Before a panel appointed under the

Fast-track Approvals Act 2024 **FTAA-2504-1046**

UNDER	the Fast-track Approvals Act 2024 (**Act**)
IN THE MATTER	an application for approvals for the Waihi North Project (**WNP**) – a listed project described in Schedule 2 of the Act
BY	**OCEANA GOLD (NEW ZEALAND) LIMITED** **Applicant**

SUBMISSIONS FOR THE APPLICANT IN SUPPORT OF REQUEST FOR AMENDMENTS TO DECISION DOCUMENTS UNDER SECTION 89 OF THE ACT

30 January 2026

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MAY IT PLEASE THE PANEL

Introduction

1. On 18 December 2025 the Panel released final decision documents on the Waihi North Project fast-track application, including the various approvals that were applied for, subject to conditions.

2. The applicant is moving at pace to implement the approvals it is able to give effect to immediately, including developing and submitting management plans for certification where required. It has become apparent that conditions concerning the requirements for certification of two management plans are not workable, and that a number of other conditions contain errors that could helpfully be corrected.

3. The applicant, together with the Department of Conservation, Hauraki District Council and Waikato Regional Council (being the relevant administering agencies) (**Parties**) have agreed on a suite of amendments that should be made to conditions as set out in the attached tracked changed and commentated condition sets and the applicant requests that the Panel address these matters by making amendments to the relevant decision documents under section 89 of the Act.

4. The Parties agree that the changes sought may be made as amendments under section 89. They are of an administrative nature only, will not alter the way impacts of the authorised activities are to be managed, and will better enable the efficient exercise of the approvals granted.

5. Amendments to decision documents under section 89 of the Act may be made at the discretion of the Panel but must be made within 20 working days after issuing decision documents under section 88(1). Accordingly, if

the Panel was to exercise its discretion to issue amendments this must occur no later than **5 February 2026**.[1]

6. I have been instructed by the applicant to provide submissions to assist the Panel on one topic addressed in the requested amendments relating to conditions setting out when management plans are to be submitted for certification. Those submissions follow.

Timeframe for submitting management plans for certification

7. Condition 2.9 of the Second Schedule of the Wharekirauponga Access Arrangement (**WUG AA**) and Condition 4 of Schedule 3 of the Northern Area Concession (**NAC**) set out when various management plans are to be submitted to the Department of Conservation for certification. The Native Frog Salvage and Release Plan (**NFSRP**) and the Native Frog Monitoring Plan (**NFMP**) are to be submitted to the Department of Conservation for certification:

> "At least two years prior to vegetation clearance occurring on the Land" (in the case of the NFSRP) and
>
> "At least four years prior to the commencement [of] WUG stoping activities or two years prior to vegetation clearance in relation to drill sites/vent shafts and portable rig sites, whichever occurs first" (in the case of the NFMP).

1 The decision documents were issued on 18 December 2025, and 20 working days from that date excludes Saturdays, Sundays, and days in the period beginning 20 December and ending 10 January as per the definition of working days in section 2 of the Resource Management Act 1991 (see section 4(2) of the Fast-track Approvals Act 2024).

8. The NFMP must also be certified by the Hauraki District Council.[2] Condition C5 of Schedule One[3] contains the same wording regarding certification of the NFMP by Hauraki District Council as Condition 2.9 of the Second Schedule to the WUG AA and Condition 4 of Schedule 3 of the NAC.

9. Vegetation clearance associated with drilling and investigation sites has already occurred on the Land and will be ongoing (including over the next two years) as additional drilling sites are identified in accordance with the requirements of the various approvals. Such drilling is an essential requirement for the construction of the tunnels that access the Wharekirauponga orebody, and to the commencement of stoping once the orebody is reached.

10. The inclusion of a requirement that plans be submitted for certification two years before vegetation clearance appears to have come from a suggestion by the Department of Conservation in its response to the panel's draft conditions. The relevant suggestion was:[4]

> OGLNZ's [sic] proposed timing for the provision of the Native Frog Monitoring Plan was at least four years prior to the commencement of WUG stoping activities. Vegetation clearance to establish drill sites may commence prior to WUG stoping. As frog salvage and translocation will have effects on frogs, **this requires baseline monitoring at release sites to have been undertaken for an appropriate time prior to these activities commencing**. **DOC has therefore amended the timeframe for the provision of this plan to refer to both the WUG stoping (at least four years prior to commencement) and vegetation clearance (at least two years prior to commencement)**. This change has been made in the combined condition set, and in the Wharekirauponga access arrangement and northern concession. [My emphasis]

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2 Appendix B2 Conditions for the Hauraki District Council Land Use Consent, condition 174.

3 Appendix B1: Conditions Common to the Hauraki District Council and Waikato Regional Council Resource Consents.

4 Department of Conservation comments on draft conditions, paragraph 23 vii on page 9.

11. In its response to comments on draft conditions the applicant did not identify the above changes as being appropriate and the draft conditions proposed by the Panel were supported.[5]

12. There is misalignment between the issue raised by the Department of Conservation – the need for appropriate baseline frog monitoring ahead of vegetation clearance – and the requirement that draft plans be provided for certification two years before vegetation clearance.

13. This misalignment becomes clear when condition 176 of the Hauraki District Council land use consent is considered. This condition sets out the matters that the NFMP must include as a minimum. Condition (c) is "A minimum of 2 years of baseline monitoring of Archey's and Hochstetter's frogs within the WNP footprint, WAPMA and selected reference site(s) prior to commencement of mining activities, mammalian pest management activities or vegetation clearance."

14. The applicant holds more than 2 years of baseline frog monitoring data in relation to vegetation clearance sites, and this information is currently being incorporated into the draft NFMP which will be submitted to the Department of Conservation and Hauraki District Council for certification very shortly along with the draft NFSRP.

15. There is no proper resource management or environmental reason why further vegetation clearance in accordance with the various conditions of the approvals needs to be delayed for two years after the relevant management plans (which must include the relevant baseline frog monitoring data) are provided, and the Parties agree that this requirement is an error that should be corrected. Once the relevant plans are submitted and certified, the applicant should be able to proceed in accordance with

5 Memorandum of Counsel for Oceana Gold (New Zealand) Limited: Response to Comments on Conditions, 11 December 2025, paragraph 13.

the requirements of those plans (and the relevant conditions of the various approvals).

16. The Parties are agreed on the appropriate amendments to address this defect as set out in the attached tracked changed and commentated versions of Appendix B1 – Combined HDC and WRC Conditions, Appendix C – Wharekirauponga Access Arrangement, and Appendix E – Northern Area Concession.

Section 89 of the FTAA

17. Section 89(1) states:

> *A panel may, within 20 working days after issuing a decision document under section 88(1), issue an amendment to the document to correct minor omissions, errors, or other defects in it.*

18. Section 89 is untested and there are no decisions that have considered what amounts to a "minor omissions, errors, or other defects" under the FTAA. Other legislation contains similar provisions, and I discuss these provisions below.

COVID-19 Recovery (Fast-track Consenting) Act 2020

19. A near identical provision to section 89 is in clause 40 of Schedule 6 the now repealed COVID-19 Recovery (Fast-track Consenting) Act 2020 (COVID FTA). Clause 40 does not appear to have been considered by the courts.

20. However, in one application an applicant pursued an argument that clause 40 should be interpreted in a broad manner so that the word "minor" did not attach to the "errors" or "defects". The Panel disagreed with the applicant's position and found that "minor" attached to omissions, errors and defects.

The applicant accepted that its change was substantive as opposed to minor in nature and was declined by the Panel.[6]

Resource Management Act 1991

21. Similar words to "minor omissions, errors and defects" are used in the RMA in several places to allow decision-makers to make small corrections to resource consent and plan decisions.

22. Section 133A of the RMA relates to resource consent decisions. It states:

> *A consent authority that grants a resource consent may, within 20 working days of the grant, issue an amended consent that corrects minor mistakes or defects in the consent.*

23. We are not aware of any case law that interprets the meaning of "minor mistakes or defects".

24. Section 149RA(1) of the RMA allows for minor corrections of Board of Inquiry decisions and uses the same wording as the FTAA:

> *At any time during its term of appointment, a board of inquiry may issue an amendment to a decision, or an amended decision, that corrects minor omissions, errors, or other defects in any decision of the board, and this power includes the powers set out in subsections (2) to (4)…*

25. In one Board of Inquiry decision,[7] the Board considered it appropriate to remove reporting obligations as the Board considered "that the

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6 Minute 11 of the Expert Consenting Panel for the Kepa Road Apartments Project dated 9 November 2023.

7 Report and Decision of the Board of Inquiry into the Watercare Waikato River Water Take Proposal (17 June 2022).

amendments do not make any material change to the outcome of its decision and they do not create any significant new responsibility or task…".

26. The RMA contains similar powers for plan preparation which use slightly different language. Clauses 16 and 20A of Schedule 1 contain powers for a local authority to make changes of minor effect and to correct minor errors in plans and proposed plans. However, a commonly referred to principle for exercising those powers are whether the proposed change is "neutral", which means that the change does not affect the rights of some members of the public.[8]

27. Section 292(1) also contains a power for the Environment Court to remedy mistakes, defects or uncertainties in plans.

> *The Environment Court may, in any proceedings before it, direct a local authority to amend a regional plan or district plan to which the proceedings relate for the purpose of—*
>
> *(i) remedying any mistake, defect, or uncertainty; or*
> *(ii) giving full effect to the plan.*

28. Unlike ss 133A, 149RA and clauses 16 and 20A of Schedule 1, the qualifier "minor" is not used to describe the types of mistakes, defects or uncertainties that can be fixed by the Environment Court. Despite that, the case law on section 292 indicates that:

    a. section 292 cannot be used to grant "substantive relief";[9]

8 *Re an Application by Christchurch CC* (1996) 2 ELRNZ 431 (EnvC).

9 *Ashburton District Council* [2005] ELHNZ 4 13 January 2005 at [5].

b. section 292 "does not extend to determining whether particular plan provisions are adequate or appropriate" and it "has been held to be a slip rule, available to remedy clear mistakes but not used to make a significant change;[10] and

c. there is arguably an additional requirement that where s 292 is used to remedy a "defect" that the defect be unintentional.[11] Therefore, in circumstances where a decision-maker deliberately included a provision and intended the consequences, there is not a defect.

29. In summary, I submit that section 89(1) is available to amend genuine mistakes, omissions and defects of a small or minor nature. What amounts to "minor" is a question of fact. In this context, the changes must not materially affect a substantive aspect of the decision about how the activity is to be carried out or how impacts are managed.

Do the proposed amendments in the present context correct a minor omission, error or defect?

30. The Parties consider that the requirement to submit the NFSRP and NFMP for certification at least 2 years before further vegetation clearance and the other matters addressed in the attached tracked change version of the conditions are minor errors or minor defects that should be corrected.

31. In relation to certification of the NFSRP and NFMP there are no effects-based reasons for the two-year stand down period between submitting the plans and commencing work in situations where two years of baseline information has already been collected. Instead, it appears that the inclusion of the stand-down periods may be an inadvertent conflation of the

10 *Re Auckland Council* [2022] NZEnvC 50 at [16].

11 See *McNaughton v Tauranga City Council* (1987) 12 NZTPA 312 (HC).

substantive requirement to obtain baseline information over two years (which has already been obtained) and the need to have plans certified before work commences.

Conclusion

32. The applicant respectfully asks the Panel to exercise its discretion and make the Parties' agreed amendments under section 89 of the Act no later than 5 February 2026.

33. The applicant is grateful to the Panel for its attention to this matter.

Dated 30 January 2026

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Stephen Christensen
Counsel for Oceana Gold (New Zealand) Limited