

Otago Regional Council
DIRECTIONS OF THE COMMISSIONERS

- [1] By way of a Memorandum dated 21 May 2025 (attached), counsel for Oceana Gold (New Zealand) Limited (**OGL**) advised that that it was proposing to no longer pursue the Golden Bar element as part of the Macraes Phase 4 Project (MP4), which has been set down for a Hearing commencing on 22 July 2025.
- [2] Counsel advised that in OGL's view, and in the view of its consultants, the Golden Bar element could be readily severed from the remainder of MP4 without requiring amended technical reports to be supplied.
- [3] In the meantime, OGL have requested that the three council's Section 42A Reports due on 9 June 2025 continue to assess the full application as currently lodged, including the Golden Bar element.
- [4] Counsel went on to submit that OGL reserved its position not to pursue Golden Bar at the Hearing based in part on the outcome of the Section 42A Reports.
- [5] We find this to be an unusual proposition.
- [6] It is our experience and preference that Section 42A Reports and an applicant's evidence circulated prior to a Hearing address the actual proposal for which consent will be sought. Nevertheless, we acknowledge OGL's advice that they may wish to follow a different process.
- [7] Should OGL decide to withdraw the Golden Bar element of MP4 prior to the Hearing, then the Panel, in consultation with the council's reporting officers, will at that time decide if the timeframes set in Minute 1 need to be adjusted to enable comprehensive advice to be provided to the Panel. We will also seek the views of submitters as to whether they require further time to assess the implications of the amended MP4 proposal.
- [8] Should OGL decide to withdraw the Golden Bar element of MP4 at the Hearing then the Panel, in consultation with OGL, the council's reporting officers and submitters, will decide if an adjournment is required to enable the council's reporting officers and submitters to assess the implications of the amended proposal.
- [9] One possible outcome of OGL's desired process is a deferment or adjournment of the Hearing. That is a risk that OGL seems to be willing to take.
- [10] We will issue further Minute(s) addressing this matter if and when OGL confirm the withdrawal of the Golden Bar element of MP4.



Rob van Voorthuysen
On behalf of the commissioners
22 May 2025

BEFORE THE INDEPENDENT COMMISSIONER HEARINGS PANEL

IN THE MATTER of the Resource Management Act 1991 (RMA)

AND

IN THE MATTER of the MP4 resource consent applications
(RM24.184, WDC 201.2024.2373 and DCC LUC-
2024-126)

MEMORANDUM ON BEHALF OF OCEANA GOLD NEW ZEALAND LIMITED

Dated 21 May 2025

Counsel acting:

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MAY IT PLEASE THE COMMISSIONERS:

1. This Memorandum is filed on behalf of the applicant Oceana Gold (New Zealand) Limited (**OGNZL**).
2. As outlined further below in paragraph 10, as a courtesy, last week OGNZL raised with the Councils' Consents Planners that it was proposing to no longer pursue the Golden Bar element as part of the Macraes Phase 4 Project (**MP4 or the Project**) which has been set down for hearing commencing 22 July 2025. OGNZL received an email from Shay McDonald of the Otago Regional Council (**ORC**) on 20 May that the Commissioners had arrived at the following options (**the Commissioner's Options**) and that OGNZL must:

1 Continue with the original application and existing hearing dates, or

2 Provide all relevant updated assessments, consent conditions, and updated AEE by tomorrow 21 May 2025 so that these can be considered by Councils and experts and incorporated into expert evidence and s42A reports. These must be genuine, complete assessments undertaken by suitably qualified persons and clearly present the updated proposal, or

3 Delay the hearing to enable consideration of all updated assessments, once they are available.

The commissioners have further said that if OGL introduces the changes (removal of Golden Bar) in their evidence or at the hearing, the commissioners will immediately adjourn the hearing and require all assessments be updated to enable relevant parties time to review these and provide updated recommendations.

Please advise, in writing, how you wish to proceed by 4 PM tomorrow 21

May.

3. This Memorandum is a response to the Commissioner's Options. OGNZL was not a party to ORC's communication with the Commissioners on this topic and OGNZL considers the ORC communication to the Commissioners paints an unhelpful picture that has contributed to a direction from the Commissioners in the form of "Options" that OGNZL considers are unreasonable in the circumstances.
4. To assist the Commissioners gain a better appreciation of the relevant facts I first set out some background to the matter and describe the Golden Bar element, and then set out the action OGNZL proposes in response to the Commissioners' Options.

Background

5. The Macraes Mine is a large and complex mine. It has been in operation since the late 1980s and over that time has been subject to many resource consent processes as understanding of the gold resource has evolved, and as mining technology and economics have allowed identified resources to be successfully developed. Consenting has necessarily "shadowed" mine development, as the nature, scale, and significance of successive mining-related land-forms and activities has become known. That process is ongoing, with the latest development proposal currently before the Commissioners.
6. In March 2024 OGNZL applied for a number of new resource consents and variations to existing consents to enable this next phase of development. It is referred to as MP4.

7. At OGNZL's request the application was publicly notified and submissions closed on 1 May 2025.
8. Seven submissions were received. This included submissions from the Department of Conservation, Forest and Bird and Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnaga o Moeraki, and Te Rūnaka o Ōtākou (**Kā Rūnaka**) which all addressed potential effects of the Project on biodiversity values.
9. Kā Rūnaka also provided a Cultural Impact Assessment (**CIA**) on 1 May 2025 which, amongst other things, identified concerns with potential impacts on *Orocrambes sophistes*, a moth which the Invertebrate report (included with the AEE as Appendix 19) noted as having one recorded finding within the Golden Bar footprint. The same issue had also been identified in the ORC's Notification Report, which classed the presence of the moth as "a fundamental issue" with the express direction that: "*The Applicant should give further consideration to these matters.*" ¹
10. Upon receipt of the submissions and the CIA, OGNZL determined that some of the potential biodiversity impacts of the Project identified in the submissions and the CIA could be avoided by removing the Golden Bar element from the scope of MP4. As a courtesy a 'heads up' was communicated to Councils on 15 May and a representative of Kā Rūnaka on 16 May. ORC's Planner initially suggested that it was too late to exclude Golden Bar from the section 42A report, and OGNZL made further inquiries about this on 16 May. ORC's planner said it

¹ ORC Notification Recommendation Report, 20 March 2025, page 96

would seek legal advice on this and raise this with the Commissioners. OGNZL had anticipated it would be included in any such communication with the Commissioners, but it was not.

MP4 and the Golden Bar element

11. As described in the Assessment of Environmental Effects (**AEE**), MP4 involves the following elements:

- i. Further development of, and tailings deposition in, the Frasers Tailings Storage Facility (**FTSF**) in Frasers Pit;
- ii. Down dip extension of three open pits (Innes Mills, Coronation and Golden Bar) and associated waste rock disposal;
- iii. Transporting of ore to the Processing Plant for gold extraction;
- iv. Backfilling of the Coronation North Pit following the completion of the mining currently authorised;
- v. Realignment of part of Golden Bar Road to facilitate additional mining in Innes Mills Pit;
- vi. Ancillary features such as topsoil stockpiles, low-grade ore stockpiles, silt ponds, areas for pit infrastructure and access roading;
- vii. Activities associated with the mitigation, remediation, and offsetting of the effects of the above activities, including amenity effects, water quality and ecological effects management (via the Murphys Ecological Enhancement Area);

- viii. Partially infilling Golden Point Pit with waste rock rehandled from Northern Gully Waste Rock Stack (**WRS**) and some waste from Innes Mills Pit to form buttressing on the west wall; and
 - ix. Establishment of an ecological enhancement area on the true right side of Murphys Creek, an access track and associated facilities.
12. The Golden Bar area is spatially separated from the main part of the Macraes Mine and is located approximately 10 km south of the Processing Plant. Golden Bar is one discrete element of MP4 and is separately described in section 3.6 of the AEE. In summary the Golden Bar Pit extension involves the following:
- i. Establishment of temporary support infrastructure;
 - ii. Recommissioning of the private haul road connecting Golden Bar to the main Macraes Mine area, including the processing plant;
 - iii. Dewatering of the existing Golden Bar Pit and mining of the pit extension;
 - iv. Expansion of the existing Golden Bar Waste Rock Stack (“GBWRS”); and
 - v. Rehabilitation and closure;
 - vi. Offsetting for the proposed ecological effects of Golden Bar as part of a staged approach in the Murphys Ecological Enhancement Area (**MEEA**).
13. The removal of the Golden Bar element means the following:
- i. withdrawal of the part of the Waitaki District Council land use consent application that relates to all proposed activities at Golden Bar Pit and WRS;
 - ii. Withdrawal of Otago Regional Council consent applications RM24.184.15 – RM24.184.29;

- iii. Reducing the scale of the MEEA in a proportionate way to reflect the reduced biodiversity impacts that need to be offset as a result of proposed activities at Golden Bar not being authorised as part of the Project, and maintaining a predator proof fenced design.
14. In OGNZL's view, and in the view of its consultants, the Golden Bar element can be readily severed from the remainder of the Project without requiring amended technical reports to be supplied. Appendices 4, 12, 14 and 21 of the AEE specifically relate to Golden Bar and can simply be removed from consideration. Appendices 13, 16, 18 and 22 address cumulative effects and can be readily updated, but not within one working day as the Commissioners have suggested. In relation to the remaining reports, OGNZL's experts have separately identified and assessed the various elements of MP4 and it is clear to the Council and submitters which parts of those reports relate to Golden Bar. OGNZL agrees that the removal of the Golden Bar element will alter the assessment of cumulative effects. That change will be a reduction in the cumulative effects that have been assessed in the AEE, and is clearly within scope of the application.. This reduction in anticipated cumulative effects can be assessed by OGNZL's experts in their evidence.
15. OGNZL has applied for multiple resource consents for MP4 and the draft regional council consents have been presented as a suite of consents according to the different project elements. Even if an applicant obtains consents, the

exercise of those consents is optional not mandatory. As the Planning Tribunal said in *Brookes v Queenstown Lakes District Council*²:

It must always be borne in mind that no person can be forced to make any particular use of his or her land. As with the previous legislation, so too under the present Act, the purpose of granting a resource consent is to make an opportunity available. A resource consent is permissive, it is not mandatory. Its terms become mandatory if it is exercised.

16. The exception to this is where resource consents are specifically linked to other associated consents in a given suite of consents which then must be exercised concurrently.
17. This is not the case with the proposed ORC consents for Golden Bar RM24.184.15 – RM24.184.29. Whilst these consents are linked to other consents in the Golden Bar suite of consents, they are not linked to the other ORC consents applied for as part of MP4. This means that if granted, OGNZL could elect to exercise the Innes Mills and Coronation consents, but could elect to not exercise those for Golden Bar. OGNZL would still be required to undertake offsetting in the MEEA in a staged manner to address the biodiversity effects of those components of MP4 that it develops.

Commissioners Options

18. OGNZL requests that the Council report writers finalise the section 42A report for the full MP4 Project including Golden Bar as per Option 1. In accordance with the way in which the OGNZL AEE and Appendices were presented, OGNZL anticipates that the section 42A report will include an assessment of the individual MP4 components as well as an assessment of cumulative effects,

² Planning Tribunal, C81/94, 2 September 1994, Skelton J and Commissioners Grigg and Catchpole.

meaning that the effects of Golden Bar are assessed on their own facts, and the identification and assessment of cumulative effects will be informed by Golden Bar's contribution.

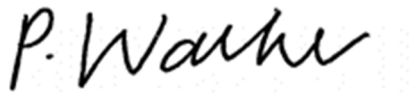
19. OGNZL reserves its position not to pursue Golden Bar at the hearing based in part on the outcome of the section 42A report. It is not uncommon for an applicant to amend a proposal after receipt of a section 42A report (or in response to matters raised by submitters or the decision-maker) and as noted above ORC in point of fact directed OGNZL to reconsider its proposal in light of the ecological assessments for the Golden Bar portion of the project. An applicant's election to amend a proposal would usually only necessitate adjourning the hearing if the Commissioners considered the information they had before them was insufficient to make a properly informed decision. Respectfully, I submit the Commissioners should not predetermine that matter, which appears to be what the Commissioners are at risk of doing by indicating now that if Golden Bar is not pursued at the hearing they will immediately take an adjournment. As described in the Commissioners Minute 1, the timetable has been set to provide additional time between the receipt of the section 42A report on 9 June and the exchange of evidence. This means that if OGNZL reviews the section 42A report and is minded to amend its proposal, it has time to convey this to the Council, Commissioners and submitters before OGNZL files its evidence on 23 June. As described above, discrete regional council consents are required for Golden Bar and the land use consent can be amended and the likely reduction in cumulative effects assessed in order to ensure the Commissioners are able to make a properly informed decision. If there is a need for an adjournment or extension of time for receipt of supplementary

evidence this needs to be considered on the basis of the information the Commissioners receive.

20. There seems to be an inference from ORC that if cumulative effects associated with Golden Bar are not considered now, they will somehow not be considered later, if Golden Bar was to be included in a subsequent application (whether under the Fast-Track Approvals Act or the RMA). If that is what ORC is inferring it is incorrect in law, and under any existing consenting framework the cumulative effects associated with any subsequent proposal will need to be assessed. The listed project in the Fast-Track Approvals Act already includes potential future extensions at Golden Bar, meaning any concern over fragmentation of the processes is not alleviated by insisting that Golden Bar remains part of the current application.
21. Option 3 with a delay to the hearing date is not a feasible option for OGNZL. In order to keep the mine running it is vital that planned works are undertaken next year, and a number of workstreams and permitted activities associated with the MEEA, and driven by seasonal constraints, are planned for later this year (in anticipation of obtaining resource consents for MP4 and in order to ensure the planned offsets can be achieved).
22. In summary, I hope this Memorandum:
 - i. provides more context as to why the applicant had raised with the Councils about not pursuing the Golden Bar element of MP4, and how it envisaged this would work; and
 - ii. Confirms that the applicant chooses option 1, but notes that it reserves its position to introduce changes to the proposal if it elects to do so and that

the implications of any such changes need to be addressed on their merits
and do not require an automatic adjournment of the hearing.

Dated this 21st day of May 2025

A handwritten signature in black ink, appearing to read "P. Walker". The signature is written in a cursive, flowing style. The letters are dark and slightly blurred, suggesting a scan of a physical document. The signature is positioned above the printed name "P Walker".

P Walker

Counsel for Oceana Gold (New Zealand) Limited