

BEFORE THE RPS HEARINGS PANEL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of submissions on the Proposed Otago Regional Policy Statement 2021 (excluding parts determined to be a freshwater planning instrument)

**SUBMISSIONS ON BEHALF OF OCEANA GOLD (NEW ZEALAND)
LIMITED – SUBMITTER ID 0115**

5 May 2023

Solicitor acting:

Jackie St John
In-house counsel
22 Maclaggan St
Dunedin 9016
jackie.stjohn@oceanagold.com

Counsel acting:

Stephen Christensen
Project Barrister
421 Highgate, Dunedin 9010
P 027 448 2325
stephen@projectbarrister.nz

MAY IT PLEASE THE PANEL:

Summary

1. These submissions are on behalf of OceanaGold (New Zealand) Limited (**OGNZL**). This is the last time that OGNZL will appear before you in this hearing. I intend to take this opportunity to provide a brief overview of OGNZL's position in relation to the PORPS before commenting in more detail on the Land and Freshwater Chapter's provisions, and how these should be changed to reflect a more appropriate policy position.
2. At the outset I note that the Commissioners' task has been made more difficult than it needed to be by the way ORC has elected to conduct itself in relation to the development of an appropriate policy response to the needs of Otago's important mineral extractive industry. In opening submissions counsel for the ORC explained the reasons why an entirely new regional policy statement was being proposed when the ink on the partially operative RPS was scarcely dry. Those reasons are fair, and reflect both the changing nature of superior instruments to which the PORPS must give effect, as well as a recognition by the ORC that its policies around freshwater management were not fit for purpose.
3. The fundamental difficulty the PORPS has created for OGNZL (and others that have appeared before you over the past weeks as you have worked your way through the document) is that for reasons never explained, and without any defensible cost benefit analysis, the ORC took it upon itself to make fundamental changes to its policy statement in areas unrelated to the reasons it has given for promoting an entirely new instrument. In particular:

- a. The notified version of the PORPS removed policy recognition for extractives¹ and removed consenting pathways for extractive industries² which had been in the 2019 PORPS, and the ORC did so without justification or explanation. The ORC then failed to grasp the significance of removing these policies. OGNZL is unsure whether even now ORC understands the implications of the provisions it promotes³ and looks forward with interest to what ORC will say in closing.
- b. Post-notification and after submissions were lodged there was an opportunity for ORC to constructively engage with submitters in the pre-hearing process. Through that pre-hearing process OGNZL engaged in good faith in the expectation that once ORC appreciated that the provisions in the 2019 PORPS that recognised the importance of the extractives industry in Otago and provided consenting pathways in acknowledgement of mineral extraction's operational and functional need to locate where minerals naturally occur had not found their way into the PORPS as notified, the ORC as a responsible local authority would move to rectify the problem it had created. OGNZL was concerned to be told that ORC had no intention of doing any work to correct the position, and that if OGNZL wanted it corrected it would have to propose a remedy.
- c. As the hearing process has unfolded ORC has belatedly begun the task of coming to grips with the problems that need to be addressed in relation to

¹ PORPS 2019 Policy 5.3.4 "Mineral and petroleum exploration, extraction and processing – Recognise the functional needs of mineral exploration, extraction and processing activities to locate where the resource exists".

² PORPS 2019 Policy 5.4.8 "Adverse effects from mineral and petroleum exploration, extraction and processing".

³ As evidenced in questioning at the ECO hearing on 17 April.

mining and quarrying, but has done so in a reactionary and haphazard manner. The position OGNZL finds itself in today as it presents for the last time is that:

- i. The planners advising the industry submitters, including Ms Hunter for OGNZL, have agreed on the wording of a new Issue statement to be included in the SRMR chapter to address the total failure of that chapter to identify that appropriate access to and use of resources in Otago is essential in order to enable people and communities to provide for their social, economic and cultural wellbeing. The ORC has not provided any indication of whether it agrees with this formulation of the issue, or indeed whether it even accepts access to resources is an important issue in Otago. In that regard, given the ORC now proposes some policy recognition of the particular needs of mineral extraction it begs the question as to why those provisions are included if not because access to mineral resources is an important regional issue.
- ii. Some acknowledgement of minerals and mining is now suggested by ORC in the UFD chapter. While this is welcome it falls short of providing the necessary policy recognition of the locational and functional needs of extractives as is contained in the partially operative RPS. In response to this Ms Hunter proposes some policy wording which could be included in the Land and Soils chapter, but which could also be included in the UFD chapter if that is the preference.
- iii. A consenting pathway for minerals development where it intersects with significant biodiversity is now proposed in the ECO chapter. Again, this is welcome but does require some adjustment as OGNZL

indicated when that topic was heard. It will not be lost on the Commissioners that without proper recognition of the importance of mineral extraction in the SRMR and other parts of the PORPS, the recognition of a consenting pathway where significant biodiversity values are affected is not properly supported in the document when read as a whole, reflecting the lack of integration and the haphazard way ORC has developed the document.

4. OGNZL is not after a “free pass” for mining. OGNZL is seeking a sensible and balanced policy statement which:
 - a. Acknowledges the important contribution of mining to the economic, social and cultural wellbeing of Otago’s people and communities;
 - b. Recognises and provides for the locational constraints of mining as mining must locate where the resources are, and like infrastructure requires large-scale landforms and is for these reasons disproportionately impacted by inflexible “avoid” policies; and
 - c. Acknowledges that the economic extraction of important mineral resources may coincide with areas of high ecological, heritage, landscape and cultural value, and that there needs to be a consenting pathway for mining to show that any unavoidable adverse effects on those other values can be appropriately managed. This recognition is certainly not a “free pass” and if an applicant cannot demonstrate that adverse effects are able to be appropriately managed, consents will not be granted.
5. Mining is a significant industry in Otago and the PORPS needs to acknowledge mining and needs to provide guidance on how it will be provided for, and what considerations and balances need to be achieved. It is not sufficient to refer to a smattering of discrete references to primary production as providing support for

mining⁴. That is not the structure required for regional policy statements under section 62 RMA. The RPS needs to state:

- a. Otago's significant resource management issues
 - b. The objectives the regional policy statement seeks to achieve;
 - c. The policies in relation to those issues and objectives;
 - d. An explanation of the policies;
 - e. The methods (other than rules) to be used to implement the policies;
 - f. The principal reasons for adopting the various objectives, policies and methods; and
 - g. The environmental results anticipated from implementation of the policies and methods.
6. It is clear therefore that there needs to be a traceable and logical flow from issues to objectives and policies. Or putting it another way, there needs to be vertical support and connection in the form of objectives and issues for each policy.
7. When the regional significance of minerals is considered, the haphazard and evolving way the ORC has chosen to address this issue means that the coherence section 62 requires of an RPS is lacking.
8. Ms Hunter proposes some additions and amendments to various provisions to achieve the necessary linkages and coherence and she will discuss these with you shortly. Ms Hunter's recommendations are supported by OGNZL and in my submission are suitable for adoption by the Commissioners as an appropriate way to address the regional importance of the extractives sector, and the need for extractive activities to be managed with care, given the known overlaps that can exist between important mineral deposits and other important values.

⁴ For example UFD-04

9. The approach Ms Hunter recommends is consistent with the way infrastructure is addressed, and consistent with the way minerals are addressed in the partially operative RPS. It also reflects the direction in higher order national instruments which are consistent in recognising that mineral development requires special consideration because of its importance and locational and functional needs.

Land and Soils Chapter

10. ORC now accepts OGNZL's submission that there was no consenting pathway for mining in the ECO chapter and that there needs to be. Recognition of the contribution minerals make to the region is also now proposed in policy in the UFD chapter. There has been a new issue statement proposed recognising that the social, cultural and economic wellbeing of Otago's communities depends on the use and development of natural and physical resources⁵. We now need to ensure the document as a whole is consistent with the requirements of section 62 RMA, and that the required clarity and logical flow from issues, through objectives, then policies and methods is in place.
11. The notified version of the PORPS used the definition of primary production which features in the National Planning Standards 2019:

means:

*(a) any aquaculture, agricultural, pastoral, horticultural, **mining, quarrying** or forestry activities; and*

(b) includes initial processing, as an ancillary activity, of commodities that result from the listed activities in a);

⁵ Joint Witness Statement dated 29 March 2023 "the social, cultural and economic wellbeing of Otago's communities depends on the use and development of natural and physical resources, but this can conflict with the achievement of environmental outcomes, including managing conflicts between landuses".

(c) includes any land and buildings used for the production of the commodities from a) and used for the initial processing of the commodities in b); but

(d) excludes further processing of those commodities into a different product. (Emphasis added)

12. In the section 42A report the ORC suggested distinguishing land based primary production from primary production as defined above. While there is some logic to this approach in terms of transparently giving effect to the NPSHPL, the approach ORC has adopted has been not to separate out land based primary production from other primary production including mining and to deal with each separately. Instead, the approach has been to narrow the scope of the LF LS section so that it only deals with a subset of primary production. OGNZL submits that this has left a lacuna for mining and quarrying, and possibly other forms of primary production.
13. With the introduction of the NPSHPL there has been a focus on tying primary production to the Land Use Classification system. While that may work for the food and fibre sector it is next to meaningless in the context of minerals like gold and silver whose occurrence is related to geological processes and not soil types. We can be absolutely confident, however, that a similar approach to that used for food and fibre (one that used available land-use data) would identify the Hyde-Macraes shear zone as the mineral-rich equivalent of LUC classes 1, 2 and 3.
14. Just as land based primary production needs to be able to access and use suitable land on which productive soils are found, so mining and quarrying need to be able to access and use land that contains valuable mineral deposits. To ensure mining and quarrying as regionally important forms of primary production are not lost sight of OGNZL has proposed amendments to UFD-O42, UFD-P7 and the introduction of a new UFD-PX, LF-LS-O13 and LF-LS-P21A. These provisions ensure that when the PORPS is applied in an integrated way, it enables and provides for extractives whilst ensuring that potential adverse effects are appropriately managed.

15. LF-LS-O13 recognises that Otago supports the full range of “primary production” activities. This is the full inclusive definition and so includes mining as well as food and fibre production. This then supports the inclusion of LF-LS-P21A which again relates to primary production, not just mining. This policy recognises the benefits of primary production activities as well as the need to ensure that adverse effects are appropriately managed whilst ensuring positive environmental outcomes.

Conclusion

16. OGNZL has provided extensive and uncontroverted evidence demonstrating the regional and national importance of its long-established mining activities at Macraes. That importance is demonstrated in significant employment contributions, district and regional economic impacts, and in export earnings, taxes and royalties.

17. The Macraes Mine is a major part of Otago’s mining industry – an industry that contributes around 4.5% of regional GDP.

18. The locational and functional needs of mining mean that avoidance of adverse effects on other important values such as productive soils, significant biodiversity, cultural and heritage values, and valued landscapes is not always possible as the mineral resource is developed.

19. The best evidence before you indicates that at the Macraes Mine OGNZL has been able to demonstrate how the intersection between important mineral values, and other important values including significant biodiversity, are able to be managed so that mutually beneficial outcomes are achieved. When it is approached in the right way it really is possible to have both the protection of important natural values and the benefits that come with development of significant mineral resources.

20. This reality is consistently recognised in national direction that must be given effect to in the PORPS.

21. This reality is also reflected in the 2019 PORPS.
22. The failure of the notified PORPS to provide this recognition was not supported by any coherent analysis, but is able to be rectified by the Commissioners recommending to ORC the adoption of the various measures that are before you in evidence from Ms Hunter.
23. The measures proposed will result in the new RPS meeting the requirements of section 62 RMA. In doing so there will be a clear articulation of the importance of mineral access and development in Otago, which will in turn be supported by appropriate objectives and policies that will guide the making of sensible decisions on future development options that promote sustainable management.



S Christensen/J St John

Counsel for Oceana Gold (New Zealand) Limited