

Otago Regional Council  
Proposed Otago Regional Policy Statement 2021

(excluding parts determined to be a freshwater planning instrument)

Response to request for directions by Oceana Gold Limited

**[Minute 13]**

1. By Memorandum dated 31 March, 2023 Counsel for Oceana Gold Limited (OGL) sought the following directions by the Hearing Panel:
  - a. *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*
  - b. *That OGNZL be given an opportunity to make submissions at the conclusion of the hearing of submissions, before ORC's closing.*

The grounds for those requested directions were set out at paragraphs 4-6 of the Memorandum of Counsel, with some of the principal underlying purposes being expressed at paragraph 6 as follows:

*...OGNZL seeks an opportunity to make submissions at the conclusion of the hearing of submissions (before the ORC's closing submissions) on the overall outcome for mining and the Macraes Mine in particular. This will allow OGNZL to take into account all of the amendments which have been made throughout the hearing.*

2. Counsel for Otago Regional Council has responded by Memorandum dated 6 April, 2023 opposing the request made for such directions. In essence that Memorandum asserts that OGL has had full opportunity to make presentations on all chapters of the non-freshwater aspects of the PORPS; that it participated through its planning witness Ms. Hunter in the witness caucusing on SRMR issues; that the Minutes issued by the Panel do not require any further drafting of AIR P4; that OGL has had opportunity to file evidence in response to ORC amendments as to methods of treatment of mineral extraction issues; and finally that as a matter of fairness and natural justice if OGL was to be given further presentation opportunity, so too would all other submitters, and that would cause unwarranted significant delay.
3. The Hearing Panel has laid out from the start a hearing process which was intended to ensure in general terms that ORC was required to present its submissions and evidence from report writers as to the basis on which the various chapters of the PORPS were drafted, and any initial reaction by them to submissions and further submissions. Submitters and further submitters then had opportunity to present and make legal submissions and to call evidence in support of their submissions. Finally, the report writers and ORC counsel were to have opportunity for reply to all such material. Any caucusing or other information we have requested has been intended

to supplement our understanding of issues involved – whether as to submitters' positions or to explore other potential wording.

4. The goal in these processes has been to ensure that the provisions of s.39 (1) of the Resource Management Act 1991 were complied with. That section requires that a Hearing Panel such as we constitute:

*...shall establish a procedure that is appropriate and fair in the circumstances.*

Also relevant is the direction in s.39 (2) of the RMA that the procedure adopted is to “*avoid unnecessary formality.*”

5. All of the procedure outlined in paragraph 3 above, on the experience of the Hearing Panel members, is absolutely standard practice. It enables all submitters to have equal opportunity to inform the Hearing Panel of their respective positions on the planning document involved, and in terms of s.41(4) the Hearing Panel had directed it wished to hear the s.42A report writers' responses to the submitters' positions. It has also ensured where there is a wide variety of opinion on particular issues between various counsel or expert witnesses that some limited caucusing occurs or issues are addressed by the s.42A report writers in their replies. All of those approaches are unexceptional.
6. A further statutory imperative which we must meet is found in s. 21 of the RMA. It provides:

***21. Avoiding unreasonable delay***

*Every person who exercises or carries out functions, powers, or duties, or is required to do anything, under this Act for which no time limits are prescribed shall do so as promptly as is reasonable in the circumstances.*

In considering the application of s.21 of the RMA in the context of the PORPS we are also cognisant of the time limits that flow from the provisions of s.80A of the RMA in relation to the freshwater aspects of the PORPS. Those will impact not only on the ORC in its processes, but also on many of the submitters involved in the non-freshwater processes, who will necessarily wish to engage in the freshwater process as well. And inter-related with the freshwater PORPS process are statutory timeframes in respect of the regional land and water plan which will follow.

In short we are cognisant that we should not adopt processes which add unnecessary delay.

7. Against all of that background we wish to take this opportunity of expressing our gratitude to all submitters for the manner in which they have approached the task of ensuring that we are fully informed of their positions in respect of the non-freshwater provisions of the PORPS which we have had to consider thus far. We do

not feel in the least uninformed for the substantial task we face of deliberations once we have concluded the hearings.

8. On the evidence and other materials we are reading at present on the balance chapters, some of which, such as the ECO and Land & Freshwater chapters, appear integral to the mineral extraction issues, parties have ensured we are particularly well informed by the evidence they have lodged. Doubtless the hearing processes on those chapters yet to come will further supplement that understanding.
9. Consequently, we are not persuaded that there is any need for us to further extend the hearing process as has been requested by OGL. As outlined in detail by counsel for ORC we believe OGL has had and will have full opportunity by the procedure we have in place to address us and inform us of its concerns as to the PORPS non-freshwater provisions. We anticipate that the opportunity for further legal submissions and supplementary evidence at the hearings yet to come, particularly on the ECO & L&FW chapters, as has occurred with other chapters, will provide OGL with further opportunity to ensure we are informed of its position on the relevant provisions.
10. We also agree with the point made by ORC's counsel that we could not in fairness to other submitters provide for OGL to have a further opportunity to make an overall presentation without ensuring that opportunity existed for others. The delay that would involve is not warranted, particularly when we are satisfied all submitters have had full opportunity to make focussed presentations to us and have availed themselves of that opportunity.
11. We therefore decline the request by OGL seeking direction for further opportunities to address the Hearing Panel.

Dated 11 April 2023

Ron Crosby  
Chair Hearings Panel