

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)

**SUMMARY STATEMENT ON BEHALF OF OCEANAGOLD NEW ZEALAND
LIMITED**

CLAIRE HUNTER

LAND AND SOILS

5 MAY 2023

- 0.1 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.
- 0.2 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 summary statement 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.
- 0.3 With respect to the Land and Freshwater Chapter of the Proposed Otago Regional Policy Statement (PORPS), OceanaGold made a number of submissions specifically relating to the land and soil provisions (referred to as the LF – LS Chapter or Section).
- 0.4 Ms Boyd, at paragraph 95 of her Opening Statement (dated 27 April 2023) acknowledges that the scope of the LF – LS section has been the subject of some debate and a number of submitters seek either new objectives and/or policies to address additional matters related to land. OceanaGold is one of these submitters.
- 0.5 I proposed a new objective and policy for the LF – LS Chapter. Proposed objective LF-L2-O13 which seeks to recognise *the role of resource use and development within the Otago region, and its contribution to enabling people and communities to provide for their social, economic and cultural wellbeing*. Ms Boyd did not agree that this objective was appropriate on the basis that it was too broad and did not appropriately sit with the LF – LS Chapter of the Plan, as it only manages land and soil resources. Ms Boyd remains concerned that the suite of policies in this subsection would be unlikely to achieve the objective as they do not collectively address *all* resource use and development.
- 0.6 I proposed this objective largely because it is my view that the PORPS as it was notified lacks sufficient balance. There is a strong protectionist theme

throughout the notified version, and if it remains unaltered it will set in place a highly limiting policy basis of avoidance of almost all effects and its protective doctrine will have significant implications for development and resource use in Otago. As it stands, the [notified] PORPS fails to properly recognise that primary production and rural industries provide the economic impetus for Otago's economy, and there is a paucity of meaningful provisions in the notified version which recognise that the use and development of land and soil resources by the primary sector is essential for the region's economic and social wellbeing. It seems to me that Ms Boyd's view that this chapter is not the place for the inclusion of more balanced provisions is also shared by the other reporting officers in relation to the chapters of the PORPS they each address, such that the reporting officers' position seems to be that there is no place within the PORPS where such provisions can be included.

- 0.7 Further limitations are suggested by Ms Boyd, in her Supplementary Evidence dated 11 October 2022. There she recommends that the term "primary production" in the LF – LS Chapter be replaced throughout with the term "food and fibre production". Upon the National Policy Statement for Highly Productive Land (**NPSHPL**) taking effect, Ms Boyd recommended adopting the term "land based primary production" as defined in that document. While I accept that the PORPS is required to 'give effect' to the NPSHPL, I do not think that the NPSHPL provides a basis for limiting or failing to provide for other primary based activities that are of importance to the Otago Region. It is not necessary to take a one-dimensional approach. As the chapter in the RPS which is assigned to the management of land and soils, I remain of the view that it would be appropriate to also include provisions recognising 'other' primary productive activities, such as mining. It is a natural fit to include such a provision here. I have provided some amendments in **Appendix A** to this Summary Statement to address this gap.
- 0.8 In terms of section 32AA, providing clarity regarding the use of land for other types of primary production through an objective and policy in the LF

– LS Chapter contributes to achieving the purpose of the RMA by clearly highlighting that there are other uses of land that are not land based primary production, but are also similarly important in enabling communities to provide for their social and economic wellbeing. I also consider these provisions to be appropriately supported by the “Industry Issues Statement” that has been agreed between a number of planners acting for various submitters.

- 0.9 I also remain of the view that the PORPS needs to expressly acknowledge the importance of the mineral and extractives industry in Otago. A significant mineral asset lies within the Macraes mine in Otago. Otago has unique characteristics in this regard when compared to many regions and I do not think that this can be ignored at the RPS level.
- 0.10 This has been recognised by Ms Boyd who has agreed in her earlier statements of evidence that there is merit in some parts of the amendments that are being sought by OceanaGold. These relate to:
- 0.10.1 Recognition of the benefits of mineral and aggregate extraction for the provision of infrastructure and the social and economic wellbeing of Otago’s communities; and
 - 0.10.2 Recognition of the locational constraints faced by these activities¹.
- 0.11 In her Supplementary Statement of Evidence, at paragraph 81 Ms Boyd states that *“mining and aggregate extraction does not clearly fit within any of the chapters of the pORPS. The two most appropriate, in my opinion, are the LF-LS subsection and the UFD chapter, as identified by OGNZL. Having considered the proposed amendments, as well as the scope and intent of both chapters, I consider that the UFD chapter is the most appropriate place for additional policy direction. This is primarily because the UFD chapter manages rural areas and the activities likely to*

¹ Ms Boyd Supplementary Statement of Evidence, 11 October 2022, Paragraphs 79 - 82

occur within them, including primary production (which includes mining and quarrying)."

- 0.12 Ms Boyd provided an amendment to UFD – P7 – Rural Areas, which has been superseded by the wholesale redrafting of the UFD Chapter by Ms White. At paragraph 5.35 of my Primary Statement of Evidence, I expressed a preference for these provisions to sit within the LS – LF Chapter. This was on the basis that mineral assets may exist on land anywhere, not just within the rural environment. While that remains a valid statement, I am less concerned with where the provisions sit in the document, only that they exist somewhere within it and that they properly recognise the significance of this activity in a regional context.
- 0.13 While I acknowledge the changes that have been suggested to PORPS post its notification regarding mineral extraction and mining activities, I remain perplexed by the reticence shown by reporting officers toward this issue. As I have set out in my evidence, the current drafting of the PORPS compares poorly against the 2019 Partially Operative RPS in this regard. That version of the RPS appropriately recognised the importance of the mining and extraction activities in Otago, acknowledged its locational constraints and provided a consenting pathway for such projects where there may be unavoidable conflicts with significant natural values or resources. This approach is also similar to provisions which exist in other regional policy statements in New Zealand which have significant mineral assets and mining activities operating in their regions – e.g. the West Coast and the Waikato Regions.
- 0.14 Ms Boyd is of the view that we have 'met in the middle' as much as we are going to on this matter². More specifically Ms Boyd notes that we continue to disagree that an additional policy setting out a specific management framework for mineral and aggregate extraction is

² Paragraph 128 of Ms Boyd's Opening Statement

necessary. I remain of the view that this pathway is necessary. There is evidence from OceanaGold, Fulton Hogan, Graymont and other submitters who have clearly demonstrated that mineral extraction and mining activities can only occur where the mineral resource is present, and that their activities are vitally important for the social, economic and cultural wellbeing of Otago. It is not my opinion that any proposed mining activity should be enabled without due and proper consideration of the environmental effects that accrue. I do however consider it reasonable that mining proposals should be able to be explored and assessed in terms of their both their benefits and their effects on the environment in an appropriately balanced way, with a clear acknowledgement that where development is able to proceed it may not be possible to avoid all adverse effects on all values due to the locational and functional constraints such activities are subject to. In such circumstances where there are adverse effects on important values, I hold the strong view that the PORPS should require methods to be employed to ensure that 'good or better environmental outcomes' are ultimately achieved as a result of the proposal proceeding.

- 0.15 In my opinion, a pathway for mineral extraction and mining activities is necessary so that local authorities are able to find policy support within the RPS for recognising the benefits derived from mineral extraction and mining activities, addressing potential reverse sensitivity issues, and other issues such as those associated with the locational needs for such activities and the management of adverse effects from mineral extraction and processing activities. This pathway in my view could comfortably sit under the amendments to the redrafted UFD Chapter which now recognises the locational constraints of mineral extraction activities, as well as its benefits. I have provided this drafting in my **Appendix B** attached.

APPENDIX A

Land and Soil Claire Hunter Amended Provisions

Changes in red or black – ORC S42A Recommendations

Changes in blue – OceanaGold 5 May 23

LF-LS – *Land and soil*

Objectives

LF-LS-O11 – ~~Land and Soil~~

The life-supporting capacity of Otago’s soil resources is safeguarded, ~~and~~ or enhanced and soil quality is maintained and the availability and productive capacity of highly productive land for primary production food and fibre production² ~~is maintained,⁴~~ now and for future generations.

LF-LS-O11A – Highly Productive Land

³ 00235.008 OWRUG

⁴ 00239.093 Federated Farmers

The availability and productive capacity of highly productive land for land based primary production is maintained now and for future generations.

LF-LS-O12 – ~~Use of land~~ Land and Freshwater

The use of *land* in Otago ~~maintains soil quality and~~ contributes to achieving *environmental outcomes* for *fresh water*.

LF-LS-O13 – Access to and Use of Land and Soil Resources

To recognise that Otago supports a range of *primary production* activities, which require appropriate access to and use of land and soil resources.

Policies

LF-LS-P16 – ~~Integrated management~~ Maintaining soil quality

~~Recognise that maintaining~~ Maintain soil quality ~~requires the integrated management of by managing both~~ *land* and *freshwater* resources, including the interconnections between soil health, vegetative cover and *water* quality and quantity.

LF-LS-P17 – Soil values

Maintain the *mauri*, health and productive potential of soils by managing the use and development of *land* in a way that is suited to the natural soil characteristics and that sustains healthy:

- (1) soil biological activity and *biodiversity*,
- (2) soil structure, and
- (3) soil fertility.

LF-LS-P18 – Soil erosion

Minimise soil erosion, and the associated risk of sedimentation in water bodies, resulting from *land* use activities by:

- (1) implementing appropriate and⁵ effective management practices to retain topsoil in-situ and minimise the potential for soil to be *discharged* to *water bodies*, including by controlling the timing, duration, scale and location of soil exposure,
- (2) maintaining vegetative cover on erosion-prone *land*, to the extent practicable,⁶ and
- (3) promoting activities that enhance soil retention.

⁵ 00101.043 Toitū Te Whenua

⁶ 00022.019 Graymont

LF-LS-P19 – Highly productive land

Maintain the availability and productive capacity of highly productive land by:

- (1) identifying highly productive land based on the following criteria:
 - (a) ~~the capability and versatility of the land to support food and fibre production primary production⁷ based on, including using⁸ the Land Use Capability classification system,~~
 - (b) ~~the suitability of the climate for food and fibre production primary production,⁹ particularly crop production, and~~
 - (c) ~~the size and cohesiveness of the area of land for use for food and fibre production primary production,¹⁰ and~~
 - (d) Land must be identified as highly productive land if:
 - (i) It is in a general rural zone or rural production zone, and
 - (ii) It is predominately LUC 1, 2, or 3 land, and
 - (iii) It forms a large and geographically cohesive area,
 - (e) Land may be identified as highly productive land if:
 - (i) it is in a general rural zone or rural production zone, an
 - (ii) it is not LUC 1, 2, 3 land, and
 - (iii) It is or has the potential to be highly productive land for land based primary production in Otago, having regard to the soil type, the physical characteristics of the land and soil, and the climate, and
 - (f) Land must not be identified as highly productive land if it was identified for future urban development on or before 17 October 2022, and
- (2) prioritising the use of highly productive land for land based primary production in accordance with the National Policy Statement for Highly Productive Land 2022 food and fibre production primary production¹¹ ahead of other land uses,¹² except as provided by EIT INF P12 and EIT INF P16,¹³ and

⁷ 00235.008 OWRUG

⁸ 00114.025-031 Mt Cardrona Station, 00118.025-031 Maryhill Limited, 00209.012-015 Universal Developments, 00210.011-013 & 015 Lane Hocking, 00211.011-013 & 015 LAC Properties Trustees Limited

⁹ 00235.008 OWRUG

¹⁰ 00235.008 OWRUG

¹¹ 00235.008 OWRUG

¹² 00413.004 New Zealand Cherry Corp, 00414.002 Infinity Investment Group

¹³ 00314.027 Transpower

- (3) managing urban development in rural areas, ~~including rural lifestyle and rural residential areas,~~¹⁴ in accordance with UFD-P4, UFD-P7 and UFD-P8.

LF-LS-P20 – Land use change

Promote changes in *land* use or *land* management practices that support and¹⁵ improve:

- (1) the sustainability and efficiency of *water* use,
- (2) resilience to the impacts of *climate change*, ~~or~~
- (3) the health and quality of soil, ~~or~~
- (4) water quality.¹⁶

LF-LS-P21 – Land use and fresh water

~~Achieve the improvement or maintenance of fresh water quantity, or quality~~ The health and well-being of water bodies is maintained¹⁷ ~~or, if degraded, improved~~¹⁸ to meet *environmental outcomes* set for *Freshwater Management Units* and/or rohe by:

- (1) reducing or otherwise managing¹⁹ the adverse effects of²⁰ direct and indirect *discharges of contaminants to water* from the use and development of *land* to meet environmental outcomes,²¹ ~~and~~
- (2) managing *land* uses that may have adverse *effects* on the flow of *water* in surface *water bodies* or the recharge of *groundwater*, and
- (3) maintaining or, where degraded, enhancing the habitat and biodiversity values of riparian margins in order to reduce sedimentation of water bodies and support improved functioning of catchment processes.²²

LF – LS- P21A – Primary Production

Provide for the management of land and soils in Otago in a way which also provides for the continued operation, maintenance and development of primary production activities, by:

- (1) Recognising the value and long term benefits of the primary production activity to the economic, social and cultural wellbeing of the region;

¹⁴ 00413.004 New Zealand Cherry Corp, 00414.002 Infinity Investment Group

¹⁵ 00223.096 Ngāi Tahu ki Murihiku

¹⁶ 00409.015 Ballance

¹⁷ 00121.066 Ravensdown

¹⁸ 00226.206 Kāi Tahu ki Otago

¹⁹ 00236.073 Horticulture NZ

²⁰ 00221.010 Silver Fern Farms

²¹ 00236.073 Horticulture NZ

²² 00226.206 Kāi Tahu ki Otago

- (2) Ensuring that the adverse effects of *primary production* are appropriately managed;
- (3) Maintaining and where appropriate enhancing access to natural and physical resources;
- (4) Avoiding or minimising the potential for reverse sensitivity; and
- (5) Ensuring positive environmental outcomes are achieved.

LF-LS-P22 – Public access

Provide for public access to and along *lakes* and *rivers* by:

- (1) maintaining existing public access,
- (2) seeking opportunities to enhance public access, including access²³ by *mana whenua* in their role as kaitiaki and for gathering of ~~maḥika kai~~ maḥika kai²⁴, and
- (3) encouraging landowners to ~~only~~ avoid restricting access ~~where~~ unless²⁵ it is necessary to protect:²⁶
 - (a) ~~public~~²⁷ health and safety,
 - (b) *significant natural areas*,
 - (c) areas of outstanding natural character,
 - (d) outstanding natural features and landscapes,
 - (e) places or areas with special or outstanding *historic heritage* values, ~~or~~
 - (f) places or areas of significance to ~~takata whenua~~ Kāi Tahu, including wāhi taoka,²⁸ wāhi tapu and wāhi tūpuna,²⁹
 - (g) establishing vegetation, or²⁹
 - (h) a level of security consistent with the operational requirements of a lawfully established activity.³⁰

²³ 00226.206 Kāi Tahu ki Otago

²⁴ Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

²⁵ 00231.065 Fish and Game

²⁶ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendments arising from 00314.028 Transpower

²⁷ 00239.094 Federated Farmers

²⁸ 00226.207 Kāi Tahu ki Otago

²⁹ 00206.041 Trojan, 00411.053 Wayfare

³⁰ 00237.047 Beef + Lamb and DINZ

APPENDIX B

UFD Claire Hunter Amended Provisions

Base document 30th March Clean Version of UFD Chapter – Ms White

Only provisions of key interest to OceanaGold extracted from this chapter shown below.

Blue text OceanaGold proposed amendments 5.05.23

UFD – Urban form and development

Objectives

...

UFD-O~~4~~2 – Development in rural areas

Development in Otago’s rural areas occurs in a way that:

(4)1 provides for the ongoing use of rural areas for *primary production*, supported by rural industry in appropriate locations, and

(4A)(2) does not compromise the productive capacity, and long-term viability of ~~the rural sector~~ primary production activities and rural communities.

UFD-P7 – Rural areas

The management of development in rural areas:

- (1) maintains *rural areas* as places where people live, work and recreate and where a range of activities and services are required to support these rural functions, and provide for social and economic wellbeing within rural communities and the wider region,
- (2) prioritises land-based primary production on *highly productive land* in accordance with the NPS-HPL,
- (3) provides for *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 well-being of Otago's communities, including for the provision of infrastructure, and
 - (b) that mining and aggregate extraction activities can only be located where those resources are present, and
- (4) restricts the establishment of ~~non-rural~~ incompatible activities which could adversely affect, including by way of reverse sensitivity or fragmentation, the *productive capacity of highly productive land* or existing or anticipated *primary production* and *rural industry* activities, unless those activities are undertaken in accordance with MW-P4 or the NPS-HPL.

UFD – PX – Mineral and Aggregate Extraction (outside the Coastal Environment)

Where mineral and aggregate extraction and its ancillary activities provide a significant regional or national benefit, manage adverse effects arising from such activities by:

- (a) avoid, as the first priority, locating these activities in all of the following:
 - i. Scheduled wāhi tupuna, and areas with protected customary rights;
 - ii. Significant natural areas;
 - iii. Natural wetlands;
 - iv. Scheduled outstanding natural features and outstanding natural landscapes;
 - v. Scheduled outstanding water bodies;
 - vi. Scheduled areas of outstanding natural character;
 - vii. Scheduled areas or places of historic heritage value;
 - viii. Areas subject to significant natural hazard risk

- (b) Where it is not practicable to avoid locating in the areas listed in (1) above because of the functional needs or operational needs of the activity, manage adverse effects as follows:
- i. In wāhi tupuna, in accordance with HCV-WT-P2;
 - ii. In a significant natural area or a natural wetland, the effects management hierarchy must be applied;
 - iii. Minimise any increase in natural hazard risk through mitigation measures;
 - iv. In all other areas listed in (1) above, manage the adverse effects of the activity on the values that contribute to the areas' importance by:
 - i. Avoiding significant adverse effects, where practicable;
 - ii. Avoiding, remedying or mitigating all other adverse effects;
 - iii. Where adverse effects cannot be practically remediated or mitigated, consider offsetting and then compensation as appropriate.
- (c) Avoiding adverse effects on the health and safety of the community.