with the ORC for further consideration.

3.2 Briefly, I note that this issue statement has been drafted to acknowledge the importance of industry activities in Otago, including mineral extraction, to the social and economic wellbeing of the region. It also recognises that enabling appropriate access to these resources needs a planning framework that recognises and provides for the essential operational, locational, and functional requirements of such activities. In my view this statement supports a standalone provision within the PORPS for mineral extraction given its clear locational and functional constraints.

4. AIR-P4 – AVOIDING CERTAIN DISCHARGES

4.1 OceanaGold requested that AIR-P4 be deleted or amended. I recommended an amendment to this policy given that this policy relies

⁹ Which appears to be the purpose of Ms Boyd’s comparative analysis undertaken in paragraphs 35 – 82 of her further evidence.

¹⁰ By the planning witnesses who participated in this process on behalf of various industry groups across the Otago region.

on a subjective assessment and is too restrictive compared with the PORPS 2019 provisions. Therefore, I maintain my view that this policy should be redrafted.

- 4.2 Ms Goslin in her further supplementary evidence does not agree with the recommendations made in my primary evidence¹¹. Subsequently no changes have been made to AIR-P4, however Ms Goslin did indicate that further drafting is required to AIR-P4 to clarify the intent. Because that further drafting has not yet been provided, I am unable to comment on it in this statement and reserve my ability to do so once it is available.

5. LF-FW-P13 – PRESERVING NATURAL CHARACTER

- 5.1 OceanaGold requested that policy LF-FW-P13 is amended due to concerns with cross referencing to and implications arising from the application of policies ECO-P3 and ECO-P6 (and consequently APP3 and APP4). Given that the issues with these provisions have not yet been resolved, I continue to support an amendment to LF-FW-P13 to refer to an effects management hierarchy, which would be defined elsewhere, for addressing the effects of an activity on freshwater and its natural character. In the freshwater context this is defined in the NPSFM, and supported by appropriate principles, so it would be appropriate to defer to this.
- 5.2 Ms Boyd's evidence does not support this amendment because it does not specify which effects management hierarchy is to be applied, and therefore would not implement clause 3.24 of the NPSFM 2020¹².
- 5.3 This policy has been amended at (2)(c) and (2)(d) to better align with the NPSFM 2020, however this has not addressed OceanaGold's concerns.
- 5.4 Ms Boyd disagrees with there being a lack of clarity around how and when biodiversity offsetting and compensation become available as part of the effects management hierarchy. Ms Boyd points to ECO-P6(4) and

¹¹ Paragraph 7 of Ms Goslin's Supplementary Evidence, dated 24 February 2023

¹² Paragraph 92

(5) as clearly setting out when these options are available¹³. However, the point that has not been addressed here is that ECO-P6(4) and (5) subsequently require interpretation of APP3 and APP4 to determine when offsetting and compensation are available, and these are still problematic as discussed later in this evidence.

- 5.5 Ms Boyd also addresses OceanaGold’s submission to delete Clause 4 of this policy, which seeks to *where possible*, sustain the form and function of a water body to reflect its natural behaviours. Ms Boyd considers that the reference to ‘where possible’ is a qualifier on the direction to sustain form and function and that phrase must be considered in the context of each circumstance. She goes on to say that “what is possible will depend on the activity proposed, the environment it is proposed within, the effects of the activity, and any measures proposed to manage those effects¹⁴”. I would agree with this statement if it used the qualifier “where practicable”, however because it uses the phrase “where possible” I do not agree that this same level of scrutiny will necessarily be applied. I maintain my view that there are issues with this as it will always “be possible” to achieve these outcomes by avoiding the activity in the first instance.

6. ECOSYSTEMS AND INDIGENOUS BIODIVERSITY

Proposed ECO-O4

- 6.1 In my evidence, I proposed the following new objective to the ECO chapter:

ECO – O4 – 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.

- 6.2 Ms Hardiman does not agree that this objective is necessary on the basis that it lacks consistency with the ECO chapter and what it is trying to

¹³ Paragraph 90

¹⁴ Paragraph 100

achieve, which is to protect and restore indigenous biodiversity in Otago.¹⁵ She further notes that the proposed objective does not align with the ECO chapter's direction because it does not seek to use Otago's indigenous biodiversity to provide for our social, economic and cultural wellbeing¹⁶.

6.3 The intent of this objective is to create balance within the ECO chapter to recognise that the protection and management of indigenous biodiversity should be undertaken in an integrated way that also provides for social, economic and cultural wellbeing. While I accept that it is important to address indigenous biodiversity loss, such measures also need to consider the costs, especially by preventing options that may deliver enhanced biodiversity outcomes, as well as providing for economic and social wellbeing (e.g., by inappropriately limiting an ability to use offsetting and compensation).

6.4 This objective therefore supports an approach whereby development is enabled, and it may occur in places where it may conflict with indigenous biodiversity, provided that overall better ecological outcomes are achieved. It also supports the following policy framework which recognises that a mix of avoidance, remediation, mitigation, offsetting, and compensation may appropriately achieve the protection of indigenous biodiversity.

ECO – P2 and APP2

6.5 Ms Hardiman notes my concerns regarding ECO – P2 and APP2 but considers that it would be helpful to hear from other experts who have also provided evidence on these provisions before making any further recommendations¹⁷. I agree with Ms Hardiman that this would be appropriate.

6.6 Since Ms Hardiman's supplementary evidence was filed the Hearing Panel has directed expert witness caucusing on APP2. I understand this

¹⁵ Paragraph 9, Ms Hardiman's Supplementary Statement of Evidence, dated 24 February 2023

¹⁶ Paragraph 10

¹⁷ Paragraphs 12 - 14

caucusing will be held on 31 March and that a joint witness statement will be issued afterwards.

ECO – P3, P4, P5 and P6

6.7 At paragraphs 18 – 22 Ms Hardiman refers to recent national policy directions which provide a pathway for mineral extraction activities. More specifically Ms Hardiman observes that such a pathway exists in both the NPSHPL and the NPSFM. She notes that in light of these national policy statements she has reconsidered her position and at paragraph 22 recommends that the approach adopted in the NPSHPL, in regard to mineral extraction having to provide a national benefit, should be adopted in ECO-P4. She says that this is because it is more stringent than the NPSFM and this 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 importance¹⁸.

6.8 Ms Hardiman recommends the addition of the following two new clauses to ECO- P4:

(1A) the new use or development of mineral extraction activities that provide a significant national 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;

(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.

6.9 While these amendments present an improvement in my view, I am unclear as to why Ms Hardiman has preferred to adopt the NPSHPL

¹⁸ Paragraph 22

wording over the NPSFM. I have two main issues with this, as I discuss below.

- 6.10 In my experience wetlands, particularly those which will qualify as a natural inland wetland, often contain indigenous vegetation; and/or provide a habitat for indigenous fauna species. Therefore, in my experience, wherever wetlands have been identified; they also qualify as being a 'significant natural area (SNA)' under the relevant criteria. This is also recognised in the section 32 document prepared for the NPSFM 2020 amendments, which sets out that the amendment to the definition of natural inland wetland provides for the protection of threatened species, which will ensure that where a wetland passes the pasture exclusion test, but is also known to contain threatened species, the protections in the NESF will apply. I interpret this to mean that the approach adopted in the NPSFM and NESF (i.e., providing a pathway for mineral extraction which has either a national or regional benefit, with an ability to apply the effects management hierarchy) will provide sufficient protection to section 6(c) habitats and species. Therefore, I do not agree with Ms Hardiman that adopting a more stringent approach and only providing a pathway for mineral extraction activities that provide a national benefit is necessarily achieving better consistency with section 6(c).
- 6.11 I also do not consider it appropriate to apply a policy directive derived from a NPS which does not in any way purport to provide for the protection and management of indigenous biodiversity. Therefore, in my view adopting the NPSFM approach is preferable and a better fit than the NPSHPL in these circumstances.
- 6.12 In addition, the NPSHPL provides more certainty in terms of its potential implications on other land uses. It applies within clear existing boundaries defined by the Landuse Capability rankings mapped by Landcare Research. These are searchable by any property owner or Council planner at any time¹⁹ and the constraints imposed by the NPSHPL are

¹⁹ "Your land will be considered highly productive under the NPS-HPL if it is zoned General Rural or Rural Production and it contains Land Use Capability (LUC) 1, 2 or 3 soils. You will still be able to

consistent in the first instance with existing general purpose zoning. The same level of clarity, and comfort derived from consistency of consenting pathways with existing permitted use, is not available to inform a regulatory impact assessment for the ECO chapter.

6.13 Ms Hardiman also does not appear to have relied on any economic analysis to justify the proposed limitation. However, her section 32AA evaluation identifies the following economic and social benefits arising from her suggested amendments to ECO – P4:

6.13.1 Will provide an economic benefit due to the employment opportunities created.

6.13.2 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.

6.13.3 Employment opportunities may increase as a result of land being available for certain mineral and aggregate extraction activities.

6.14 These benefits appear to have a regional level focus (i.e., employment within the region and land values), as opposed to a national benefit, so I am unclear why Ms Hardiman supports limiting the pathway to mineral extraction activities which only provide a national benefit. This is consistent with the evidence of Mr Eaquib, who notes that while Macraes Mine has significant national benefits, the regional benefit of its operation can also not be disputed. As Mr Eaquib sets out in his evidence the Macraes Mine is a large economic entity in the Otago region, specifically providing²⁰:

6.14.1 \$36.0 million into Waitaki District and supports 333 jobs directly and indirectly;

undertake land-based primary activities on your highly productive land once the policy takes effect. If you wish to undertake other activities that are not land-based primary production, clause 3.9 of the NPS-HPL contains a list of activities that may also occur on highly productive land. Find out if your land is LUC1, 2 or 3 on the Manaaki Whenua Landcare Research website" (<https://environment.govt.nz/assets/publications/national-policy-statement-highly-productive-land-infosheet.pdf>)

²⁰ Evidence of Shamubeel Eaquib, 24 November 2022 at paragraph 4.3.

- 6.14.2 \$82.2 million into Dunedin City and supports 757 jobs directly and indirectly;
- 6.14.3 \$122.7 million into the Otago region and supports 1,132 jobs directly and indirectly.
- 6.15 He also states that in the event of mine closure, these direct benefits to the region would be lost. The gold resource would not be redeployed, and thus the economy would be smaller. Workers would be redeployed, but local economies do not offer comparable incomes (average income at Macraes is \$110,000, roughly twice the average of the income in Otago at \$59,000), and many would choose to live and work elsewhere, and local suppliers are unlikely to find a similar customer.
- 6.16 Based on Ms Hardiman’s section 32AA evaluation and the evidence of Mr Eaquib, I therefore consider that it would be appropriate to apply the consenting pathway in ECO – P4 to mineral extraction activities which provide either a national *or* regional benefit. To ‘give effect’ to this in the lower order regional and district plans, I also consider that the PORPS should within its methods direct the plans to list and/or add criteria so as to clearly identify the activities / resources within their respective jurisdictions which would qualify as being of national or regional significance. For example, OceanaGold has provided evidence that the Macraes Mine is of national and regional significance, and this type of direction in the PORPS would appropriately provide for the Macraes Mineral Zone within the Waitaki District Plan.
- 6.17 On an additional note, Ms Hardiman’s section 32AA evaluation, says “There are no further environmental benefits identified” from the amendments to ECO-P4²¹. However, this ignores the point that ECO-P4 cross references ECO-P6 which will require mineral extraction activities satisfying ECO-P4(1A) to satisfy the effects mitigation hierarchy. This may lead to biodiversity offsets or compensation, which lead to net gains, resulting in environmental benefits.

²¹ Supplementary evidence of Melanie Hardiman, 24 February 2023 at paragraph 29.

6.18 Clauses (1A) and (1B) also refer to the “new use or development of mineral [or aggregate extraction] activities”. However, it is not clear to me what is meant by this term in certain contexts. For example, there is uncertainty as to whether this would provide a pathway for the minor expansion of a pit mine at Macraes; as this would not strictly be considered as either a “new use or development”, nor would it arguably be considered as an existing use and therefore provided for by the parameters within ECO – P5. It also differs from the language used in Clause (1) which refers to the “*development, operation, maintenance and upgrade* of nationally and regionally significant infrastructure”.

6.19 To address this, it is my view that the drafting of Clauses (1A) and (1B) should be amended as follows:

(1A) *the ~~new use or~~ development, operation and maintenance of mineral extraction and its ancillary activities that provide a significant national benefit 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.*

(1B) *the ~~new use or~~ development, operation and maintenance of aggregate extraction and its ancillary 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.*

ECO – P5

6.20 Ms Hardiman notes that the amendments to ECO – P4 may resolve my concerns that I raise with respect to ECO – P5 in my evidence²². I agree that provided there is a pathway for regionally or nationally significant mineral extraction activities within the ECO provisions, there may not be a further need for changes to ECO – P5.

ECO – P6 and Appendices

6.21 Like the above, Ms Hardiman considers that my concerns regarding ECO – P6 and APP3 and APP4 may be resolved via the provision of a pathway for mineral extraction in ECO – P4²³. Although the amendments to ECO – P4 ‘open the door’ for mineral extraction activities [which provide national benefits] to consider the application of the effects management hierarchy, this does not resolve my concerns with the drafting of ECO – P6 and more specifically APP3 and APP4 which place limitations on when offsetting and compensation can be considered.

6.22 As I have set out in my primary statement of evidence these limits are problematic, and they are at odds with the guidance inherent in the higher order planning document such as the NPSFM, the Exposure Draft of the National Policy Statement for Indigenous Biodiversity and section 104(1)(ab) of the RMA. This is further elaborated on in the evidence of Mr Mark Christensen and Mr Hooson on behalf of OceanaGold.

6.23 As Ms Hardiman notes further evidence is to be provided on this matter, and I agree that it would be appropriate to return to these issues at that time.

7. HISTORICAL AND CULTURAL VALUES

7.1 Both Ms Boyd and Ms Fenemor comment that it is unclear from my evidence whether OceanaGold is seeking to pursue both a standalone provision for mineral extraction activities and the amendments to

²² Paragraph 37

²³ Paragraph 38

individual provisions throughout the various chapters; or whether they are alternative options²⁴. As I have outlined above, OceanaGold's preference is to provide a clear pathway for mineral extraction activities in Otago. This would be similar to the pathway which is currently provided via Policy 5.4.8 in the Partially Operative RPS and appropriately recognises the economic benefits this activity provides to the region's economy; and its locational constraints.

- 7.2 Notwithstanding this, OceanaGold is still seeking amendments to various provisions throughout the PORPS in order to improve their certainty and/or practical workability. To this end, OceanaGold submitted in opposition to policy HCV-HH-P5, 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.
- 7.3 Both Ms Boyd and Ms Fenemor are of the view that while there is a close link between locating within and adversely affecting an area (with special or outstanding historic heritage values or qualities), they do not consider that locating on its own will always result in adverse effects²⁵.
- 7.4 Ms Fenemor then refers to the evidence of Mr Chris Horne for the Telecommunications Companies in support of this view, citing that his *“examples of activities that affect scheduled heritage buildings being permitted or controlled activities in district plans, are indicative of the relevant local authorities being confident that compliance with the rule will adequately manage any effects expected”*²⁶.
- 7.5 I have reviewed Mr Horne's evidence and note that in his subsequent paragraphs (4.13 onwards) he explicitly expresses concern with the use of the “avoid” directive in this policy, stating that²⁷:

²⁴ Paragraph 5 of Ms Fenemor's Supplementary Statement of Evidence, dated 24 February 2023

²⁵ Paragraph 8 of Ms Fenemor's Supplementary Statement of Evidence, dated 24 February 2023

²⁶ Paragraph 8 of Ms Fenemor's Supplementary Statement of Evidence, 23 February 2023

²⁷ Paragraph 4.14 of Mr Horne's evidence, dated 23 November 2022

“Given that district plans (as lower order planning documents) must give effect to the relevant Regional Policy Statement (“RPS”) under the RMA, an “avoid” directive in the RPS may lead to outcomes such as non-complying activity status in district plans and/or notification. It also increases the risk that applications such as the Auckland Council City-Wide consent example be declined. In my opinion this may lead to unintended consequences and could make it difficult for telecommunications network operators to provide service connections to scheduled heritage buildings/buildings in heritage precincts, which would not be supporting their ongoing protection and use.”

- 7.6 Mr Horne also states that in the absence of a clear pathway for telecommunications infrastructure in the PORPS, amendments are necessary to policy HCV-HH-P5 to sufficiently provide for such activities²⁸. This position is consistent with OceanaGold’s (as it relates to mining activities).
- 7.7 As set out above, given the locational constraints and significant economic benefits that can be derived from mineral extraction activities as outlined in Ms Paul’s and Mr Eaqub’s evidence, I consider it appropriate for this policy to defer to a separate mining related provision, like it does for nationally or regionally significant infrastructure. This is consistent with the current approach adopted in Policy 5.4.8 of the Partially Operative RPS, and I reiterate that I have seen no valid reasoning as to why this should not be retained in the PORPS.

8. NATURAL HAZARDS AND LANDSCAPES

- 8.1 Mr Maclennan addresses both natural hazards and landscapes in his supplementary evidence. He considers that within both chapters of the PORPS, provided certain standards are achieved or demonstrated, there is a potential pathway for mineral extraction to be considered. Therefore, no further changes are proposed by Mr Maclennan to address the concerns raised by OceanaGold specifically.

²⁸ Paragraph 4.18 of Mr Horne’s evidence, dated 23 November 2022

- 8.2 Mr Maclennan also agrees with the analysis of Ms Boyd and expresses some concerns regarding the workability of the standalone provision for mineral extraction activities which I attached to my primary statement of evidence.
- 8.3 As I have noted in this evidence, OceanaGold's preference remains to provide a clear pathway for mineral extraction activities within the PORPS. This is because there are locational and functional constraints that mean avoidance-based policies (in other chapters of the PORPS) will have disproportionate and unintended consequences on this activity in particular.
- 8.4 There is apparent preference in the ORC's evidence for the drafting of Policy 5.4.8 (refer to Ms Boyd's supplementary evidence). OceanaGold is supportive of a provision which is similar to this being reinstated in the PORPS. As I have set out above this is consistent with its submission.
- 8.5 In my view, adopting Policy 5.4.8 as it relates to the coastal environment, natural features and landscapes and natural hazards would also address both Ms Boyd's and Mr Maclennan's concerns regarding the potential inconsistencies with the provision I have proposed in my evidence and the New Zealand Coastal Policy Statement (NZCPS) and section 6(b) of the RMA in particular.

9. UFD – URBAN FORM AND DEVELOPMENT

- 9.1 I remain of the view that the PORPS needs to acknowledge the importance of the mineral and extractives industry in Otago specifically. However, that recognition needs to go further than protecting mineral extraction from reverse sensitivity effects as an activity encompassed within the definition of rural activity and needs to be enabling and provide for mineral extraction.
- 9.2 Ms White supports Ms Boyd’s view that several provisions in the UFD chapter apply to mining and extraction; namely those applying to primary production and rural industry²⁹. I agree with Ms Boyd and Ms White’s view insofar as the UFD chapter includes several provisions that could apply to mineral extraction (i.e., by reference to primary production and/or rural industry). However, for the reasons set out in my primary evidence and within this brief of evidence, these provisions are insufficient to support a consenting pathway for mineral extraction activities.
- 9.3 Since the UFD chapter is to be further re-drafted per Minute 7, I anticipate an opportunity to respond to any subsequent changes will be further provided.

Claire Hunter

31 March 2023

²⁹ Paragraph 6 of Ms White’s Supplementary Statement of Evidence, dated 24 February 2023.