

**Before the Environment Court
at Christchurch**

ENV-2024-CHC-

**I Mua I Te Kōti Taiao o Aoteroa
Ōtautahi Rohe**

UNDER the Resource Management Act 1991

IN THE MATTER of appeals under clause 14(1) of the First
Schedule of the Act in relation to the non-
freshwater planning instrument parts of the
proposed Otago Regional Policy Statement
(PORPS)

BETWEEN **Oceana Gold (New Zealand) Limited**

Appellant

AND **OTAGO REGIONAL COUNCIL**

Respondent

Notice of Appeal

Dated 13 May 2024

Solicitor acting:

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TO: THE REGISTRAR

Environment Court

Christchurch

1. Oceana Gold (New Zealand) Limited (**OceanaGold**) appeals against part of a decision of the Otago Regional Council on the non-freshwater planning instrument parts of the proposed Otago Regional Policy Statement (**PORPS**).
2. OceanaGold made a submission and further submissions on the PORPS.
3. OceanaGold is not a trade competitor for the purposes of section 308D of the Act.
4. OceanaGold received notice of the decision on the afternoon of 27 March 2024.
5. The Non-Freshwater Hearings Panel issued a Report and Recommendations on the non-freshwater planning instrument parts of the PORPS. The Otago Regional Council adopted each of the recommendations of the Panel as the Respondent's decision on the non-freshwater planning instrument parts of the PORPS.
6. As further described in the table attached as Appendix 1, OceanaGold is appealing the Otago Regional Council's decision on:
 - a. New definitions for environmental compensation and mining, the definitions of natural wetland, rural area and urban area;
 - b. 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;

- c. IM-P1 Integrated approach to decision making and IM-P2 – Decision priorities;
- d. AIR – P4 – Avoiding certain discharges;
- e. LF-FW-O10- Natural character;
- f. LF-LS-O11 – Land and soil;
- g. LF-LS-O12 – Use, development and protection;
- h. LF-LS-P19 – Highly productive land;
- i. LF-LS-M12 – District Plans;
- j. ECO- P2 -Identifying significant natural areas and taoka;
- k. ECO-P3 – Protecting Significant Natural Areas and taoka;
- l. ECO-P4 – Provision for new activities;
- m. ECO-P5 – Existing activities in significant natural areas;
- n. ECO-P6 – Maintaining indigenous biodiversity;
- o. ECO-M4 – Regional plans;
- p. APP2 -Significance criteria;
- q. APP3 - Criteria for Biodiversity Offsetting;
- r. APP4 – Criteria for Biodiversity Compensation;
- s. HAZ-NH-O1 – Natural hazards;
- t. HAZ-NH-P2 – Risk assessments;
- u. HAZ-NH-P3 – New activities;
- v. HAZ-CL-P15 – New contaminated land;
- w. APP6 – Methodology for natural hazard risk assessment;
- x. HCV – HH- P5 – Managing historic heritage;
- y. UFD-P7 – Rural areas

7. The reasons for the appeal are set out in the table attached as Appendix 1.

8. OceanaGold seeks the following relief:
 - a. In relation to the parts of the decision appealed, the relief set out in the table in Appendix 1, which in some instances seeks the inclusion of new objectives and policies;
 - b. Any further or other relief as may be required to address this appeal; and
 - c. Costs.

9. The following documents are attached to this notice of appeal;
 - a. A table showing the provision being appealed, a summary of OceanaGold's submission on the provision, the Council's decision, the reasons for the appeal and the relief sought (Appendix 1);
 - b. A list of names and email addresses of persons to be served with a copy of this notice (Appendix 2).
 - c. A copy of OceanaGold's original submission (Appendix 3);
 - d. A copy of OceanaGold's further submission (Appendix 4);

10. A copy of the original submissions which OceanaGold further submitted on (Appendix 5) is too large to file electronically and a link to a folder containing these original submissions is available.

Dated this 14th day of May 2024



SW Christensen/JE St John
Counsel for Oceana Gold (New Zealand) Limited

The address for service of the appellant is 22 Maclaggan Street, Dunedin.

Documents for service on the filing party may be left at that address for service or may be—

(a) posted to the party at 22 Maclaggan Street, Dunedin or

(b) emailed to the party at Jackie.stjohn@oceanagold.com

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, 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
- within 20 working days after the period for lodging a notice of appeal ends, 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 Act.

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

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not have attached a copy of the appellant's submissions and or the decision (or part of the decision) 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 Auckland, Wellington, or Christchurch

APPENDIX 1 – table showing provision being appealed, summary of OceanaGold’s submission, Council’s decision, reasons for appeal and relief sought

Oceana Gold (New Zealand) Limited: non-freshwater PORPS provisions being appealed

Provision appealed	Summary of OceanaGold’s submission	Council decision	Reasons for appeal	Relief sought
Seeking new definition for environmental compensation	FS00115.021 on QLDC submission 00138.029 supporting the inclusion of a definition.	Reject. We adopt the recommendations and reasons set out in the Intro and General Report 03 Interpretation at paragraph 93 in particular.	Inclusion of a definition for environmental compensation will aid understanding and interpretation.	Include a definition of environmental compensation, or grant such other relief or consequential amendments which addresses OceanaGold’s concerns.
Seeking new definition for mining.	FS00115.024 on Matakanui Gold Limited submission 00021.004 supporting inclusion of a definition for mining.	Reject. We adopt some of the recommendations and reasons set out in the Intro and General Report 01 at paragraphs 205-211 as far as they do not see a need for a specific mining chapter or definition. Other recommendations have been made in relation to other submissions to enable a consent pathway for mining activities amongst others.	There are now multiple references to mining in the PORPS. Inclusion of a definition will assist with interpretation.	Include a definition for mining: <u>mining—</u> <u>(a) means to take, win, or extract, by whatever means,—</u> <u>(i) a mineral existing in its natural state in land; or</u> <u>(ii) a chemical substance from a mineral existing in its natural state in land; and</u> <u>(b) includes—</u> <u>(i) the injection of petroleum into an underground gas storage facility; and</u> <u>(ii) the extraction of petroleum from an underground gas storage facility; and</u> <u>(c) includes exploration or prospecting for a mineral.</u>

				<p>And includes, unless the context requires otherwise, mining operations, which means:</p> <p>(a) operations in connection with mining, exploring, or prospecting for any Crown owned mineral; and</p> <p>(b) includes, when carried out at or near the site where the mining, exploration, or prospecting is undertaken,—</p> <p>(i) the extraction, transport, treatment, processing, and separation of any mineral or chemical substance from the mineral; and</p> <p>(ii) the construction, maintenance, and operation of any works, structures, and other land improvements, and of any related machinery and equipment connected with the operations; and</p> <p>(iii) the removal of overburden by mechanical or other means, and the stacking, deposit, storage, and treatment of any substance considered to contain any mineral; and</p> <p>(iv) the deposit or discharge of any mineral, material, debris, tailings, refuse, or wastewater produced from or consequent on the operations; and</p> <p>(v) the doing of all lawful acts incidental or conducive to the operations; and</p> <p>(c) includes any activities relating to the injection into and extraction of petroleum from an underground gas storage facility</p>
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				Or grant such other relief or consequential amendments which addresses OceanaGold's concerns.
Definition of natural wetland	FS00115.044 on Balance Agri-Nutrients submission 00409.012 supporting amendment to align with the Ministry for the Environment's final guidance on the definition.	Reject. We adopt the recommendations and reasons set out in the main FPI recommendations report on the issue of the definition of wetlands.	The NPS-FM has set new direction for activities in and around and management of natural inland wetlands. This has been followed through into the RPS, and it is important that the definition is also included in the RPS for consistency. This appeal point is consistent with OceanaGold's High Court appeal (on the freshwater planning instrument: CIV-2024-412-41) which is seeking amendments to the freshwater policies on wetlands to ensure better alignment with the NPS-FM	Re-instate the definition of natural wetland and amend it to align with the most recent amendments to the NPS-FM. <u>natural inland wetland means a wetland (as defined in the Act) that is not:</u> <ul style="list-style-type: none"> (a) <u>in the coastal marine area; or</u> (b) <u>a deliberately constructed wetland, other than a wetland constructed to offset impacts on, or to restore, an existing or former natural inland wetland; or</u> (c) <u>a wetland that has developed in or around a deliberately constructed water body, since the construction of the water body; or</u> (d) <u>a geothermal wetland; or</u> (e) <u>a wetland that:</u> <ul style="list-style-type: none"> (i) <u>is within an area of pasture used for grazing; and</u> (ii) <u>has vegetation cover comprising more than 50% exotic pasture species (as identified in the National List of Exotic Pasture Species using the Pasture Exclusion Assessment Methodology (see clause 1.8)); unless</u>

				<p>(iii) <u>the wetland is a location of a habitat of a threatened species identified under clause 3.8 of this National Policy Statement, in which case the exclusion in (e) does not apply</u></p> <p>Or grant such other relief or consequential amendments which addresses OceanaGold's concerns.</p>
Definition of rural area.	<p>00115.03</p> <p>Oppose including this definition, unsure of the purpose and how it would apply to special purpose zones.</p>	Submission rejected.	<p>Areas such as Macraes have a dedicated special purpose zone, the Macraes Mining Project Mineral Zone, which has a dedicated zone statement and specific rules. Any definition of rural area needs to acknowledge this special purpose zone.</p>	<p>Delete this definition as it is unnecessary, or in the alternative, amend the definition as follows:</p> <p>“rural area means any area of land that is:</p> <p>(i) not an urban area; or</p> <p>(ii) <u>not subject to a special purpose mining zone or special purpose mining overlay.</u></p> <p>Or grant such other relief or consequential amendments which addresses OceanaGold's concerns.</p>
Definition of urban area	<p>00115.04</p> <p>Oppose including this definition, unsure of the purpose and how it would apply to</p>	Submission rejected.	<p>Areas such as Macraes have a dedicated special purpose zone, the Macraes Mining Project Mineral Zone, which has a dedicated zone statement and specific rules. Any definition of urban area</p>	<p>Delete this definition as it is unnecessary, or in the alternative, amend the definition as follows:</p> <p>“means any area of land (regardless of size, and irrespective of local</p>

	special purpose zones.		needs to acknowledge this special purpose zone.	<p>authority or statistical boundaries) that is, or is intended to be, predominantly urban in character. This includes but is not limited to any land identified in District Plans as being within any urban growth boundary or equivalent however described, any residential zone, commercial and mixed use zone, industrial zone and future urban zone as listed in the National Planning Standards or its present District Plan zone equivalent. <u>However it does not include any area which is subject to a special purpose mining zone or special purpose mining overlay.</u> Urban environments are a subset of urban areas.”</p> <p>Or grant such other relief or consequential amendments which addresses OceanaGold’s concerns.</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	FS00115.05 on Waitaki District Council submission 00140.014	Reject. We adopt the recommendations and reasons set out in the s42A Report.	This issue needs to provide greater recognition of mining activities and the contribution that mining makes towards not just economic but also social wellbeing.	<p>Include the following words:</p> <p><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>

				Or grant such other relief or consequential amendments which addresses OceanaGold's concerns.
IM-P1 Integrated approach to decision making and IM-P2 – Decision priorities	IM-P1: FS00115.066 on DCC submission 00139.026 and IM-P2: Submission 00115.010 Support greater clarity being given to conflicts and competing matters.	Rejected. Old IM-P1 and IM-P2 deleted and a new IM-P1 inserted.	The amendments do not promote integrated decision-making or clarify decision priorities. Instead of focussing on weighing competing considerations, the new IM-P1 gives decision-makers an additional layer of “veto” if it does not want an activity to occur, even if there are objectives and policies enabling and promoting that activity.	IM-P1 is ambiguous and unclear and should be deleted. It is preferable if the individual objectives and policies clearly address conflicts and priorities, rather than leaving it to IM-P1. As an alternative to deleting IM-P1 it should be amended, or grant such other relief or consequential amendments which addresses OceanaGold's concerns.
AIR – P4 – Avoiding certain discharges	Submission 00115.013 opposing in part because the policy is too uncertainty and onerous.	Accept in part. We adopt the recommendations and reasons set out in the s42A Reply Report	It is unclear how this policy (which has combined the old AIR-P4 and AIR-P5 together) will work. For example, it is unclear what would constitute a noxious or dangerous effect (see AIR-P4 (1)) and how this would differ from a discharge which caused offensive or objectionable effects (see AIR-P4(2)), and how this differs from the other effects to be avoided, remedied or mitigated.	Amend as follows: AIR-P4 – Managing Avoiding certain discharges: Avoid discharges to air that cause offensive, objectionable, noxious or dangerous effects. Manage the adverse effects of discharges to air by: (1) avoiding noxious or dangerous effects, (2) ensuring discharges to air do not cause offensive or objectionable effects, (3) avoiding, remedying or mitigating other adverse effects from discharges to air, including but not limited to discharges arising from:

				<p>(a) outdoor burning of organic material, (b) agrichemical and fertiliser applications, (c) primary production activities, (d) activities that produce dust, and (e) industrial and trade activities. (4) locating new sensitive activities to avoid potential reverse sensitivity effects from existing consented or permitted discharges to air, unless these can be appropriately managed.</p> <p>Or grant such other relief or consequential amendments which addresses OceanaGold's concerns.</p>
LF-FW-O10- Natural character	<p>FS00115.087 supporting Transpower submission 00314.022</p> <p>OceanaGold agreed that the drafting of this objective was appropriate and should be retained.</p>	Reject. We adopt the recommendation and reasons set out in the s42A Report.	OceanaGold has appealed freshwater planning instrument provisions LF-FW-P10A, LF-FW-M6 and LF-FW-M7 to the High Court (CIV-2024-412-41). If there any amendments to those policies, it is important, as a matter of law that there is scope to amend LF-FW-O10 if needed.	<p>Make any such necessary amendments to align with changes to the LF-FW objectives and policies.</p> <p>Or grant such other relief or consequential amendments which addresses OceanaGold's concerns.</p>
LF-LS-O11 – Land and soil	Submission 00115.016 opposing and FS00115.093 on Alluvium Ltd and Stoney Creek Mining Ltd,	Accept in part. Elsewhere in this report we recommend amendments that address this submission point.	The definition of “primary production” includes mining activities. Whilst OceanaGold is supportive of safeguarding land for mining, this objective does not suitably recognise nor	<p>Insert a new LF-LS-O13:</p> <p><u>LF-LS-O13 – Access to and Use of Land and Soil Resources</u> <u>To recognise that Otago supports a range of primary production activities, which</u></p>

	<p>FS00115.094 on Kai Tahu ki Otago/Aukaha, FS00115.095 on Fulton Hogan Limited</p> <p>This objective does not suitably recognise nor enable mining in any way.</p>		<p>enable mining in any way, nor does it acknowledge that mining uses resources rather than protecting them for future generations as section 5(2)(a) RMA does e.g. "sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations.</p>	<p><u>require appropriate access to and use of land and soil resources.</u></p> <p>Or in the alternative amend LF-LS-O11 as follows:</p> <p>LF-LS-O11 – Land and soil The availability and productive capacity of highly productive land for primary production, <u>other than land used for mining</u>, is protected now and for future generations.</p> <p>Or grant such other relief or consequential amendments which addresses OceanaGold’s concerns.</p>
<p>LF-LS-O12 – Use, development and protection</p>	<p>FS00115.096 supporting Mt Cardona Station submission 00114.026</p> <p>OceanaGold seeks to ensure all productive uses of the land and soil resource and appropriately provided for as part of the RPS.</p>	<p>Accept in part. We accept this submission point in part, for the reasons outlined in the main Recommendations report.</p>	<p>OceanaGold seeks to ensure that all productive uses of the land and soil resource are appropriately provided for as part of the ORPS. The LF-LS objectives focus on “protection” and do not recognise that mining uses resources rather than protecting them for future generations as section 5(2)(a) RMA does e.g. "sustaining the potential of natural and physical resources (excluding minerals) to meet the</p>	<p>Amend LF-LS-O12 as follows:</p> <p>LF-LS-O12 – Use, development, and protection The use, development, and protection of land and soil <u>for primary production</u>:</p> <ul style="list-style-type: none"> (1) safeguards the life-supporting capacity of soil, whilst recognising the extractive nature of mining; (2) contributes to achieving environmental outcomes for fresh water, and (3) recognises the role of these resources in providing for the social, economic, and cultural well-being of Otago’s people and communities.

			reasonably foreseeable needs of future generations.	Or grant such other relief or consequential amendments which addresses OceanaGold's concerns.
LF-LS-P19 – Highly productive land	<p>Submission 00115.017 in support, and FS00115.100 on Matakanui Gold Limited submission 00021.014, FS00115.101 on Trojan Holdings Limited submission 00206.40</p> <p>OceanaGold supports the policy insofar as it seeks to prioritise the use of high productive land for primary production (which includes mining activities) ahead of other land uses. However it does not adequately recognise or provide for mining.</p>	Accept in part. We accept this submission point in part, for the reasons outlined in the main Recommendations report. The PORPS has been aligned with the NPS-HPL.	The amended LF-LS-P19 provides a pathway for recognition of highly productive land however LF-LS-P19 does not include mining. OceanaGold considers that there needs to be a specific objective and/or policy for mining which recognises the economic and social benefits of mining.	<p>Insert new LF-LS-P21A:</p> <p><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> <p>Or grant such other relief or consequential amendments which addresses OceanaGold's concerns.</p>
LF-LS-M12 – District Plans	FS00115.104 in support of Alluvium and Stoney Creek	Accept in part, except for the submission of Forest and Bird which was rejected in part. We	The reference to controlling the establishment of spatial extension of existing “land use activities” to give effect	<p>Revert to original wording:</p> <p>LF–LS–M12 – District plans</p>

	<p>Mining Ltd 00016.012,</p> <p>FS 00115.015 in support of Danny Walker, Peter Hall, Cold Clutha Ltd and Awa Koura Mining Ltd 00017.010,</p> <p>supporting the amendments proposed by the submitter.</p> <p>FS00115.106 opposing Royal Forest and Bird Protection Society of NZ Inc submission 0230.095,</p> <p>FS00115.107 opposing Wise Response Society Inc submission 00509.092</p> <p>Avoidance sets too high a threshold and there are other methods that could</p>	<p>adopt the recommendations and reasons set out in the s42A Report.</p>	<p>to an objective under the NPSFM is unwarranted and unnecessary. There is already considerable control of land use activities. If the NPSFM requires a territorial authority to manage land uses, then territorial authorities will do so.</p> <p>It is understood that this provision was proposed because of a requirement to refer to plantation forestry and so that should be re-inserted.</p>	<p>Territorial authorities must prepare or amend and maintain their district plans no later than 31 December 2026 to:</p> <p>(1) manage land use change by:</p> <p>...</p> <p>(a) controlling the establishment of new or any spatial extension of existing land use activities <u>plantation forestry</u> activities where necessary to give effect to an objective developed under the NPSFM, and</p> <p>Or grant such other relief or consequential amendments which addresses OceanaGold's concerns.</p>
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	be implemented to appropriately manage adverse effects on tussock grasslands.			
ECO- P2 - Identifying significant natural areas and taoka	00115.018 opposing in part. The policy combined with the criteria in APP2 will result in a large portion of the Otago region, and in particular within the Macraes Ecological District, being identified as an SNA.	Accept in part. Substantial amendments are recommended to ensure consistency with the NPSIB. We adopt the recommendations and reasons set out in the NPSIB reply report.	OceanaGold supports the changes made, provided the key aspects of this wording are retained and that any further amendments to the provisions do not erode this. Under the RMA a RPS must give effect to a NPS. The RPS has been amended to give effect to the NPSIB, which came into effect during the hearing, however the Government has signalled its intention to amend the NPSIB. OceanaGold agrees with the current wording of the policy, however it needs to ensure that it provides scope, to the extent that the law allows, for the Environment Court to make any further amendments necessary to give effect to changes to the NPSIB made before the Environment Court makes its decision.	Make any necessary amendments to ECO-P2 in order to give effect to any changes to the NPSIB. Or grant such other relief or consequential amendments which addresses OceanaGold's concerns.

<p>ECO-P3 – Protecting Significant Natural Areas and taoka</p>	<p>00115.019 in opposition. OceanaGold was concerned that EC-P3 effectively acted as a veto and would constrain significant development within the Otago region. It does not enable circumstances where adverse effects on SNAs cannot be avoided however on a merits assessment may be acceptable having regard to methods of remediation, mitigation and/or offsetting or compensation.</p>	<p>Reject. Substantial amendments are recommended to ensure consistency with the NPSIB. We adopt the recommendations and reasons set out in the NPSIB reply report.</p>	<p>The cross-reference to ECO-P4, which provides a consenting pathway for mining, as per the NPSIB, addresses the issues OceanaGold made in its submission, provided the key aspects of this wording are retained and that any further amendments to the provisions do not erode this.</p> <p>Under the RMA a RPS must give effect to a NPS. The RPS has been amended to give effect to the NPSIB, which came into effect during the hearing, however the Government has signalled its intention to amend the NPSIB. OceanaGold agrees with the current wording of the policy, however it needs to ensure that it provides scope, to the extent that the law allows, for the Environment Court to make any further amendments necessary to give effect to changes to the NPSIB made before the Environment Court makes its decision.</p>	<p>Make any necessary amendments to ECO-P3 in order to give effect to any changes to the NPSIB.</p> <p>Or grant such other relief or consequential amendments which addresses OceanaGold's concerns.</p>
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<p>ECO-P4 – Provision for new activities</p>	<p>00115.020 in opposition.</p>	<p>Accept in part. Substantial amendments are recommended to ensure consistency with the NPSIB. We adopt the recommendations and reasons set out in the NPSIB reply report.</p>	<p>OceanaGold supports the amendments which have given effect to the NPSIB and therefore addressed OceanaGold’s concerns, provided the key aspects of this wording are retained and that any further amendments to the provisions do not erode this. However clause (1B) includes additional wording, not found in the NPSIB, “...and that have a functional need or operational need to locate within the relevant significant natural area(s) <u>or where they may adversely affect indigenous species or ecosystems that are taoka.</u>”</p> <p>The inclusion of this additional wording does not give effect to the NPSIB and a departure from the clear wording of the NPSIB is not warranted nor justified.</p> <p>In addition, the Government has signalled its intention to amend the NPSIB and therefore any changes to the NPSIB must be incorporated into this RPS.</p>	<p>Amend clause (1B) as follows: “...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, provide a new objective which ECO-P4 will be giving effect to:</p> <p><u>ECO-O4 Social, economic and cultural wellbeing</u></p> <p><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>And make any necessary amendments to ECO-P4 in order to give effect to any changes to the NPSIB.</p> <p>Or grant such other relief or consequential amendments which addresses OceanaGold’s concerns.</p>
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<p>ECO-P5 – Existing activities in significant natural areas</p>	<p>00115.021 opposing in part. Needs to be amended to provide for the operation, maintenance and minor upgrading of existing infrastructure.</p>	<p>Accept in part. Substantial amendments are recommended to ensure consistency with the NPSIB. We adopt the recommendations and reasons set out in the NPSIB reply report. ECO-P5 deleted and new ECO-P5A inserted.</p>	<p>The amendments have adopted the wording used in the NPSIB, however in this instance it is unclear as to how this type of grandfather provision will work. For example, it is difficult to understand the scale of effects as at 4 August 2023, especially where dynamic systems such as rivers and streams are involved. Further consideration should be given to how this particular direction from the NPSIB should be applied in the context of existing activities in the Otago region.</p>	<p>Amend ECO-P5 to provide more certainty that all activities (new and existing) could be able to be developed within an appropriately zoned area.</p> <p>Or grant such other relief or consequential amendments which addresses OceanaGold’s concerns.</p>
<p>ECO-P6 – Maintaining indigenous biodiversity</p>	<p>00115.022 opposing in part. OceanaGold was concerned that the effects management hierarchy was not available to mineral extraction and mining activities where significant biodiversity is unavoidably impacted.</p>	<p>Accept in part. We adopt the recommendations and reasons set out in the NPSIB reply report.</p>	<p>The provision of consenting pathway for mining, as per the NPSIB, addresses the issues OceanaGold made in its submission provided the key aspects of this wording are retained and that any further amendments to the provisions do not erode this. Under the RMA a RPS must give effect to a NPS. The RPS has been amended to give effect to the NPSIB, which came into effect during the hearing, however the</p>	<p>Make any necessary amendments to ECO-P6 in order to give effect to any changes to the NPSIB.</p> <p>Or grant such other relief or consequential amendments which addresses OceanaGold’s concerns.</p>

			Government has signalled its intention to amend the NPSIB. OceanaGold agrees with the current wording of the policy, however it needs to ensure that it provides scope, to the extent that the law allows, for the Environment Court to make any further amendments necessary to give effect to changes to the NPSIB made before the Environment Court makes its decision.	
ECO-M4 – Regional plans	FS00115.123 supporting Federated Farmers submission seeking alignment with the NPSIB.	Accept in part. We adopt the recommendations and reasons set out in the NPSIB reply report.	As a method this provision must implement the higher up policies and objectives in the RPS. Therefore ECO-M4 needs to be amended so that it aligns with the other amendments made to the ECO provisions which give effect to the NPSIB, in particular by providing a consenting pathway for mining.	Amend 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> Or grant such other relief or consequential amendments which addresses OceanaGold’s concerns.
APP2 - Significance criteria	00115.023 Oppose in part. OceanaGold was concerned that the set of significance criteria is similar to	Accept. The Panel recommend that APP2 be amended as per the Reply Report version of the	APP2 was amended to align with clauses 3.8(2) and Appendix 1 of the NPSIB. However an additional criterion, ‘attributes of ecological context’ 3(e), has	Amend the APP2 as follows: “The assessment must be done using the assessment criteria in <u>1 to 3 and A to D below Appendix 1</u> and in accordance with the following principles:

	<p>but differs to that which is contained in anticipated national direction (at the time of submitting it was the draft NPSIB). The application of those criteria will mean a large proportion of the Otago region will be identified as an SNA.</p>	<p>PORPS dated 10 October 2023.</p> <p>Attributes of ecological context</p> <p>(3) An area that qualifies as an SNA under this criterion has at least one of the following attributes:</p> <p>...</p> <p><u>3. (e) an area that is important for a population of indigenous fauna during a critical part of their life cycle, either seasonally or permanently, e.g. for feeding, resting, nesting, breeding, spawning, or refuges from predation</u></p>	<p>been inserted. The inclusion of this criterion is not warranted.</p> <p>The Government has signalled its intention to amend the NPSIB and therefore any changes to the NPSIB must be incorporated into this RPS to give effect to the NPSIB.</p> <p>Some minor consequential amendments are required to improve clarity and remove typographical errors/references to Appendix 1 and clauses in the NPSIB.</p>	<p>3. (e) an area that is important for a population of indigenous fauna during a critical part of their life cycle, either seasonally or permanently, e.g. for feeding, resting, nesting, breeding, spawning, or refuges from predation.</p> <p>Plus any further amendments to give effect to any changes to the NPSIB, or to correct minor cross-references to Appendix 1.</p> <p>Or grant such other relief or consequential amendments which addresses OceanaGold's concerns.</p>
<p>APP3 - Criteria for Biodiversity Offsetting</p>	<p>00115.024 Oppose.</p> <p>These limits as to when biodiversity offsetting is not available for use as part of an overall effects management</p>	<p>Accept.</p> <p>Have also inserted additional criteria.</p> <p>(2) When biodiversity offsetting is not appropriate:</p>	<p>OceanaGold supports the changes made to align APP3 with the NPSIB, however the additional criteria for when biodiversity offsetting is not appropriate are not warranted and are unnecessary.</p>	<p>Amend APP3:</p> <p>(2) When biodiversity offsetting is not appropriate:</p> <p>...</p> <p>(d) the loss from an ecological district of any individuals of Threatened taxa, other than kanuka (Kunzea robusta and Kunzea serotina), under the New Zealand Threat</p>

	<p>strategy are not appropriate. The proposed approach sets the threshold as to when offsetting can be considered too high and as a result this is not likely to lead to beneficial ecological or biodiversity outcomes.</p>	<p>... <u>(d) the loss from an ecological district of any individuals of Threatened taxa, other than kanuka (Kunzea robusta and Kunzea serotina), under the New Zealand Threat Classification System (Townsend et al, 2008); or</u> <u>(e) the likely worsening of the conservation status of any indigenous biodiversity as listed under the New Zealand Threat Classification System (Townsend et al, 2008); or</u> <u>(f) the removal or loss of health and resilience of a naturally uncommon ecosystem type that is associated with indigenous vegetation or habitat of indigenous fauna.</u></p>	<p>The Government has signalled its intention to amend the NPSIB and therefore any changes to the NPSIB must be incorporated into this RPS to give effect to the NPSIB.</p> <p>Some minor consequential amendments are required to improve remove typographical errors.</p>	<p><u>Classification System (Townsend et al, 2008); or</u> <u>(e) the likely worsening of the conservation status of any indigenous biodiversity as listed under the New Zealand Threat Classification System (Townsend et al, 2008); or</u> <u>(f) the removal or loss of health and resilience of a naturally uncommon ecosystem type that is associated with indigenous vegetation or habitat of indigenous fauna.</u></p> <p>5. Leakage: Aquatic offset design and implementation avoids displacing <u>harm</u> hard to other locations (including harm to existing biodiversity at the offset site).</p> <p>Plus any further amendments in order to give effect to any changes to the NPSIB.</p> <p>Or grant such other relief or consequential amendments which addresses OceanaGold's concerns.</p>
<p>APP4 – Criteria for Biodiversity Compensation</p>	<p>00115.025 Oppose. OceanaGold submits that these limits as to when biodiversity</p>	<p>Accept.</p> <p>However have added additional criteria.</p>	<p>OceanaGold supports the changes made to align APP4 with the NPSIB, however the additional criteria for when biodiversity offsetting is not</p>	<p>Amend APP4 as follows:</p> <p>(2) When biodiversity offsetting is not appropriate:</p> <p>...</p>

	<p>compensation is not available for use as part of an overall effects management strategy are not appropriate.</p>	<p>(2) When biodiversity offsetting is not appropriate: ... <u>(d) the loss from an ecological district of any individuals of Threatened taxa, other than kanuka (Kunzea robusta and Kunzea serotina), under the New Zealand Threat Classification System (Townsend et al, 2008); or</u> <u>(e) the likely worsening of the conservation status of any indigenous biodiversity as listed under the New Zealand Threat Classification System (Townsend et al, 2008); or</u> <u>(f) the removal or loss of health and resilience of a naturally uncommon ecosystem type that is associated with indigenous vegetation or habitat of indigenous fauna.</u></p>	<p>appropriate are not warranted and unnecessary. The Government has signalled its intention to amend the NPSIB and therefore any changes to the NPSIB must be incorporated into this RPS to give effect to the NPSIB.</p>	<p><u>(d) the loss from an ecological district of any individuals of Threatened taxa, other than kanuka (Kunzea robusta and Kunzea serotina), under the New Zealand Threat Classification System (Townsend et al, 2008); or</u> <u>(e) the likely worsening of the conservation status of any indigenous biodiversity as listed under the New Zealand Threat Classification System (Townsend et al, 2008); or</u> <u>(f) the removal or loss of health and resilience of a naturally uncommon ecosystem type that is associated with indigenous vegetation or habitat of indigenous fauna.</u></p> <p>...</p> <p>(14) Achievability: The biodiversity compensation outcome is demonstrably achievable</p> <p>Plus any further amendments in order to give effect to any changes to the NPSIB.</p> <p>Or grant such other relief or consequential amendments which addresses OceanaGold's concerns.</p>
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		Also added (14) <u>Achievability: The biodiversity compensation outcome is demonstrably achievable</u>		
HAZ-NH-O1 – Natural hazards	00115.026 in support. Retain this objective. However, OceanaGold wishes to confirm that “tolerable” is consistent with the acceptable hazard risk which appears to be more commonly used in practice.	Accept in part. We adopt the recommendations and reasons set out in the s42A Report.	It is unnecessary to refer to maintaining levels of risks when they are acceptable and these words can be removed.	Amend HAZ-NH-O1 as follows: <u>Levels of risk</u> Risks to people, communities and property from natural hazards within Otago are maintained where they are acceptable , and managed to ensure they do not exceed a tolerable level. Or grant such other relief or consequential amendments which addresses OceanaGold’s concerns.
HAZ-NH-P2 – Risk assessments	FS00115.133 supporting NZ Infrastructure Commission submission clarifying circumstances when assessments are to be carried out	Reject. We adopt the recommendations and reasons set out in the s42A Report.	OceanaGold agrees with the current wording of the policy. However OceanaGold is also seeking an amendment to APP6 for the removal of the word ‘resilience’. If that change is not made, further amendment to this policy may be required.	Such other relief or consequential amendments which addresses OceanaGold’s concerns, particularly in relation to its appeal on APP6.
HAZ-NH-P3 – New activities	00115.027 opposing in part. OceanaGold is concerned that this does not	Reject. We adopt the recommendations and reasons set out in the s42A Report.	The concerns addressed by OceanaGold in its original submission remain. Namely the policy does not acknowledge that risks,	Amend HAZ-NH-P3 as follows: Once the level of natural hazard risk associated with an activity has been determined in accordance

	adequately recognise that risks posed (including significant risks) can be appropriately managed by adopting conservative hazard risk assumptions in the design of structures and activities.		including significant risks, can be managed or mitigated.	with HAZ–NH–P2, manage new activities to achieve the following outcomes: (1) <u>when the natural hazard risk remains significant (despite mitigation or management of that risk) natural hazard risks are the activity is avoided,</u> (2) when the natural hazard risk is tolerable (<u>either with or without mitigation</u>), manage the level of risk so that it does not exceed tolerable and (3) when the natural hazard risk is acceptable (<u>either with or without mitigation</u>), maintain the level of risk. Or grant such other relief or consequential amendments which addresses OceanaGold’s concerns.
HAZ-CL-P15 – New contaminated land	00115.028 opposing in part. There is some uncertainty as to what is required by “minimisation” and submits that this policy is not necessary when read in conjunction with HAZ-CL-P14.	Reject. We adopt the recommendations and reasons set out in the s42A Report.	The concerns raised by OceanaGold in its original submission remain. The policy refers to “minimise to the extent reasonably practicable”. This is uncertain and will lead to difficulties in interpreting and applying this policy. The policy can be deleted as HAZ-CL-P4 deals within managing contaminated land.	Delete HAZ-CL-P15. Or grant such other relief or consequential amendments which addresses OceanaGold’s concerns.
APP6 – Methodology for	FS00115.150 on Blackthorn Lodge Glenorchy Lodge	Accept submission of Wayfare.	The amended Appendix includes a reference to “resilience” without defining	Amend APP6 to remove the reference to resilience.

<p>natural hazard risk assessment</p>	<p>00119-028 – 00119.033, DCC 00139.141, Trojan 00206.075 and 00206.076, Wayfare Group 00411.090 – 00411.095 It is appropriate that APP6 is consistent with best practice methodology for natural hazard assessment.</p>		<p>what this means i.e. whose resilience?</p>	<p>Or grant such other relief or consequential amendments which addresses OceanaGold’s concerns.</p>
<p>HCV – HH- P5 – Managing historic heritage</p>	<p>00115.029 in opposition. This policy is likely to be overly restrictive and constrain the ability to develop sites which may be near to, or contain historic heritage.</p>	<p>Accept in part. We accept this submission point in part, for the reasons outlined in the main Recommendations report.</p>	<p>Whilst the amended policy has addressed some of OceanaGold’s concerns, it does not recognise that development can sometimes “release” or enable greater access to and therefore understanding of the historic heritage values. The value of the site is therefore preserved through recoding information notwithstanding the modification or removal of the site itself. An example of this are adits or water races which can be inaccessible until mining development occurs.</p>	<p>Amend 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 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: ... <u>(g)the activity will enable access to or improved understanding of the historic heritage site or place.</u></p>

				Or grant such other relief or consequential amendments which addresses OceanaGold's concerns.
UFD-P7 – Rural areas	00115.032 opposing in part. OceanaGold is concerned that this policy is not sufficiently balanced in recognising the significant social and economic benefits that are generated from the use of rural land, particularly for primary production type uses and more specifically that of mineral extraction. The PORPS needs to better provide for the Macraes mine operation.	Accept in part. We adopt the recommendations and reasons set out in the s42A Reply Report in relation to mining and aggregate resources.	<p>The amendments in (3) refer to “land-based primary production” and do not implement UFD-O4 which refers to “primary production”. This disconnect means there is no policy prioritising primary production, which by definition includes mining.</p> <p>(6) refers to “non-rural” activities. It is unclear what would be defined as “non-rural” activities, for example whether that would include mining, or whether this would be urban areas.</p>	<p>Amend UFD-P7 to insert a new paragraph as follows:</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>And insert a new policy:</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> <p><u>(a) avoiding, as the first priority, locating these activities in all of the following:</u></p> <p><u>i. Scheduled wāhi tupuna, and areas with protected customary rights;</u></p>

				<p>ii. Significant natural areas;</p> <p>iii. Natural wetlands;</p> <p>iv. Scheduled outstanding natural features and outstanding natural landscapes;</p> <p>v. Scheduled outstanding water bodies;</p> <p>vi. Scheduled areas of outstanding natural character;</p> <p>vii. Scheduled areas or places of historic heritage value;</p> <p>viii. Areas subject to significant natural hazard risk</p> <p>(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:</p> <p>i. In wāhi tupuna, in accordance with HCV-WT-P2;</p> <p>ii. In a significant natural area or a natural wetland, the effects management hierarchy must be applied;</p> <p>iii. Minimise any increase in natural hazard risk through mitigation measures;</p> <p>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:</p> <ul style="list-style-type: none">i. Avoiding significant adverse effects, where practicable;ii. Avoiding, remedying or mitigating all other adverse effects;
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				<p>iii. <u>Where adverse effects cannot be practically remediated or mitigated, consider offsetting and then compensation as appropriate.</u></p> <p>(b) <u>Avoiding adverse effects on the health and safety of the community.</u></p> <p>And insert a new objective;</p> <p><u>ECO-O4 Social, economic and cultural wellbeing</u></p> <p><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>Or grant such other relief or consequential amendments which addresses OceanaGold's concerns.</p>
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APPENDIX 2 – list of people to be served

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thea.sefton@rossdowling.co.nz and Fleur.Matthews@orc.govt.nz

Table of submitters to be served:

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New definition for mining	Contact Energy Limited	Chris.drayton@contactenergy.co.nz
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