

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH**

ENV-2024-CHC-29

**I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI**

IN THE MATTER

of an appeal under clause 14(1) of the First
Schedule of the Resource Management Act
1991

BETWEEN

Oceana Gold (New Zealand) Limited
Appellant

AND

Otago Regional Council
Respondent

**NOTICE OF WISH OF DIRECTOR-GENERAL OF CONSERVATION TUMUAKI AHUREI
TO BE A PARTY TO APPEAL**

7 June 2024

Director-General of Conservation Tumuaki Ahurei

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NOTICE OF WISH TO BE A PARTY TO PROCEEDINGS

To:

The Registrar
Environment Court
Christchurch

1. The Director-General of Conservation Tumuaki Ahurei (D-G) wishes to be a party to the following proceedings:
Oceana Gold (New Zealand) Limited v Otago Regional Council
ENV-2024-CHC-29
2. The D-G received notice of this appeal on 16 May 2023.
3. The D-G made a submission on the matters included in the proposed Regional Policy Statement (RPS). The D-G has an interest in this proceeding that is greater than that of the general public.
4. The D-G is not a trade competitor for the purposes of section 308C or 308CA of the Resource Management Act 1991(RMA).
5. The D-G is interested in part of the appeal.
6. The D-G supports or opposes the relief sought in the appeal for the reasons given in the table in Schedule 1.
7. The D-G agrees to participate in mediation or other alternative dispute resolution of the proceedings.



Pene Williams
Counsel for the Director-General of Conservation Tumuaki Ahurei
Dated 7 June 2024

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Schedule 1 – Position and reasons on specific provisions appealed

Provision appealed	Relief sought	Support/ Oppose	Reasons
	<p><u>NOTE</u> all relief sought also seeks: <u>Or grant such other relief</u> or consequential amendments which addresses OceanaGold’s concerns.</p>	<p>Support/ Oppose as set out below</p>	<p>Reasons given below.</p>
<p>Definitions – NEW – Environmental compensation</p>	<p><u>Include</u> a definition of “environmental Compensation”</p>	<p>Oppose</p>	<p>The term “environmental compensation” does not appear in the RPS, adding this definition could lead to confusion with the definition of “biodiversity compensation” which has been inserted for consistency with the National Policy Statement for Indigenous Biodiversity (NPSIB).</p>
<p>SRMR-I10 – Economic and domestic activities in Otago use natural resources but do not always properly account for the environmental stresses or the future impacts they cause</p>	<p><u>Include</u> the following words: <u>“Mining is an important industry in the Otago region and contributes towards social and economic wellbeing. In recognition of this the Macraes Mine is a special purpose zone in the Waitaki District Plan”.</u></p>	<p>Oppose</p>	<p>New Issue SRMR-I10A already recognises that mineral and aggregate extraction (among other activities) is essential for the social, cultural and economic well-being of the region. It is inappropriate to specifically recognise the Macraes Mine special purpose zone at Issue level in the RPS.</p>
<p>IM-P1 – Integrated approach to decision making AND IM-P2 – Decision priorities (deleted)</p>	<p>IM-P1 is ambiguous and unclear and should be <u>deleted</u>. It is preferable if the individual objectives and policies clearly address conflicts and priorities, rather than leaving it to IM-P1. <u>As an alternative</u> to deleting IM-P1 it should be <u>amended, or grant such other relief</u> or consequential amendments which addresses OceanaGold’s concerns.</p>	<p>Oppose</p>	<p>This policy was revised and rewritten following the release of the Supreme Court’s <i>Port Otago</i> decision. It appropriately promotes a structured and purposive approach to decision making to ensure integrated management as required by s59 RMA.</p>

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LF-LS-O11 – Land and soil	<p><u>Amend</u> LF-LS-O12 as follows: LF-LS-O12 – Use, development, and protection The use, development, and protection of land and soil <u>for primary production</u>: (1) ...</p>	Oppose	The D-G agrees that under the RMA minerals are not required to be sustained to meet the reasonably foreseeable needs of future generations. However, it is unclear what the proposed amendment would achieve.
LF-LS-P19 – Highly productive land	<p><u>Insert</u> new LF-LS-P21A: <u>LF-LS-P21A – Primary Production</u> <u>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:</u> <u>(1) Recognising the value and long term benefits of the primary production activity to the economic, social and cultural wellbeing of the region;</u> <u>(2) Ensuring that the adverse effects of primary production are appropriately managed;</u> <u>(3) Maintaining and where appropriate enhancing access to natural and physical resources;</u> <u>(4) Avoiding or minimising the potential for reverse sensitivity; and</u> <u>(5) Ensuring positive environmental outcomes are achieved.</u></p>	Oppose	The redrafted LF-LS-O12(3) recognises the role of land and soil resources in providing for the social, economic and cultural well-being of Otago’s peoples and communities. The proposed new policy cuts across several other provisions in the RPS and would not achieve sustainable management of natural and physical resources as required by Part 2 RMA.
LF-LS-M12 – District Plans	<p><u>Revert</u> to original wording: LF–LS–M12 – District plans Territorial authorities must prepare or amend and maintain their district plans no later than 31 December 2026 to:</p>	Oppose	The amendment was made to address concerns raised by Forestry submitters that the notified provision was too targeted. The proposed relief would not provide for District plans to consider other activities that may impact on Councils’ ability to give effect to freshwater objectives developed under

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	<p>(1) manage land use change by: ... (a) controlling the establishment of new or any spatial extension of existing land use activities <u>plantation forestry activities</u> where necessary to give effect to an objective developed under the NPSFM, and ...</p>		<p>the National Policy Statement for Freshwater Management (NPSFM).</p>
<p>ECO-P2 – Identifying significant natural areas and taoka</p>	<p><u>Make any necessary amendments to ECO-P2 in order to give effect to any changes to the NPSIB.</u></p>	<p>Support</p>	<p>Agree that a RPS must give effect to a National Policy Statement (NPS), and that to the extent there is scope to do so within the scope of original RPS submissions, the Court should make further changes in accordance with any changes to the NPSIB.</p>
<p>ECO-P3 – Protecting Significant Natural Areas and taoka</p>	<p><u>Make any necessary amendments to ECO-P3 in order to give effect to any changes to the NPSIB.</u></p>	<p>Support</p>	<p>Agree that a RPS must give effect to a NPS, and that to the extent there is scope to do so within the scope of original RPS submissions, the Court should make further changes in accordance with any changes to the NPSIB.</p>
<p>ECO-P4 – Provision for new activities <u>AND new Objective ECO-O4 – Social, economic and cultural wellbeing</u></p>	<p><u>Amend ECO-P4 clause (1B) as follows:</u> “...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,”</p> <p>In line with the amendments already made, <u>provide a new objective</u> which ECO-P4 will be giving effect to: <u>ECO-O4 Social, economic and cultural wellbeing</u> <u>Manage indigenous biodiversity in such a</u></p>	<p>Oppose re amendments to ECO-P4 and new ECO-O4</p> <p>Support re changes to give effect to NPSIB</p>	<p>The wording sought to be deleted in ECO-P4 clause (1B) provides for the maintenance of indigenous biodiversity and taoka as required to give effect to the NPSIB in the Otago region.</p> <p>The proposed new objective ECO-O4 is inconsistent with the NPSIB objective which requires indigenous biodiversity to be maintained so that there is at least no overall loss, while providing for the social, economic and cultural wellbeing of people and communities.</p> <p>Agree that a RPS must give effect to a NPS, and that to the extent there is scope to do so within the scope of original RPS</p>

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	<p><u>way that also provides for the social, economic, and cultural wellbeing of people and communities now and in the future.</u></p> <p>And make any necessary amendments to ECO-P4 in order to give effect to any changes to the NPSIB.</p>		<p>submissions, the Court should make further changes in accordance with any amendments to the NPSIB.</p>
ECO-P5A – Managing adverse effects of existing activities in significant natural areas	<p><u>Amend</u> ECO-P5A to provide more certainty that all activities (new and existing) could be able to be developed within an appropriately zoned area.</p>	Oppose	<p>The date used in ECO-P5A of 4 August 2023 is the date when the NPSIB came into force and when giving effect to the NPS it is appropriate to use this date as a starting point for assessment of effects.</p>
ECO-P6 – Maintaining Indigenous biodiversity	<p><u>Make any necessary amendments to</u> ECO-P6 in order to give effect to any changes to the NPSIB.</p>	Support	<p>Agree that a RPS must give effect to a NPS, and that to the extent there is scope to do so within the scope of original RPS submissions, the Court should make further changes in accordance with any changes to the NPSIB.</p>
ECO-M4 – Regional plans	<p><u>Amend</u> ECO-M4 to include the following wording: <u>(x) provide for activities set out in ECO-P4 which meet the requirements of that policy.</u></p>	Oppose	<p>It is unclear what the proposed amendment would achieve, as the activities in ECO-M4 cover more than mining activities.</p>
HCV-HH-P5 – Managing historic heritage	<p><u>Amend</u> HCV-HH-P5 as follows: Except as provided for in EIT-INF-P13, protect historic heritage from inappropriate subdivision, use and development by: ... 2. avoiding adverse effects on areas or places which have been identified as</p>	Oppose	<p>The proposed addition would inappropriately expand the exceptions to clause 2 and thereby fail to protect significant historic heritage from inappropriate subdivision, use and development as required by Part 2 RMA.</p>

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	<p>having special or outstanding historic heritage values or qualities, except that in circumstances (a) to (f)(g) below, they are remedied or mitigated to the extent practicable:</p> <p>...</p> <p><u>(g) the activity will enable access to or improved understanding of the historic heritage site or place.</u></p>		
UFD-P7 – Rural areas	<p><u>Amend UFD-P7 to insert a new paragraph as follows:</u></p> <p><u>(3A) provides for primary production, rural industry and supporting activities and recognises:</u></p> <p><u>(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</u></p> <p><u>(b) that mining and aggregate extraction activities can only be located where those resources are present, and</u></p> <p><u>And insert a new policy:</u></p> <p><u>LF-LS-PX – Mineral and Aggregate Extraction (outside the Coastal Environment)</u></p> <p><u>Where mineral and aggregate extraction and its ancillary activities provide a significant regional or national benefit, manage adverse effects arising from such activities by:</u></p>	Oppose	<p>The proposed amendment to UFD-P7 is unnecessary, as clause (2) already recognises social and economic well-being.</p> <p>The proposed new policy <u>LF-LS-PX</u> repeats other provisions in the RPS and is unnecessary.</p>

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	<p><u>(a) avoiding, as the first priority, locating these activities in all of the following:</u></p> <ul style="list-style-type: none"> <u>i. Scheduled wāhi tupuna, and areas with protected customary rights;</u> <u>ii. Significant natural areas;</u> <u>iii. Natural wetlands;</u> <u>iv. Scheduled outstanding natural features and outstanding natural landscapes;</u> <u>v. Scheduled outstanding water bodies;</u> <u>vi. Scheduled areas of outstanding natural character;</u> <u>vii. Scheduled areas or places of historic heritage value;</u> <u>viii. Areas subject to significant natural hazard risk</u> <p><u>(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:</u></p> <ul style="list-style-type: none"> <u>i. In wāhi tupuna, in accordance with HCV-WT-P2;</u> <u>ii. In a significant natural area or a natural wetland, the effects management hierarchy must be applied;</u> <u>iii. Minimise any increase in natural hazard risk through mitigation measures;</u> <u>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:</u> 		

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	<p><u>i. Avoiding significant adverse effects, where practicable;</u> <u>ii. Avoiding, remedying or mitigating all other adverse effects;</u> <u>iii. Where adverse effects cannot be practically remediated or mitigated, consider offsetting and then compensation as appropriate.</u> <u>(b) Avoiding adverse effects on the health and safety of the community.</u></p> <p><u>And insert a new objective;</u> <u>ECO-O4 Social, economic and cultural wellbeing</u> <u>Manage indigenous biodiversity in such a way that also provides for the social, economic, and cultural wellbeing of people and communities now and in the future.</u></p>		<p>The proposed new objective ECO-O4 is inconsistent with the NPSIB objective which requires indigenous biodiversity to be maintained so that there is at least no overall loss, while providing for the social, economic and cultural wellbeing of people and communities.</p>
<p>APP2 – Criteria for identifying areas that qualify as indigenous natural areas (SNAs)</p>	<p><u>Amend APP2 as follows:</u> <u>“The assessment must be done using the assessment criteria in 1 to 3 and A to D below Appendix 1 and in accordance with the following principles: ...</u> <u>3. (e) an area that is important for a population of indigenous fauna during a critical part of their lifecycle, either seasonally or permanently, e.g. for feeding, resting, nesting, breeding, spawning or refuges from predation.</u></p>	<p>Oppose amendment proposed</p> <p>Support any changes to give effect to NPSIB</p>	<p>The Council’s decision adds paragraph (e) to criteria in the NPSIB, Appendix 1. This paragraph is needed to ensure protection of areas of significant habitat of indigenous fauna in accordance with Part 2 RMA.</p> <p>Agree that a RPS must give effect to a NPS, and that to the extent there is scope to do so within the scope of original RPS submissions, the Court should make further changes in accordance with any changes to the NPSIB.</p>

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	<p>appropriate where <i>indigenous biodiversity</i> values are not able to be compensated for. Examples of <i>biodiversity compensation</i> not being appropriate include where:</p> <p>...</p> <p>(d) the loss from an ecological district of Threatened taxa, other than kanuka (<i>Kunzea robusta</i> and <i>Kunzea serotina</i>), under the New Zealand Threat Classification System (Townsend et al, 2008); or,</p> <p>(e) removal or loss of viability of the <i>habitat</i> of a Threatened <i>indigenous species</i> of fauna or flora under the New Zealand Threat Classification System (Townsend et al, 2008),</p> <p>(f) removal or loss of health and <i>resilience</i> of a naturally uncommon ecosystem type that is associated with <i>indigenous vegetation</i> or <i>habitat</i> of indigenous fauna,</p> <p>(g) the likely worsening of the conservation status of any Threatened or At Risk <i>indigenous biodiversity</i> listed under the New Zealand Threat Classification System (Townsend et al, 2008).</p> <p><u>Plus any further amendments</u> in order to give effect to any changes to the NPSIB.</p>	<p>changes to APP4</p>	<p>where biodiversity compensation may not be appropriate, in accordance with Part 2 RMA.</p>