

22 August 2025

Andrew & Rachel Wharry

Fast-track Approvals Act 2024  
Environmental Protection Authority

OceanaGold (New Zealand) Limited  
Waihi North Project

Dear Panel Members

OceanaGold is seeking to construct a tunnel through our private owned land and mineral estates. Under the Crown Minerals Act 1991 (CMA) Section 57 defines the term "entry on land" and references the word prejudicial. Legally, prejudicial is defined as intending to injure or impair rights, or as leading to a decision or judgment on an improper basis. Adjectival, definitions include harmful, detrimental, and undermining. The proposed tunnel beneath our property is clearly prejudicial to our land and property rights. It would interfere with our lawful ability to access groundwater through deep boreholes -an essential right for both domestic and livestock water supply, and extraction of Crown-owned minerals would prejudicially affect the recovery of the privately-owned minerals.

Further, Section 25(6) of the CMA states that 'the Minister must not grant an exploration or mining permit in respect of privately owned minerals except as provided for under Section 84 of the Marine and Coastal Area (Takutai Moana) Act 2011.' Additionally, Section 54(2) of the CMA provides that the holder of a permit (excluding Petroleum) must not prospect, explore, or mine on or under land without a written access arrangement agreed to by each owner and occupier of the affected land.

Accordingly, OceanaGold requires our explicit consent to tunnel through our privately owned land and mineral estate. Proceeding without such consent would be contrary to the legal requirements set out in the Crown Minerals Act and would infringe upon our rights as landowners and mineral rights holders."

Our landholdings include properties located at

These comprise a total of 19 sections held across nine separate property titles, with three residential dwellings currently built on them. One of these homes is a large executive residences, newly constructed in 2023. In addition, our farm infrastructure includes a cowshed with its own water supply via deep well borehole and submersible pump, and five operational support buildings. The combined land area of these holdings is approximately 40.1663 hectares.

An additional 10<sup>th</sup> property, located at [REDACTED] (1.3314 hectares includes another executive home and is held by registered owners [REDACTED] Holland as executors. The named beneficiary of this property is [REDACTED]

OceanaGold's proposed interconnecting tunnel corridor would traverse approximately 500 meters beneath our properties, affecting around 15 hectares of land and five separate property titles-three of which contains residential dwellings. These affected properties are situated between State Highway 25(Waihi-Whangamata Road) and the Walmsley Stream.

The majority of our 40 hectares have been identified for future residential development under the Hauraki District Council's Hauraki District Growth Strategy: Te Rautaki Whakatipu 2050'. Given the land's proximity to existing Waihi residential areas, favourable roading access, and suitable contour, subdivision and development are realistic future opportunities for our family. While the current land use is dairy farming, the long-term potential for residential development is significant."

Our farm has been in our family since 1972 and is now in its second generation of ownership. It holds significant personal and historical value to us and our children. Currently, two of our three children and their families reside on our property at [REDACTED] Wharry Road. The location of the proposed interconnecting tunnel raises serious concerns, as it may limit our ability to subdivide and develop additional homes for future generations.

We are deeply concerned about the potential and unknown impacts of an underground tunnel beneath our land -including dewatering, vibration, noise, reduced property values, insurance and liability implications, and the imposition of conditions on our certificates of title. These issues present unacceptable risks to our family, our property rights, and the long-term viability of our land."

"OceanaGold requires the consent of private landowners and occupiers affected by the proposed Waihi North Project. The Environmental Protection Authority should not permit, nor tolerate, any deviation from this requirement. Despite our repeated efforts to raise legitimate concerns regarding the proposed interconnecting tunnel and our private mineral rights, OceanaGold has consistently dismissed our input, leaving our concerns unaddressed.

In our case, the aspect of the proposed Waihi North Project that affects us most directly is the interconnecting tunnel. OceanaGold requires underground access between the new surface and underground mining site at the end of Willows Road and their existing processing facility on Baxter Road.

The mineral body OceanaGold intends to mine-known as 'Wharekirauponga'-is located within the Coromandel State Forest Park and not beneath our property. However, the area beneath our land is part of the proposed route for an underground access tunnel, not an area designated for mineral extraction,"

The proposed interconnecting tunnel is intended solely for access purposes and could feasibly be constructed beneath land already owned by OceanaGold-specifically between Golden Valley Road and State Highway 25 (Waihi-Whangamata Road).

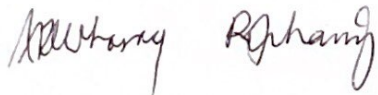
From that point, the tunnel could follow the existing public road corridor along State Highway 25 and Willows Road, continuing directly to OceanaGold's Willows Road proposed mine site. This alternative route would avoid impacting any privately owned land.

Notably, this suggested route aligns with the path OceanaGold has already proposed for its upcoming service trench, scheduled to commence construction later this year. It appears that the current proposed tunnel alignment has been selected primarily based on construction cost efficiencies, with insufficient regard for the rights and interests of private landowners, occupiers, and mineral title holders."

"It is evident that consultants often frame their reports in ways that align with the interests of their clients. Throughout OceanaGold's supporting documentation for the Waihi North Project, the language used tends to emphasize only the positive aspects, while downplaying or omitting potential adverse effects. Phrases such as 'less than minor' or unlikely to be noticeable' appear frequently and consistently across these reports. Notably, many of these assessments are based from Australia or the South Island of New Zealand, and therefore may lack a direct understanding of the local context and the concerns of those living in the affected area."

Thank you for time and your consideration

Yours sincerely

Handwritten signatures of Andrew and Rachel Wharry in black ink.

Andrew & Rachel Wharry



# Lyfestyle Research Ltd

The people with answers on the earth

PO Box 532  
550 Anglesea St  
Hamilton 3204  
New Zealand

Phone 07 - 838 1067  
Fax 07 - 838 1093  
Email: [cull@lyfestyle.co.nz](mailto:cull@lyfestyle.co.nz)  
Website: [www.lyfestyle.co.nz](http://www.lyfestyle.co.nz)

Our Ref: LMS 1812

## Re: NON-STATUTE MINERAL OWNERSHIP FOR LAND ON CT 392/274, WAIHI.

Waihi Borough was constituted in 1902.

Local Authority spent Public Monies on the ex subject streets, maintained and were used as a Public Highway and deemed to have ownership pursuant to early Municipal Corporation Act.

- A Public Notice Meeting dated 24<sup>th</sup> Day March 1921 streets were stopped in Waihi Borough vide  
S181 and S182 MC Act 1908  
S47 MC Amended Act 1913  
By special Council Order.
- Stopped streets transferred to A H Clark, Transfer 177808 for the consideration of 7 pounds 1 shilling 9 pence, CT 392/274 issued on 17<sup>th</sup> April 1924 (SO 22222 – 1921)

The Land and Non Statute Mineral Estates vested in Waihi Borough Council originally as streets who then stopped the streets and transferred both estates into private ownership in 1924, and lie presently in the ownership of AR and RA Wharry, [REDACTED] 3610.

G E CULLEN  
Crown Accredited Mineral Researcher

21 / 1 / 2022



**RECORD OF TITLE  
UNDER LAND TRANSFER ACT 2017  
FREEHOLD  
Historical Search Copy**



*R.W. Muir*  
Registrar-General  
of Land

Constituted as a Record of Title pursuant to Sections 7 and 12 of the Land Transfer Act 2017 - 12 November 2018

**Identifier** SA392/274  
**Land Registration District** South Auckland  
**Date Issued** 17 April 1924

---

**Estate** Fee Simple  
**Area** 2.8758 hectares more or less  
**Legal Description** Section 114-117 Block XVI Ohinemuri  
Survey District

**Original Registered Owners**  
Judith Mary Wharry

---

**Interests**

Exploration Permit embodied in Register SA67D/24 - 5.5.1999 at 9:00 am  
6097751.1 Departmental Dealing correcting the memorials by deleting the memorial for expired permit/licence embodied in Register SA67D/24 - 29.7.2004 at 12:23 pm  
7559906.2 Transfer to Andrew Robert Wharry and Rachel Ann Wharry - 4.10.2007 at 3:38 pm  
7559906.3 Mortgage to Judith Mary Wharry - 4.10.2007 at 3:38 pm  
8615059.1 Discharge of Mortgage 7559906.3 - 22.10.2010 at 10:58 am  
8615059.2 Mortgage to Rabobank New Zealand Limited - 22.10.2010 at 10:58 am  
12094828.1 Discharge of Mortgage 8615059.2 - 23.4.2021 at 3:33 pm

**SOUTH**

Reference:	Vol.	Folio
	Transfer No.	1775-00
	Application No.	
	Order for N/C No.	



Register Book.  
Vol. 392, p. 274

CERTIFICATE OF TITLE UNDER LAND TRANSFER ACT.

This Certificate, dated the seventeenth day of April, one thousand nine hundred and twentysix  
under the hand and seal of the District Land Registrar of the Land Registration District of Auckland Witnesseth that  
ANDREW HUGH CLARK of said printer

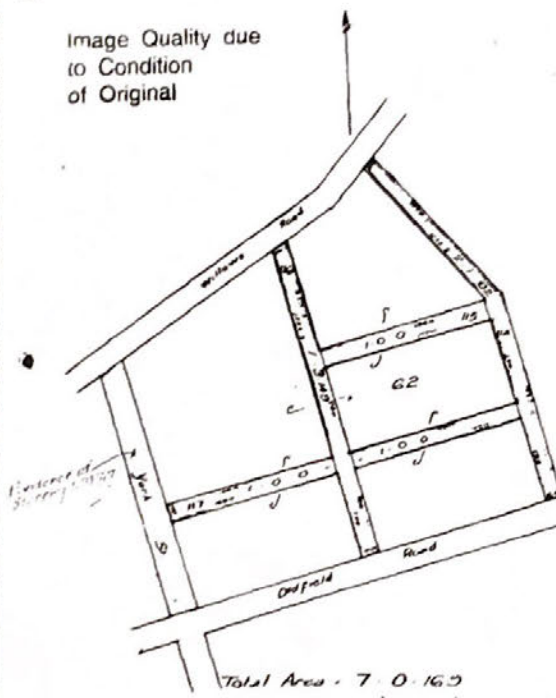
is seized of an estate in fee-simple (subject to such reservations, restrictions, encumbrances, liens, and interests as are notified by memorial under written or endorsed hereon, subject also to any existing right of the Crown to take and lay off roads under the provisions of any Act of the General Assembly of New Zealand) in the land hereinafter described, as the same is delineated by the plan hereon bordered green, be the several dimensions a little more or less, that is to say: All that parcel of land containing SEVEN ACRES AND SEVEN DECADE FRACTIONS more or less situated in the Borough of Waihi being Sections 114, 115, 116 and 117 Block A14 of the Ohineauri Survey District

METRIC AREA IS 2.8755 ha



District Land Registrar

Image Quality due  
to Condition  
of Original



Total Area = 7.0.165  
goats 5 Chains to an Acre  
Dell A.E.M.

Transfer No. 182129 Andrews Hugh Clarke to  
Edo Byrns of Warbi, Harms, produced  
9<sup>th</sup> Septm Br 1924 at 12:36 pm. H. V. 182129  
A.L.B.

Mortgagee To HENRY Otto Byrning to  
Danson Donaldson Friedrich September  
1924 at 12:27 p.m.

Marigny  
Donatilio  
Produced by  
DISCHARGE  
1955  
la Comiss  
Munici

Edward and Mary O'Brien  
 1841

Mortgage No 23590 Otto Björning to  
Lennart Hulténson B. Åron produced  
24 9 1935 at 10.30 161

Prove Evidence of ongoing adulterous  
 relationship between John P. Hinnerbach  
 and 10/23 5 lines  
 Hinnerbach

mortgage No 265569 of the 1st Mort.  
to the National Bank of Montreal  
limited produced 1000 1100 of 1918

Continued

392/274

S.130158 Transfer to Ernest Pearce of Waihi  
farmer produced 10.10.1957 at 9.54 o'clock

T.J. DENNETT  
A.L.R.

S.130159 Mortgage to Bank of New Zealand  
produced 10.10.1957 at 9.54 o'clock

T.J. DENNETT  
A.L.R.

S.516598 Mortgage to The State Advances  
Corporation of New Zealand produced 28.4.1971  
at 2.30 o'clock

W.D. LONGHURST  
A.L.R.

THIS REPRODUCTION (ON A REDUCED SCALE)  
- CERTIFIED TO BE A TRUE COPY OF THE ORIGINAL  
REGISTER FOR THE PURPOSES OF SECTION  
215A LAND TRANSFER ACT 1952

*redan*

A.L.R.

S.572183 Transfer to Douglas Stewart Wharry of  
Katikati farmer produced 1.9.1972 at 11.05 o'clock

*redan*  
A.L.R.

S.572184 Mortgage to The State Advances  
Corporation of New Zealand produced 1.9.1972  
at 11.05 o'clock  
H887498.2

*redan*  
A.L.R.

S.572185 Mortgage to Ernest Pearce produced  
1.9.1972 at 11.05 o'clock  
H433506

*redan*  
A.L.R.

S.572186 Mortgage to David Wharry and Edith  
May Wharry produced 1.9.1972 at 11.05 o'clock

*redan*  
A.L.R.

H.605203 Transfer of a 1/2 share to Judith  
Mary Wharry of Katikati married woman produced  
2.8.1985 at 9.01 o'clock

*for A.L.R.*

Mortgage S.572184 is vested in The Rural Banking  
and Finance Corporation of New Zealand  
See H.887498.1

*for A.L.R.*

B541590.1 Exploration Permit to Welcome  
Gold Mines Limited, Martha Mining  
Limited, Waihi Mines Limited and Auag  
Resources Limited  
Term 5 years commencing on 3.5.1999 -  
5.5.1999 at 9.00  
CT 67D/24 issued

*for RGL*

B646237.2 Transmission of the 1/2 share  
of Douglas Stewart Wharry to Judith Mary  
Wharry as executor

B646237.3 Transfer of the 1/2 share  
acquired by Transmission B646237.2 to  
Judith Mary Wharry

all 15.2.2001 at 12.13

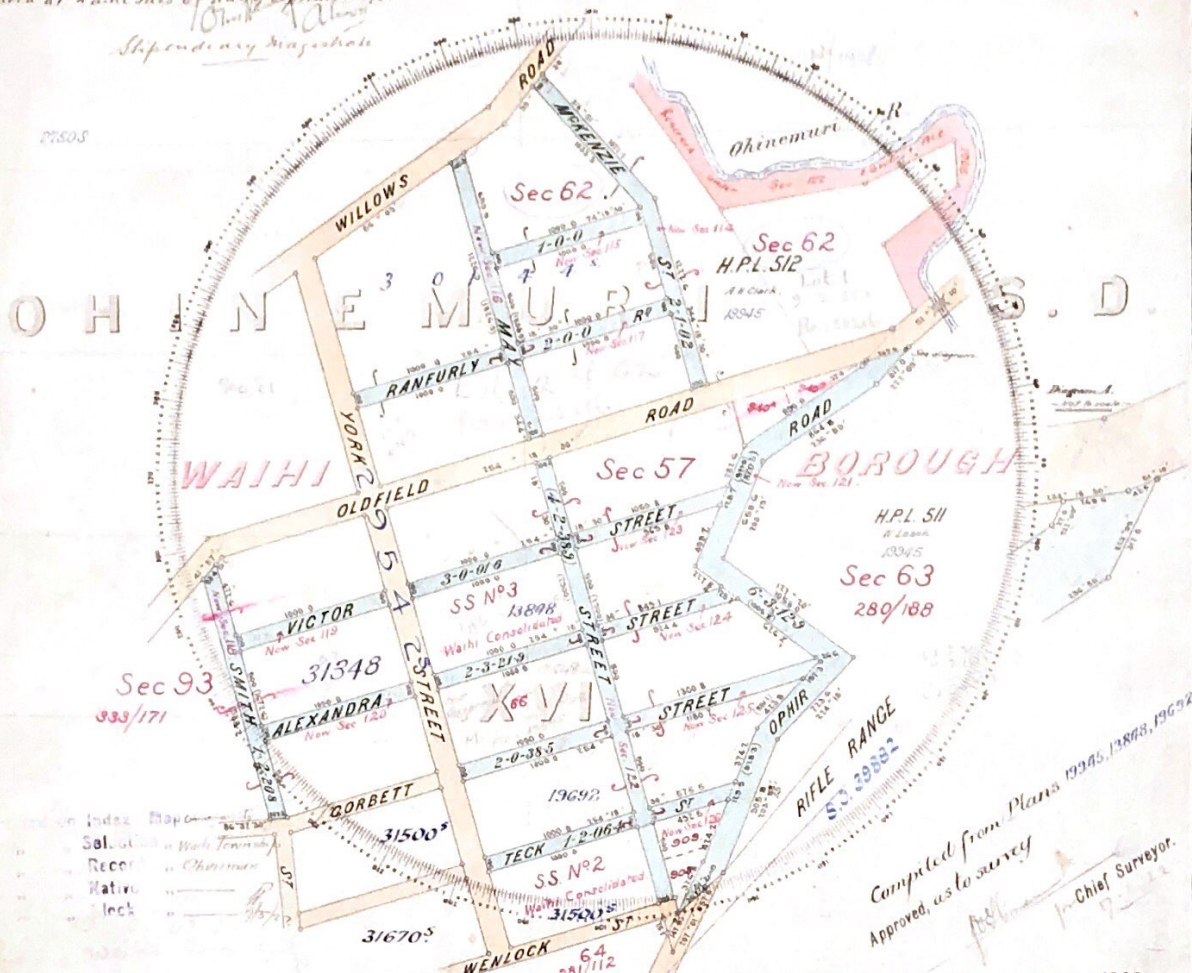
*for RGL*



The decision of the electors of the Borough of Waihi, made at a meeting duly called by Public Notice and held on the 24th day of March 1921 that the streets shown on this plan and colored blue, shall be stopped, is hereby confirmed.  
 Dated at Waihi this 6th day of September 1921  
*Shirley Mary Magistrate*

DEPARTMENT OF LANDS AND SURVEY, NEW ZEALAND.  
 AUCKLAND LAND DISTRICT

Land 22



Instructions No. \_\_\_\_\_ Date: \_\_\_\_\_  
 Field-book No. \_\_\_\_\_  
 Traverse Reduction-book \_\_\_\_\_  
 Map revised \_\_\_\_\_  
 Registered \_\_\_\_\_

Plan of R<sup>o</sup> to be stopped under Section 181 & 182 of The Municipal Corporation Act 1908, as amended by the Amendment Act 1913.  
 Surveyed for the Waihi Borough Council. [Section 47] " " " " " "  
 By \_\_\_\_\_ Licensed Surveyor.

Date: \_\_\_\_\_

SCALE: 5 Chains to an Inch.

22222

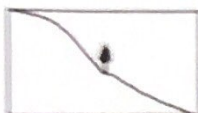
CERTIFICATE.

I HEREBY CERTIFY that this plan has been made from surveys executed by me (or under my own personal supervision, inspection, and field check); that both plan and survey are correct; and that all the rules and regulations with respect to the survey of Crown or Native lands have been strictly complied with.

Witnessed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 1921

*Matthews*  
 Licensed Surveyor.

Safe



# Lyfestyle Research Ltd

The people with answers on the earth

PO Box 532  
550 Anglesea St  
Hamilton 3204  
New Zealand

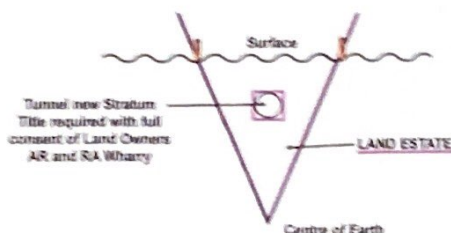
Phone 07 - 838 1067  
Fax 07 - 838 1093  
Email: [cull@lyfestyle.co.nz](mailto:cull@lyfestyle.co.nz)  
Website: [www.lyfestyle.co.nz](http://www.lyfestyle.co.nz)

Our Ref: LMS 1813

## LAND ESTATES RTs SA 392/274 and SA 726/4 REPORT WAIHI – Andrew Wharry, Client.

### Definition of Land Estates

Includes all soil subsoil and air space below the surface down to the centre of the earth and air space to the heavens above the surface.



For a tunnel to put through the Land Estate you need to create a separate stratum estate for the occupied air space by way of a stratum title or a stratum instrument title. This can be done by way of the Land Transfer Act or Proclamation, both would require your full consent as Land Owner, so you can veto any future action.

In this particular circumstance as Mining is not occurring the Mineral Ownership is not an issue.

Note my comments are relevant to both RT SA 392/274 Private Non Statue Minerals and RT SA 726/4 Crown Minerals.

Hope this helps, I do not see you have any problems if you stick to common land laws protocol.

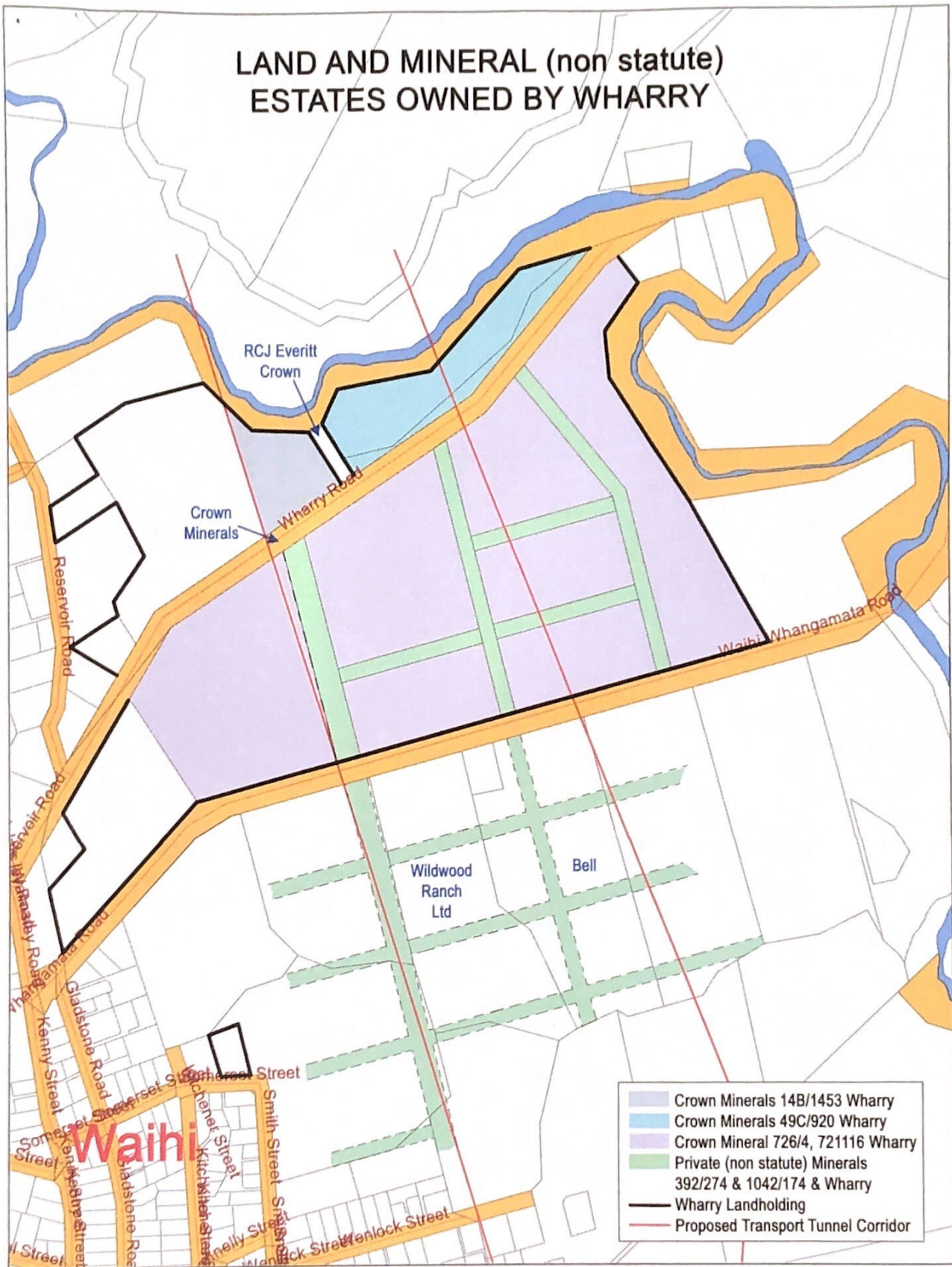
NB In the past I have prepared stratum survey plans for elevated bridges and subterranean tunnels, what seems complicated is easily resolved.

  
G E CULLEN  
Crown Accredited Mineral Researcher  
212/2022

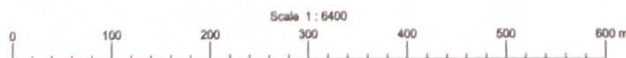
# **WHARRY LAND AND MINERAL INVESTIGATION**

October 2022

# LAND AND MINERAL (non statute) ESTATES OWNED BY WHARRY



Graham Cullen  
Crown Accredited Supplier  
Land and Minerals



**CONFIDENTIAL**

October 2022  
LRL Ref: LMS 1813



# LAND DEFINITION ESTATES – WHARRYS

RTs 392/274, 726/4, 1042/174, 49C/920, 273578, 721116

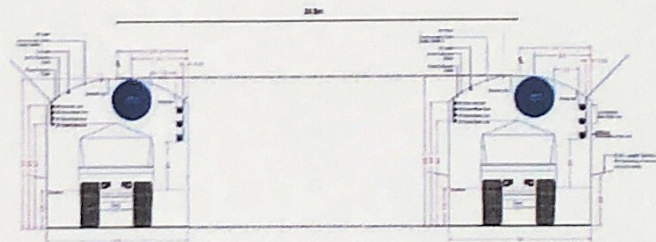
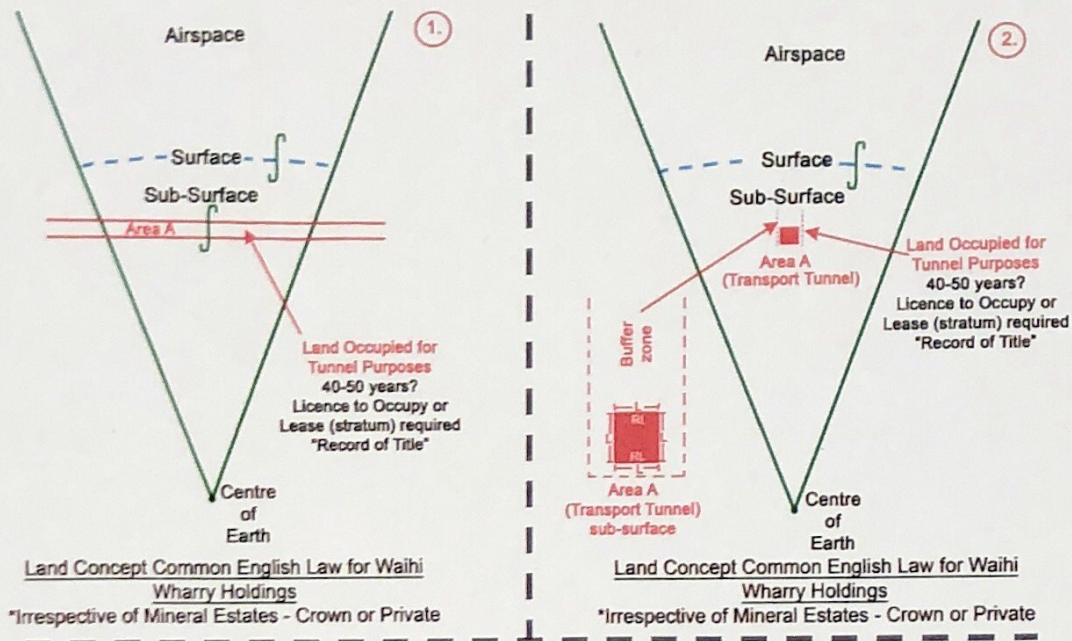


Figure 7: Conceptual layout section of twin tunnel option (after Mitchell Daysh 2022).

## Definition of Land Estates – Common English Law

Includes all soil subsoil, subsurface and air space below the surface down to the centre of the earth and air space to the heavens above the surface.

For a significant Transport Tunnel to be put through the "Land Estate" you need to create a separate stratum estate for the occupied space by way of a stratum title or a stratum instrument of title eg Licence to Occupy, Lease or Title.

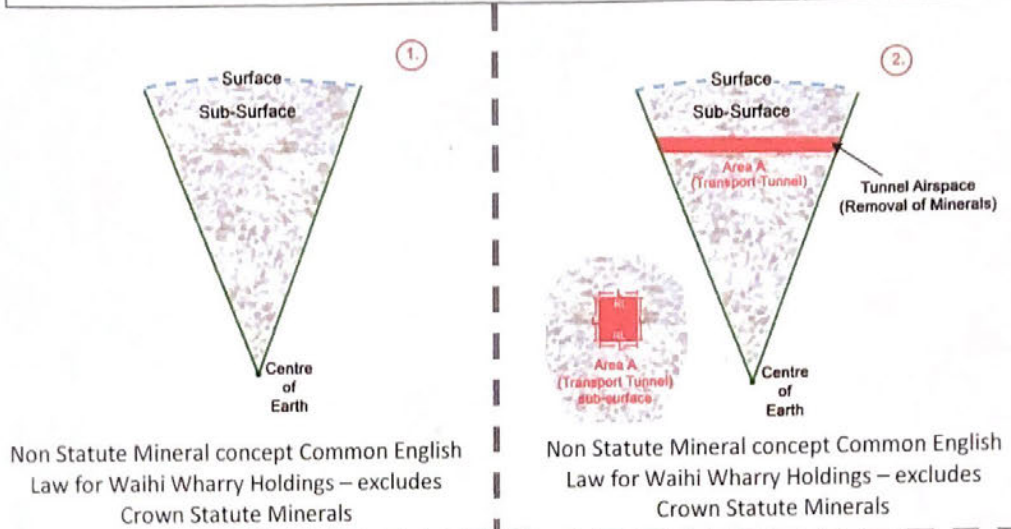
This can be done by way of the Land Transfer Act or Proclamation which would require full consent of landowner.

Precedent would be stratum survey plans and subsequent actions for elevated road bridges (airspace) and large subterranean road tunnels (subsurface).

Prepared by Graham Cullen  
Crown Accredited Supplier  
Land and Minerals

**CONFIDENTIAL**

**NON STATUTE (PRIVATE) MINERAL DEFINITION ESTATE**  
**RTs SA392/274, and SA1042/174 - WHARRY**



**Definition of Mineral Estates in Crown Minerals Act 1991**

*“Mineral” means a naturally occurring inorganic substance beneath or at the surface of the earth, whether or not under water; and includes all metallic minerals, non-metallic minerals, fuel minerals, precious stones, industrial rocks and building stones, and a prescribed substance within the meaning of the Atomic Energy Act 1945:*

**NON STATUTE MINERAL OWNERSHIP CONTAINED WITHIN RTs SA392/274 and SA1042/174 – AUTHORITY – WHARRY**

Originally Local Authority spent Public Monies on the ex subject streets, maintained and were used as a Public Highway and deemed to have ownership pursuant to early Municipal Corporation Act.

- A Public Notice Meeting dated 24<sup>th</sup> March 1921 streets were stopped in Waihi Borough vide S181 and S182 MC Act 1908 S47 MC Amended Act 1913 by Council Order.
- Stopped streets transferred to AH Clark, Transfer 177808 for the consideration of 7 pounds, 1 shilling, 9 pence, CT SA392/274 issued on 17<sup>th</sup> April 1924 (SO 22222 – 1921).
- The Land and Non Statute Mineral Estates vested in Waihi Borough Council originally as streets who then stopped the streets and transferred both estates into private ownership in 1924 and lie presently in the ownership of AR and RA Wharry.

As the registered owners also own the fee simple land estate and private minerals an access arrangement is required with the Wharry's to mine Statute Minerals over their property (S.47.06 CM Act 1991).

Prepared by Graham Cullen  
 Crown Accredited Supplier  
 Land and Minerals

/ / 2022

**CONFIDENTIAL**

08 August 2022

Andrew and Rachel Wharry  
23 Wharry Road  
WAIHI 3610

Dear Andrew and Rachel

**RE: Mineral Rights Advice**

Thank you for providing us with the mineral rights advice you received from Lifestyle Research Ltd dated 21 January and 2 February 2022. Based on that advice, you maintain that you have mineral rights over your property that would prevent OceanaGold tunnelling beneath the property without your express consent.

As you invited us to, we have reviewed that advice and OceanaGold has obtained its own advice.

OceanaGold is advised that:

1. Based on the information provided, you have private mineral rights on the pieces of land within your property that were formerly streets.
2. The Crown retains mineral rights over gold and silver in your property and the Crown has issued a Mining Permit (**MP**) that overlies your property and authorises OceanaGold to mine for gold and silver, provided it obtains any other necessary authorities like resource consents. Your advice from Lifestyle Research Ltd does not acknowledge this MP.
3. Your private mineral rights and OceanaGold's MP rights over gold and silver can co-exist.
4. Your advisor is correct that OceanaGold would not require an access arrangement with you, i.e. your express consent, if it was conducting minimum impact activities on your property.
5. Your advisor has not recognised that OceanaGold does not require your express consent to a tunnel for mining below the surface of your property if the tunnel does not unreasonably interfere with lawful activities you undertake on your property i.e. does not damage the surface of the land, cause you loss or damage, or have any prejudicial effect on your current use and enjoyment or future use of the surface of the property (section 57 Crown Minerals Act 1991).

In summary, based on current information regarding your property and expert advice OceanaGold considers that it can safely tunnel beneath your property without interfering with your lawful use of it, therefore it does not agree that your express consent is needed.

Your advisor recommends that you do not enter into any communication or correspondence with OceanaGold, however we remain open to further discussion with you regarding the Waihi North Project.

Yours sincerely



Kyle Welten  
Superintendent - External Affairs & Social Performance  
OceanaGold (New Zealand) Ltd

**Oceana Gold (New Zealand) Ltd**  
(Incorporated in New Zealand)  
NZBN 9429 0377 53023)

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[www.waihigold.co.nz](http://www.waihigold.co.nz)

**HOLLAND BECKETT**  
LAW

18 August 2022

OceanaGold (New Zealand) Limited  
43 Moresby Avenue  
WAIHI 3641

BY EMAIL  
waihi.info@oceanagold.com

Attention Kyle Welten

Dear Kyle

**Wharekirauponga Underground Mine and Access Tunnels**

1. We act for Andrew and Rachel Wharry. We refer to your letter to our clients dated 8 August 2022 in relation to OceanaGold (New Zealand) Limited's (**OceanaGold**) ability to establish a tunnel beneath our clients' property at 24 Wharry Road (**Property**) without their express consent.
2. The purpose of this letter is to set out our clients' position in relation to the tunnel. In particular, we set out the reasons that OceanaGold would require express consent from our client to enter the Property, namely the proposed activity:
  - (a) would not qualify as a "minimum impact activity" (**MIA**) as defined by section 2 of the Crown Minerals Act 1991 (**CMA**); and
  - (b) would interfere with the lawful activities that our clients undertake on their property (now and in the future).
3. At this point of time our clients are not prepared to provide the required consent. Should OceanaGold present our clients with a proposal for an access arrangement which adequately compensates them,<sup>1</sup> then our clients may reconsider this position.

**Background**

4. By way of background, the Property is made up of a number of land titles including SA392/274 (Section 114-117 Block XVI Ohinemuri) (**Title A**). As set out in your letter, OceanaGold have received a copy of the reports by Lifestyle Research Ltd (**Lifestyle**) dated 21 January 2022 and 2 February 2022 commissioned by our clients. We understand from your letter that OceanaGold agrees with Lifestyle that the minerals beneath Title A (other than petroleum, gold, silver and uranium which are owned by the Crown)<sup>2</sup> remain in the private ownership of our clients. We also agree with this assessment.
5. Notwithstanding the above, we understand that OceanaGold intends to establish Wharekirauponga Underground Mine beneath the Coromandel Forest Park. It also intends to construct a new underground dual tunnel which connects the Wharekirauponga Underground Mine and Willows Surface Facilities Area beyond the Coromandel Forest Park. Further, and most

<sup>1</sup> Section 60 of the Crown Minerals Act 1991 provides that compensation can be paid to any owner or occupier of the land as a consequence of the permit holder prospecting, exploring, or mining on or in the land.

<sup>2</sup> Crown Minerals Act 1991, s 10.

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relevantly, it intends to construct a single 4.7km long tunnel (**Tunnel**) from the Willows Road farm to the Waihi Processing Plant, linking to the dual tunnel system, in order to transport ore from the underground mine back to the Waihi Processing Plant. Although we understand that the technical studies and consultation around final tunnel alignments are ongoing, it is clear from the map provided on the OceanaGold website that the Tunnel would be located directly beneath the Property, including Title A.

6. We agree that the Crown retains mineral rights over gold and silver in the Property<sup>3</sup>, and that a Minerals Mining Permit (41808) (**Mining Permit**) has been issued to OceanaGold for the mining of gold and silver which overlies the Property. The Mining Permit grants the right for OceanaGold to prospect, explore for and mine silver and gold in the permit area.<sup>4</sup> However, we note that in doing so OceanaGold must comply with the CMA and all other relevant legislative requirements.<sup>5</sup> In particular, the CMA requires landowners to grant consent to permit holders to enter their land.<sup>6</sup> This is subject to specific exceptions which we discuss below.

#### Access without express consent

7. Generally, permit holders may not enter any land to which the permit relates unless they have entered into and complied with the terms of an access arrangement with the owner of that land.<sup>7</sup> While the CMA provides specific exceptions to this rule, for the reasons detailed below, we do not consider the construction of the Tunnel would qualify under these exceptions. Therefore, consent would be required from the owner to enter the Property.

#### Minimum Impact Activity

- (a) Firstly, permit holders may enter land to carry out a MIA in the absence of written consent from the owner of that land.<sup>8</sup> We do not consider the construction of the tunnel to be a MIA. In support of this, we rely on the definition of MIA which expressly excludes the use of explosives.<sup>9</sup> We understand that the Tunnel would be developed using a drilling and blasting method which includes the controlled use of explosives to break rock for excavation. Such a method is clearly excluded by the definition of a MIA.

#### Interference with the surface of the land

- (b) Secondly, activities carried out below the surface of land will not be treated as entering on that land if the surface of the land is not likely to be damaged or affected or the present or future use and enjoyment of the land is not diminished.<sup>10</sup> Without having access to the consent documentation for the Tunnel we are unable to fully understand the effects the Tunnel would have on the surface of the Property. However, on its face, our clients have serious concerns about the impact the Tunnel would have on future development of the Property. The Hauraki District Growth Strategy 2050 identifies the Property as being part of a future growth area for residential zoning. There is therefore a real opportunity for our clients to subdivide and develop the Property in the future. It

<sup>3</sup> As above, s 10.

<sup>4</sup> Minerals Mining Permit 41808, conditions 1 & 2.

<sup>5</sup> As above, condition 4(a).

<sup>6</sup> Crown Minerals Act 1991, s 54.

<sup>7</sup> As above, s 54.

<sup>8</sup> As above, s 49.

<sup>9</sup> As above, s 2: minimum impact activity, para (h).

<sup>10</sup> As above, s 57.

is our clients' opinion that the Tunnel would impact on any proposed development within the vicinity of the Tunnel and deter prospective purchasers from purchasing a section on the Property. Therefore, it appears that the Tunnel would prejudicially affect the possible future use of the surface of the land.


#### Title A

8. We note that condition 13 of the Mining Permit further requires OceanaGold to not unreasonably interfere with the activities of any other persons lawfully operating in the permit area. Where Crown-owned and privately-owned minerals coexist below the surface of the same piece of land, extraction of the Crown-owned minerals would prejudicially affect the recovery of the privately-owned minerals. Therefore, practically speaking should OceanaGold establish the Tunnel below Title A, our clients would not be able to carry out their rights to mine the privately-owned minerals beneath Title A. We consider this to be an unreasonable interference with our clients' lawful rights and therefore the Tunnel cannot exist beneath Title A at all.

#### Conclusion

9. For the reasons set out above, we do not consider that OceanaGold is able to access the Property without an access arrangement with our clients. At this point of time our clients are not prepared to provide the required consent. Should OceanaGold present our clients with a proposal for an access arrangement with adequate compensation to be paid to our clients,<sup>11</sup> then our clients may reconsider this position.
10. Our clients are also unhappy with the level of engagement OceanaGold has had with them in relation to the establishment of the Tunnel. In fact, OceanaGold had not engaged with our clients at all until after our clients provided it with Lifestyle's reports. Should OceanaGold intend to come to a working arrangement with our clients, they require adequate communication and knowledge of what is being proposed to occur beneath the Property. We therefore request a detailed update on the proposed mining operations below the Property and a response to the content set out in this letter **within 10 working days of the date of this letter**.

Yours faithfully  
HOLLAND BECKETT LAW



**Laura Jeffries / Solicitor**  
DDI 07 262 0438 / M 027 111 292  
E laura.jeffries@hobec.co.nz  
Supervising Partner Vanessa Hamm

<sup>11</sup> Section 60 of the Crown Minerals Act 1991 provides that compensation can be paid to any owner or occupier of the land as a consequence of the permit holder prospecting, exploring, or mining on or in the land.

# Pip Walker Environment Law

phone: 0220442631 | email: pip.walker@environmentlaw.nz | 271 Hillhead Road, Corstorphine, Dunedin 9012

**26 August 2022**

Laura Jeffries  
Holland Beckett Law  
Private Bag 12011  
Tauranga 3143

By email: laura.jeffries@hobec.co.nz

**Dear Laura**

**Re: Wharry Property, Waihi**

1. I act for Oceana Gold (New Zealand) Limited (**OceanaGold**) and refer to your letter of 18 August 2022 regarding your clients Andrew and Rachel Wharry (**the Wharrys**).

## **OceanaGold's approach**

2. OceanaGold (including current staff who have worked in Waihi under Newmont) has considerable experience in this scenario where people in the community raise concerns about potential effects of mining operations on their properties.
3. To this end OceanaGold has engaged leaders in their respective fields to assess the potential impacts of the proposal, including the Interconnecting Tunnel which will go underneath part of the Wharry land. Based on OceanaGold's experience on other projects and based on the expert advice for this particular project, OceanaGold believes there will be no surface impacts which impede your clients use of their land. OceanaGold is proposing conditions that will ensure vibration levels are below the level where property damage could occur and this will avoid property damage and protect amenity values.
4. Nevertheless, OceanaGold appreciates that people can still have residual concerns about the potential effects of underground mining, particularly on their amenity and property values. For this reason OceanaGold has developed property value management measures for residents who are or are potentially impacted by OceanaGold's operations. OceanaGold representatives have discussed these with your clients (see paragraphs 6(c) and 6(f) below), however for your benefit the key components for the Wharrys<sup>1</sup> are:

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<sup>1</sup> There is also a "Top-Up" option where a person selling their property believes the sale price has been affected by the mining operations. Note this option applies to properties sold on the open market and I understand that the Wharrys are not currently intending to sell.

- a. An Amenity Effects Programme (AEP) designed to offset a perceived loss of amenity after blasting activities commence;
- b. An ex gratia payment which is equal to 5% of the property's agreed market value. Please note that this would be 5% of the value of the land which the Interconnecting Tunnel passes underneath, not the entire Wharry landholdings;
- c. A "We Break, We Pay" system in the unlikely event that mining operations did cause damage to home or contents.

## Engagement

- 5. In relation to your paragraph 10, OceanaGold strongly repudiates any suggestion of inadequate engagement with the Wharrys and disagrees with the following statement in your letter:

In fact, OceanaGold had not engaged with our clients at all until after our clients provided it with Lifestyle's reports.

- 6. OceanaGold undertook consultation with the Wharry's prior to receiving the Lifestyle reports and will continue to offer opportunities for the Wharrys to meet with OceanaGold, and its experts, should the Wharrys wish to do so. Formal consultation with the Wharrys<sup>2</sup> up until OceanaGold's letter of 8 August 2022 is recorded as follows:
  - a. On 13 July 2021 Andrew Wharry visited the Project Information Office with questions about the proposed Interconnecting Transport Tunnel. At this time some of the specific information was not known (due to ongoing studies) and a commitment was made to visit him once more information was available.
  - b. On 26 October 2021 OceanaGold representatives visited Rachel and Andrew Wharry and shared the proposed corridor for the Interconnecting Transport Tunnel with them. An indication of the tunnel depths was given, together with a summary of the expected vibration effects. In the same meeting the Social Impact Assessment was explained, and an invite extended to attend one of WSP's engagement events.
  - c. On 1 December 2021 OceanaGold representatives met with Andrew and Rachel Wharry at the OceanaGold Moresby Ave Office and gave an overview of the proposed Interconnecting Transport Tunnel, including the predicted effects and the property value management measures. An offer was made for the Wharrys to meet with any of OceanaGold's technical experts as a way of helping the Wharry's better understand the predicted effects.
  - d. Around this time Telfer Young were engaged to prepare a comprehensive market valuation on the Wharry property (**the Valuation**). Even though no plan change has been developed for rezoning the Wharry land, the Valuation took account of the area having been identified for future expansion of the town and noted that at the date of the Valuation (12 May 2022) the Council was seeking an update on the costs of providing services into the proposed areas. As part of the valuation process Telfer Young factored in costs of subdivision (selling costs, legal fees, survey, development contributions, fencing, power, roading and a margin for profit and risk).
  - e. On 17 June 2022 OceanaGold contacted the Wharrys to advise them that the Telfer Young report had been prepared and a copy of this report was subsequently given to them, and can be provided to you on request.

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<sup>2</sup> This excludes the more general community wide engagement and consultation which has been ongoing.

- f. OceanaGold representatives met with the Wharrys on 22 June 2022 and the Wharrys gave OceanaGold a copy of the Lifestyle Research reports. An update on the status of the resource consent application was given to the Wharry's and the tunnel proposal, its predicted effects and property value management measures were reiterated. The Wharrys said they disagreed with the Telfer Young report, and when OceanaGold offered to pass their comments on to Telfer Young, the Wharrys said they were not interested in Telfer Young's response. Out of completeness, the Wharry's concerns were passed onto Telfer Young. Telfer Young say that irrespective of the actual values concerned, based on evidence available from similar locations where there is tunneling or mining under a property, it will not have a material impact on the value of the Wharry property.
- g. On 13 July 2022 OceanaGold emailed the Wharrys to confirm that the Hauraki District Council and Waikato Regional Councils have accepted the resource consent applications as complete. A link to the full suite of application documents and supporting technical documents was emailed to the Wharrys. I understand the link sent to them has expired, the new link is <https://oceanagold.com/interactive-documents/> I trust that this answers your request for a detailed update on the proposed mining operations.
- h. On 19 July 2022 the Wharrys indicated that an access arrangement would be required to monitor the bore on their property. As this bore was not required for compliance purposes, rather it was for the Wharry's benefit, OceanaGold confirmed that it would not continue to monitor the bore.

#### **OceanaGold's position**

- 7. In response to the other points in your letter, I want to confirm that at paragraph 4 of OceanaGold's letter it was confirming agreement with Lifestyle Research Ltd that an access arrangement is not required for minimum impact activities (as per section 2 and section 49 Crown Minerals Act 1991, **CMA**). OceanaGold was not purporting that the tunnel underneath the Wharry's land meets the definition of minimum impact activities.
- 8. I do not agree with your analysis of the law. OceanaGold maintains that its tunnel will not unreasonably interfere with lawful activities that the Wharrys undertake on the affected parts of their property, nor will it damage the surface of the land, cause them loss or damage or have prejudicial effects on the use and enjoyment of possible future uses. Accordingly no access arrangement is required.
- 9. However OceanaGold remains willing to continue to engage with the Wharrys, and your letter says that the Wharrys would be open to looking at an arrangement if adequate compensation is given. I have already outlined the property value management measures in paragraph 4 above which remain on the table and available to the Wharrys.
- 10. As part of the property value management measures, OceanaGold is willing to re-look at two issues your clients seem concerned about:
  - a. The potential value of the subdivision. As discussed above, the Valuation estimated the costs of subdivision. If your client has their own detailed cost estimates or a subdivision plan showing the proposed lot boundaries, roading etc., OceanaGold can re-look at this component of the valuation.
  - b. The potential value of the private mineral rights including: information about what minerals (other than gold and silver) exist; the commercial value of these minerals; how those minerals can be extracted without removing any gold or silver (which is covered by

OceanaGold's permit<sup>3</sup>); and any detailed plans for how these will be extracted whilst also subdividing the land.

11. If your clients can provide this information, or any other pertinent information to me, I will pass it on to OceanaGold for its consideration.

Kind regards

*P. Walker*

Pip Walker

Barrister

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<sup>3</sup> Also note that gold is defined in the CMA as including any substance containing gold or having gold mixed in it.

Andrew and Rachel Wharry

16 September 2022

Pip Walker Environment Law  
271 Hillhead Road Corstorphine Dunedin 9012

By email: [pip.walker@environmentlaw.nz](mailto:pip.walker@environmentlaw.nz)

Dear Pip

RE: Wharry Property, Waihi

Our Situation

Property owner of freehold land estate with private mineral ownership, ancillary to OceanaGold proposed Waihi North Project (Wharekirauponga mineral deposit and connecting underground transportation tunnel back to the Baxter Road mine site).

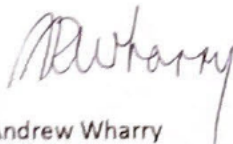
Referring to your letter of 18 August 2022 address to Laura Jeffries (our acting Lawyer from Holland Beckett Law), regarding your client (OceanaGold) proposal and intent to locate an Underground Interconnecting Mining Tunnel through our **Private Mineral Ownership**.

We disagree with the majority of your letter, in particular we disagree that the proposed tunnel will not unreasonably interfere with the present or future lawful activities undertaken or have a prejudicial effect on the current, and future use and enjoyment of our property.

We consider OceanaGold's compensation offer inadequate and we disagree with the Telfer Young report undertaken on behalf of OceanaGold.

The consideration of an access arrangement is for a limited time. If our situation with OceanaGold goes unresolved and ends up in Arbitration or Court regarding a proposed tunnel to be located below our property and through our **Private Mineral Ownership**, then our consideration to give consent for an access arrangement in place subject to resource Consent being obtained) will undoubtedly be refused.

Yours faithfully



Andrew Wharry