

BEFORE THE HEARINGS PANEL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the Proposed Otago Regional Policy Statement
2021 (Non-Freshwater Parts)

MEMORANDUM ON BEHALF OF THE OTAGO REGIONAL COUNCIL

Dated 6 April 2023

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MEMORANDUM ON BEHALF OF THE OTAGO REGIONAL COUNCIL

May it please the Panel:

Introduction

- 1 This memorandum responds to the memorandum on behalf Oceana Gold (New Zealand) Limited (**OGL**) dated 31 March 2023.
- 2 OGL seeks directions that:
 - 2.1 A timetable be put in place for submitters to respond to the ORC's re-drafting of a new SRMR issue statement relating to regionally significant industries and activities, and AIR-P4; and
 - 2.2 OGL be given an opportunity to make submissions at the conclusion of the hearing of submissions, before ORC's closing.

SRMR

- 3 The caucusing invited in Minute 6 has occurred.
- 4 OGL's witness, Ms Hunter, participated in the caucusing and is a signatory to the resulting joint witness statement.
- 5 The expert witnesses of all interested submitters have had the opportunity to participate. Minute 6 expressly recorded:

“15. The Panel wishes to record that any submitter who has made a similar such request, but whose identification may have been inadvertently missed above, should make contact with either Mr. Horne or Ms. Tait if they wish to participate in the caucusing.

16. Finally, while it is not really necessary for the Panel to say so, we wish to encourage interested submitters to engage in the caucusing. We record that the fact of their doing so will not have any effect on the weight we give to their original submission requests which remain unaffected.”
- 6 As a result, a joint witness statement dated 22 March 2023 has been filed.
- 7 Minute 6 directs at paragraph 13 that the ORC response is expected as part of the ORC closing.

- 8 The issues for ORC response are not only how any further SRMR issue statement should be drafted, but whether there should be a further issue statement at all (which OGL incorrectly assumes to necessarily be the case).
- 9 On these issues, as the timetable presently stands, the Panel will have the benefit of:
 - 9.1 submissions on the notified policy statement;
 - 9.2 the section 42A report;
 - 9.3 submitter expert evidence filed before the SRMR hearing;
 - 9.4 expert evidence led at the SRMR hearing;
 - 9.5 legal submissions at the SRMR hearing;
 - 9.6 the joint witness statement filed after caucusing of the submitter expert witnesses;
 - 9.7 the ORC report writer's reply statement; and
 - 9.8 any ORC closing legal submissions.
- 10 The Panel will be fully informed to determine its recommendations on this topic.
- 11 That determination is for the Panel and does not require the now requested further response and response to the response.
- 12 No further timetable direction is required.

AIR-P4

- 13 This policy is not subject to a minuted direction of the Panel.
- 14 What form the policy should take is a matter that was raised at the hearing, and which will need to be addressed as part of the ORC closing, as is the case with many issues raised during the course of the hearings.
- 15 Every submitter has had the opportunity to submit on the notified policy statement, and to respond to the ORC position in its section 42A report by

filing evidence before the hearing, leading further evidence at the hearing, and making legal submissions.

16 In its closing, ORC will respond to the submitters' evidence and legal submissions on this point.

17 There is no need for any further timetable direction to be made.

Further OGL submissions

Context

18 OGL has had the same opportunity as all other submitters to lead evidence and make legal submissions. It has taken an active role in the hearings to date and presumably will continue to do so.

19 OGL has had, and continues to have, the opportunity to make legal submissions at each hearing on a topic it has submitted on.

20 In addition, in Minute 5 the Panel directed that the ORC section 42A report writers lodge further evidence addressing the potential for separate relevant chapter amendments as to the effects of mineral extraction, and allowed further response by OGL to this evidence.

21 These steps have now occurred.

22 ORC section 42A report writers filed supplementary evidence on 11 chapters, and OGL has filed Ms Hunter's evidence in response.

23 OGL now seeks directions allowing it to make further closing submissions.

Fairness and natural justice

24 This raises significant issues of procedural fairness and natural justice.

25 The additional ORC consideration of OGL submission points and OGL response has already occurred to the exclusion of other submitters.

26 Essentially OGL now seeks an overall right of reply not afforded to any other submitter, despite having had and continuing to have the same opportunity to make legal submissions as every other submitter.

27 To grant OGL's request would be unfair to every other submitter, especially those with submission points at odds with those of OGL.

- 28 The only way such a direction could fairly be made would be to give the same opportunity to every submitter, and to defer the ORC closing by a sufficient time period (at least three weeks), to enable the ORC closing to address those submissions.
- 29 Doing so would cause significant delay and is unnecessary because by the conclusion of the hearings all submitters will have had the full opportunity to present their cases.

Grounds advanced by OGL

- 30 At paragraph 6 of its memorandum OGL lists its grounds for having a further opportunity to address the Panel.
- 31 Grounds (a), (b) and (c) are restatements of the OGL case that the PORPS is deficient and fails to recognise the significance of the Macraes mine and its functional and operational needs.
- 32 That case has already been presented.
- 33 OGL has had the same opportunity as all submitters to present its case.
- 34 It has also had the further accommodation described above.
- 35 Ground (d) asserts that it is reasonable for OGL to have the opportunity to address revisions when they are able to be considered as a whole and in context of the entire PORPS.
- 36 The consideration of any revisions in the final ORC section 42A report writers' report as a whole and in context of the entire PORPS is the role of the Panel.
- 37 The nature of these final revisions and reporting is that they are made after hearing the submitters' cases in their entirety. This final reporting by ORC report writers' is to take into account all of the submissions and evidence. It is by definition the final reporting to the Panel, not a prelude to further submissions by one submitter, to the exclusion of all others.
- 38 Far from being reasonable, this would be unfair and a breach of the rules of natural justice for the reasons outlined above.



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6 April 2023