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**

APPLICANT'S RESPONSE TO COMMENTS PROVIDED UNDER SECTION 53: MEMORANDUM OF COUNSEL FOR OCEANA GOLD (NEW ZEALAND) LIMITED

1 September 2025

Counsel acting:
Stephen Christensen
Project Barrister
P 027 448 2325
stephen@projectbarrister.nz

MAY IT PLEASE THE PANEL

Introduction

1. These submissions and its attachments are provided in response to comments on the WNP substantive application from parties invited to comment under section 53 of the Act.

2. An applicant's right to respond to comments from invited parties is found in section 55 of the Act.

3. Section 81(2)(a) of the Act provides that for the purpose of making your decision you must consider comments from persons invited under section 53 that are received in accordance with the 20 working day timeframe set in section 54.

4. Section 81(2)(a) of the Act further provides that for the purpose of making your decision you must also consider the applicant's response to those comments received by the EPA in accordance with the 5 working day timeframe established in section 55. Within that strictly limited timeframe the applicant has sought to address relevant comments received in a way which will best assist the Panel.

5. To the extent that the applicant's response does not address comments the Panel wishes the applicant to respond to, or provides a response that requires additional explanation, the applicant invites the Panel to direct the EPA to request additional information from the applicant.[1] Alternatively, or in addition, the Panel may wish to consider other process options available to it to gather the information it needs to make its decision. I address the question of further processing of the application at the conclusion of these submissions.

---

[1] Section 67

6. Minute 1 of the Panel dated 28 July 2025 directed the EPA, no later than 28 July 2025, to invite identified parties to provide written comments on the substantive application. Minute 1 records the Panel's direction that comments must be received by 25 August 2025.

7. Due to an administrative error, some of the parties that were listed in the application as owners or occupiers of land to which the application relates and land adjacent to that land were not listed in Minute 1. Those parties needed to be invited to comment in accordance with section 53(2)(h) and (i). The applicant identified that an error had been made in Minute 1 and alerted the EPA to this on 30 July 2025. The Panel rectified the error in Minute 2 dated 1 August 2025 in which it directed the EPA to invite comments from the persons that had been omitted from the list attached to Minute 1. To ensure that these additional invited persons had the full 20 working days provided in section 54(1) available to them to provide written comments, Minute 2 specified that comments from these additional persons were due by 29 August 2025. To the best of OceanaGold's knowledge, no comments have been received from parties invited in Minute 2.

8. Responses to comments from persons invited to comment pursuant to Minute 1 are due by 1 September 2025, and it is to these comments that this memorandum and its attachments respond.

9. The Act does not require persons providing comments to serve their comments on the applicant. Instead, comments received by the EPA must be forwarded to the applicant pursuant to section 55(1).

10. This memorandum and its attachments respond to all the comments from the persons invited to comment in Minute 1 that were received by the EPA by 25 August and provided to the applicant.

11. Comments from one commenter, Coromandel Watchdog of Hauraki, refer to evidence from a number of witnesses. Only some of that evidence has

been provided to the applicant. In particular no evidence has been provided from Professor Death, Dr Bertram, Professor Banks, Mr Miller and Dr Meade.

12. The applicant's response does not address comments received from invited persons after the 25 August deadline. While the panel has a discretion to consider these comments pursuant to section 81(6) of the Act the applicant has not received any notice from the panel about this, and has not has an opportunity to address any prejudice or procedural issues that might arise from considering such comments. I note that section 55 makes no provision for the applicant to respond to late comments. Should the panel be minded to consider any late comments it will need to establish a process[2] by which the applicant can address the panel on whether or not late comments should be considered, and if they are to be considered, a fair process to enable the applicant to respond to those comments within the timeframe constraints the panel is working under.

13. This memorandum does not address comments received from persons that were not invited to comment on the substantive application. In my submission the Act contains no provision that would allow for unsolicited comments to be considered. Should the panel receive comments from uninvited persons and be of a mind to consider these I respectfully submit that would be a procedural error.

14. Given that large parts of the WNP are an extension of existing activities it is unsurprising that a majority of persons invited to comment have not taken up the opportunity to do so. That is consistent with OceanaGold's experience that for most Waihi people the environmental effects associated with the ongoing presence of modern mining in the area are accepted and unremarkable, while the benefits of having the mine and its people in the area are understood. At the same time, comments from residents who are genuinely concerned they might directly experience

[2] Clause 10, Schedule 3 to the Act.

adverse impacts as a result of mine development are expected and respected. For as long as modern mining has been going at Waihi, every consenting round has involved residents speaking up to voice their fears and reservations. While the WNP approvals process is occurring under a different statutory process, the standards the applicant proposes to adopt to ensure the amenity and wellbeing of Waihi's residents are maintained have not changed, and in that regard the conditions under which the WNP activities will take place are the same as those that have worked well for both residents and the mining company for many years.

Applicant's approach to comments

15. The applicant's response to comments is structured as follows:

a. Part One – these submissions

b. Part Two - brief notes identifying where in the overall response material the applicant addresses comments from iwi received under section 54 and the contents of the section 51 reports provided by DOC and Heritage New Zealand Pouhere Taonga

c. Part Three - statements of evidence from the following witnesses:

Appendix A – Robert Van de Munckhof – Tonkin & Taylor
Appendix B – Shamubeel Eaqub – Eaqub & Eaqub
Appendix C – Ian Jenkins – AECOM
Appendix D – Dylan van Winkel – Bioresearches
Appendix E – Tim Mulliner – GHD
Appendix F – Hilary Konigkramer - WSP
Appendix G – Christopher Simpson – WWLA
Appendix H – John Kyle & Abbie Fowler – Mitchell Daysh
Appendix I – Kyle Welten – OceanaGold (New Zealand) Limited
Appendix J – Brian Lloyd – Lloyds Ecological Consulting
Appendix K – Katherine Muchna – Boffa Miskell
Appendix L – Richard Chilton – Tonkin & Taylor

Appendix M – Graham Ussher – RMA Ecology
Appendix N – Helen Blackie – Alliance Ecology
Appendix O – Rhys Girvan – Boffa Miskell
Appendix P – Ian Boothroyd – Boffa Miskell
Appendix Q – Cassandra McArthur - OceanaGold (New Zealand) Limited
Appendix R – Doug Saunders – CBRE
Appendix S – Trevor Matuschka – Engineering Geology
Appendix T – Kate Feickert – Bioreseaches
Appendix U – Andrew McLean – Equitation Science International
Appendix V – Christopher Wedding – Bioresearches
Appendix W – Leroy Crawford-Flett - OceanaGold (New Zealand) Limited

d. Part Four – updated tracked changed sets of the applicant's proposed conditions and the two Ecology and Landscape Management Plans where amendments have been made in response to matters raised in the section 51 reports and section 54 comments. Commentary/explanation is provided indicating why various changes have and have not been made

e. Part Five – memoranda prepared by several of the technical experts outlining responses to suggested condition amendments provided in the section 54 comments received

Legal Submissions

16. The following matters that are raised in comments justify a legal response:

a. Panel composition – challenge to Mr van Voorthuyzen's appointment on the basis of apparent bias

b. Perceived errors in not including Ngāti Porou ki Hauraki in pre-application consultation and section 18 report

c. Scope issues:

   i. Number of drill sites

   ii. Scope of wildlife approvals

   iii. Scope of access arrangement – section 57 Crown Minerals Act

d. Conditions

   i. Overlapping and integration with existing consents

   ii. Bonds and the Martha Trust

   iii. Use of management plans

e. The decision-making framework – benefits, uncertainty and managing risk

f. Planning assessment comments

17. I conclude this memorandum with some comments on process that the Panel may wish to consider as you contemplate how you will proceed towards producing final decisions on the application by 18 December 2025.

Panel composition and Apparent Bias

18. Forest & Bird argues that Mr van Voorthuyzen should recuse himself from the Panel on account of apparent bias. The factual basis for this argument is said to be a letter, written by me in my capacity as counsel for the applicant, to the Panel Convenor (and associated correspondence with the relevant councils) which notes that Mr van Voorthuyzen has been approached by the Councils to be their nominee and records his credentials and availability.

19. Forest & Bird assert that this letter constitutes a “request” for Mr van Voorthuyzen to be appointed to the panel by the applicant and gives the ‘impression’:

    a. of a closeness of relationship between the applicant and Mr van Voorthuyzen (on the basis of knowledge of his availability to participate in the panel); and

    b. that the applicant “directly” influenced the panel appointment process.[3]

20. The Supreme Court decision of *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd* is the leading case on apparent bias. The Supreme Court held that the question for determining apparent bias is:[4] [Whether] a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial mind to the resolution of the question the judge is required to decide.

21. The applicant agrees that panel members occupy a ‘quasi-judicial’ position and that the public must have confidence in their work. Bias or any apparent bias should be avoided. However, there is no basis here for a fair-minded observer to be concerned that Mr van Voorthuyzen does not have an impartial mind; or that the Panel Convener or the Assistant Panel Convener (who was the officer who made the appointment)[5] were inappropriately influenced in making his appointment.

22. The applicant agrees that the legal test for apparent bias is a two-stage test, as articulated in *Muir*. The first stage is a factual inquiry into the actual circumstances which provide the asserted “personal or professional relationship with a party or a prejudice or preference towards a particular outcome, or a predisposition leading toward a predetermination of the issues”. This factual inquiry should be ‘rigorous’.

---

3 Paragraphs 12 and 13 of Forest & Bird’s comments.

4 *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd* [2009] NZSC 72; [2010] 1 NZLR 35 at [3].

5 Minute 9 of the Panel Convener dated 4 July 2025

23. In considering this stage of the test, there is no factual basis for the assertions of Forest & Bird; they have materially overstated both the nature and potential significance of the comments in counsel's letter to Judge Borthwick.

    a. Read objectively, the letter itself was not a request for Mr van Voorthuyzen's appointment.

    b. It was factually accurate – he is the nominee of the Councils, is objectively well qualified for the role, and he had indicated his availability to the Councils.

    c. There is no relationship or alignment between Mr van Voorthuyzen and the applicant or their counsel of any sort – let alone one that could form the basis for a disqualifying preference towards the applicant.

        i. I do not know Mr van Voorthuyzen, other than in his capacity as a commissioner at several plan and consent hearings over the years.

        ii. There have been no discussions or communications with Mr van Voorthuyzen about the WNP, other than in the context of formal communication with the Panel.

24. In any event, Forest & Bird's comments overlook the process of appointment to the Panel by the Convener. This is a process which the public are entitled (without any evidence to the contrary – and none is offered) to assume is robust. Judge Borthwick is an experienced judicial officer, and Jennifer Caldwell is an experienced solicitor, who were

exercising an independent statutory function under section 50 of the FTAA in making this appointment.[6]

25. Given this factual matrix, and turning to the second limb of the test, there is no basis for a fair-minded observer to conclude that Mr van Voorthuyzen's appointment to the Panel by Jennifer Caldwell was influenced by the applicant's letter to Judge Borthwick and the alleged 'endorsement' therein. Mr van Voorthuyzen is the Councils' nominee and must be included in the Panel.[7]

26. Nor is there any basis for a fair-minded observer to consider that Mr van Voorthuyzen has any disqualifying preference for the applicant.

27. Considering the matter in totality, the assertion of apparent bias is without merit and should be set aside.

Ngāti Porou ki Hauraki Issues

28. NPKH asserts that the applicant has not consulted properly with it. That assertion is not accepted. Mr Welten's statement of evidence sets out the extensive attempts the applicant has made to seek constructive engagement with and information from NPKH. These efforts to engage exceed those recorded in NPKH's comments. The short point is that NPKH has elected not to engage with the applicant in good faith, and specifically asked the applicant to refrain from communicating.

29. The applicant's existing activities occur over a large geographical area that overlaps with areas in which a number of iwi and hapu have interests. The applicant does not consider it is appropriate for it to determine issues of mana whenua status and the like, and as Mr Welten explains in his evidence the applicant's approach is to take on board what all interested

---

6 The Associate Panel Convener acts under delegation from the Panel Convener pursuant to Schedule 3, clause 2(5) of the FTAA – see the instrument of delegation dated 8 April 2025 https://www.fasttrack.govt.nz/__data/assets/pdf_file/0020/3179/Fast-track-panel-convener-minute-delegation-to-associate-conveners.pdf.

7 Schedule 3, clause 3(3).

parties have to say, and respond to issues as best it can, both procedurally and substantively. That approach extends to NPKH.

30. As the Panel will appreciate from reading the summary of consultation included as part of the application,[8] and the comments received from Ngāti Tara Tokanui and Ngāti Koi, NPKH, and Ngāti Pū, there is no overall or agreed iwi view in relation to the WNP. That makes things challenging for the applicant. The challenge is compounded when there are unresolved differences between iwi and hapu groups about mana whenua status. As Mr Welten explains, the applicant has found on occasion that progressing with consultation can be frustrated because some iwi are not accepted by other iwi as having appropriate status to 'sit around the table', and this is certainly the way NPKH is regarded by some other iwi with whom the applicant engages.

31. The applicant's approach is to continue to be open to engagement with all who assert they have an interest in their exploration and mining activities. NPKH has been clear in not wanting this engagement, and there is not much more that the applicant can do other than continue to indicate that if NPKH elects to re-engage with it, the applicant will respond in good faith.

32. NPKH is not identified in the section 18 report as a relevant iwi authority for the purpose of this application. Nevertheless, the Panel extended NPKH an invitation to comment in the exercise of its discretion under section 53(2).

33. NPKH argues that the WNP must be declined approvals under section 85(1) of the Act because it is "*fundamentally incompatible with the interests of NPkH, including our interests in ancestral whenua the project is the proposed to access, occupy and mine and our interests in land (including land we own currently and land we will own following our Treaty settlement) that is adjacent to or will be impacted by the project.*

8 A.08. Section 5 – Consultation and Engagement.

Therefore, the project must be declined on this basis"[9]. NPKH goes on a suggest[10] that:

a. The application may encompass an ineligible activity, being an activity for which an access arrangement may not be granted under section 61(1A) of the Crown Minerals Act 1991 or an activity that would occur in an area for which a permit cannot be granted under that Act;[11] and

b. The granting of the access arrangement applied for would confer an interest in land that is incompatible with an existing interest in land.[12]

34. Section 61(1A) of the Crown Minerals Act limits the range of mining activities that may be authorised by an access arrangement in relation to Crown owned land and internal waters identified in Schedule 4 of that Act. Items 9 and 10 of that Schedule, being the area described in the Otahu Dedicated Area Notice 1976 and the area described in the Parakawai Geological Area Notice 1980 are in the general vicinity of places where monitoring and predator control are proposed as part of the WNP. This matter was addressed by the Department of Conservation in its application completeness check[13] of the original (rejected for incompleteness) WNP application where the two Schedule 4 areas are identified and it is recorded that "*There are (at least) pest management control activities proposed within the Otahu Dedicated Area. DOC believes these activities are ineligible activities pursuant to section 5(1)(h). These activities are beyond the area of the applicant's mining permit and would not require an access arrangement*."[14]

---

9 Comments of Ngāti Porou ki Hauraki, paragraph 27.
10 Ibid, paragraphs 88 – 91.
11 Section 5(1)(f) of the Act.
12 Section 85(g) and Schedule 11, clauses 7(2)(b) and 8(2)(b).
13 Section 46(1) of the Act.
14 Department of Conservation Fast-track application completeness check, 19 March 2025, page 4.

35. The matter of concern to NPKH regarding section 61(1A) has therefore been addressed and DOC has confirmed no access arrangement is being sought in relation to a Schedule 4 area. The resubmitted application and proposed conditions have been careful to identify that the northern concession does not authorise activities as part of the WNP within Schedule 4 areas. This addresses the issue identified by DOC regarding pest management within the Otahu Dedicated Area.

36. The WNP does not involve ineligible activities as defined in section 5(1) of the Act.

37. In relation to NPKH's second concern that the approvals would be incompatible with their existing interests in land, this assertion is also rejected.

38. DOC addresses whether there are relevant interests in the land to which the proposed access arrangements relate.[15] DOC advises there are none, but adopts the cautious approach of listing the permissions that have been granted for the area (which DOC says do not grant an 'interest in land') and notes that the works proposed under the access arrangement will not prevent the holders of the various concessions from undertaking their authorised activities.

39. NPKH has no relevant interest in land subject to the proposed new or varied access arrangements. It is not disputed that NPKH is interested in what happens on the land, but that is a different proposition. To reach the mandatory decline threshold in clause 7(2)(b) requires an incompatible legal interest. NPKH has not established that proposition.

40. NPKH's other recommendations are addressed in the proposed conditions and the evidence of Mr Welten where appropriate.

---

15 Department of Conservation section 51 Report, Appendix F: Access Arrangement report, 11 August 2025, at paragraphs 167 – 169 and 235 – 237.

Number of Drill Sites

41. Forest & Bird asserts that the substantive application seeks approvals for more new drill sites in the Coromandel Forest Park than are provided for in the description of the WNP contained in Schedule 2 of the Act, and that the Panel is limited to granting no more than the number of drill sites referred to in Schedule 2.[16]

42. The relevant part of the project description in Schedule 2 relating to activities in the Coromandel Forest Park says:

- *exploration drill sites within Department of Conservation land, including 4 ventilation shafts and 4 new geotechnical drilling sites*
- *A new underground mine at Wharekirauponga with associated twin decline access to explore and mine including 4 ventilation or escapeway shafts capped at surface"*

43. The substantive application[17] seeks approval for the following new drilling activities[18] within the Coromandel Forest Park administered by the Department of Conservation. The amount of clearance per site sought (regardless of the purpose of drilling) is 150m^2:

a. 8 exploration drill sites

b. 4 geotechnical investigative drill sites within the existing access arrangement area (that is, in the area of the Wharekirauponga Underground Mine)

c. 4 geotechnical investigative drill sites within the area above the dual access tunnel

d. 4 hydrogeological drill sites

16 Comments of Forest & Bird, paragraphs 31 – 36.
17 A.05 – Substantive Application Report – Project Description, Table 2-2, page 39.
18 Additional activities are also applied for but these are not relevant to the issue raised by the commenter.

44. The Schedule 2 description contains no limit on the number of exploration drill sites. The description refers to 4 ventilation shafts, 4 new geotechnical drilling sites and 4 ventilation or escapeway shafts capped at surface. The Schedule 2 description contains no limit on the area each drill site, ventilation shaft or escapeway shaft may occupy.

45. It is not possible for the substantive application to seek approvals for more drill sites than are referred to in Schedule 2 as there is no maximum number of exploration drill sites, or an overall number of drill sites, specified.

46. Similarly, the 4 ventilation or escapeway shafts referred to in the second bullet point of the Schedule 2 description associated with the twin decline access would necessarily involve geotechnical drilling as part of their construction. The specification of 4 ventilation shaft sites (rather than 4 geotechnical drill sites) does no more than overstate the level of construction required, and the substantive application prunes that back to just 4 geotechnical drill sites.

47. The substantive application is therefore, in both the number of exploration drill sites applied for (8, rather than unlimited) and the number of sites applied for along the dual tunnel route (4 geotechnical drill sites, not 4 ventilation shaft sites) a sub-set of the Schedule 2 description. I note that the applied for area of clearance in relation to a geotechnical drill site is 150m^2 compared to 900m^2 for a ventilation shaft site.

48. I also note that the definition of “project” in section 4(1) of the Act includes two parts. Clause (a)(i) described listed projects as “the project as described in Schedule 2”. Clause (b) expands that description to include “any activity that is involved in, or that supports and is subsidiary to, a project referred to in paragraph (a)”. Clause (b) appropriately encompasses related and necessary activities that are part of or support the simplistic descriptions of the projects listed in Schedule 2. While there

are no express limits to the number of exploration drill sites in the Schedule 2 description, at the very least, these are activities "involved in, or that supports and is subsidiary to" the WNP.

49. From a review of the requirements on the applicant as contained in the proposed conditions it will be apparent to the Panel that it is in the applicant's interest to minimise the number of drill sites in the forest. The numbers specified in the substantive application are therefore maxima, and operationally the applicant will be incentivised to minimise the number of areas it clears by reusing sites and co-locating different activities wherever it is sensible to do so.

50. Finally in relation to this matter I note that the High Court has recently had cause to consider the relationship between the contents of a substantive application for a listed activity under the Act and the description of that activity in Schedule 2. *Ngāti Kuku Hapū Trust v Environmental Protection Agency*[19] concerned Port of Tauranga Limited's Stella Passage Development. The High Court was addressing an application by Ngāti Kuku for judicial review of the EPA's decision that Port of Tauranga's substantive application was within scope.

51. At issue was the fact that the substantive application sought approvals for extensions of two wharves – one at Sulphur Point and one at Mount Maunganui. The project description in Schedule 2 of the Act only refers to extending the Sulphur Point wharf, notwithstanding that Port of Tauranga's application to be included as a listed project clearly included the Mount Maunganui wharf extension as part of the overall development proposal. The High Court noted at [63] that the Mount Maunganui wharf may have been left out of the Schedule 2 description by mistake (i.e., a legislative drafting error) but was unable to conclude that was the case, and that it was possible the omission was intentional.

---

19 *Ngāti Kuku Hapū Trust v Environmental Protection Agency* [2025] NZHC 2453, 27 August 2025.

52. In the result the High Court set aside the EPA's decision that the application was within scope. It was held that the EPA's decision was wrong in law, and that the application did not relate solely to a listed project or referred project, contrary to the requirement of section 46(2)(b) of the Act.

53. *Ngāti Kuku* is useful authority in reinforcing the orthodox proposition of statutory interpretation that where a provision is clear on its face it should be given its ordinary and obvious meaning. The Court was not persuaded that it should infer that the Mount Maunganui wharf formed part of the description of the project. While its omission from Schedule 2 may have been a drafting error, the Court could not exclude the possibility that its omission from the description was deliberate.

54. The Court ordered at [75] that no further processing of the substantive application should proceed in the meantime and directed the parties to use their best endeavours to agree on consequential orders from the Court's findings.

55. The situation in *Ngāti Kuku* involved a question about whether a major component of an overall development project was or was not part of a Schedule 2 description and was therefore able to be progressed via a substantive application. It is not on all fours with the WNP situation raised by Forest & Bird and discussed above. In the present case the issue raised is simply whether the way Schedule 2 is worded means the number of drill sites needs to be limited. For the reasons set out above, I submit the answer is no.

56. If the answer is yes, it is not clear what the number is, because the Schedule contains no overall number of drill sites. That is hardly surprising. It is a matter of fine project detail in the context of a part of the Act whose purpose is simply to broadly identify projects that are eligible to make substantive applications under a process designed to facilitate the approvals process for important projects. Schedule 2 cannot be expected

to delineate and describe every aspect of a complex project with precision. Such an approach would be unwieldly, inconsistent with the purpose of the Act, and would run the risk of preventing applicants from making improvements to details of their projects within their substantive applications to deliver both enhanced benefits and reduced adverse impacts.

Scope of Wildlife Approval

57. In its section 51 report DOC[20] has indicated it is unclear as to which activities the applicant seeks a wildlife authority for, based on the conditions proposed.

58. As DOC notes, the substantive application[21] seeks approvals that would otherwise be required under the Wildlife Act to:

- *Undertake monitoring of leiopelmatid frogs within the vibration impact area, Wharekirauponga Animal Pest Management Area and a control area, all of which are located within the Coromandel Forest Park;*
- *Undertake monitoring of leiopelmatid frogs in waterways within and outside the area potentially affected by the dewatering of the WUG, all of which are located within the Coromandel Forest Park (excluding any areas listed in Schedule 4 of the Act);*
- *Handle, salvage and relocate leiopelmatid frogs and lizards in order to enable vegetation clearance at TSF3, NRS, GOP and Willows SFA, all of which are located on OGNZL owned land; and*
- *Handle, salvage and relocate leiopelmatid frogs and lizards in order to enable vegetation clearance for drill sites and pumping*

[20] Department of Conservation section 51 report, 11 August 2025, Appendix D: Wildlife approval report, paragraphs 177 – 184.

[21] A.07 – Substantive Application Report – Approvals Required, section 4.5, page 341.

test / ventilation shaft sites located within the Coromandel Forest Park.

59. This list was developed by the applicant based on the existing wildlife approvals it holds from DOC, and also the fact that for some activities like frog research that may disturb frogs,[22] but do not include frog handling, DOC does not require a wildlife approval and instead authorisation is provided via a simple permit under the Conservation Act. This list therefore reflected the WNP activities the applicant thought DOC would consider should to be authorised by a wildlife approval.

60. Subsequent discussions with DOC led the applicant to understand that DOC considered some additional activities associated with the WNP should also be included in the wildlife approval.

61. As a result the applicant made several amendments to the species and the activities it thought DOC was suggesting the approval should also include.

62. The applicant is therefore surprised by DOC's comments in the section 51 report given the way the draft conditions have evolved in response to engagement with DOC.

63. Regardless, all the WNP activities and their potential impacts on wildlife are discussed and assessed in the application documents and DOC's statement[23] that "…*it is not possible to understand what activities may harm wildlife, how any such activities could harm wildlife, how wildlife would be affected, and where, what methods would be used to minimise any effects, etc*." is not true.

---

22 For example disturbance caused by shining lights on frogs so they can be counted.

23 Department of Conservation section 51 report, 11 August 2025, Appendix D: Wildlife approval report, paragraph 182.

64. On the basis that DOC may have changed its view that additional activities over and above those described in the application should be covered by the wildlife authority, or perhaps that DOC itself is unsure, the applicant is content to revert to the original proposed condition describing the activities and species to which the approval relates, consistent with the application documents.

65. Ultimately, it is surely the actual effects on wildlife that the process should be concerned with. The wildlife values and how they might be affected, and the measures that will be taken to manage those effects are clearly described and conditioned in other approvals.

66. The applicant has no intention to harm wildlife and proposes realistic management measures to minimise the risk of incidental harm occurring as it goes about the various activities that need to be undertaken as part of the WNP. Those measures are appropriately conditioned via the resource consents and DOC approvals.

67. If in the future DOC is able to substantiate that activities proposed as part of the WNP in addition to those listed in the application are properly subject to the wildlife approval regime in the Wildlife Act the applicant will look to make a subsequent application.

68. A particular issue that is queried by DOC, and raised more directly in the Forest & Bird comments[24] is whether a wildlife approval should be in place to authorise potential effects on frogs from vibrations.

69. I submit that cannot be the case. As noted previously DOC does not require a wildlife authority for activities that may disturb frogs but does not involve their handling. In the case of frog research undertaken by the applicant and its consultant ecologists that involves field work that may disturb frogs but does not involve their handling, a Conservation Act permit

[24] Comments of Forest & Bird at paragraph 42 – 43.

suffices. In relation to members of the public who undertake lawful activities such as pig hunting and tramping on conservation land which could disturb frogs, no wildlife approval is required. Nor is a wildlife approval required by logging contractors who cause vibrations from the use of heavy trucks on roads adjacent to frog habitat.

Access arrangement required for underground mining

70. Section 57 of the Crown Minerals Act 1991 provides:

> *Meaning of entry on land*
>
> *For the purposes of sections 53 to 54A, prospecting, exploration, or mining carried out below the surface of any land shall not constitute prospecting, exploration, or mining on or in land if it—*
>
> *(a) will not or is not likely to cause any damage to the surface of the land or any loss or damage to the owner or occupier of the land; or*
>
> *(b) will not or is not likely to have any prejudicial effect in respect of the use and enjoyment of the land by the owner or occupier of the land; or*
>
> *(c) will not or is not likely to have any prejudicial effect in respect of any possible future use of the surface of the land.*

71. This section provides the statutory justification for why underground mining and associated tunnelling beneath the surface of land does not require an access arrangement with the owner of the land where the mining activity has no material impact on the surface. It is the reason why the applicant does not require access arrangements with the landowners under whose land the existing underground mines in Waihi have been operating for many years (even though at times some vibrations can be felt at the surface; have at times given rise to complaints from some residents; and are the subject of agreed amenity effects payments to affected residents).

72. In the case of the proposed Wharekirauponga Underground Mine an access arrangement is required to authorise activities at surface (such as the drill sites and ventilation shafts).

73. Forest & Bird raise a novel argument that *underground* mining at Wharekirauponga should also be authorised by an access arrangement with the Crown because vibrations from the mining will be felt at the surface, and could cause harm to frogs. That in turn is said to result in a prejudicial effect in respect of the use and enjoyment of the land by the Minister because the land is to be managed so that its natural and historic resources are protected.[25]

74. That is not the view DOC takes. In its section 51 report[26] DOC states:

> *"Based on the available evidence, DOC does not consider the proposed underground mining will be 'likely to have any prejudicial effect in respect of the use and enjoyment of the land' by the Crown, for the purpose of s 57 of the [Crown Minerals Act]. However, if the measures proposed by OGNZL are unsuccessful, and adverse effects are not avoided or minimised, s 57 could be engaged."*

75. In support of that conclusion DOC relies on the technical assessments undertaken by the applicant that conclude potential effects on frogs associated with the surface expression of blast vibrations will be of a low magnitude. Contrary to what Forest & Bird asserts[27] DOC does not rely on the applicant's proposed predator control, monitoring, and research in relation to frogs to reach the view that the evidence does not support section 57 being engaged. As the panel will appreciate, the predator control and other activities that will benefit frogs are not being proposed

---

25 Section 19(1)(a) Conservation Act 1987.

26 Department of Conservation section 51 Report, Appendix F: Access Arrangement report, 11 August 2025, at paragraph 15.

27 Comments of Forest & Bird at paragraph 50.

because significant adverse effects on frogs are anticipated and need to be offset or compensated for. Rather, the applicant is taking a precautionary approach and proposing actions that address an unlikely 'worst-case' outcome. The most likely outcome is that frogs will not be shown to be affected by vibrations, but the population will still benefit from the actions the applicant proposes and which have been calculated to produce a net benefit for frogs even if the worst-case vibration impact is assumed.

76. DOC's approach is orthodox. Section 57 requires that effects at surface from underground mining activities need to be material before the section is engaged.

77. Forest & Bird concludes its discussion on this aspect by suggesting that if the Panel agrees that an access arrangement for underground mining at Wharekirauponga is not required, your decision and conditions should 'at a minimum' record that if frogs are affected by vibrations then an access arrangement for underground mining will be required and this is not authorised.[28]

78. I submit any such statement would be inappropriate. Whether any future circumstances may require an access arrangement for underground mining is a legal question involving the interpretation of section 57 of the Crown Minerals Act in light of the particular factual position at that time. That cannot be predetermined in the Panel's decision, and the Panel cannot predetermine that if at some future time an access arrangement is needed it is not authorised. That would be a matter for a future decision-maker to determine.

79. Comments on the applicability of section 57 of the Crown Mineral Act have also been made by Andrew and Rachel Wharry (**Wharrys)**.

---

[28] Comments of Forest & Bird at paragraph 52.

80. The applicant has been engaging with the Wharrys on this project since 2021 because the Wharekirauponga Access Tunnel will pass underneath a part of their land.

81. The applicant has conveyed to the Wharrys, through their lawyers, that its mining permit enables tunnelling under part of the Wharry's land without any Access Arrangement from them provided the tunnel does not engage the matters listed in section 57 of the Crown Minerals Act 1991.The Wharrys own a private mineral right over a part of their land which was previously road. The applicant's mining permit to extract gold and silver owned by the Crown and this private mineral right co-exist, and there is nothing about the existence of the private mineral right that requires the applicant to have an access arrangement for the Wharekirauponga Access Tunnel to pass through the Wharry property provided section 57 is not engaged.

Conditions - Integration of WNP consents and other existing approvals

82. HDC's comments[29] discuss the complicated regulatory environment that applies in relation to the applicant's mining activities because of the multiple existing consents and authorisations that apply, and which will be added to if approvals for the WNP are granted. The applicant accepts that the regulatory environment is complicated. It is a consequence of the way the consenting process inevitably works whereby each aspect of mine development has been subject to its own approvals process, and the applicant's activities are authorised by a combination of consents and permitted activity rules with consent obligations and performance standards that are not always consistent or easy to reconcile. That is a common feature of large projects that are developed in stages.

[29] Comments of Hauraki District Council, pages 31 - 32, paragraphs 4.6 – 4.11 (Mr Green's legal submissions) and pages 58 – 59 (Mr McGarr's planning commentary).

83. To respond to this reality Mr McGarr, the HDC's planning expert, has suggested condition wording that will aid in ensuring greater clarity around which approvals are being relied on in relation to activities that form part of the WNP, where there are overlaps with other existing approvals. Mr Kyle has considered Mr McGarr's approach and has indicated he agrees it is workable and appropriate. This is recorded in the attached conditions set.

Conditions - Bonds and the Martha Trust

84. The proposed resource consents contain bond conditions in favour of the HDC and WRC to cover the costs of rehabilitation and closure works. The conditions mirror conditions in the applicant's existing resource consents for the Waihi mine operations which have operated successfully with the Councils since the grant of consents in 1999.

85. There are two different bonds in place – a Rehabilitation Bond and a Capitalisation Bond.

86. The purpose of the Rehabilitation Bond is to provide the Councils with unencumbered access to a source of funds to close and rehabilitate the mine site in accordance with the requirements of the company's consents and approvals in the unlikely event that OceanaGold is for some reason unable to meet its closure obligations. This provides security to the Councils and community that sufficient funds will be available to allow the completion of closure by a third party under the management of the Councils, that will leave the site in a safe, stable and self-sustaining rehabilitated state known as Closure.

87. The purpose of the Capitalisation Bond is to ensure funding of post-Closure site management costs for land and structures that will pass into the ownership, control, management and maintenance of the Martha Trust in perpetuity once Closure is achieved.

88. In practice the bond quantum is reviewed and adjusted annually by an independent expert engaged by OceanaGold, and is independently peer reviewed and approved by Councils prior to bank bonds being issued. That review encompasses both changes in the mining work programme (which determine the level of disturbance that would require rehabilitation, and the manner of that rehabilitation, at any given time) and inflationary effects on costings.

89. As part of the HDC comments Mr McGarr's planning commentary[30] "*queries in respect of the appropriateness and suitability of the proposal to "roll over' conditions from previous consents/authorisations*", including those related to the Martha Trust, and says "*there is no supporting assessment' for 'the rehabilitation bond risk insurance sums and the scope of the capitalisation bond risk assessment (and the costs to HDC associated with this process where disagreement arises)*".

90. In comments on the proposed conditions at C70 Bentley & Co say it is unclear what has determined the base figures for 'Industrial & Special Risk Insurance $17M and Public Liability Insurance $7M (2025 dollars)'.

91. The permitted activity rule in the Hauraki District Plan[31] under which the applicant in part operates at Waihi together with various resource consents issued by the Councils over the years require it to have these insurances in place in the amounts (updated to 2025 dollars) required by this condition.

92. At condition C89 Bentley & Co raise concern that "*there is no explanation of the terms/parameters that [a residual risk assessment] is to contain, or what acceptance, approval, or certification process this is to follow*."

93. The level of detail that seems to be suggested in the comment is not reflected in the existing consents granted for other aspects of the

30 Comments of Hauraki District Council page 60.
31 Rule 5.17.4.1 P2.

applicant's mining activities at Waihi. The existing bond conditions have been functioning successfully with Council agreement since 1999, and in my submission there is no need to change the current approach in the consents.

94. The way bond sums are calculated is known to the Councils as it was developed in conjunction with them in 1997 and has been applied since. The bond quantum calculation is done by an independent expert and uses a conservative estimating method. There are two components of each bond, a base cost and a risk cost. The base cost provides for physical rehabilitation or ongoing site maintenance work, its project management and for the Rehabilitation Bond a period of ongoing environmental monitoring and site maintenance and management throughout the closure period. It adopts reasonable to conservative estimates of quantities and unit rates. The risk cost provides a contingent liability fund against the occurrence of something unexpected and unwanted occurring during the closure period. It assumes the occurrence of the quantified risk events at the earliest possible time and uses the conservative Threshold Method for setting the risk cost, which is the commonly used approach for bonding in New Zealand. As discussed, reviewed in detail and approved by both the HDC and WRC the bond calculations are arrived at via the Monte Carlo method using a statistically derived value referred to as the P80 which provides a suitably conservative contingency on the best estimate (the P50) without being punitive.

95. If the Panel considers it is necessary to expand the condition to specify the approved bond calculation methodology, and with the Councils' acceptance, this could be done. But based on well-established past practice which is expected to continue the applicant does not consider this is necessary. The risk assessment processes, and cost estimation and financial modelling, are professional disciplines, and appropriately accessible to peer review by the Councils' experts on an annual basis according to prevailing accepted practice at that time. The mechanisms

are there for adjustment to the bond calculation methodology should this be required.

96. At condition C93 Bentley & Co indicates "*concern to understand whether 'all costs' are inclusive of those costs that may be incurred as a consequence of a disagreement between the parties and the related processes this may entail, including in respect of the risk assessment*."

97. I am instructed that to date OceanaGold has met the Councils' costs in independently reviewing and putting in place the capitalisation bond and would expect this to continue. There have not been disputes since bond implementation began in 1999 and the applicant does not consider this is a significant matter that conditions must address.

98. In respect of the Martha Trust, HDC identify that proposed conditions require the Martha Trust to take responsibility for post-closure matters and express concern that this requires the approval of a third party.

99. The same post-closure land management in perpetuity mechanism has been applied in and is required by existing consents and the permitted activity rule 5.17.4.1 P2 in the District Plan, and in discussion with the HDC, was considered suitable for the WNP consents too.

100. The Trustees of the Martha Trust are currently representatives appointed by HDC and WRC, therefore the Councils will have direct involvement in any third party approval process.

101. The Martha Trust's comment on the application is that the Trustees "await any formal requests from the HDC and the WRC regarding potential recommendations for amendments to the Trust Deed arising from the Waihi North Fast-track application". The Trust appears to anticipate that Council requests will be made as a result of the WNP application and a consequential need (identified by HDC through consultation on the proposal) to update the Trust Deed so that it is clear the Trust is

authorised to take ownership of land pursuant to obligations arising from conditions in consents granted under the Fast-track Approvals Act (in addition to consents granted by the Councils as is currently the case). This is as the applicant expected following consultation with the trustees.

102. OceanaGold has previously met the reasonable costs of the Trust to obtain independent legal advice and attend to Trust Deed updates. For example, in 2021 the Trust Deed was amended to make provision for the Trust to take on additional Trust Land if requested to do so by the Councils. That amendment was made in anticipation of further resource consents being granted for various new mine elements, with a view to the long-term ownership and maintenance of some of these elements passing to the Martha Trust (together with appropriate funding) to be dealt with in the same way as the existing Trust Land. That amendment was a precursor to the consenting of OceanaGold's development plans which at the time were called Project Quattro, and which were reconfigured in 2022 as the WNP.

103. OceanaGold and, as I understand it, the Councils, anticipate that new mine elements that are approved and built as part of the WNP would in due course need to be added to the Trust Land and OceanaGold will fund the reasonable costs of this.

104. The Martha Trust will only take ownership of Trust Land, structures and responsibility for their management in perpetuity once all of the site's Closure criteria are met.

105. Counsel has met with the Martha Trust's solicitor and the solicitors for HDC in relation to this matter and I understand a suitable amendment to the Trust Deed is in preparation. There is a common intention between OceanaGold and the Councils to advance a Trust Deed amendment to incorporate WNP. It may be that this has not been drawn to Bentley & Co's attention.

106. At condition C82 Bentley & Co queries whether a consent condition should be included to transfer the consent to the Martha Trust. Further they indicate it is not for the HDC to determine which iwi is to be involved with the Trust, and that Council is not 'involved/empowered in respect of the Iwi Advisory Group'.

107. A condition providing for the transfer of any remaining operative aspects of the consent to the Martha Trust, once Closure is achieved, may be appropriate. In the applicant's experience (having rehabilitated and initiated closure and hand-back to DOC of its former Globe Progress mine at Reefton) it is likely that parts of the site, and conduct of the associated resource consents, will be achieved in stages reflective of final site condition and lay-out at the date of closure. This is not a topic that has been addressed in previous consents for other mine elements, and has not been a topic of discussion in consultation between the applicant and HDC in relation to the WNP. No condition in relation to this is presently proposed. The applicant will engage further with HDC on this matter and will communicate the outcome to the Panel in good time to ensure any necessary amendment or addition to the conditions can be included before a final decision is made on the application.

108. Under the terms of the Martha Trust Deed, HDC already has the power, together with WRC, to appoint an iwi trustee representing Ngati Tamaterā.[32] This condition does not add any additional obligations in that regard. The advice note stating that Council appointees may be representatives of the Iwi Advisory Group is guidance and not a direction to Council.

[32] Clause 6.2 of the Deed of Trust of the Martha Trust dated 31 May 2021 – available at https://register.charities.govt.nz/CharitiesRegister/ViewCharity?accountId=0cc45afe-467e-ec11-bb0e-0022480ffcd1&redirectUrl=https%3A%2F%2Fregister.charities.govt.nz%2FCharitiesRegister%2FSearch%3FSubmitted%3DTrue%26CharityNameSearchType%3DContains%26CharityName%3Dmartha%2Btrust

109. The covering letter from HDC's Chief Executive[33] suggests that there should be a 'first principles review' of the bonds as part of the process for setting the bond quanta, should the WNP be approved. HDC further suggests that "the assumptions upon which the setting of the bonds are based are an essential element" of that review, and considers a key assumption is that the Rehabilitation Bond should be called at the same time as the Capitalisation Bond is called.

110. The process by which bonds are calculated, and the matters that are taken into account, are described above. The conditions (which are not materially different from the conditions the HDC has imposed on previous consents) spell out what the bonds must cover and confirm that ultimately the bond sums are set by the Councils based on the advice received. It is not entirely clear what the Chief Executive anticipates by way of a 'first principles review' and how that differs (if at all) from the annual review process currently undertaken. In any event, it does not appear that HDC is suggesting the Panel needs to do anything in response to the comment by way of a change to conditions.

111. I note WRC does not propose amendments to the bond conditions and appears to accept the appropriateness of extending the existing bond structure to include the WNP, subject to the Martha Trust Deed being appropriately amended to provide for taking over WNP land and assets.

112. In my submission, it is efficient and sensible to maintain the existing bond structure and conditions that are understood and have worked successfully for several decades based on a known and accepted bond calculation methodology. This is what the proposed conditions achieve.

[33] Comments of Hauraki District Council, page 5.

Conditions - Use of management plans

113. A theme in the section 51 DOC report is a concern about the way management plans are used in conjunction with conditions in relation to the DOC approvals.[34]

114. The use of management plans is orthodox in the resource consent context (and is inevitable for large complex activities like the WNP), and their proposed use (including the conditions that relate to the requirements for management plans to be in place, their objectives, and the processes for changing and certifying[35] them) raises no fundamental issues with the local authorities.

115. The applicant's approach, as proposed in the application documents, had been to effectively mirror the management plans in the context of the DOC approvals. As can be seen from the DOC section 51 report, that approach does not align with DOC's preferences. It is clear to the applicant that the approach it had proposed for the approvals administered by DOC would introduce unfamiliar requirements, with associated risks of administrative complexity and delay.

116. In light of the concerns expressed by DOC around the way management plans are used in the DOC approvals, the applicant and its planners have recast the proposed DOC approval conditions to significantly reduce reliance on management plans and instead to include more detail in the conditions themselves. This approach will be readily apparent as the Panel considers the revised conditions set in Part 4 of the applicant's response, and it is hoped the approach addresses many of DOC's concerns.

---

34 Highlighted in the Department of Conservation s51 Covering Report, 11 August 2025 paragraph 14ff, and picked up again variously in Appendices C-F of the Report

35 Certification of management plans is a normal process provided for in resource consents granted under the RMA. It is usually undertaken by consent authorities and involves a check that the contents of the management plan properly address the matters the plan is required to include in accordance with the relevant consent conditions

The Decision-making framework: benefits, uncertainty and managing risk

117. I submit there appears to be broad agreement amongst the various legal submissions before the Panel around how the decision-making criteria in the Act and its schedules should apply, including as to the relevant matters that must be taken into account or considered, what 'take into account' means (e.g., in Schedule 5, clause 17 of the Act when assessing the resource consent applications), and how the task of giving greatest weight to the purpose of the Act is to be approached in the context of the various mandatory matters that need to be taken into account. I therefore do not dwell in these submissions on the bulk of the Act's provisions that direct how you are to approach your task. I can address the Panel on any of these matters at a subsequent stage in the process if that will assist.

118. I do however want to make some submissions on the 'proportionality' test in section 85(3) and how it might be approached, including by reference to the setting of conditions on various approvals.

119. The applicant's position is that the material before the Panel must draw you to the conclusion that development of the WNP will result in significant regional and national benefits. I submit that conclusion must be drawn regardless of the yardstick by which individual, overall, and net benefits are measured, and this is not an application where the choice of measurement tool determines whether or not the benefits are seen to be significant. In this regard I submit the Panel does not need to get drawn into the argument some economists like to have about whose economic assessment tool is the most appropriate.

120. In support of that proposition I would refer you to the economic effects report written by Mr Eaqub that forms part of the application,[36] the review of that report on behalf of HDC by Mr Akehurst of Market Economics,[37] the

[36] B.51 Economic Effects of the Waihi North Project, Eaqub & Eaqub Ltd.

[37] Comments of Hauraki District Council, page 202.

evidence of Mr Eaqub forming part of the applicant's response to comments received from invited parties; the comments on the application from Mr Buick-Constable, National Manager, Petroleum, Minerals & Offshore Renewable Energy, on behalf of the Ministry of Business, Innovation and Employment; and the comments on the application from the Ministers for Economic Development and Resources. In the face of this evidence and comments, the criticisms made by some other commenters[38] of the way the project's benefits have been assessed, and their criticisms of the robustness of the conclusions reached, are unsubstantiated and in my submission should be given little weight.

121. In the context of section 85(3), and the Panel's discretion to decline approvals if you were to find that the proposal has adverse impacts that are sufficiently significant to be out of proportion to the project's benefits, I submit that you would need to find on the evidence that the applicant's experts have mischaracterised and massively understated the adverse impacts of the WNP. I submit that on the material before the Panel you must conclude that the project's actual and potential adverse impacts are properly identified and addressed, and that the project's benefits far outweigh any residual adverse impacts.

122. The WNP is a large and complex mining project that will be developed over a significant time period[39] within receiving environments that are themselves complex and dynamic, and which will continue to respond to both natural and anthropogenic stressors[40].

---

38 Including the Parlimentary Commissioner for the Environment who was offered but did not take up the opportunity to receive a briefing on the project.

39 There is a 6 year tunnel construction period before development of the underground mine would commence, with the mine being opened up over a 3 year period and mining continuing for a further 7 years.

40 For example, Archey's frogs are classified in the New Zealand Threat Classification System as At Risk - Declining. That is not because of the WNP. It is because people have cleared much of the forest that provided their habitat to make the land productive, and more particularly these days because people introduced predators that eat them, and as a nation we have not made (and continue not to make) the investment necessary to effectively manage the predators

123. I submit that at the heart of arguments from those commenters that oppose the WNP is an assertion that the risk of adverse impacts is greater than the applicant's experts have assessed, and that the management responses the applicant proposes are insufficient to adequately address those risks.

124. In this regard I submit that the important consideration for the Panel is whether the way the project is intended to be run (as required in accordance with the proposed conditions to attach to the various approvals) satisfactorily addresses the inherent uncertainty in the nature and extent of some of the potential impacts of the project and deals with the associated risks in a responsible and appropriate way. To put this another way, are the proposed controls and actions embodied in the conditions suitably precautionary and proportionate to the potential significance of the effects? And where there is uncertainty of effects is the risk associated with that uncertainty borne by the applicant (in the sense that it may be required, and is able, to adjust what it does to ensure that the adverse impacts are not significantly greater than expected) rather than by the receiving environment?

125. In my submission the answer to these questions is 'yes'. To demonstrate this it is helpful to focus in on the two topics that I consider dominate the stage – potential impacts on Archey's frogs and potential impacts on surface water from deep mine dewatering.

126. As a preliminary comment I note that the primary tool the applicant has deployed to address potential effects from the proposed development, including on frogs and surface water, is avoidance. The point is lost on most commenters, but the applicant has advanced a project in which, to the greatest extent possible, and at significant cost,[41] activities take place underground and with very limited impacts at surface. That fact,

[41] The time-cost of money associated with accessing the ore body via underground tunnels can be seen in the NPV calculations of tax and royalties in Mr Eaqub's evidence, and is $100s of millions.

supplemented by careful design, conservative effect minimisation, and conservative and well thought-through offsetting and compensation measures, combine to ensure that residual adverse impacts are small and able to be offset and compensated to produce overall gains. The years of fieldwork and studies undertaken by the applicant to date (some going back 10 years), and the baseline studies that will be ongoing through to the point, 6 years in the future, where underground mining is expected to begin, underscore the care that has gone into understanding the environment which the applicant will be responsible for protecting.

127. In relation to Archey's frogs that are located above the proposed underground mine at Wharekirauponga:

a. They are a small proportion of a very much larger population than was previously thought. There are arguments between the population experts about how large the overall population of frogs is likely to be, but respectfully, those arguments are hair-splitting and unhelpful in the context of the task before the Panel. What is clear in my submission is that the frog population above the proposed underground mine does not represent such a large proportion of the overall Coromandel population that the Panel needs to be concerned that these particular frogs are somehow especially important to the protection or survival of the species.

b. The primary risks that the proposal poses to Archey's frogs are:

i. the known risks associated with clearance of areas frogs may occupy to allow necessary surface activities (drill sites, ventilation shafts etc). The overall area of disturbance is very small within the context of the forest area; suitable habitat for frogs is a factor that counts against clearing a site under the proposed site selection protocol; if too many frogs are encountered when a drill site is ecologically searched ahead of clearance it will be abandoned per the proposed conditions;

frogs encountered during site clearance will be moved to safety by approved handlers. The number of frogs likely to be encountered in relation to these activities is small. Finally, 10 years of exploration activity to date has cleared about a quarter[42] of the clearance area now proposed, and the formal population estimates for Archey's Frogs in that same period have increased by an order of magnitude.[43]

ii. the uncertain but low risk that frogs in the area above the underground mine will be adversely impacted by infrequent and short vibrations caused by underground explosions. As mining progresses the areas and depths that are subject to vibrations will change, so that no area on the surface will consistently experience vibrations across the full duration of mining. The risk of impacts from these intermittent, transient vibrations is speculative and unlikely to occur, but cannot be discounted at this stage.[44] In response the applicant proposes the most extensive predator control ever applied for Archey's frogs, both as to the size of the area to be managed for predator control, and the range of predators to be controlled.[45] Comprehensive monitoring is proposed using BACI[46] design that will allow understanding of both the extent (if any) to which vibration impacts frogs and the extent to which predator control has positive impacts on the population. Opportunities to adapt the way the predator control is managed exist, and the applicant's experts are confident the targeted net gain in frog numbers, should it be shown that vibration is having an adverse effect, is

---

42 0.18ha within the forest park have been cleared to date for exploration drilling, relative to 0.66ha of new proposed clearance.

43 In February 2025, the formal threat classification of Archey's Frogs increased the estimated population size from 5000-20,000 to over 100,000.

44 See the evidence of Dylan van Winkel.

45 In particular including control of mice – something DOC currently does not currently do but agrees is necessary to achieve a sustained and meaningful protecdtion of native frogs (Comments of DOC, paragraph 92, page 21).

46 Before-After-Control-Impact.

achievable. The period over which any impacts are expected to be monitored (15 years) ensures that the benefits of predator control during that time will be received regardless.

128. In relation to the potential for deep mine dewatering to have effects on waterbodies at the surface:

a. A suitable range of investigations and modelling have been completed to conceptualise and characterise the hydrogeological environment, and in particular the potential for connectivity between deep and shallow groundwater, such that deep mine dewatering would cause changes in the shallow groundwater, which in turn results in reductions in groundwater contribution to surface waterbodies above the mine. Those investigations and modelling indicate there is generally good separation between deep and shallow groundwater with only small drawdown potential in localised areas that would be unlikely to result in measurable changes to water flows and levels at surface. Consequently the experts expect that the overlying natural state streams and wetland features in the area will be protected and their values unaffected.

b. Those conclusions are based on the information that is currently available. As must be expected at this stage in the project, and more so because of the access constraints that operate in the Coromandel Forest Park that have until now restricted the investigations that can be undertaken, the experts agree that information gathering and interpretation needs to continue so that an ever-increasing understanding of the hydrogeological context is achieved. The first 6 years of underground tunnelling, ahead of the mining that holds the greatest risk of effects on groundwater, enables a greater range of tests to be undertaken. The experts also agree that comprehensive monitoring of groundwater and surface water needs to be undertaken ahead of and during dewatering activities so that any changes in conditions caused by dewatering that have potential to impact on

surface waterbodies are detected early. The experts further agree that there is a suitable range of actions that the applicant will be able to deploy to address any effects that are encountered. All these matters are provided for in the conditions and management plans that are proffered.

129. The above examples demonstrate what is, in my submission, an appropriate approach to managing the linked topics of uncertainty and risk. While the experts have a good understanding of the relevant environments and consider the likelihood of the proposed activities having material adverse impacts on frogs and surface waterbodies is low, there is residual uncertainty. That uncertainty means the experts are saying that while it is unlikely, it is possible that impacts could be greater than they predict. It is possible (but not likely) that the experts will be able to detect changes in frog behaviour that are attributable to vibrations from underground explosions. It is possible (but not likely) that deep mine dewatering would result in measurable changes to flows and levels in surface waterbodies.

130. The consequences, should frogs respond to vibrations, or should water changes at surface be detectable, are important but not catastrophic. It is the combination of the likelihood of something happening and its consequences that defines risk,[47] and the applicant's experts assess the risk in this case, to both frogs and water bodies, to be low.

131. Both the frogs and the waterbodies in the forest are important and valued natural resources. This means that even modest potential adverse impacts on them are not trivial and need to be addressed.

132. In response to this, the applicant, on the advice of its experts, proposes measures that:

[47] It is been long acknowledged that the RMA does not promulgate a "no-risk" approach. Instead, the measure of risk, its assessment and the acceptable degree of risk avoidance is a question of fact in each case. See *Land Air Water Assn v Waikato Regional Council* [2001] LGHNZ 44 at [515] - [523].

a. In the case of frogs – assumes that (implausibly) all frogs in the vibration footprint above the mine are affected and in response proposes the most extensive predator control project that has ever been implemented for this species and which will result in a net gain in frog numbers, even on that worst case scenario. If (as is far more likely), the worst case scenario does not eventuate, the gain to frog numbers will be even greater.

b. In the case of the waterbodies – assumes that meaningful changes at surface could occur and manages against that prospect by adopting extensive monitoring and a range of management responses should monitoring detect changes.

133. In both cases, the proposed conditions are intentionally designed so the risks sit with the applicant and not the environment. It is the applicant that has to adjust what it does in order to achieve the targeted increase in frog numbers if its mining activities are having a measurable adverse impact on frogs. It is the applicant that has to adjust what it does in order to ensure that meaningful changes in the waterbodies above the mine do not arise. Further, in both cases the activities that could give rise to the adverse impacts will not occur until after the access tunnels are constructed and as a consequence significantly more investigations will have been completed and enhanced confidence in possible outcomes will be available to inform the way activities are undertaken to further reduce risks and enhance positive outcomes.

134. In my submission the approaches proposed are robust, clear, precautionary, and supported by appropriate conditions that give the assurance needed that the Councils and DOC will have the ability to closely scrutinise what the applicant is doing and hold it to account if necessary.

135. Even in the RMA context, development is not enabled only where uncertainty is eliminated. Acceptable risks are tolerated and need to be managed. This is particularly the case for larger projects in complex environments. As one of the many examples in the case law, in *Director-General of Conservation* v *Marlborough District Council,*[48] the Environment Court considered an appeal against a decision to allow TrustPower to establish 6 new hydro stations in the lower Wairau Valley, with an associated alteration of the flow of the Wairau River. The Court found that the altered river flow was unlikely to have an adverse effect on macro-invertebrates, but given that there was "inevitable scientific uncertainty", conditions requiring monitoring and an adaptive management plan were appropriate (at paragraph 715):

> "*The macro-invertebrate community is unlikely to be adversely affected. The inevitable scientific uncertainty associated with the model predictions is addressed through conditions requiring monitoring, with a trigger linked to the sensitive EPT taxa. An adaptive management plan sets out the responses, and a review of conditions may be undertaken should the trigger level be breached. The composition and productivity of the macro-invertebrate community is predicted to be sufficient to support the fish and river bird populations."*

136. If the need for such an approach is acknowledged in the RMA context, then it surely must be appropriate under the Act, where the facilitative purpose of the legislation must receive the greatest weight in a panel's considerations (and more weight than the sustainable management purpose of the RMA),[49] and discretion to decline approvals only exists where adverse impacts are out of proportion to a project's regional or national benefits.[50]

---

48 *Director-General of Conservation* v *Marlborough District Council* [2010] NZEnvC 403.

49 Schedule 5, clause 17(1)(a).

50 Section 85(3).

Statutory Planning Assessment

137. As required, the application includes a detailed analysis of the WNP against the relevant statutory planning documents.[51] Alternative or additional analyses of aspects of the assessment contained in the application are presented in various comments by invited parties.

138. A response to those comments is provided in the planning evidence of Ms Fowler and Mr Kyle and I do not repeat their evidence.

139. I do remind the Panel that while the provisions of the various planning instruments (e.g., national policy statements and regional plans) that have been written under the various specified Acts (including the RMA and Conservation Act) are relevant to your evaluation and must be taken into account, the weight you give them is a matter for you to determine, and as you consider them you need to bear in mind they are not written with the purpose of the FTAA in mind. Rather they are written to assist in the management of activities and protection of resources for the purpose of the legislation under which they are written.

140. I submit that consideration of these planning documents can inform what good outcomes look like under the FTAA, but cannot determine those outcomes, or preclude the panel from taking a divergent approach to those planning documents, if the panel sees fit. The Act[52] stipulates that where any provision of the Resource Management Act 1991 would require a decision maker to decline an application for a resource consent, the panel must take into account that the provision would normally require an application to be declined, but must not treat the provision as requiring the panel to decline the application. The position is stronger again, I submit, where the relevant instruments prefer, but do not prescribe, a particular approach.

---

51 A.11 – Substantive Application Report – Fast-track Approvals Act 2024 Requirements.

52 Schedule 5, clause 17(4).

141. The only matter of detail I would highlight concerns the Forest & Bird comments that the applicant's assessment conflates operational need and functional need. I do not agree with Forest & Bird's contention that a functional need is not established for the purposes of the NES-Freshwater, and NPS-FM.[53]

142. I note the Forest & Bird comments to do include reference to the High Court's decision in *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council*[54] which provides a helpful discussion on functional need in the context of the Mt Messenger bypass, and which adopts a broader and (in my submission) more realistic approach to the concept of functional need. This is addressed further in the planning evidence of Ms Fowler and Mr Kyle.

Concluding comments and recommendations re further process steps

143. The applicant recognises the effort commenters have taken to provide their comments on the application within a tight timeframe, as required by the Act.

144. The comments have allowed the applicant to refine and improve the proposed conditions.

145. Some commenters are highly critical of the proposal and think it will deliver few benefits at enormous cost. Those views are as expected and are not supported by the weight of evidence.

146. While the comments and response process has enabled many of the gaps between the applicant and the Councils and DOC to be reduced and hopefully closed in many cases, there remain points where the parties are not agreed on the most appropriate conditions.

---

53 Comments of Forest & Bird, paragraphs 181 – 191.

54 *Poutama Kaitiaki Charitable Trust* v *Taranaki Regional Council* [2022] NZHC 629

147. In light of whatever assessment you make as to where things now sit, the Panel will need to determine how it will proceed to further consider and ultimately make its decisions on the application.

148. In doing so you must regulate your procedure as you think appropriate, without procedural formality, and in a manner that best promotes the just and timely determination of the approvals sought in the application.[55]

149. The Panel therefore has a broad discretion as to how it will proceed, and this is confirmed in the non-statutory Guidance Note prepared by the panel convener and associate panel conveners to assist panels and participants in substantive application processes.[56]

150. While it is entirely for the panel to determine its process, I make the following observations and suggestions in the hope they may be of some assistance:

    a. As you consider the comments and response, and in particular how matters have been now addressed in the proposed conditions, there may be matters which are unclear and would benefit from further information or explanation. Section 67 authorises you to request further information from the applicant (and/or from other participants if required).

    b. A request for further information may be an efficient way to get the panel to the point where it is able to conclude what it will decide on an issue. If you do ask for further information section 67(3) requires that it must be provided within 10 working days, or within such shorter period as you may determine. This process option therefore offers an efficient way of progressing and resolving issues that may be well suited to the tight time constraints the panel is working under.

---

55 Schedule 3, clause 10(1).

56 https://www.fasttrack.govt.nz/__data/assets/pdf_file/0022/8680/Panel-conveners-practice-and-procedure-guidance.pdf.

c. If there are material issues where the panel considers a section 67 request is not appropriate and you determine you need to better understand what the technical experts' views are, and how the experts think those issues can be best managed, there are several process options you can consider.

d. The most efficient option may be to require the relevant experts to meet with the panel in a workshop context where you can ask them collectively the questions that need to be answered, differences of view can be explained and explored, and you can seek their assistance on the best and most pragmatic way to take matters forward.[57]

e. Another option is to ask experts to conference between themselves to produce a joint statement in response to the questions you have. In my experience, such joint statements are often not as helpful to decision-makers as they could be, and can leave questions unanswered, or answered in ways which leave the decision-maker still scratching its head as to how best to proceed. The result in such situations is that some further process steps are required, thereby introducing inefficiency into the process that might be avoided by having the experts workshop with the panel.

f. The process of translating what subject matter experts advise should be done into certain and enforceable conditions can be a complicated technical task, and condition writing needs to be done with care. The panel may wish to consider at what points in the process the expert condition writers (generally planners, but not always) for the applicant, Councils and DOC could be usefully engaged to assist as you work towards producing draft conditions for formal comment.[58] Again, this could be in a workshop context with the panel to improve process efficiency. The Panel also has the

---

[57] This process is used to good effect in RMA hearings where there are differing scientific opinions and is colloquially referred to as "hot-tubbing".

[58] Section 70.

ability to engage its own condition writer to assist the process, if required.[59]

g. The Panel does of course have the discretion[60] to hold a formal hearing in accordance with the procedural requirements in sections 57 - 59 the Act. Hearings in relation to previous fast-track processes have been uncommon. I submit that is likely because, despite the requirement that hearings must avoid undue formality,[61] they are process-heavy, time-consuming, and poorly-suited to deliver the information a panel needs within the timeframes available, particularly for a complex proposal. Parliament has been clear in stating that no extra time allowance is available to a panel to make its decision if a hearing is held.[62]

h. I submit that while hearings are common in classic adversarial contexts, this is a process step best avoided in the modified and time-constrained context of the Act.

151. The applicant appreciates the opportunity to provide its response to comments, and stands ready to assist the Panel in whatever ways you may require as the process moves forward.

Dated 1 September 2025

_____

Stephen Christensen
Counsel for Oceana Gold (New Zealand) Limited

59 Schedule 3, clause 10(3).
60 Section 57(1).
61 Section 58(1)(a).
62 Section 57(6).