

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)

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**SUMMARY STATEMENT OF EVIDENCE BY CLAIRE ELIZABETH HUNTER**

**ON BEHALF OF OCEANA GOLD (NEW ZEALAND) LIMITED**

**ECO PROVISIONS**

17 APRIL 2023

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## **INTRODUCTION**

- 1.1 Following the preparation of further evidence on behalf of the Otago Regional Council (ORC) in February 2023 and OceanaGold in response in March 2023, I have further refined the ECO provisions. These are attached as **Appendix A** to this summary and explained in this statement.

## **ECOSYSTEMS AND INDIGENOUS BIODIVERSITY**

### **Proposed Definitions**

- 2.1 Mr Christensen, in his evidence, proposed the insertion of three new additional definitions.<sup>1</sup> These seek to define the terms *Terrestrial Biodiversity Offset*, *Terrestrial Biodiversity Compensation*, and the *Effects Management Hierarchy*.
- 2.2 In my view, the addition of these definitions assists in providing clarity as to what is to be achieved via the implementation of offsetting and compensation as it relates to terrestrial biodiversity. I agree with Mr Christensen that it is appropriate to include these additional definitions alongside those which apply to aquatic offsetting and aquatic compensation, which are currently in the PORPS. These definitions are drafted consistent with that set out in the Exposure Draft for the National Policy Statement for Indigenous Biodiversity (NPSIB).
- 2.3 I also consider it appropriate to retain a definition of "effects management hierarchy" in the PORPS.<sup>2</sup> In my view, it is more effective and efficient if the freshwater, wetland and terrestrial biodiversity provisions then defer to this definition, rather than embedding each step into the policy itself, making them unnecessarily unwieldy. It is also likely to be a more efficient process to make changes to the definition (rather than each policy) should it be subsequently amended via the enactment of the NPSIB, or further amendments to the NPSFM, for example.

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<sup>1</sup> Refer to Appendix 4, Evidence of Mark Christensen, 22 November 2022.

<sup>2</sup> The section 42A report writers recommend to delete it, and rely on the policies.

2.4 I agree with Mr Christensen in that there does not appear to be any policy justification for the PORPS applying a different approach to the concept of the effects management hierarchy,<sup>3</sup> which relates to a freshwater environment vs a terrestrial environment. Therefore, the proposed definition in Appendix A is drafted so it can be applicable across both environments. In my view, this would assist in achieving appropriate integration in terms of the approach taken to managing effects, especially when dealing with a habitat like a wetland or within a riparian margin, likely to exhibit both freshwater and terrestrial values.<sup>4</sup> There is no apparent justification within the PORPS or the evidence to explain why two similar yet slightly different approaches to applying the effects management hierarchy would be appropriate in such situations. I have highlighted the differences between LF-FW-P13A and ECO-P6 to illustrate this in Table 1 below. The proposed amendments in Appendix A<sup>5</sup> would therefore assist in streamlining and simplifying the document while promoting appropriate integration across different but connected habitats.

**Table 1: Highlighted differences (in yellow) showing the variation in the application of the effects management hierarchy for wetlands versus other terrestrial environments under the PORPS.**

<b>LF-FW-P13A – Effects management hierarchy (in relation to natural wetlands and rivers)</b>	<b>ECO-P6 – Maintaining Indigenous Biodiversity</b>
The effects management hierarchy (in relation to natural wetlands and rivers) referred to in LF-FW-P9 and LF-FW-P13 is the approach to managing adverse effects of activities that requires that:	Maintain Otago's indigenous biodiversity (excluding the coastal environment and areas managed protected under ECO-P3) by applying the following biodiversity effects management hierarchy (in relation to indigenous biodiversity) in decision-

<sup>3</sup> Paragraph 11 of Mr Christensen's Summary Statement presented 17 April 2023.

<sup>4</sup> I note that all ecological experts agree that an integrated approach to these environments should be taken – refer to Point 5 of the JWS.

<sup>5</sup> and consequential amendments to corresponding provisions in both FW and ECO chapters of the PORPS.

<p>(1) adverse effects are avoided <b>where practicable</b>, then</p> <p>(2) where adverse effects cannot be avoided, <b>they are minimised where practicable</b>, then</p> <p>(3) where adverse effects <b>cannot be minimised, they are remedied where practicable, then</b></p> <p>(4) <b>where more than minor residual</b> adverse effects cannot be avoided, minimised, or remedied, aquatic offsetting <b>is provided where possible</b>, then</p> <p>(5) if aquatic offsetting <b>of more than minor</b> residual adverse effects is not possible, aquatic compensation is provided, and then</p> <p><b>(6) if aquatic compensation is not appropriate</b>, the activity itself is avoided.</p>	<p>making on applications for resource consent and notices of requirement:</p> <p>(1) avoid adverse effects <b>as the first priority</b>,</p> <p>(2) where adverse effects <b>demonstrably cannot be completely avoided, they are remedied</b>,</p> <p>(3) where adverse effects <b>demonstrably cannot be completely avoided or remedied, they are mitigated</b>,</p> <p>(4) <b>where there are residual adverse</b> effects after avoidance, remediation, and mitigation, then the residual adverse effects are offset <b>in accordance with APP3</b>, and</p> <p>(5) if biodiversity offsetting of residual adverse effects is not possible, then:</p> <p>(a) <b>the residual</b> adverse effects are compensated <b>for in accordance with APP4</b>, and</p> <p>(b) <b>if the residual adverse effects cannot be compensated for in accordance with APP4, the activity is avoided</b>.</p>
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## Proposed ECO-O4

2.5 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.*

2.6 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. To provide additional clarity that this is what is seeking to be achieved I have further refined this objective, to read as follows:

*Protect and ~~m~~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.*

2.7 In my view this objective also supports a policy framework which recognises that the application of a mix of avoidance, remediation, mitigation, offsetting, and compensation measures, is appropriate to manage the effects on indigenous biodiversity. In light of the agreed industry issue statement<sup>6</sup>, this objective also supports the recognition within that, that activities using natural and physical resources can achieve positive environmental outcomes, such as riparian planting, habitat restoration, public access, and pest control.

2.8 I also note that this objective may also be beneficial for seeking to support eco-tourism and similar ventures in Otago.

## **ECO – P2 and APP2**

2.9 I have reviewed the Joint Witness Statement (JWS) following the expert ecologist witness conferencing session on 31 March 2023. It is apparent from this statement that there is not yet an agreed set of criteria between the various ecologists. This is not an unsurprising outcome. However, it further indicates that the criteria may not be 'fit for purpose' and therefore should be taken with care in terms of the application of APP2 as it could, as demonstrated in OceanaGold's evidence, potentially have widespread and unforeseen implications. I also note that a number of the ecological experts agree that the impact of implementing the criteria have not been analysed as part of the section 32 of the RMA or within the section 42A

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<sup>6</sup> Refer to the JWS dated 29 March 2023.

reports. On this basis I am unsure of the likely impact the proposed SNA framework (in whatever form it will ultimately take) will have on development activity in Otago.

- 2.10 A number of the experts also expressly acknowledge in the JWS that meeting only one of the criteria set out in APP2 is a low threshold for attributing a significance status. In addition, Dr Thorsen and Dr Keesing recommend amending this as follows:

*An area is considered to be a significant natural area if it meets ~~any-one~~ the threshold for the rarity criterion or two or more of the other criteria below.*

- 2.11 Given that an agreed set of criteria has not yet been developed amongst the ecologist, it may be more appropriate to refer to the criteria in a less absolute way in drafting the provisions and methods of the PORPS which refer to APP2. By this I mean that additional wording could either be added to APP2, or within the methods (ECO-M2) setting out that:

**APP2**

*An area is considered to be a significant natural area if it meets the threshold for the rarity criterion or two or more of the criteria below and is mapped in the regional or district plans. If an area meets the threshold for the rarity criterion or two or more of the criteria below and is not mapped in the regional or district plans, determination of the significance status will need to be verified by an ecological assessment on a case by case basis.*

**ECO – P3, P4, P5 AND P6**

- 3.1 At paragraphs 18 – 22 Ms Hardiman of her Supplementary Evidence, (dated February 2023) acknowledges 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 National Policy Statement for Highly Productive Land (NPSHPL) and the NPSFM. She notes that in light of these national policy statements she has reconsidered her position [on the ECO provisions and mineral

extraction] and recommends that adopting the more stringent approach set out in the NPSHPL, in regard to mineral extraction having to provide a national benefit, should be adopted in ECO-P4.

3.2 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.*

3.3 While these amendments present an improvement in my view, I am unclear as to why Ms Hardiman has preferred to adopt the NPSHPL wording over the NPSFM. I have some reservations with this, which are discussed in my Supplementary Statement, dated 31 March 2023, and summarised briefly below.

3.4 In my view, it would be more appropriate to adopt the direction within the NPSFM which provides a pathway for mineral extraction activities that provide a national or regional benefit. In addition, as noted above, wetlands often exhibit both freshwater and terrestrial values. The approach adopted within the NPSFM concerning the management of wetlands would therefore seem appropriate to apply to all other terrestrial-based habitats.

3.5 I also do not consider it appropriate to apply a policy directive derived from a NPS that 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.

3.6 I also note that in evaluating the provisions in the NPSHPL, the section 32 analysis which supports it, does not justify elevating the status of aggregate extraction over mineral extraction. In fact, the section 32 analysis refers to both activities being appropriate provided they have a national or regional public benefit and a functional or operation need to locate on highly productive land.<sup>7</sup> This may therefore be an error within the drafting of the NPSHPL that will need to be resolved.

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

- Will provide an economic benefit due to the employment opportunities created.
- 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.
- Employment opportunities may increase as a result of land being available for certain mineral and aggregate extraction activities.

3.8 These benefits appear to have a regional focus, as opposed to providing a national benefit, so I am unclear why Ms Hardiman supports limiting the pathway to mineral extraction activities which only provide a national benefit. There is evidence provided by OceanaGold which clearly demonstrates the Macraes Mine, provides both national and regional

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<sup>7</sup> Refer to the following:

- Pages 98 (final bullet point).
- Pages 100/101 (Table 95, economic row, benefits column, fourth bullet point).
- Page 101 (Table 95, economic row, costs column, sixth bullet point).
- Page 101 (Table 95, social row, benefits column, second bullet point).



benefit. I therefore think it would be inappropriate for the PORPS to ignore the regional significance Macraes in particular provides.

- 3.9 Proposed 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 reference to "new". 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".
- 3.10 I have provided some revised drafting to Clauses 1A and 1B in Appendix A to address these matters.

#### **ECO – P6, APP3 and APP4**

- 3.11 In her supplementary evidence, 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 – P4.<sup>8</sup> However, 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.
- 3.12 Under the current drafting of APP3 and APP4 if certain impacts are to arise (e.g. the loss of any individuals of threatened taxa; and/or removal of its habitat), the activity is automatically 'ruled out' for offsetting or compensation. In other words, offsetting and compensation cannot be part of the environmental effects management matrix when specified species of conservation value or their habitat will be lost, even though the

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<sup>8</sup> Paragraph 38.

loss may be capable of being offset or compensated to produce a net gain for the species of interest.

- 3.13 Such limitations could, therefore, inadvertently preclude the ability to achieve good biodiversity outcomes in Otago through valid offsetting and compensatory means.
- 3.14 I also note that if some offset and compensation proposals, regardless of their efficacy, are "ruled out" at the outset in policy, it becomes difficult for those preparing and assessing resource consent applications to reconcile those policies with the requirement in section 104(1)(ab) of the RMA to consider "any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effect on the environment that will or may result from allowing the activity".
- 3.15 I agree with Mr Christensen that it would be appropriate to amend APP3 and APP4 to set out the principles which offsetting and/or compensation proposals must be considered against. This approach has been adopted in Appendix A. It generally aligns with the NPSFM with appropriate amendments made for aquatic versus terrestrial environments.
- 3.16 In my view, making the full effects management hierarchy available at a policy level also does not mean that proposals, including offsetting and compensation, will automatically be granted approval. Instead, it enables proposals to be evaluated on their merits, including an assessment of the validity and appropriateness of any proposed offsetting or compensation measures. The way I have drafted them, the matters set out in APP3 and APP4 would be a key guiding component in this evaluation.
- 3.17 In my experience, if decision-makers find on the evidence presented to them that a proposal's residual effects (after avoidance, remediation and mitigation) on biodiversity values are significant and cannot be appropriately offset or compensated for, the proposal has been declined.
- 3.18 As I have set out in my primary statement of evidence, these limits are problematic. They are at odds with the guidance inherent in the higher

order planning documents such as the NPSFM, the Exposure Draft NPSIB and section 104(1)(ab) of the RMA. This has been further elaborated on in the evidence of Mr Christensen and Mr Hooson on behalf of OceanaGold.

**Claire Hunter**

**17 April 2023**