
Under	the Resource Management Act 1991 (RMA)
In the matter of	an appeal under Clause 14(1), First Schedule of the RMA in relation to the proposed Otago Regional Policy Statement (pORPS)
Between	Oceana Gold (New Zealand) Limited Appellant
And	Otago Regional Council Respondent

Notice of appeal

9 December 2016

Appellant's solicitors:

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**anderson
lloyd.**

To: The Registrar
Environment Court
Christchurch

- 1 Oceana Gold (New Zealand) Limited (**OGNZL**) appeals part of the decisions of the Otago Regional Council (**ORC**) on the proposed Otago Regional Policy Statement (**pORPS**).
- 2 OGNZL made a submission¹ (**Submission**) and further submissions² on the pORPS.
- 3 OGNZL is not a trade competitor for the purposes of section 308D of the RMA.
- 4 OGNZL received notice of the decisions on 1 October 2016.
- 5 The decisions were made by the ORC.

Decisions appealed

- 6 The ORC's decisions do not directly refer to or respond to OGNZL's Submission and further submissions on the pORPS and this has proved unhelpful in assessing the decisions. It is difficult to ascertain with any certainty the ORC's reasons for rejecting OGNZL's submissions, or only accepting them in part.
- 7 The following parts of the pORPS are references to the ORC decision version³. Footnotes are included where references in the decision version have changed from the notified version of the pORPS.
- 8 The part of the decisions being appealed is:
 - (a) The decision to use the term 'avoid' in the pORPS for the reasons set out at pages 18 and 19 of the Recommendations of the Hearing Panel to Council on the pORPS, 21 September 2016, and in particular the decision to exclude the words "*from inappropriate subdivision, use and development*" to the intent that any activity unable to avoid specified effects on resources is by definition inappropriate;
 - (b) The decision to include a new Policy 1.1.2 that enables the use and development of natural and physical resources only if the adverse effects

¹ Dated 24 July 2015 (submission 140)

² Dated 25 September 2015 (submission 1030)

³ Proposed Regional Policy Statement for Otago: Incorporating Council Decisions (1 October 2016)

on the environment can be managed to give effect to the other objectives and policies of the pORPS;

- (c) The decision to only accept in part the Submission on Part B Chapter 3 Otago has high quality natural resources and ecosystems⁴;
- (d) The decision to only accept in part the Submission on Policy 3.1.1 Fresh water⁵;
- (e) The decision to only accept in part the Submission on Policy 3.1.2 Beds of rivers, lakes, wetlands and their margins⁶;
- (f) The decision to only accept in part the Submission on Policy 3.1.7 Soil values⁷;
- (g) The decision to reject the Submission on Policy 3.1.9 Ecosystems and indigenous biological diversity⁸;
- (h) The decision to reject the Submission on Schedule 3 Criteria for the identification of outstanding natural features, landscapes and seascapes, and highly valued natural features, landscapes and seascapes⁹;
- (i) The decision to reject the Submission on Objective 3.2 Otago's significant and highly-valued natural resources are identified, and protected or enhanced¹⁰;
- (j) The decision to reject the Submission on Policy 3.2.2 Managing significant vegetation and habitats¹¹;
- (k) The decision to reject the Submission on Policy 3.2.4 Managing outstanding natural features, landscapes and seascapes¹²;
- (l) The decision to reject the Submission on Policy 3.2.6 Managing highly valued natural features, landscapes and seascapes¹³;

⁴ Previously Part B Chapter 2 in the notified version of the pORPS

⁵ Previously Policy 2.1.1

⁶ Previously Policy 2.1.2

⁷ Previously Policy 2.1.5

⁸ Previously Policy 2.1.6

⁹ Previously Schedule 4

¹⁰ Previously Objective 2.2

¹¹ Previously Policy 2.2.2

¹² Previously Policy 2.2.4

- (m) The decision to reject the Submission on Policy 3.2.14 Managing outstanding freshwater bodies¹⁴;
- (n) The decision to reject the Submission on Policy 3.2.18 Managing significant soil¹⁵;
- (o) The decision to reject the Submission on Schedule 4 Criteria for the identification of areas of significant indigenous vegetation and habitat of indigenous fauna¹⁶;
- (p) The decision to reject the Submission on Objective 2.3 Natural resource systems and their interdependencies are recognised;
- (q) The decision to reject the Submission on Objective 3.1 Protection, use and development of natural and physical resources recognises environmental constraints;
- (r) The decision to reject the Submission on Policy 4.6.9 Contaminated land¹⁷;
- (s) The decision to reject the Submission on the introduction to Part B Chapter 5¹⁸;
- (t) The decision to reject in part the Submissions on Objective 5.2 Historic heritage resources are recognised and contribute to the region's character and sense of identity and Policies 5.2.1 Recognising historic heritage and 5.2.2 Identifying historic heritage¹⁹;
- (u) The decision to reject the Submission on Policy 5.2.3 Managing historic heritage²⁰;
- (v) The decision to reject the Submission on Policy 5.3.1 Rural activities²¹;
- (w) The decision to reject the Submission on Policy 5.3.4 Industrial land²²;

¹³ Previously Policy 2.2.6

¹⁴ Previously Policy 2.2.13

¹⁵ Previously Policy 2.2.15

¹⁶ Previously Schedule 5

¹⁷ Previously Policy 3.9.5

¹⁸ Previously Part B Chapter 4

¹⁹ Previously Objective 4.2, Policy 4.2.1 and Policy 4.2.2

²⁰ Previously Policy 4.2.3

²¹ Previously Policy 4.3.1

- (x) The decision to reject the Submission on Policy 5.3.5 Mineral and petroleum exploration, extraction and processing²³;
- (y) The decision to reject the Submission on Objective 4.4 Otago's communities can make the most of the natural and built resources available for use;
- (z) The decision to reject the Submission on Objective 5.4 Adverse effects of using and enjoying Otago's natural and physical resources are minimised²⁴;
- (aa) The decision to only accept in part the Submission on Policy 5.4.1 Objectionable discharges²⁵;
- (bb) The decision to include a new Policy 5.4.3;
- (cc) The decision to reject the Submission on Policy 5.4.6 Offsetting for indigenous biological diversity²⁶;
- (dd) The decision to only accept in part the Submission on Policy 5.4.8 Adverse effects from mineral and petroleum exploration, extraction and processing²⁷;
- (ee) The decision to reject the Submission on the Glossary to add a definition of primary production which includes mining; and
- (ff) The decisions not to amend proposed or add new anticipated environmental results as requested by the Appellant.

Reasons

9 The reasons for the appeal are as follows:

- (a) **Failure to provide appropriately for development of Otago's mineral wealth, and in particular for the Macraes Gold Operation:**
 - (i) The pORPS fails to achieve an appropriate balance for the sustainable management of Otago's natural and physical resources.

²² Previously Policy 4.3.5

²³ Previously Policy 4.3.6

²⁴ Previously Objective 4.5

²⁵ Previously Policy 4.5.1

²⁶ Previously Policies 4.5.7 and 4.5.8

²⁷ Previously Policy 4.5.6

Insufficient emphasis is placed on the need to enable the responsible use and development of Otago's resources, including its mineral resources;

- (ii) With particular reference to minerals, the key policies (Policies 5.3.5 and 5.4.8²⁸) are inadequate when read in the context of the entire pORPS and overall the pORPS demonstrates a lack of understanding of the functional requirements of mining, and the unavoidable co-location of regionally and nationally important mineral resources (including those contained within the area of the Macraes Gold Operation) and areas comprising or containing other important natural and physical resources;
- (iii) At the hearing before the Commissioners appointed by the Respondent, the Appellant produced evidence concerning the Coronation Project. The Coronation Project is a significant mine development comprising part of the Macraes Gold Operation and was in 2013 granted a suite of resource consents by the Respondent and the Dunedin City and Waitaki District Councils enabling the development of the gold resource subject to extensive conditions regarding the management of adverse effects, including unavoidable adverse effects on significant and outstanding values;
- (iv) At the hearing the Appellant gave information to the Commissioners about the historical significance of mining in the area, the economic value of land used for mining as part of the Macraes Gold Operation, and also as to employment at the mine and other positive effects arising from the activity;
- (v) The Appellant indicated to the Commissioners that in its notified form the pORPS would make future developments like Coronation difficult, if not impossible;
- (vi) The decision on the pORPS contains no recognition of the information the Appellant provided and no amendments have been made to the provisions of the pORPS to address the concerns the Appellant identified;
- (vii) New Policy 1.1.2 purports to enable the use and development of resources but in the context where mineral resources cannot be developed while still giving effect to all the other objectives and

²⁸ Previously Policies 4.3.6 and 4.5.6

policies of the pORPS. Policy 1.1.2 implicitly provides that the mineral resource is not to be developed;

- (viii) Policy 5.3.5 purports to give effect to Objective 5.3²⁹ "*Sufficient land is managed and protected for economic production*" but only partially achieves this. In particular, Policy 5.3.5 is to "*Recognise the functional needs of mineral exploration, extraction and processing activities to locate where the resource exists*". The policy goes on to specify two methods by which these activities are to be managed (presumably to achieve the policy):
 - (A) Giving preference to avoiding their location in areas where other important values exist; and
 - (B) Restricting the establishment of other activities that may result in reverse sensitivity effects.
- (ix) "*Giving preference to avoiding*" their co-location with other important values is reasonable as a general approach, but this is not possible or practicable in every case. Policy 5.3.5 is silent as to what happens in the situation where, as with the Coronation Project, an important mineral resource is co-located with other important values listed in the policy and the extraction of the mineral resource unavoidably has significant adverse effects on those other values;
- (x) In its current form Policy 5.3.5 is deficient and will, in the context of mineral resources, not effectively ensure Anticipated Environmental Result 5.3 "*The effects of land management do not preclude future economic uses of land*" is achieved;
- (xi) Policy 5.4.8 addresses adverse effects of mineral and petroleum exploration, extraction and processing and purports to give effect to Objective 5.4;
- (xii) Policy 5.4.8 repeats the list from Policy 5.3.5 of areas where preference to avoid conflict between mineral development and other values is stated. The policy then states that where mineral development cannot avoid locating in the listed areas, significant adverse effects on the values that contribute to the area being

²⁹ Previously Objective 4.3

significant or outstanding are to be avoided³⁰ and adverse effects on other values are to be avoided, remedied or mitigated³¹;

- (xiii) The policy then goes on to address unavoidable adverse effects by including methods to reduce those effects through staging of development and progressive rehabilitation³², and also refers to considering offsetting to address residual adverse effects³³. As currently worded it appears that these additional policy provisions do not apply to the types of effects described at Policy 5.4.8(b) and it is unclear why reference is made to offsetting but not to other types of compensation for unavoidable adverse effects; and
- (xiv) The above interpretation is reinforced by the various policies supporting Objective 3.2³⁴ which require avoidance of significant adverse effects on values which contribute to an area having the qualities described in Policy 5.4.8(a).

(b) **Values of natural resources are recognised, maintained and enhanced (Objective 3.1, Policies 3.1.1, 3.1.2, 3.1.7, 3.1.9 and Schedule 3):**

- (i) The pORPS does not recognise OGNZL's concerns in relation to the values of mineral resources under Objective 3.1. OGNZL considers that while some mineral resources may be worth maintaining for their natural science values, the value of the majority of Otago's mineral resources is linked to the ability to extract and consumptively use them. This is not acknowledged in the pORPS. The introduction to Part B Chapter 3 states that "*This chapter begins with the recognition and maintenance of all natural resources*" but it appears that Otago's mineral resource has not been included. This is despite an acknowledgement in the Introduction to Part B Chapter 3 that "... *mineral and petroleum exploration and extraction strongly relies on the quantity and quality of natural resources...*";
- (ii) Policy 3.1.1 provides for the management of freshwater. However, this policy does not acknowledge the economic value of water. OGNZL considers that Policy 3.1.1 should protect the important

³⁰ Policy 5.4.8(b)

³¹ Policy 5.4.8(d)

³² Policy 5.4.8(e)

³³ Policy 5.4.8(f)

³⁴ Previously Objective 2.2

economic uses of freshwater, which include in the extraction and processing of minerals;

- (iii) The pORPS seeks to manage beds of rivers, lakes, wetlands, and their margins under Policy 3.1.2. Mining will sometimes have unavoidable adverse effects on the beds of rivers, wetlands and their margins, and the values supported will not be maintained or enhanced. This has not been recognised in this policy;
- (iv) Policy 3.1.7(h) manages soils to avoid the creation of contaminated land³⁵. Contaminated land is defined in the pORPS as "*means land that has a hazardous substance in or on it that (a) has significant adverse effects on the environment; or (b) is reasonably likely to have significant adverse effects on the environment*"³⁶. The use of the term 'avoid' in Policy 3.1.7(h) renders it impossible for any mineral extraction industry to occur as tailings impoundments and waste rock stacks may contain hazardous substances;
- (v) Policy 3.1.9 manages ecosystems and indigenous biological diversity in terrestrial, freshwater and marine environments. OGNZL supports a policy that promotes the values of indigenous biodiversity, however, this policy does not allow for anything other than maintenance or enhancement of indigenous biodiversity. With some mining activities there will be unavoidable adverse impacts on areas of predominantly indigenous vegetation (e.g. creation of a pit or waste rock stack). If this policy is applied without modification, and is reflected in subordinate plans, it has the potential to preclude those activities; and
- (vi) The criteria used to identify highly valued and outstanding natural features, landscapes and seascapes are listed in Schedule 3. In its decision the ORC states "*The Schedule 3 attributes will provide consistent criteria for identification of natural features and landscapes, whilst allowing some flexibility in approach*"³⁷. While there may be consistency of criteria, it is unclear how the criteria are intended to apply. The amendments to this Schedule were not evaluated in the Section 32AA Report. The pORPS should provide an explanation as to how the criteria will be weighed and balanced.

³⁵ Previously Policy 2.1.5(k)

³⁶ Glossary definition of contaminated land

³⁷ Decisions of Council Report 1 October 2016, page 68

(c) **Otago's significant and highly-valued natural resources are identified, and protected or enhanced (Objective 3.2, Policies 3.2.2, 3.2.4, 3.2.6, 3.2.14, 3.2.18 and Schedule 4):**

- (i) In the notified version of the pORPS there were two versions of Objective 2.2 (now renumbered Objective 3.2) one version at page 24 under the heading "*Chapter Overview*" and another version at page 32. The decisions version of the pORPS appears to ignore this second version;
- (ii) Objective 3.2 does not recognise minerals as a significant and highly valued natural resource and fails to appropriately manage for the protection of and access to that resource in the ensuing policies. In particular, the pORPS needs to enable mining activities to occur where regionally and nationally important mineral resources (and in particular those associated with the Macraes Gold Operation) are co-located with regionally important areas of significant and highly valued vegetation, habitats, soil, indigenous biodiversity and outstanding freshwater bodies. This in turn requires an acknowledgement that the nature of mining means that significant adverse effects on those other values cannot always be avoided. In those cases the pORPS needs to provide for appropriate remediation, mitigation or compensation for unavoidable adverse effects;
- (iii) For the reasons discussed above, the use of the term 'avoid' under Policies 3.2.2, 3.2.4, 3.2.6, 3.2.14 and 3.2.18 is likely to create a major obstacle to the development of regionally and nationally important mineral resources where that development cannot avoid adverse effects on the identified values. OGNZL considers that if these policies remain in the pORPS with the term 'avoid' then there needs to be an exception for unavoidable adverse effects arising from the development of regionally and nationally important mineral resources, accompanied by a strong enabling policy for mineral development that recognises that in appropriate circumstances it is acceptable not to avoid adverse effects on significant values; and
- (iv) Schedule 4 provides for a list of criteria for the identification of areas of significant indigenous vegetation and habitat of indigenous fauna. OGNZL regards the inclusion of Schedule 4 in the pORPS as constructive and it promotes the transparency of decision making. However, ORC does not clarify the information provided at the end of Schedule 4 which states "*The Regional Council holds additional information to inform decision making on these criteria including the*

rationale for criteria and examples of areas representing these criteria." It is not clear what this means for applicants and decision makers. Further, the listed criteria will result in many examples of indigenous flora and fauna qualifying as "*significant*". This reinforces the need to have appropriate policies which enable mineral development to occur in cases where significant adverse effects on significant values cannot be avoided.

(d) **Contaminated land and waste minerals (Policy 4.6.9):**

- (i) The pORPS seeks to avoid the creation of contaminated land under Policy 4.9.6. OGNZL opposes the use of the term 'avoid' in this policy as it is overly restrictive. Tailings impoundments and waste rock stacks may contain hazardous substances and may be considered to have significant adverse effects on the environment (for example, landscape effects arising from scale or effects on underlying biological values). However, when properly managed the effects of these necessary structures associated with mining are contained and warranted, and are similar to those arising from, for example, landfills.

(e) **Historic heritage resources are recognised and contribute to the region's character and sense of identity (Objective 5.2 and Policies 5.2.1, 5.2.2 and 5.2.3):**

- (i) The pORPS fails to recognise that regionally and nationally significant mineral resources, including those associated with the Macraes Gold Operation, are sited in areas with historic heritage values, often associated with the long and enduring tradition of mining in areas of known prospectivity;
- (ii) The Heritage New Zealand Pouhere Taonga Act 2014 (**HNZPTA**) has not been considered in Policies 5.2.1 and 5.2.2 of the pORPS. OGNZL is concerned that the requirements in these policies are more onerous than the HNZPTA which acknowledges the relevance of prevention or restriction on the use of a site for any lawful purpose when determining whether to preserve an historic site (section 59(1)(a)(iii)); and
- (iii) Policy 5.2.3 manages historic heritage. Policy 5.2.3(c) requires avoidance of all adverse effects on those values which contribute to an area or place of historic heritage being of regional or national significance. OGNZL considers that this policy is too restrictive. For activities such as mining, avoidance is sometimes impossible and the policy needs to provide more flexibility to enable adverse effects

on historic heritage to be mitigated, remedied or compensated where they cannot be avoided. Policy 5.2.3 is more onerous than the operative regional policy statement policy on managing historic heritage which appears to have been effective, and no explanation as to why a change is necessary to meet the requirements of the RMA is provided.

(f) **Sufficient land is managed and protected for economic production (Policies 5.3.1, 5.3.4 and 5.3.5):**

- (i) By defining primary production to exclude mining and related activities the benefit to the mining industry of enabling Policy 5.3.1(a) is lost, even though mining supports the rural economy and at Macraes, has typically demonstrated productivity on a per land area basis many times greater than farming use. The reference in Policy 5.3.1(b) to "*minimising the loss of significant soils*" is likely to cause confusion as to what constitutes "minimising". OGNZL submitted that this policy should refer to "mitigating" as this is an understood RMA term; and
- (ii) Policy 5.3.5 purports to provide for mineral and petroleum exploration, extraction and processing. This policy acknowledges, in part, the locational constraints of mining. However while the policy says "*Giving preference to avoiding their location*" in areas where important values arise, the policy is silent as to how conflicts will be managed where those locations cannot be avoided, including in areas of the Macraes Gold Operation containing regionally and nationally significant mineral resources.

(g) **Adverse effects of using and enjoying Otago's natural and physical resources are minimised (Objective 5.4 and Policies 5.4.1, 5.4.6 and 5.4.8):**

- (i) The use of the term 'avoid' under Policy 5.4.1(a) "*Avoiding significant adverse effects of those discharges*" is too restrictive and could lead to some mining and development activities (such as the discharge of rock to land to create a waste rock stack) being prevented;
- (ii) Policy 5.4.6 provides for consideration of biological diversity offsetting in limited circumstances. The policy is weak and inefficient, and the six listed qualifying criteria are not likely to all be met. Further, given the wording of Policy 5.4.8 (discussed below) Policy 5.4.6 is not going to apply in the circumstances where offsetting is likely to be most relevant in the mining context – where

there are unavoidable adverse effects on significant indigenous vegetation and significant habitats of indigenous fauna; and

- (iii) Policy 5.4.8 is not consistent with the Respondent's acknowledgment that there are constraints on mining and in particular the policy fails to address the unavoidable effects on significant or outstanding values that must occur if regionally and nationally significant mineral resources, including those associated with the Macraes Gold Operation, are to be developed.

Relief

10 OGNZL seeks the following relief:

- (a) To amend the pORPS in accordance with the original Submission of OGNZL:
 - (i) Amend new Policy 1.1.2 to enable mineral development in circumstances where there are unavoidable adverse effects on significant or outstanding values that are otherwise protected;
 - (ii) Part B Chapter 3 Otago has high quality natural resources and ecosystems: Amend by adding the following at the end³⁸: "*However, it is important to recognise that some economic activities such as mining consumptively use natural resources and by their very nature these resources cannot be preserved for future generations*";
 - (iii) Policy 3.1.1 Fresh water³⁹: Amend to include a new line item as follows: "*g) Protect important economic uses of water*";
 - (iv) Policy 3.1.2 Beds of rivers, lakes, wetlands and their margins⁴⁰: Include acknowledgement that some activities such as mining will have unavoidable adverse effects on the beds of rivers, wetlands, and their margins. In these instances adverse effects should be remedied, mitigated or compensated. Amend to explain whether there is a priority ranking or how the factors are meant to be balanced against one another;
 - (v) Policy 3.1.7 Soil values⁴¹: Delete (h), or in the very least amend to say: "*h) Avoid, remedy or mitigate any potential contamination of*

³⁸ Previously Part B Chapter 2

³⁹ Previously Policy 2.1.1

⁴⁰ Previously Policy 2.1.2

⁴¹ Previously Policy 2.1.5(k)

soil." It would be helpful if the policy were to acknowledge that where soil needs to be disturbed in connection with activities such as mining it should be retained and reused to the extent practicable;

- (vi) Policy 3.1.9 Ecosystems and indigenous biological diversity⁴²: Amend to provide for instances where indigenous biodiversity values may not be maintained or enhanced. Amend (a) to refer to indigenous biological diversity "at a regional scale";
- (vii) Schedule 3 Criteria for the identification of outstanding natural features, landscapes and seascapes, and highly valued natural features, landscapes and seascapes⁴³: Amend to clarify how the schedule is intended to function, in particular weighting/balancing of criteria, and to ensure it satisfies the requirements of section 32 of the RMA;
- (viii) Objective 3.2 Otago's significant and highly-valued natural resources are identified, and protected or enhanced⁴⁴: Delete this objective;
- (ix) Policy 3.2.2 Managing significant vegetation and habitats⁴⁵: Amend to read: "~~Protect and enhance~~ Manage effects on areas of significant indigenous vegetation and significant habitats of indigenous fauna from the effects on inappropriate activities, by all of the following: a) Avoiding, remedying or mitigating adverse effects on those values which contribute to the area or habitat being significant; b) Avoiding, remedying or mitigating significant adverse effects on other values of the area or habitat; (c) Remedying when other adverse effects including significant adverse effects cannot be avoided or remediated⁴⁶; (d) Mitigating when other adverse effects including significant adverse effects cannot be avoided or remedied⁴⁷; and". Clarify that this policy needs to be read subject to Policy 5.4.8⁴⁸;
- (x) Policy 3.2.4 Managing outstanding natural features, landscapes and seascapes⁴⁹: Amend (a) to read: "a) Avoiding, remedying or

⁴² Previously Policy 2.1.6

⁴³ Previously Schedule 4

⁴⁴ Previously Objective 2.2

⁴⁵ Previously Policy 2.2.2

⁴⁶ Previously Policy 2.2.2(d)

⁴⁷ Previously Policy 2.2.2(e)

⁴⁸ Previously Policy 4.5.6

⁴⁹ Previously Policy 2.2.4

mitigating adverse effects on those values which contribute to the significance of the natural feature, landscape or seascape; and"
Amend (b) similarly. Delete (c) and (d)⁵⁰;

- (xi) Policy 3.2.6 Managing highly valued natural features, landscapes and seascapes⁵¹: Delete this policy;
- (xii) Policy 3.2.14 Managing outstanding freshwater bodies⁵²: Amend (a) to read "a) *Avoiding, remedying, or mitigating significant...*";
- (xiii) Policy 3.2.18 Managing significant soil⁵³: Amend (a) to read "a) *Avoiding, remedying, or mitigating significant...*";
- (xiv) Schedule 4 Criteria for the identification of areas of significant indigenous vegetation and habitat of indigenous fauna⁵⁴: Amend to include criteria: "6. Size and Scale." Clarify what is meant by the note beneath the Schedule. Ensure Schedule 4 satisfies the requirements in section 32 of the RMA;
- (xv) Objective 2.3 Natural resource systems and their interdependencies are recognised: Reinstate this objective;
- (xvi) Objective 3.1 Protection, use and development of natural and physical resources recognises environmental constraints: Reinstate this objective;
- (xvii) Policy 4.6.9 Contaminated land⁵⁵: Delete this policy;
- (xviii) Introduction to Part B Chapter 5⁵⁶: Amend the introduction as follows: "*The use of natural and physical resources underpins economic and community activity in Otago. However due to the dynamic and highly interconnected nature of the environment the sustainable management of our resources requires consideration of the adverse effects of resource use on the environment and on other resource users and to promote the economic, social and cultural wellbeing of the people and communities of Otago the use of natural*"

⁵⁰ Previously Policy 2.2.4(d) and (e)

⁵¹ Previously Policy 2.2.6

⁵² Previously Policy 2.2.13

⁵³ Previously Policy 2.2.15

⁵⁴ Previously Schedule 5

⁵⁵ Previously Policy 3.9.5

⁵⁶ Previously Part B Chapter 4

and physical resources should be enabled to the greatest extent consistent with the concept of sustainable management.";

- (xix) Objective 5.2 Historic heritage resources are recognised and contribute to the region's character and sense of identity and Policies 5.2.1 Recognising historic heritage and 5.2.2 Identifying historic heritage⁵⁷: Consider the HNZPTA in setting criteria for identifying historic heritage values in Schedule 7 and avoid creating a more onerous or duplicate system;
- (xx) Policy 5.2.3 Managing historic heritage⁵⁸: Amend to read as follows: "~~Protect~~ Manage and enhance... c) Avoiding, remedying or mitigating adverse effects on those values which contribute to the area or place being of regional or national significance; and d) Avoiding, remedying or mitigating significant adverse effects on other values of areas and places of historic heritage; and";
- (xxi) Policy 5.3.1 Rural activities⁵⁹: Amend to read as "b) ~~Minimising Mitigat[ing]~~ the loss...";
- (xxii) Policy 5.3.4 Industrial land⁶⁰: Amend to expressly allow for the continuation of existing industrial activities;
- (xxiii) Policy 5.3.5 Mineral and petroleum exploration, extraction and processing⁶¹: Amend (a) to recognise that sometimes mineral deposits and the values in (a) will coincide. Stating that there is a preference that the effects be avoided is inappropriate. Suggested wording as follows: "a) *Providing for these activities in sensitive, significant, or outstanding areas, and recognising they are not inappropriate and may give rise to unavoidable adverse effects, but that any such effects need to be remedied, mitigated or compensated for.*";
- (xxiv) Objective 4.4 Otago's communities can make the most of the natural and built resources available for use: Reinstate this objective;

⁵⁷ Previously Objective 4.2 and Policies 4.2.1 and 4.2.2

⁵⁸ Previously Policy 4.2.3

⁵⁹ Previously Policy 4.3.1

⁶⁰ Previously Policy 4.3.5

⁶¹ Previously Policy 4.3.6

- (xxv) Objective 5.4 Adverse effects of using and enjoying Otago's natural and physical resources are minimised⁶²: Replace the word "*minimised*" with "*mitigated*";
- (xxvi) Policy 5.4.1 Objectionable discharge⁶³: Amend to read as "*a) Avoiding, remedying or mitigating significant adverse effects of those discharges.*";
- (xxvii) New Policy 5.4.3 Precautionary approach. Delete this policy;
- (xxviii) Policy 5.4.6 Offsetting for indigenous biological diversity⁶⁴: Delete this policy;
- (xxix) Policy 5.4.8 Adverse effects from mineral and petroleum exploration, extraction and processing⁶⁵: Amend: "~~Minimise~~ Mitigate adverse effects..." Delete (a) and (b) and replace with: "*Providing for these activities in sensitive, significant, or outstanding areas, and recognising they are not inappropriate and may give rise to unavoidable adverse effects, but that any such effects need to be remedied, mitigated or compensated for.*" Amend f) as follows: "*Considering the use of offsetting or compensatory measures for residual adverse effects;*" Amend g) as follows: "*g) Applying a precautionary approach (including through the use of adaptive management) to assessing the effects...*";
- (xxx) Amend Glossary definition of primary production to not exclude mining; and
- (xxxi) Amend and add to the anticipated environmental results as requested in the Appellant's Submission.
- (b) Such further or other relief as may be appropriate to give effect to OGNZL's Submission points addressed in this appeal; and
- (c) The costs of and incidental to this appeal.

Attached documents

11 The following documents are attached to this notice:

⁶² Previously Objective 4.5

⁶³ Previously Policy 5.4.1

⁶⁴ Previously Policies 4.5.7 and 4.5.8

⁶⁵ Previously Policy 4.5.6

- (a) A copy of OGNZL's Submission and further submissions;
- (b) A copy of the decisions of the ORC on the pORPS; and
- (c) A list of names and addresses of persons to be served with a copy of this notice.

Dated this 9th day of December 2016



Stephen Christensen
Counsel for the Appellant

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Advice to recipients of copy of notice

How to become party to proceedings

You may be a party to the appeal if,—

- (a) within 15 working days after the period for lodging a notice of appeal ends, you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- (b) within 20 working days after the period for lodging a notice of appeal ends, you serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the Appellant's submission and further submission or the decisions appealed. These documents may be obtained, on request, from the Appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Christchurch.