Your Comment on the Waihi North application

Please include all the contact details listed below with your comments and indicate whether you can receive further communications from us by email to substantive@fasttrack.govt.nz

1. Contact Details			
Please ensure that you have authority to comment on the application on behalf of those named on this form.			
Organisation name (if relevant)	Royal Forest and Bird Protection Society of New Zealand Incorporated		
First name	Erika		
Last name	Toleman		
Postal address	PO Box 631, Wgtn 6140		
Home phone / Mobile phone	[redacted]	**Work phone**	
Email ***(a valid email address enables us to communicate efficiently with you)***	[redacted] Additional contacts: Sally Gepp KC: [redacted] Shoshona Galbreath: [redacted]		

2. We will email you draft conditions of consent for your comment			
☒	I can receive emails and my email address is correct	☐	I cannot receive emails and my postal address is correct

Thank you for your comments

COMMENTS BY THE ROYAL FOREST & BIRD PROTECTION SOCIETY OF NEW ZEALAND INC

Contents

INTRODUCTION

1. The Royal Forest and Bird Protection Society Incorporated (Forest & Bird) has been Aotearoa New Zealand's independent voice for nature since 1923. Forest & Bird's constitutional purpose is:

> To take all reasonable steps within the power of the Society for the preservation and protection of the indigenous flora and fauna and the natural features of New Zealand.

2. Forest & Bird believes that conservation land should be for people and nature, not for mines. We regularly participate in resource consent and conservation approval processes in relation to mining across Aotearoa New Zealand. We understand the actual and potential impacts of mining on conservation values. Forest & Bird's position is that there should be no new mines on conservation land.

3. However, that is not the basis on which it has prepared these comments. Forest & Bird understands that the substantive application must be determined under the Fast-track Approvals Act 2024 ("FTAA"), which does allow new mines on conservation land to be approved.

4. Even under the FTAA framework and criteria, this mine should not be approved. The project area includes nationally important ecological features which are at risk of harm. There is a high degree of uncertainty as to the project's effects, including from underground mining within the Coromandel Forest Park. New Zealand's obligations under relevant international conservation agreements, which are a mandatory relevant consideration under the FTAA,[1] require New Zealand to take a precautionary approach where there is a threat of serious or irreversible environmental damage, even where not backed by conclusive scientific evidence, and place the burden on the applicant to demonstrate that their activities will not cause significant damage.[2] This has not been demonstrated.

5. The substantive application is inconsistent with (or has failed to demonstrate consistency with) important resource management and conservation policies.

6. The only reasonable conclusion is that the project's adverse impacts outweigh its regional or national benefits[3], and that the project should be declined under s 85(3) FTAA.

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[1] Clause 5 Schedule 7 FTAA.

[2] Convention on Biological Diversity (1992) and Principle 15 Rio Declaration, discussed further from paragraph 220 below.

[3] Addressed at paragraphs 83 - 84 below.

7. Should the panel decide not to decline the substantive application, it is important that conditions are improved.

PRELIMINARY ISSUE: PANEL MEMBER – APPARENT BIAS

8. By letter dated 27 February 2025, counsel for the Applicant wrote to the Fast-track Panel Convener regarding panel appointments. In this letter, the applicant expressly endorsed the appointment of Mr van Voorthuysen,[4] describing him as a "vastly experienced planning Commissioner" with "knowledge of relevant and comparable complex mining developments" and discussed his availability, including the following statement:

> Mr van Voorthuyzen has indicated good availability from July to undertake substantive consideration of the application, and this aligns well with a panel appointment in April, and completion of the necessary reports and written comment processes that will precede substantive consideration by the panel.

9. Section 50 FTAA requires the panel convenor to set up a panel and Schedule 3 includes provisions relating to the appointment of the panel by the panel convenor. The FTAA does not provide for an applicant to comment on who should be appointed as part of the panel that determines its application.

10. Forest & Bird is concerned that the correspondence gives the impression that:

    a. The Applicant has influenced the selection of the decision-makers for its substantive application. Given Mr van Voorthuysen's subsequent appointment, it appears that the Panel appointment process has been (or could reasonably be perceived to have been) affected by the fact that the applicant has requested one of the appointees.

    b. There is a relationship between counsel for the Applicant and Mr van Voorthuysen that is sufficiently close for counsel to have an understanding of Mr van Voorthuysen's availability. Forest & Bird does not know to what extent there were discussions between counsel for the Applicant and Mr van Voorthuysen, but is aware that Mr van Voorthuysen has been the hearing commissioner for other resource consent applications by this Applicant, including the Macraes Phase 4 Project that was heard in July 2025.

11. Forest & Bird has also seen correspondence between counsel for the Applicant and Waikato Regional Council (Sheryl Roa) and Hauraki District Council (Leigh Robcke) as outlined below:

[4] Part A; A.00 Cover and application letter to EPA.

a. Counsel for the Applicant initially proposed to write to the Panel Convenor with respect to panel appointments and decision timeframe without naming Mr van Voorthuysen specifically. On 17 February 2025, he sent a draft letter to Ms Roa and Mr Robcke to that effect.[5]

b. Subsequent to a meeting with the Councils, and after speaking to the Applicant about Mr van Voorthuysen's other commitments (including the Macraes project referenced above), counsel for the Applicant revised the draft letter to the Panel Convenor to specifically endorse Mr van Voorthuysen's appointment and circulated the revised letter to the Council representatives by email. The email says "I know Rob has a huge ability to get through mountains of work, but he is going to be busy!" but notes "I don't think that changes what we are proposing for [Waihi North]".[6] The attached letter includes track changes specifically commenting on Mr van Voorthuysen's availability and that he is "vastly experienced".

12. This correspondence is **attached**. It reinforces the clear impression that the Applicant has influenced the panel appointment process, and that the Applicant's counsel is familiar with Mr van Voorthuysen.

Law regarding bias

13. This is a relatively novel situation. We are not aware of any authorities dealing with the situation where an applicant has directly influenced the appointment of the decision-maker for its application. However, we refer to the general law on apparent bias below and comment on its application to FTAA panels.

14. The authorities distinguish between unlawful predetermination and bias. Where administrative decisions are made by Ministers, it is expected that they will be influenced by policy and political considerations. They are not held to a standard of "scrupulous impartiality" expected of judicial officers.[7]

15. Expert panels under the FTAA are appointed as an independent decision-making body to exercise a quasi-judicial function. In *Panel Convener v Ngāti Paoa Trust Board*[8] the Court of Appeal held that panels appointed under the Covid-19 Recovery Fast-track Consenting Act 2020 ("Covid Fast Track Act"), which had substantially the same functions as panels appointed under the FTAA but limited to resource consent applications, "perform a quasi-judicial function" (at [30]). Forest & Bird submits that panels are

[5] Draft letter from Mr Christensen circulated by email to Cheryl Roa and Leigh Robcke on 17 February 2025.
[6] Email Mr Christensen to Cheryl Roa and Leigh Robcke dated 26 February 2025.
[7] At [167]
[8] *Panel Convener v Ngāti Paoa Trust Board* [2023] NZCA 412

therefore subject to the same "scrupulous impartiality" standard as judicial decision-makers.[9]

16. In *Ngāti Paoa Trust Board*, the Court of Appeal observed that Covid Fast Track Act panels "occupy a position somewhere between a local authority and the Environment Court. They are normally chaired by a judge of that Court. They make decisions which normally would be attended by local authority process obligations and rights of substantive appeal. The public must have a high level of confidence in their work."[10]

17. The law is concerned with the appearance of bias and not actual proof of bias.[11] Apparent bias includes circumstances where the decision-maker has some 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.

18. According to *Muir v Commissioner of Inland Revenue* there is a two-stage enquiry to determine whether apparent bias exists:[12]

> First it is necessary to establish the actual circumstances which have a direct bearing on a suggestion that the judge was or may be seen to be biased. This factual inquiry should be rigorous, in the sense that complainants cannot lightly throw the 'bias' ball in the air. The second enquiry is then to ask whether those circumstances as established might lead a fair-minded lay-observer to reasonably apprehend that the judge might not bring an impartial mind to the resolution of the instant case. This standard emphasises to the challenged judge that a belief in her own purity will not do; she must consider how others would view her conduct.

19. The "fair-minded" lay observer test was endorsed by the Supreme Court in *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd.*[13]

20. In *Glenpanel Development Ltd v Expert Consenting Panel*[14] the Court of Appeal addressed an allegation that there was procedural impropriety in a Covid Fast Track Act panel's decision-making process, and that the Chair did not properly or meaningfully disclose his conflicts of interest (including that he

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[9] With the exception that a person is not ineligible for appointment as a panel member by reason only that the person is a member of a particular iwi or hapū (including an iwi or a hapū that is represented by an iwi authority that must be invited by the panel to comment on the application): cl 7(2) Schedule 3 FTAA

[10] Above n 8, at [30].

[11] Environmental Law in New Zealand ; Chapter 6 - The Role of Administrative Law; 6.5 Environmental judicial review.

[12] *Muir v Commissioner of Inland Revenue* [2007] 3 NZLR 495 at [62].

[13] *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd* [2009] NZSC 72, [2010] 1 NZLR 35 at [3] and [87]

[14] *Glenpanel Development Ltd v Expert Consenting Panel* [2025] NZCA 154

acted for a competitor of the applicant). It was argued that a fair minded, impartial and properly informed lay observer could reasonably think that the chair might have been unconsciously biased.[15] The Court held that Mr Allan's disclosure could have been more fulsome which would have allowed appointment decisions to be made on a more fully informed basis, however based on the circumstances of that case it was determined that there was no conflict of interest. The Court referred to the fact that Parliament anticipated that professionals with knowledge and expertise of the operation of the Act would be appointed to decision-making panels and that a fair-minded observer would recognise this when assessing whether suggested involvement with other activities would mean that a person should not be appointed.

21. The present circumstances can be distinguished. Firstly, in this case the issue is the perceived relationship between Mr van Voorthuysen and the Applicant, not Mr van Voorthuysen's possible relationship with a third party. Secondly, there was no suggestion in *Glenpanel* that the applicant had influenced the panel selection process. Here, the issue is that the relationship may have had a direct bearing on the appointment of the panel (or could have the appearance of such) given the Applicant's endorsement of his appointment.

22. In this case there is a significant risk that the fair-minded lay observer may apprehend that Mr van Voorthuyzen's appointment was influenced by the Applicant's endorsement and/or that the Applicant's alignment with Mr van Voorthuysen means that he may not bring an impartial mind to the case.

23. Forest & Bird considers that in these circumstances, Mr van Voorthuysen should recuse himself.

FTAA DECISION-MAKING FRAMEWORK

Section 81 – decisions on substantive applications

24. The authorised person for a listed project or a referred project may lodge a substantive application for the project.[16] The substantive application may seek 1 or more approvals.[17]

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[15] In reliance on *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd* [2009] NZSC 72, [2010] 1 NZLR 35 at [42].

[16] Section 42(1) Fast-track Approvals Act 2024 ("FTAA").

[17] The types of approvals that may be sought are a resource consent, change or cancellation of a resource consent condition, a certificate of compliance, a designation, a concession, a land exchange, a conservation covenant, a wildlife approval, and archaeological authority, a complex freshwater fisheries activity approval, a marine consent [under the EEZ Act], an access arrangement, and a mining permit: s 42(3) FTAA

25. A panel must, for each approval sought in a substantive application, decide whether to:[18]

    a. grant the approval and set any conditions to be imposed on the approval; or

    b. decline the approval.

26. The panel:[19]

    a. must apply the applicable clause for the approval type, as set out in s 81(3);

    b. must comply with s 82;

    c. must comply with s 83 in setting conditions;

    d. may impose conditions under s 84;

    e. may decline the approval only in accordance with s 85.

27. When taking the purpose of the FTAA into account under one of the "applicable clauses" for the approval type, the panel must consider the extent of the project's regional or national benefits.[20]

Scope and additional approvals

28. Because a substantive application can only be made for "a listed project" (or "a referred project"), there is no jurisdiction for a panel to grant a substantive application for an activity that is not part of a listed project or a referred project.

29. A "listed project" means a project listed in Schedule 2.[21] A "project":[22]

    a. means:

        i. in relation to a listed project, the project as described in Schedule 2:

        ii. [relates to referred projects]; and

    b. includes any activity that is involved in, or that supports and is subsidiary to, a project referred to in (a).

30. The terms in (b) are not defined. While these terms are broad, logically there must be limits on the extent to which an activity "is involved in", "supports" or "is subsidiary to" a listed or referred project. The spatial and

[18] Section 81(1) FTAA
[19] Section 81(2)(b).
[20] Section 81(4) FTAA
[21] Section 4 FTAA
[22] Section 4 FTAA

topical connection between the project and the supporting activity are to be relevant, along with how the listing or referral application described the activity. Considering an interim order on an application for judicial review of the EPA's decision to accept the Stella Passage substantive application as complete and in scope, the High Court gave preliminary consideration to the merits of a claim that part of the application was out of scope.[23] It found there was some merit in the claim, given the listed project in Sch 2 FTAA did not include extensions to the Mount Maunganui wharf that were included in the substantive application.[24]

Number of Drill Sites

31. The number of drill sites proposed is outside the scope of the approvals that the substantive application can properly seek through this process.

32. The Project described in FTAA Schedule 2 is:

> In stages, expand the existing gold and silver mining operations, including establishing new open pit and underground mines, and extending the life of the mine from expiry in 2030 to 2040, including—
>
> - **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
> - a new open pit on Oceana Gold (New Zealand) Limited's private land at Gladstone Hill (with capacity to co-dispose waste and tailings)
> - a third tailings storage facility plus a new rock storage facility (with capacity to co-dispose waste and encapsulated filtered tailings)

33. However the substantive application states that surface works within the Coromandel Forest Park are:[25]

> > Up to **eight exploration drill sites**, requiring a maximum vegetation clearance area of 150 m2 per site;
>
> > Up to **four hydrological drill sites**, requiring a maximum vegetation clearance area of 900m2 per site;
>
> > Up to **four geotechnical drill sites** for tunnel alignment, requiring a maximum vegetation clearance of 150m2 per site;

[23] *Ngāti Kuku Hapū Trust v Environmental Protection Agency* [2025] NZHC 2046
[24] At [44]
[25] Part A – Waihi North Project – Substantive Application; page 427.

> Up to 50 portable rig sites, however these sites only require minimal disturbance (namely, canopy trimming) and moving groundcover to accommodate the rigs; and

> Up to four ventilation evasé, which do not require any additional vegetation clearance as the ventilation evasé will be located on sites previously cleared for drilling.

34. While "project" includes "any activity that is involved in, or that supports and is subsidiary to, a project [described in Schedule 2], here the listing was specific that within conservation land the application was for "exploration drill sites within Department of Conservation land, including 4 ventilation shafts and **4 new geotechnical drilling sites**". There are now proposed to be **16** drill sites. Those additional drilling sites are not within the scope of clause (b) of the definition of "project" and are beyond scope.

35. As recognised in the Waikato Conservation Management Strategy the ecosystems in this area support a great diversity of flora and fauna, including many endemic and threatened and at risk species.[26] The Conservation Land includes areas classified as Outstanding Natural Landscape and a Significant Natural Area. When it comes to land disturbance and vegetation clearance in the Coromandel Forest Park it is critical that the activity is properly defined and constrained.

36. Forest and Bird considers that the Panel is limited to granting no more than the number of drill sites referred to in Schedule 2 of the FTAA.

Scope of approvals sought under Wildlife Act

37. DOC has raised questions about the scope of approvals sought under the Wildlife Act and Forest & Bird has also found this issue unclear. Clause 2 of Schedule 7 FTAA sets out minimum requirements for a wildlife approval, including a requirement to specify the purpose of the proposed activity. The applicant's substantive application report states that wildlife approval is sought for the following activities as part of the project: [27]

- "To undertake monitoring of leiopelmatid frogs within the vibration impact area, Wharekirauponga Pest Management Area and a control area, all of which are located within the Coromandel Forest Park;
- To 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;
- To 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 OceanaGold owned land; and

[26] Section 9.
[27] Part A – Waihi North Project – Substantive Application; 8.9.1

- To handle, salvage and relocate leiopelmatid frogs and lizards in order to enable vegetation clearance for drill sites and pumping test / ventilation shaft sites located within the Coromandel Forest Park"

38. There are several issues with this. First, there is no reference in the list of approvals required to the activity of killing wildlife. Yet in the document 'Waihi North Project – Proposed Wildlife Act Approval Conditions' the activity is described as:

> Activity:
>
> a) To catch, salvage and relocate native frog and lizard species listed in Schedule 4 prior to vegetation clearance at mineral exploration and mining operation sites (see list of sites, in next section)
>
> b) To catch and hold native frogs for the purpose of long-term monitoring
>
> c) To take or destroy the eggs of wildlife when unavoidable (any taxa)
>
> **d) To kill wildlife when unavoidable (any taxa)**

39. Further we note that Schedule 3 (Special Conditions) includes:

> 5. If, in the course of undertaking the Activities, all reasonable effort has been made to meet all of the conditions expressed and implied in this authority; and wildlife is killed by the Authority Holder, then that will be permitted under this authority.

40. The updated conditions now refer to "*any accidental/unintentional harm to wildlife that could arise from any of the activities undertaken in relation to the Waihi North Project*".

41. This purports to authorise killing native frogs and lizards, when the substantive application does not seek approval for killing native frogs and wildlife.

42. Second, the wildlife approval only seeks approval to handle, salvage and relocate frogs in the areas where vegetation clearance will occur. Otherwise, within the vibration area and waterways that may be affected by de-watering, approval is only sought for monitoring. Under the Wildlife Act it is an offence to 'hunt or kill' wildlife without a permit. "Hunt or kill" is defined in s 2 as: "in relation to any wildlife, includes the hunting, killing, taking, trapping, or capturing of any wildlife by any means; and also includes pursuing, disturbing, or molesting any wildlife, taking or using a firearm, dog, or like method to hunt or kill wildlife, whether this results in killing or capturing or not…"

43. There is significant uncertainty as to the effect of vibration on frogs. Vibration is likely to at least amount to "disturbing" wildlife. Approval has not been sought for disturbing frogs by vibration and accordingly there is no scope to grant a wildlife approval for this activity. Approval based on

the updated catch-all condition covering "any accidental/unintentional harm" to wildlife would be ultra vires. The same applies to other disturbances such as from air quality effects from ventilation evasé.

44. DOC advises that *accidental* harm is harm that is unforeseeable and occurs inadvertently. Based on DOC's s 51 report,[28] Forest & Bird understands that the Applicant is now seeking authorisation to *incidentally* harm or kill[29] wildlife which is something quite different and includes killing that is foreseeable. That was not applied for, and is not reflected in the updated conditions set.

45. Even if these activities are assessed to be within scope:

    a. DOC advises that its consideration of whether the substantive application was complete was made on the basis that the activities sought to be covered by the approval were lizard salvage, frog salvage and frog monitoring.[30] DOC have stated that it does not appear that the information requirements of Schedule 7 and clause 2 are complied with.[31]

    b. Forest & Bird agrees with DOC that the extent of activities affecting wildlife is unspecified and not addressed by proposed conditions. We refer to the comment in DOC's s 51 report that "*DOC has attempted to clarify what activities this might cover to better understand whether OGNZL is seeking approval for potential harm caused by vibrations, dewatering, unsuccessful salvage, by-kill from pest control operations etc. OGNZL has not yet provided this detail*."[32]

    c. These issues are too fundamental for the applicant to be able to resolve through supplementary information at this point. The provision of this information at this late stage prejudices commenting parties who did not have this information when preparing comments. Enabling the Applicant to provide this information without giving commenting parties a reasonable opportunity to respond would be contrary to the requirements of natural justice.

Scope of access arrangement

46. The application does not include an application for an access arrangement for activities carried out below the surface of the land.

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[28] Wildlife Approval Report, para 183.
[29] Incidental killing is killing that is not directly intended but is unavoidable and foreseeable as a consequence of carrying out the lawful activity: Wildlife Act 1953, s 53A(2).
[30] Wildlife Approval Report, para 181.
[31] Paragraph 220.
[32] Wildlife Approval Report, paragraph 179.

47. Section 57 of the Crown Minerals Act provides:

> 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.

48. There is currently considerable uncertainty as to the effects of vibrations on frogs. If adverse effects result, this would mean that the exclusion for underground mining in s 57 would not apply (as there would be a prejudicial effect on the use and enjoyment of the land by the Crown) and an access arrangement would be required under s 54.

49. DOC have stated that "the technical assessments undertaken by the applicant have concluded that potential effects on frogs associated with the surface expressions of blast vibrations will be of low magnitude" and then refers to proposed offsets and compensation for those effects. DOC conclude that based on the available evidence it 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."[33]

50. DOC only reaches this conclusion by taking into account offsets and compensation (predator control etc), however even if those actions do offset the effect of mining, those actions are not themselves mining. The threshold for s 57 is whether "mining" will cause the effects in clauses (a) to (c). There will be some degree of prejudicial effect as a result of mining and as such underground mining will or is likely to have a prejudicial effect on the use and enjoyment of the land by the owner (in this case the Minister of Conservation). The "use and enjoyment" of the land by the Minister is guided by the purpose for which the land is held, which in this case is the protection of its natural and historic resources.[34] Interference with that protection constitutes interference with the Minister's use and enjoyment of the land.

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[33] [33]Access Arrangement report, paragraphs 13 – 15.

[34] Section 19 Conservation Act 1987. Use and enjoyment are not limited to commercial uses or interference with physical structures. The nature of conservation land is that its use and enjoyment relates to the protection of its natural features. See for example the definition of "Government Work" in the Public Works Act.

51. As such Forest & Bird considers that the underground mine cannot proceed without an access arrangement for the underground mining.

52. Should the approvals sought be granted, Forest & Bird considers this position should be made clear in the decision report and in conditions. If the Panel disagrees then at a minimum the decision report and conditions should make it clear that if frogs are affected by vibrations then the underground mining activities will require an access arrangement and this is not authorised. This will provide an important safeguard against effects that the applicant has said are at low risk of happening.

Section 81(3): applicable clauses for approval types: Resource consents

53. Clauses 17 to 22 of Schedule 5 apply to decisions seeking approval for a resource consent.[35] When considering a consent application and conditions, the panel must take into account, giving the greatest weight to paragraph (a):[36]

    a. the purpose of the FTAA; and

    b. the provisions of Parts 2, 3, 6, and 8 to 10 of the Resource Management Act 1991 that direct decision making on an application for a resource consent (but excluding section 104D of that Act); and

    c. the relevant provisions of any other legislation that directs decision making under the Resource Management Act 1991.

54. We address the meaning of this provision below. In doing so, we have referred to the two draft decisions on substantive applications under the FTAA that are available at the time of writing. While this panel is not bound by the approach to interpretation taken by other panels, it may assist to understand how other panels have approached the key FTAA provisions.[37]

"Take into account"

55. The interpretation of "take into account" taken by the panel that is determining the Bledisloe Wharf substantive application ("Bledisloe panel") was:[38]

> [120] We understand the phrase "take into account" as requiring us to directly consider the matters so identified and give them genuine consideration; rather than mere lip service, such as by listing them and setting them aside: *Royal Forest*

[35] Section 81(3)(a) FTAA
[36] Clause 17(1) Schedule 5 FTAA
[37] Forest & Bird notes also the requirement to use "consistent" processes in the procedural principles (s 10 FTAA).
[38] Bledisloe panel draft decision at [120]

and Bird Protection Society Inc v New Zealand Transport Agency [2024] NZSC 26 *[East West Link]*

56. While the *East West Link* case cited by the Bledisloe panel concerned the phrase "have regard to" rather than "take into account", Forest & Bird submits that approach is correct. The Court in *East West Link* said that the duty to have regard to relevant provisions of planning instruments in s 104 does not invest consent authorities with a broad discretion to "give genuine attention and thought" to directive policies, only to then refuse to apply them.[39] A relevant plan provision is not properly had regard to if it is simply considered for the purpose of putting it to one side.[40]

Weighting

57. The weighting to be accorded to relevant considerations by a statutory decision maker is normally for that decision maker to determine[41] (subject to unreasonableness). However, where a statute directs the weight to be given to a matter, that direction must be followed.[42]

58. Clause 17 specifies that the greatest weight is to be given to paragraph (a), the purpose of the FTAA. A legislative weighting was also used in s 34 of the Housing Accords and Special Housing Areas Act 2013 ("HASHAA"), and that provision was considered by the Court of Appeal in *Enterprise Miramar Peninsular Inc v Wellington City Council*.[43]

59. The Court in *Enterprise Miramar* set out the hierarchy of matters in s 34, and said:

> [41] The plain words indicate, therefore, that greatest weight is to be placed on the purpose of HASHAA, namely enhancing affordable housing supply in certain districts. That said, other considerations have been deliberately included. Decision-makers must be careful not to rely solely on the purpose of HASHAA at the expense of due consideration of the matters listed in (b)—(e).

60. The Court found that the decision-maker was required to assess the matters listed in subs (1)(b)—(e) (i.e. the matters other than the Act's purpose) uninfluenced by the purpose of HASHAA, before standing back and conducting an overall balancing.[44] As a result, environment effects

[39] See *East West Link* at [72], [79], [80], [167] and fn. 157, at [169].
[40] *RJ Davidson* (CA) at [73].
[41] *Huakina Development Trust v Waikato Valley Authority* [1987] 2 NZLR (HC) 188 at 223.
[42] *Quarantine Waste (New Zealand) Ltd v Waste Resources Ltd* [1994] NZRMA 529 (HC) at 540.
[43] *Enterprise Miramar Peninsular Inc v Wellington City Council* [2018] NZCA 541
[44] *Enterprise Miramar* at [53]

"may be outweighed by the purpose of enhancing affordable housing supply, or they may not."[45]

61. This indicates that a statutory requirement to give an Act's purpose the most weight does not mean that it will always outweigh other considerations (in which case there would be no point in listing those other considerations). The same must be correct in relation to the FTAA. That interpretation is supported by s 85(3) of the Act (addressed below).

62. As this panel must under the FTAA, the HASHAA decision-maker was required to consider Part 2 RMA. The Court saw the decision-maker's "cursory analysis" of Part 2 matters in *Enterprise Miramar* as an example of the decision-maker having allowed the purpose of HASHAA to neutralise or minimise the other matters that arose for consideration, which resulted in those matters not being given due consideration and weight. Rather than merely treating the purpose of HASHAA as the most important and influential matter to be weighed, the decision-maker used the purpose of HASHAA to eliminate or greatly reduce its consideration and weighing of the others 34(1) factors, and that was a "significant error of law".[46]

63. Accordingly, Forest & Bird submits that the correct approach under cl 17 is to carefully consider each of the listed matters on their own terms, before moving to the weighing exercise. In that exercise, environmental effects or other impacts may be outweighed by the Act's purpose, or they may not.

64. The Bledisloe panel applied *Enterprise Miramar* in the FTAA context.[47] It noted that there is a difference between s 34 HASHAA and cl 17 in that "the HASHAA created a hierarchy of criteria, with the greatest weight to be given to criterion (a) and the least weight to be given to criterion (e), whereas in the FTAA the requirement is simply for the decision maker to give the greatest weight to criterion (a). The implication, therefore, is that in the FTAA the criteria in (b)-(c) are to have equal statutory weight".[48] Subject to bearing that distinction in mind, the Bledisloe panel considered that *Enterprise Miramar* provided helpful guidance, which it adapted to apply to the FTAA:[49]

    a. While the greatest weight is to be placed on the purpose of the FTAA, we must be careful not to rely solely on that purpose at the expense of due consideration of the other matters listed in (b) to (c): *Enterprise Miramar*, at [41].

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[45] At [55]
[46] At [55]
[47] In contrast, the Maitahi panel "did not find reference to section 34(1) HASHAA to be of much assistance" (at [68])
[48] Bledisloe Expert Consenting Panel draft decision at [122]
[49] At [122]

b. Clause 17 requires us to consider the matters listed in clause 17(1)(a)-(c) on an individual basis, prior to standing back and conducting an overall weighting in accordance with the specified direction: *Enterprise Miramar*, at [52] – [53].

c. The purpose of the FTAA is not logically relevant to an assessment of environmental effects. Environmental effects do not become less than minor simply because of the purpose of the FTAA. **What changes is the weight to be placed on those more than minor effects; they may be outweighed by the purpose of facilitating the delivery of infrastructure and development projects with significant regional or national benefit, or they may not**: *Enterprise Miramar*, at [55]

(our emphasis)

Clause 17(1)(a) of Schedule 5: purpose of the FTAA

65. Clause 17(1)(a) is the purpose of the FTAA, that is, "to facilitate the delivery of infrastructure and development projects with significant regional or national benefits". When taking into account this criterion, panels must consider the extent of the project's national or regional benefits.[50]

66. The panel considering the Maitahi project ("Maitahi panel") described this as "essentially a forensic exercise" in its draft decision.[51] Panels must reach their own assessment of the extent of benefits and are not required or obliged to treat a project as having significant regional or national benefits on the basis of its listing or referral. The Maitahi panel rejected the applicant's submissions that the Panel could rely on the fact that the Project is listed in Schedule 2 for any finding that it has significant regional or national benefits.[52]

> [84] … these findings were made by bodies other than the Panel which has statutory responsibility for making decisions on approvals sought in a substantive application under s 81. By virtue of s 81(4) it falls to the Panel, when taking the purpose of the FTAA into account, to consider the extent of the regional or national benefits. This is something the Panel itself must do in the context of its analysis of, and findings on, regional or national benefits.
> [85] The notion that a panel could rely on findings of another body is also inconsistent with the statutory requirement for the Panel to undertake a proportionality test under s 85(3). …

67. For all matters of interpretation, s 10(1) of the Legislation Act 2019 will apply. It provides that "the meaning of legislation must be ascertained from its text and in the light of its purpose and its context". The Maitahi panel found that purpose and context was "conveniently summarized in

[50] Section 81(4) FTAA
[51] At [82]
[52] At [83] – [85]

the Legislative Statement outlining the Parliamentary intention for decision making by expert panels" as follows:[53]

> The purpose and provisions of the Bill will take primacy over other legislation in decision making. This means that approvals can be granted despite other legislation not allowing them, such as, projects that are prohibited activities or those which are inconsistent with RMA National Direction. This approach is intended to ensure key infrastructure and other development projects with significant benefits for communities are not declined where the benefit of approving the project outweighs any issue identified.

68. The Maitahi panel considered that the "extent" of benefits should be assessed or quantified "depending on their nature as varying between modest and meaningful, substantial or of real value".[54] It later noted that the word "extent" is not defined and that the dictionary definition refers variously to terms such as "assessment" or "assessed value" or degree, size, magnitude, dimensions or breadth of the thing being measured. The panel took that approach to its evaluative task, "bearing in mind that not all benefits are able to be calculated in precise financial or monetary terms. Sometimes expression of quantification or value in absolute terms may simply not be possible".[55]

69. Any factual assessment of regional or national benefits, particularly in relation to infrastructure or development projects, will be informed by related economic and social factors. The relevant regional context will therefore be important.[56]

70. Both the Maitahi and Bledisloe panels also took "some guidance" from s 22 FTAA which relates to the criteria for assessing a referral application, because the first criterion is whether "the project is an infrastructure or development project that would have significant regional or national benefits".[57] The Maitahi panel described the s 22 matters as providing "some useful guidance … a flavour of what is required", but with the question of whether a project is in fact one with significant benefits still being "an intensely factual determination turning on the particular circumstances of the Application".[58]

71. With respect to the term "significant" in the phrase significant national or regional benefits, the Maitahi panel noted the dictionary definition of "significant" as "full of meaning or import, and "important, notable", and was content to use "sufficiently great or important to be worthy of

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[53] At 50, citing the Legislative Statement, para 17.
[54] Maitahi panel draft decision at vi (Executive Summary)
[55] At [620]
[56] At [437] and [620]
[57] Maitahi panel draft decision at [435], Bledisloe panel draft decision at [287]
[58] Maitahi panel draft decision at [435]

attention; noteworthy" as a working definition.[59] While the Maitahi project's contribution to housing and construction jobs was considered undeniably regionally significant, the panel did not consider upgrades to increase the capacity of downstream wastewater pipe infrastructure and a new shared commuter path to be significant:[60]

> [445] … While these are undoubtedly benefits of the development, arguably they do not classify as being of regional significance. They are amenities which will serve to enhance the environment for those who live there. At best the benefits will accrue to visitors who seek to enjoy the environment and amenities associated with proposed walking tracks and cycleways.

Clause 17(1)(b) of Schedule 5: RMA provisions

72. Clause 17(1)(b) refers to the provisions of Parts 2, 3, 6, and 8 to 10 of the RMA that direct decision making on an application for a resource consent (but excluding section 104D of that Act). Clauses 17(3) and (4) provide that, where any provision of the RMA requires a decision maker to decline any application for a resource consent, the Panel must take such a provision into account, but "must not treat the provision as requiring the panel to decline the application".

73. The FTAA does not specify which provisions direct decision-making. It is "left to the Panel to determine which such provisions ought to be taken into account".[61] The Maitahi panel saw procedural RMA provisions as not "directing" decision making,[62] which must be correct. It considered ss 5, 6 and 7, and s 104 to be relevant "because they do operate to direct decision making in the RMA context".[63] In addition to those provisions, Forest & Bird submits that ss 104G, 105, 106, 107, 217 and 230 RMA will be be relevant (where the circumstances make them so) as they also direct decision-making.[64]

74. In the RMA context, the Courts have identified that it will likely not be necessary to directly consider Part 2 RMA where a national policy statement or regional/district plan has already fully implemented Part 2. In those cases, significant reliance is placed on the planning instruments instead.[65] However, that concept does not apply to the FTAA because of the different structure of cl 17, under which directive planning instruments

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[59] At [436]
[60] At [445]
[61] Maitahi panel draft decision at [72]
[62] At [73]
[63] At [74]
[64] Section 8 RMA is not relevant. Per cl 17(2)(a), "Part 2" RMA means sections 5, 6, and 7 RMA only.
[65] *EDS v New Zealand King Salmon Company Limited* [2014] NZSC 38; *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 at [70] – [74].

do not have the same force and effect as they would under the RMA. It will be necessary for panels to directly consider Part 2 in those circumstances.

75. The Maitahi panel considered that:

> [75] … the statutory direction for a panel to take into account key provisions of the RMA brings into focus the question of whether the Application promotes sustainable management (s 5 of the RMA). It also requires consideration of how the Proposal recognises and provides for the matters of national importance in s 6(a) to (h) of the RMA. Decision makers must also take into account the matters referred to in s 7(a) to (j) of the RMA.

76. The Bledisloe panel also carefully considered Part 2 matters.[66]

77. Although the planning instruments that are a matter to have regard to under s 104(1)(b) RMA / cl 17(1)(b) FTAA may have less impact on decisions than they would under the RMA, the approach to interpretation and reconciliation of planning instruments described in *King Salmon* and *Royal Forest & Bird v NZTA* (*East West Link*)[67] remains relevant when they are being applied under the FTAA. That approach provides, in summary, that:

    a. Directive policies, such as policies requiring particular environmental impacts to be avoided, have greater potency than other non- or less directive policies.[68] Policies that provide for use and development, through terms such as "ensure", "require" and "recognise," can also be directive, depending on how those terms are used in the policy.[69]

    b. "Avoid" means "not allow" or "prevent the occurrence of".[70] However, prohibition of minor or transitory effects is not likely to be necessary.[71] The standard is protection from material harm. The concepts of mitigation and remedy may serve to meet the "avoid" standard by bringing the level of harm down so that material harm is avoided. To be consistent with the concept of avoidance, decision-makers must either be satisfied there will be no material harm or alternatively be satisfied that conditions can be imposed that mean material harm will be avoided; or any harm will be mitigated so that the harm is no longer material; or any harm will be remedied within a reasonable timeframe so that, taking into

[66] Bledisloe panel draft decision at [320]
[67] *East West Link*
[68] *East West Link* at [72]; *King Salmon* at [129] and [152].
[69] *Port Otago* at [28] and [69]
[70] *King Salmon* at [93]
[71] *King Salmon* at [145]

account the whole period harm subsists, overall the harm is not material. [72]

c. In applying s 104(1)(b), the consent authority must undertake a fair appraisal of the objectives and policies read as a whole. Isolating and de-contextualising individual provisions in a manner that does not fairly reflect the broad intent of the drafters must be avoided. Attention must be paid to the relevant objectives and policies both on their own terms and as they relate to one another in the overall policy statement or plan. Relevant objectives and policies cannot "simply be put in a blender with the possible effect that stronger policies are weakened and weaker policies strengthened".

d. There may be instances where policies pull in different directions. This is likely to occur infrequently, and an apparent conflict may resolve if close attention is paid to the words used.[73] Where directive policies conflict, a "structured analysis" should be adopted. The appropriate balance between the directive policies depends on the particular circumstances, considered against the values inherent in the various objectives and policies. All relevant factors must be considered to assess which of the conflicting policies should prevail in the particular circumstances of the case (for example, the nature and importance of ports' safety and efficiency requirements, and the environmental values at issue).[74]

Clause 17(1)(c) of Schedule 5: other legislation

78. Clause 17(1)(c) refers to the relevant provisions of *any other legislation* that directs decision making under the RMA.[75] Clauses 17(3) and (4) (which provide that, where any provision of the RMA requires a decision maker to decline any application for a resource consent, the Panel must take such a provision into account, but "must not treat the provision as requiring the panel to decline the application …") also applies to "any other legislation" considered under cl 17(1)(c).

Conditions

79. When setting conditions on a resource consent, RMA provisions that are relevant to setting conditions apply (subject to all necessary

[72] *Port Otago* at [65]-[66], applying *Trans-Tasman Resources* [2021] NZSC 127, at [252] per Glazebrook J, [292]—[293] per Williams J and [309]—[311] per Winkelmann CJ and [5]—[6] of the summary.
[73] *King Salmon* at [129]
[74] *Port Otago* at [77] – [81]
[75] This could include, for example, the Water Services Act 2021.

modifications).[76] Section 108AA RMA is particularly relevant. It provides that consent conditions must:

a. be agreed to by the applicant;

b. be directly connected to an adverse effect of the activity on the environment, or applicable rule, national environmental standard or environmental performance standard; or

c. relate to administrative matters that are essential for the efficient implementation of the resource consent.

80. This RMA cross-reference indicates that case law on condition-setting under the RMA is also likely to be relevant (subject to s 83 FTAA which is discussed below). The following principles relevant to setting conditions on resource consents were applied by the Bledisloe[77] and Maitahi[78] panels:

a. a resource consent condition must be for a resource management purpose, not an ulterior one; must fairly and reasonably relate to the development authorised by the resource consent or designation; and must not be so unreasonable that a reasonable planning authority, duly appreciating its statutory duties could not have approved it.[79]

b. The underlying purpose of the conditions of a resource consent is to manage environmental effects by setting outcomes, requirements or limits to that activity, and how they are to be achieved.[80]

c. Conditions must be certain and enforceable.[81]

d. A condition must not delegate the making of any consenting or other arbitrary decision to any person, but may authorise a person to certify that a condition of consent has been met or complied with or otherwise settle a detail of that condition.[82] Such authorisation is subject to the following principles:

i. the basis for any exercise of a power of certification must be clearly set out with the parameters for certification expressly stated in the relevant conditions;

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[76] Clause 18 of Schedule 5
[77] Bledisloe panel draft decision at [308]
[78] Maitahi panel draft decision at [603-[608]
[79] *Newbury District Council v Secretary of State for the Environment* [1980] 1 All ER 731 (HL), at 739
[80] *Summerset Village (Lower Hutt) Ltd v Hutt City Council* [2020] MZEnvC 31 at [156].
[81] *Bitumix Ltd v Mt Wellington Borough Council* [1979] 2 NZLR 57.
[82] *Turner v Allison* (1970) 4 NZTPA 104.

ii. the power of certification does not authorise the making of any waiver or sufferance or departure from a policy statement or plan except as expressly authorised under the RMA;

iii. the power of certification does not authorise any change or cancellation of a condition except as expressly authorised under the RMA.

81. For all approvals under the FTAA, panels must also comply with s 83 in setting conditions.[83] This provides:[84]

> When exercising a discretion to set a condition under this Act, the panel must not set a condition that is more onerous than necessary to address the reason for which it is set in accordance with the provision of this Act that confers the discretion.

82. The ordinary meaning of "onerous" is "difficult to carry out".[85] This provision will not generally set a higher standard than would otherwise apply to conditions under the RMA, which must already "directly relate" relate to an environmental effect or applicable rule (etc). It will require a panel to check that proposed conditions are not more "difficult to carry out" than is necessary to address the reason for the condition, and in some circumstances it may have a substantive impact, e.g. where there are two equally effective alternative methods of controlling an effect proposed by participants and one is more onerous than the other.

The project's national or regional benefits

83. Forest & Bird accepts that there are monetary benefits associated with mining and exporting gold, and that there are associated employment benefits. It accepts that these are likely to be considered at least regionally significant, but notes that the Applicant's Canadian ownership means those benefits are very much reduced compared to what they would be if a New Zealand company were progressing this application.

84. Forest & Bird disagrees with the extent of benefit claimed for the biodiversity enhancement package. The measures proposed are almost entirely to offset or compensate for actual or potential effects of the project, and as such they are not a "benefit". Further the effectiveness of some of the proposed measures is uncertain. The "Waihi North Biodiversity Project" is too early stage/conceptual for the panel to treat is as constituting an environmental "benefit" and as any funding is proposed

[83] Section 81(2)(d) FTAA
[84] Section 83 FTAA
[85] Collins New Zealand Dictionary, 2017 Harper Collins.

to cease after 10 years or mine closure, any benefits from predator control that are realised will not be maintained in the long-term.

Actual or Potential Effects and conditions

Frogs

85. Archey's frogs are classified as At risk – Declining and Globally Critically Endangered. Hochstetter's frogs are classified as At risk – Declining. Archey's Frogs only persist naturally in the Coromandel Forest and in the Whareorino Forest (160km to the south east).[86]

86. These frogs are extremely vulnerable and there is a need for long term monitoring on vibration and habitat modification impacts. It is important that these species are protected and where there is uncertainty that a conservative approach is taken.

87. The science behind population estimates presented on behalf of the applicant is not robust and includes considerable uncertainties and overestimation. As stated by DOC[87] the extrapolations are wide when considering the population at risk, despite the applicant acknowledging the lack of robustness in the preliminary analyses. Both species have experienced dramatic declines over the past millennium.[88] In the most recent version of the International Union for Conservation of Nature (IUCN) Red List status of species, Archey's frog is listed as "critically endangered (stable)".[89]

88. There is considerable uncertainty on the size of the frog population and the magnitude of effects. For example there is uncertainty, but potentially significant adverse effects, in relation to:

    a. Vibration effects - it is concluded in the application that there remains a low (but uncertain) risk for the project to generate residual effects on native frogs.[90] Forest & Bird do not agree that the risk is low. Further, it is of significant concern that vibration greater than >2 mm/s is considered to have a low but unknown likelihood of impacts on native frogs"[91], but yet for Area 1 (i.e. the underground mine and dual

[86] DOC concession report, paragraph 41.
[87] DOC concession report, paragraph 49.
[88] DOC wildlife permit report, paragraph 115.
[89] DOC wildlife permit report, paragraph 116.
[90] Part A – Waihi North Project – Substantive Application, page 424.
[91] B.37 Terrestrial Ecology Values and Effects of the WUG; Boffa Miskell; page 79. This part of the report states that vibration parameters relied on are that blasts that generate a level of vibration **above 2 mm/sec** can comprise up to 78% of the total blasts.

tunnel) the limit proposed in draft conditions is significantly higher at 15 mm/s[92] for 95% of blast events.

b. Effects of exposure to ventilation discharges. Frogs are very vulnerable to absorbing emissions in the air through their skin. There are likely to be many frogs near the proposed 4 x vent stacks. The emissions will be vented 24 hours per day including at night when frogs are active on the ground.[93] The report by Boffa Miskell states that vent emissions carry low but uncertain residual risk.[94] The report by RMA Ecology states that the implications of long-term exposure to emissions at an unknown level from the vent stacks is unknown but that a precautionary approach would suggest it is not nil.[95]

c. Effects of noise. Boffa Miskell concludes that for all fauna groups there will be a localised high level of effect in the vicinity of the drill rigs/pumps.[96]

d. Effects of dewatering on Hochstetter's frogs.

e. The survival prospects of Archey's frogs following translocation when Archey frog habitat is cleared for construction of drill sites. The Monitoring Plan acknowledges that "their survival prospects are unknown". [97] It is due to the very limited success of frog salvages to date (of which there are very few) that DOCs preference from a species conservation outcome is avoidance.[98]

f. The effects of vegetation clearance and drilling. The applicant's assessment of effects acknowledges that even following their proposed MCA process, native fauna species will be present at vegetation clearance sites.[99] In relation to this issue we note the comments of DOC that these activities have the potential to cause significant adverse effects and that due to the uncertainty of the impact of these activities on the species and the success of the mitigation measures proposed the overall potential impacts are uncertain. The species have a known vulnerability to disturbance.[100]

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[92] Peak particle velocity (vector sum) at the surface.
[93] B.22; Air Discharge Assessment; Beca; Page 21
[94] B.37 Boffa Miskell Terrestrial Ecology Values and Effects of the WUG; Executive Summary
[95] B.38 RMA Ecology Assessment of Effects of Native Frogs; page 14.
[96] Part A – Waihi North Project – Substantive Application, page 430.
[97] B.58 A Plan for Monitoring Potential Effects of the Proposed Wharekirauponga Underground Mine Project on Native Frogs; Executive Summary.
[98] DOC wildlife approval report, paragraph 123.
[99] P 429
[100] Concession report, p 6.

g. The effectiveness of the proposed pest management strategy. As stated by DOC the degree of benefit is uncertain due to the experimental nature of the plan, unproven tools, insufficient control area and a lack of reliable monitoring and site-specific studies.[101]

h. It is unclear what is proposed in relation to release sites for Hochstetter frogs. Monitoring appears to only be proposed for translocated Archey's frogs and it has not been demonstrated that Hochstetter frogs will be released into suitable habitat.

i. Cumulative effects, when the range of effects on frogs are considered together.[102] The application assesses the effects separately but not on a cumulative basis. The same applies to effects on other fauna such as lizards.

89. Forest & Bird agrees with the comments from DOC that the conclusions in the technical reports accompanying the application downplay potentially detrimental impacts of the proposal, despite a high degree of uncertainty of overall impact and outcomes.[103] The potential effects are very high.

90. Forest & Bird refers to the comments from DOC that:

> Due to lack of certainty of both the impact of the proposed activities on the species and the success of the mitigation measures proposed, the overall potential impacts are uncertain. However, given the species' known vulnerability to disturbance, the effects of the proposed activities are likely to be detrimental on a population level without successful avoidance, remediation, mitigation, offset and/or compensation. [104]
>
> …
>
> Overall, the potential impacts on values including threatened species would be very high. Some effects would be able to be rehabilitated over the medium term. Other effects could be long term or permanent if not adequately mitigated. It is therefore critical that, if the proposal is approved, adequate conditions are imposed to address adverse effects.[105]

91. Policy 3 of the NPS IB seeks to adopt a precautionary approach when considering adverse effects on indigenous biodiversity (addressed further below). This is particularly important in the present circumstances given

[101] DOC wildlife approval report, paragraph 125.
[102] Refer DOC access arrangement report, para 119.
[103] Concession report, paragraph 48.
[104] Concessions approval report, paragraph 26.
[105] Access Arrangement approval report, paragraph 56.

the advice from DOC that neither species of frogs have the capacity to increase their numbers rapidly after a decline or translocation.

92. The Applicant accepts that a precautionary approach is necessary.[106] However, Forest & Bird submits that the Applicant's approach is far from precautionary.

93. The AEE states that key measures to support this approach include:[107]

> **Further mitigation**: intensive pest control within 314 ha of the WUG surface footprint (where surface vibrations greater than 2 mm/sec are expected) to deliver benefits specifically for Archey's frogs (and associated benefits for Hochstetter's frogs);

> **Offset enhancements**: Intensive pest control within a 318 ha area (outside of the vibration footprint) of frog habitat that is superior habitat to that which is located within the WUG footprint; and

> **Compensation**: In the form of financial support for researchers to undertake investigative work within the WUG and wider habitat (frog) enhancement areas to assess the efficacy of pest control regimes for frog recovery, and surveys of the broader Coromandel Peninsula to better understand the distribution and habitat preferences of native frogs.

94. Whilst Forest & Bird supports the inclusion of these measures in the conditions of consent (in the event that consent is granted) these alone are not sufficient when applying a precautionary approach. There is also a need to address the effects themselves as required by the NPS IB (discussed later in these comments).

95. A draft monitoring programme for frogs has been developed (Lloyd 2024) which states that there will be "*ongoing monitoring of the survival of translocated frogs at release sites to measure the success of Archey's frog translocation as a mitigation method and inform adaptive management to improve translocation outcomes*." However, it is not clear what adaptive management would entail and how that would be enforced. The objectives of the management plan also include monitoring the effects of surface vibrations from underground blasting on Archey's frogs, but the results are simply used to determine whether positive effects of pest control on native frog populations provide effective offsets for any negative effects of either vibrations from the underground blasting or dewatering. There does not appear to be any action required to reduce the effects from vibrations should monitoring show that to be necessary. When it comes to our threatened and vulnerable species this is unacceptable and not consistent with a precautionary approach. Forest &

[106] Part A – Waihi North Project – Substantive Application; page 424.
[107] Part A – Waihi North Project – Substantive Application; page 424.

Bird therefore agrees with the conclusion by the Department of Conservation that the proposed measures do not adequately mitigate the adverse effects.

96. When taking into account adverse effects on frogs, and when considering their magnitude, is also necessary to consider what will be authorised by the wildlife approval – that is, regardless of the reassurances that the applicant seeks to give regarding the effects on frogs being unlikely, it is ultimately seeking authorisation to kill an unlimited number of frogs.[108] This is relevant when considering the magnitude of the potential effects.

97. As the panel may only decline the approvals if adverse impacts are sufficiently significant to be out of proportion to the project's regional or national benefits even after taking into account conditions,[109] potential conditions are now addressed.

Frogs – consent conditions

98. Forest & Bird submits that a very prescriptive adaptive management approach would be required to manage effects that are uncertain such as the effect of vibration on frogs. Mining could only be allowed in stages, with mining only able to progress to the next stage if the effects are shown to be acceptable.[110]

99. The Court in *Burgoyne v Northland Regional Council*[111] considered an application for water takes from aquifers, adjacent to which was an important wetland. The Court found that the necessary features of adaptive management are:

    a. That incremental stages of development are set out.
    b. The existing environment is established by robust baseline monitoring.
    c. There are clear and strong monitoring, reporting and checking mechanisms so that steps can be taken before adverse effects eventuate.
    d. These mechanisms must be supported by enforceable resource consent conditions that require certain criteria to be met before the next stage can proceed.
    e. There is a real ability to remove all or some of the development that has occurred at that time if the monitoring results warrant it.

[108] As reflected in the conditions, however as set out above Forest & Bird have raised an issue regarding the scope of this.
[109] Section 85(3) FTAA.
[110] This is similar to the approach taken in *Sustain our Sounds Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 40.
[111] Burgoyne v Northland Regional Council [2019] NZEnvC 28. An appeal was dismissed: see *Burgoyne v Northland Regional Council* [2020] NZHC 189.

100. The Court in *Burgoyne* accepted evidence that an adaptive management technique is best suited to development and resource use where the actual and potential impacts are reversible. It held that the adaptive management process would be an appropriate method for meeting the requirements of the NPSFM and the RMA in relation to ensuring the avoidance of adverse effects on significant indigenous habitats and fauna. One of the reasons for this was that there was potential to suspend the consents should exceedances occur, which would enable full studies to be undertaken. The Court held that the basis upon which the consent was considered and granted is that water could be abstracted without any adverse effect on the significant values and attributes recognised under the NPSFM and s 6(c) RMA. In the event that that could not be done the basis upon which the consent was granted would have proved to be fallacious and the consent itself would need to be reviewed or cancelled. The Court held that if unexpected adverse effects arose, this would fundamentally contradict the terms of the consent and would breach the primary purpose of the adaptive management plan and consent conditions.

101. Likewise in this case any adaptive management approach must be capable of ensuring that adverse effects do not eventuate.

102. Forest & Bird submits that the risks cannot be adequately overcome by conditions of consent given the importance of the species; the level of uncertainty over the potential effects; including the fact that effects are potentially irreversible; and that effects may at first be subtle or delayed; and the lack of demonstrably successful mitigation, remediation or offsetting techniques (including the very limited success of frog salvage to date).[112]

<u>Habitat loss / vegetation clearance / lizards</u>

103. The proposal involves vegetation clearance within the Coromandel Forest Park. The Coromandel Forest Park includes rare coastal forests and is valued for its diverse native flora and fauna and ecosystem services.[113] It lies within SNA T13 p152 which is identified in the Hauraki District Plan as having national significance.[114]

104. Forest & Bird agrees with DOC that:[115]

[112] With respect to frog salvage Forest & Bird agrees with the position of DOC that given the very limited success of frog salvages to date, the preference from a species conservation outcome must be avoidance.
[113] DOC concessions report, paragraph 178.
[114] Section 6.2: Indigenous Biodiversity and Significant Natural Areas; SNA T13 P152.
[115] Access arrangement approvals report, paragraph 97.

> …, the ecological values of the vegetation and the herpetofauna they support in the impacted area is considered very high, and the level of effect from vegetation and habitat loss without management would be very high for fauna habitats and communities (Table 10, Boffa Miskell (B.37)). DOC is not satisfied that the proposed management adequately addresses the effects.

105. The proposal also impacts SNA 166, including by the permanent removal of 8.3ha of rewarewa/tree fern forest associated with the establishment of Tailings Facility 3.[116]

106. The applicant seeks to downplay the impact of habitat loss and vegetation clearance by referring to the point that the vegetation proposed to be removed within the Coromandel Forest Park will be no more than 0.66ha in total area. However when considering such effects Forest & Bird draws particular attention to the statement in the AEE that:[117]

> While the footprints of vegetation/habitat clearance will be very small, particularly in the context of the large area of habitat available in the Coromandel Forest Park, the magnitude of effect is assessed as being Very high within the sites where such work will occur. The ecological value of the potentially impacted fauna communities is Very High, and therefore, the level of effect (prior to mitigation) is assessed as being Very High.

107. Put simply: where ecological features are very rare, an impact on those features over even a very small area will be a very significant impact. The spatial extent of the impact, without that context, is meaningless. The panel would be in error if it were to place weight on the 0.66 ha area of impact rather than the ecological assessment of the magnitude of that impact.

108. The application acknowledges the unavoidable localised effects on the habitat of native species, which is a significant concern as outlined above in relation to frogs.

109. A range of lizard species are also affected, including the northern stripped gecko which is classified as Threatened – Nationally Endangered. There are also a number of 'At risk – Declining' species for which wildlife approval is sought including elegant gecko; forest gecko; striped skink; ornate skink; copper skink. Vegetation clearance has the potential to cause lizard injury or mortality in addition to habitat loss. Effects on lizards include the loss of 6.5 ha of copper skink habitat associated with the Gladstone Pit. Copper

[116] Vegetation clearance within the SNAs are addressed further later in these comments in the context of the NPS IB.
[117] Part A – Waihi North Project – Substantive Application, page 429.

skink has a High ecological value, and therefore, the overall level of effect is considered by Bioresearches (2025a) to be High.[118]

110. The Bioresearches report states that "**significant residual effects are expected following mitigation** for copper skinks at the Gladstone pit, and therefore compensation for copper skink habitat is recommended to support a net gain for this species habitat at this location."[119]

Habitat loss / vegetation clearance / lizards - conditions

111. In accordance with Bioresearches' recommendations, compensation is proposed. Forest & Bird considers that compensation is inappropriate and inadequate when it comes to these high value endangered species, and that the applicant should be required to avoid significant residual adverse effects.

Waterbodies

112. The application will result in long term effects on freshwater values, including a reduction in the water table and changed wetland hydrology.

113. A key concern regarding water quality and wetlands arises from the proposed dewatering. Dewatering could result in a decline in the groundwater level in connected aquifers. This, in turn, could reduce water availability to streams and wetlands. Potential adverse effects include drying, changes in plant composition, and declines in ecological function. The scale of these effects is highly uncertain.

114. In relation to effects associated with the Gladstone Open Pit, a reduction in groundwater discharge to the Gladstone wetland of approximately 30%, and a reduction in groundwater level of approximately 0.5 m adjacent to the wetland is predicted.[120]

115. The Wharekirauponga Underground Mine and the Wharekirauponga Underground Mine Dual Tunnel are located beneath the Department of Conservation administered Coromandel Forest Park, and beneath or near a number of surface water features that are identified in the Regional Plan's "Natural State Water Class" as being "…outstanding waterbodies and important habitats because they are unmodified or substantially unmodified by human intervention".[121]

116. In relation to the dual tunnel it is concluded that the dewatering effects are low risk with respect to potential effects on groundwater and that as such no specific associated monitoring is proposed with respect to this phase of

[118] Part A – Waihi North Project – Substantive Application, page 439
[119] B.36 Bioresearches Terrestrial Impact Assessment; page iv
[120] Part A – Waihi North Project – Substantive Application; 6.4.1.1, page 408.
[121] Part A – Waihi North Project – Substantive Application; 6.4.1.1.

work. However a no monitoring position is unacceptable and does not account for effects that may have low probability but high potential impact, including dewatering of wetlands and other waterbodies.

117. In relation to the Wharekirauponga Underground Mine, dewatering will have potential effects on spring flows, aquifers and surface waterbodies, including streams and wetlands which we comment on below. The application describes the potential drawdown effects resulting from dewatering of the ore development and mining stopes of the WUG.[122]

118. The application records that dewatering will result in the removal of a small warm natural spring located within the Wharekirauponga Stream catchment.[123] DOCs report states that there are high impacts on freshwater values through the loss of this spring.[124]

119. The application states that it is expected a cold spring will discharge at the same location once rewatering of the mine has taken place and that trace element concentrations will not be measurably different from the existing discharge, however sulphate is predicted to be elevated. However the modelling is stated to involve "significant uncertainties" and it is stated that "several modelling inputs provided are not sufficient to support a robust geotechnical model."[125]

120. A fracture-controlled discharge of 5 L/s at an area along a downstream reach of the Wharekirauponga Stream where deep groundwater is discharging is also expected to reduce, or possibly cease, for the duration of WUG dewatering.

121. The loss of the springs is a significant ecological impact.

122. In relation to aquifers, the application records that the primary aquifer likely to be dewatered is the Rhyolite rockmass which intercepts deep groundwater that flows from the upper reaches of the catchment down to well below sea level in a submarine environment. It is stated that some extent of dewatering of the rockmass is likely to occur. There may be some adjustment of pressure heads in the aquifer due to steeper vertical hydraulic gradients created by increased drainage.

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[122] Part A – Waihi North Project – Substantive Application page 392.
[123] Part A – Waihi North Project – Substantive Application page 579.
[124] Doc report on access arrangement, para 104.
[125] B.16 ACEOM Warm Spring Post Closure Geochemistry; pages 8 – 9. Uncertainties with respect to the warm spring are also addressed at B33 Flo Solutions Hydrogeologic Site Model; at page 105.

123. In relation to effects on surface water the effects are highly uncertain. The AEE records that in relation to dewatering effects associated with the Wharekirauponga Underground Mine:[126]

> … The proposed dewatering activities will lower the deep groundwater level. Available geological and hydrogeological data has demonstrated that there is a limited link between deeper groundwater, shallow groundwater, and surface water. The presence of such a link raises the potential for the proposed dewatering of the deep groundwater system to affect the shallow groundwater system.
>
> **Until dewatering activities commence, it will not be known if this link between the deep, shallow, and surface waters is small-negligible (which will see dewatering effects constrained to the deep groundwater system), or more substantial (resulting in measurable surface water effects).**

124. This uncertainty is of significant concern given the fact that the ecological values and ecological integrity of the Wharekirauponga Sub-Catchment are very high.[127] In particular, the application refers to the potential (but unlikely) effects on flow regimes within certain Natural State Water Bodies and natural inland wetlands in response to mine dewatering with the commensurate potential for reduction of stream extent and ecological functioning.[128]

125. It is clear from the application that there is a location where there is a higher risk of adverse effects:

    a. The application states that while connection could develop between the shallow and deep groundwater systems, this effect is likely to be constrained to where the Rhyolite host rocks are exposed at the surface. This is stated to be around 1.5km^2 or 2% of the catchment as shown on Figure 6-6 of the AEE (surface exposure of Rhyolite rocks). However, as shown by comparing Figure 6-6 and the underground mining footprint plan (copied below),[129] the area of Rhyolite largely coincides with the underground mining footprint.[130] It therefore appears that underground mining will occur in the area of highest potential risk/effect. It is irrelevant, and downplays the significance of

[126] Page 391
[127] Page 446.
[128] Page 538.
[129] This plan is an extract from C.02 Area 1 maps.
[130] See also Figure 6 of B.27 WWLA Wharekirauponga Groundwater Assessment which includes a similar figure but with the Dual Tunnels overlaid which is a useful reference.

the potential effect, to refer to this as being 2 % of the catchment area.[131]

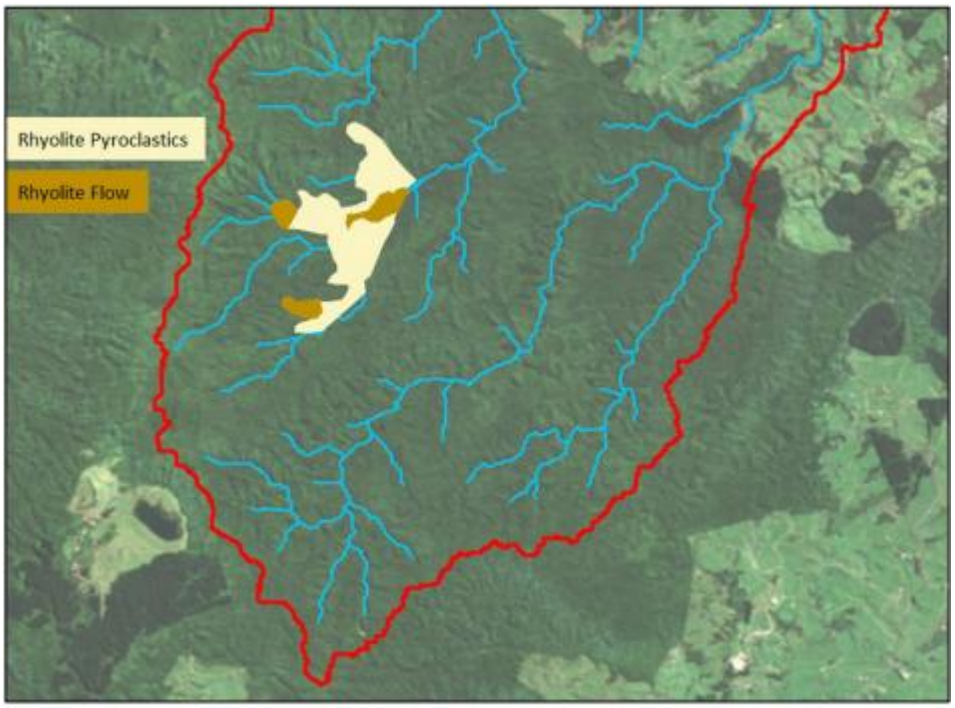
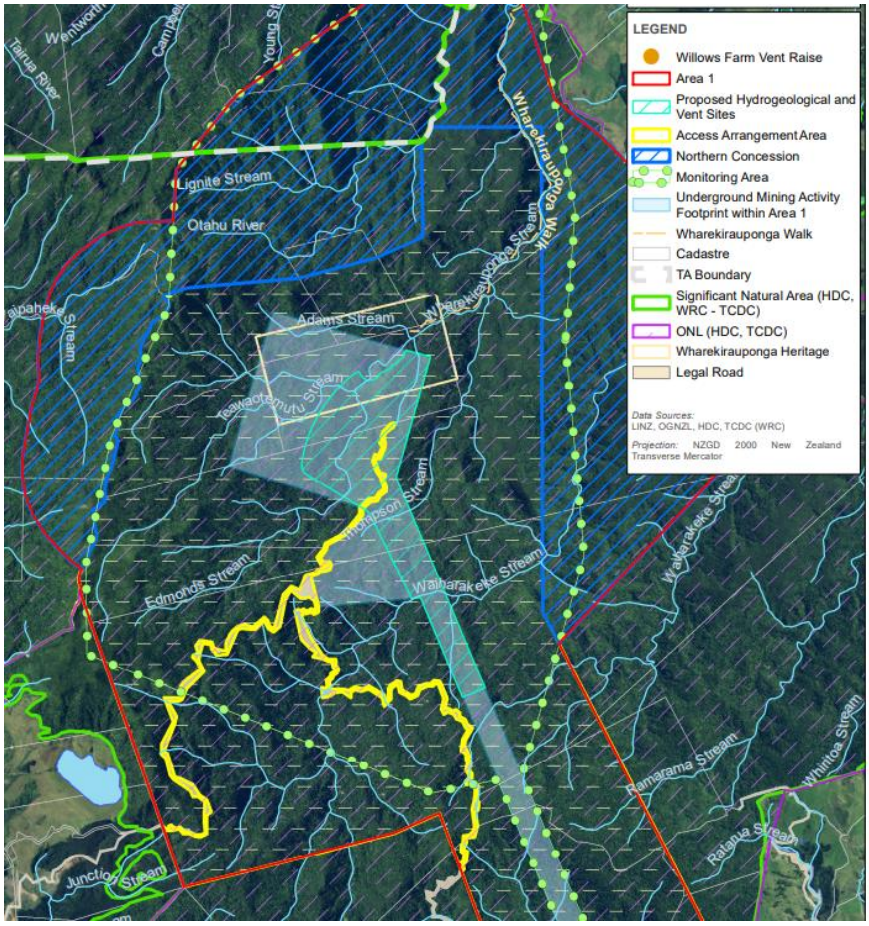


Figure 6-6: Surface Exposure of Rhyolite Rocks

[131] See also B.27 WWLA Wharekirauponga Groundwater Assessment Figure 8 which show no capping layer over the vein structure that extends to the surface.



b. The groundwater assessment provides the following explanation[132]:

> ... there is a localised area where post mineralisation Andesite cover is not present at the land surface that is considered to be of potentially higher risk. That location is an area where the Rhyodite rocks that host the orebody that will be dewatered are in direct contact with the surface water features and the low permeability layer is absent. The potential for effects to develop in the near surface in that area is related to the degree of hydraulic connectivity between the vein system and the land surface, the magnitude of which is driven by the permeability of the geology locally. Initial indications are that permeability is low and connectivity to the stream beds is weak and unlikely to result in a measurable change in stream flows. However localised structures such as fracture zones or vein sets have the potential to create connectivity to the stream bed.

c. The vein system is shown in Figure 8 of the Groundwater Effects report which shows the veins extending to the surface with no Andesite cover. The report states that adjacent to the vein systems the Rhyolite rock is highly silicified, fractured and has variable permeability depending on the degree of fracturing which can be high.

[132] B.27 WWLA Wharekirauponga Groundwater Assessment, executive summary.

Strong downward hydraulic gradients are observed in many parts of the Rhyolite aquifer system.

d. The extent of surface waters at higher risk of dewatering appears to be significantly understated. The application states that deep dewatering could create connectivity to the shallow aquifer system (where the Wharekirauponga Stream bed passes over the mining area) and therefore affect surface waters. Figure 6-9 illustrates the area of potential effect, which the applicant states represents a stream length of approximately 1,200 m of second and third order stream.[133] It is appears from Figure 6-9 (not reproduced in these comments but included at page 398 of the application) that the area of potential effect is identified as being the darker area on the map (Rhyolite), and that the Edmonds Formation (rhyolitic pyroclastics) has been excluded. If the Edmonds Formation is included in the area of potential effect, which it should be, this would significantly alter the calculation of affected stream extent.

126. It is critical that when considering effects that this is not just considered on a catchment wide basis but also specifically with respect to this area of higher risk below which mining will occur. Forest & Bird is concerned that within this area of higher risk mining could result in dewatering effects much more significant than predicted. The level of uncertainty regarding the effects of dewatering (which has a high potential impact) is unacceptable.

127. The groundwater report states following mine closure the groundwater system is expected to recover to its previous state after approximately 30 years.[134] However this is not sufficiently certain and species or habitats affected during that time period may never return.

128. Forest & Bird also refers to the following uncertainties in the modelling:

e. The application states that the 7-day mean annual low flow ("MALF") could be reduced within the Wharekirauponga Sub-Catchment between 2 to 13% because of baseflow reduction as a result of mining (based on current monitoring locations). The report states that in terms of comparing the predicted effects to the long-term low flow variability, the modelled effects appear most noticeable in Edmonds and Thompsons where the modelled reductions in 7-day MALF approach the lower end of the current estimated ALF variability. In these areas even small decreases can mean a decline in habitat and aquatic species. This concern is exacerbated given the uncertainty in

[133] Page 397.
[134] B.27 WWLA Wharekirauponga Groundwater Assessment; executive summary.

the modelling[135] which means that there is a real risk that impacts cannot be accurately quantified and could be significantly worse than expected.

f. The groundwater report also refers to the need for further assessment in assumptions regarding areas where dewatering effects are not expected to develop.[136]

129. There is an even higher potential for effects on freshwater biodiversity, wetlands and associated loss of habitat or vegetation if the uncertainty within the modelling results in greater water loss.

130. In relation to potential effects on wetlands, of the 50 wetlands, eight have been identified as having a higher susceptibility of being affected (relative to others) if a linkage between the deep and shallow ground water systems develops due to mine dewatering.[137] The wetlands are of very high ecological value.[138]

131. The application states that hydrological changes arising from dewatering, if they were to occur, could lead to reductions in wetland extent, or changes in hydrological regimes of the wetlands. This could lead to ecological impacts such as a loss of habitat for flora and fauna or a change in vegetation community. Because of the uncertainty in whether these effects will occur, and also to aid in the detection of effects, monitoring of both wetlands assessed as most at risk, as well as control or reference wetland/s, is proposed to be undertaken.[139]

132. The proposal is that if effects of dewatering are detected, remedial actions such as provision of supplementary water, grouting of fissures which drain shallow groundwater and/or reinjections of water into aquifers may occur to augment flows. If these measures are unsuccessful, inadequate or otherwise unable to be undertaken, an offsetting or compensation package will be developed to address any residual effects and ensure that

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[135] The GHD modelling report states at page 47 that: *It is difficult to quantify the total uncertainty within the current data set. However, the current calibration provides some context, as does the comparison of the calculated long term flow statistics with the generated physical and empirical based estimates. Based on these comparisons it is surmised that at lower flows the model provides a reasonable estimate of rainfall storage / runoff and groundwater dependent flow, and at locations with a continuous flow record this uncertainty is probably in order of 10-20 % of the actual values. Outside of these flow ranges and the continuously monitored locations, the uncertainty is likely to increase.*

[136] B.17, page 18.

[137] Page 399

[138] Bioresearches Wetland Ecology Effects Assessment, page ii.

[139] Page 448

the project results in no net loss of wetland habitat or wetland ecological values.[140]

133. It is of significant concern that the extent to which water bodies (including wetlands and Natural State waterbodies) will be affected and whether the measures to address any effects will be successful is unknown. Further measures like reinjection do not replace natural groundwater fed systems and there is a risk that these will create artificial flow regimes, leaving ecosystems altered and vulnerable.

Conditions - waterbodies

134. Given the uncertainties that exist and the high potential impacts including on Natural State waterbodies, effects should be avoided by not allowing mining in this area. A regime that allows attempts to be made to address effects after they occur (with an acknowledged possibility that it might not be successful) is unacceptable. Conditions cannot adequately address these risks.

135. Conditions should ensure that information gaps are addressed; a precautionary approach is taken and that areas with higher risk are avoided. The applicant proposes to include trigger levels and respond to trigger levels in the conditions.[141] Although the AEE states "set Respond Trigger Levels, below which the natural flows of the identified National State Water Bodies (with the exception of the warm spring) and natural water levels of the identified nine natural inland wetlands shall not fall below …", if the flows do fall below OGNL must simply commission a suitably qualified expert to implement appropriate mitigation measures. This does not provide sufficient protection.

136. In the case of Natural State Waterbodies, the conditions state that if flows are less than the Respond Trigger Level then "the Consent Holder must immediately cease any upstream surface water take". It is unclear what is meant by upstream surface water takes, and how this will address the effects of dewatering (which arises from the abstraction of groundwater/dewatering of the underground mine and not from a surface water abstraction).

137. Trigger levels must be set at levels which seek to avoid adverse effects, rather than being reactive to effects after they arise. The conditions must include a more stringent limit which if reached would require mining to cease until the effects have been successfully remediated. However, as the potential for remediation is highly uncertain, conditions are not able to adequately address these effects.

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[140] Page 448.
[141] See page 401.

Reclamation

138. The proposal will lead to reclamation of stream habitat, reduced aquatic connectivity and instream works. Under 22.1.4 (Reclamations) ecological assessment summarises the reclamations as follows:[142]

> Across the footprints of works for WNP there is an overall expected loss of some 4,122 m of low to high value stream loss (Table 50) as well as some 9 m2 of warm spring.

139. The reclamations and diversions are summarised in Table 50 of the Boffa Miskell report as including:[143]

    a. 558m of Tributary 2, Mataura Stream catchment.

    b. 47m for the Gladstone Open Pit

    c. 2,118m of Tailings facility TSF3

    d. 1,389m for the Northern Rock Stack (NRS).

140. The application says this will be offset with the creation of 13,573m of stream diversion channels and stream restoration; with an overall permanent loss of some 16% of extent (length) of streams.

141. The loss of these streams is a significant impact. Resulting effects include a prediction that the reclamation of the upper reaches of the headwater gully will reduce groundwater and surface flows to the Gladstone Wetland.

142. We note that the AEE only appears to use the term 'reclamation' in the context of discussing Tributary 2 and the 47m reclaimed as a result of the Gladstone open pit. There are only limited references to reclamation in the AEE all confined to those particular reclamations. However the loss of streams at TFS3 and the NRS are also reclamations. 'Reclamation' is defined in the National Planning Standards as including the manmade formation of permanent dry land by the positioning of material into or onto any part of a waterbody or bed of a river. Therefore even if a stream is diverted the bed will still be reclaimed. This is important when taking into account the national planning instruments. The failure to refer to the other 3507m in the AEE as being reclamation is a significant omission.[144]

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[142] B.43 Boffa Miskell Freshwater Ecological Assessment; page 126.
[143] B.43 Boffa Miskell Freshwater Ecological Assessment; page 128.
[144] Reclamations and the loss of extent of watercourses is addressed further below in the context of the NPS FM.

Construction and Operational Water Management Effects

143. It is critical that the control and treatment of rainfall runoff from areas subject to mine related activities at the surface and from seepage from proposed work sites, and treatment of surplus processing water is undertaken in a way that protects water related values and does not affect groundwater or surface water quality.

144. Some of the conclusions reached in the technical reports do not give sufficient reassurance that this will be achieved. For example page 415 of the AEE includes statements that:

> **Groundwater quality is expected to be affected by seepage** through the base of the NRS, however, the sub-soil drains are predicted to capture the majority of impacted water. The un-captured seepage is predicted to have a very minor influence on downgradient groundwater quality;
>
> > Monitoring of existing storage facilities indicates that following closure, longer term impacts to water quality **should reduce**;

145. It is good practice for draft management plans to be provided with a resource consent application. It is concerning that some important management plans including the Northern Rock Stack Monitoring and Management Plan and the TSF Monitoring and Management Plan have not been provided (as far as we can ascertain) and this makes it difficult to assess the extent to which effects will be managed appropriately.

Effects associated with tailing storage

146. The application records that the processing of the recovered ore will produce approximately 8.66 million tonnes of additional tailings.[145] Environmental risks associated with tailing storage are significant. This includes risks to freshwater and ecosystems and risks to downstream drinking water sources and communities. Contamination effects resulting from mining can occur well into the future which was highlighted by the occurrence of bright orange discoloration of the Ōhinemuri River last year which was found to involve elevated arsenic and originated from sediment discharged from a historic mine shaft in Karangahake Gorge.[146] The presence of further tailings in this sensitive receiving environment should be avoided.

[145] Page 584

[146] https://www.waikatoregion.govt.nz/community/whats-happening/news/media-releases/preliminary-results-from-orange-sediment-in-ohinemuri-river-analysed/

Tailing storage - conditions

147. Should consent be granted is important that the bond and trust fund proposed as conditions are sufficient to ensure rehabilitation and closure outcomes can be achieved; and also to allow for remediation should unforeseen effects arise in the future.

Part 2 RMA

148. Clause 5 (1)(g) of Schedule 5 FTAA requires an assessment of the project against ss 5, 6 and 7 of the RMA.

149. The application in this case is contrary to Part 2 RMA including the purpose of sustainable management and the need to safeguard the life-supporting capacity of water and ecosystems.

150. Particularly relevant in this case is s 6(c) which requires the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna to be recognised and provided for;[147] and s 6(a) which relates to the preservation of the natural character of wetlands and lakes and rivers and their margins and protection of them from inappropriate subdivision, use and development. The proposal runs directly counter to these provisions.

Relevant RMA planning instruments

151. RMA planning instruments are a matter for the panel to take into account under cl 17 Schedule 5 FTAA.

National Environmental Standards for Freshwater (NES FW)

152. Various activities associated with the project are subject to the provisions of the NES FW.

153. The application refers to clause 45D(6) of the NES FW (which relates to various activities affecting natural inland wetlands) which provides:

> A resource consent for a discretionary activity under this regulation **must not be granted unless** the consent authority has first—
>
> (a) satisfied itself that the extraction of the minerals will provide **significant national or regional benefits**; **and**
>
> (b) **satisfied itself that there is a functional need** for the extraction of minerals and ancillary activities in that location; and
>
> (c) **applied the effects management hierarchy**.

[147] The proposal affects identified SNAs.

154. This is a very directive provision requiring that the consent authority not grant consent "unless" it has satisfied itself of the specified matters. Although the panel is only required to take into account that provision, it should be given significant weight in the analysis in accordance with the authorities discussed above.[148]

155. In relation to the requirement that extraction of minerals will provide significant national or regional benefits we note that OGNZL has supplied information in relation to the positive effects of the Waihi North Project as a whole. The estimates are not separated into individual components of the proposal.[149] It is therefore difficult to establish the benefits arising from the parts of the scheme that may impact natural inland wetlands. Further as stated above, OGNZL is a wholly owned subsidiary of OceanaGold Corporation, a Canadian corporation, so any national or regional benefits are significantly less than a mining proposal by a New Zealand entity.

156. Clauses (b) functional need and (c) effects management hierarchy are addressed below in the context of Policy 7 NPS FM.

157. Section 8 of the application (Fast-track Approval requirements) does not refer to Regulation 57 which relates to reclamation of riverbeds. Given the proposal to reclaim over 4000m of riverbed this is a key regulation that must be considered. Regulation 57 states:

> (2) A resource consent for a discretionary activity under this regulation **must not be granted unless** the consent authority has first—
>
> (a) **satisfied itself that there is a functional need** for the reclamation of the river bed **in that location**; and
>
> (b) **applied the effects management hierarchy**.

158. These requirements are addressed below in the context of Policy 7 of the NPS-FM. Forest & Bird submits that functional need has not been established, and the effects management hierarchy has not been applied, and as such this regulation directs that consent not be granted. Regulation 57 is again a very directive provision, deserving significant weight in the Panel's assessment.

National Policy Statement for Freshwater Management 2020 (NPSFM)

Policy 1

[148] At paragraphs 55-56 and 77 above.
[149] DOC access arrangement report 148.

159. Policy 1 requires that freshwater is managed in a way that gives effect to Te Mana o Te Wai.[150] The application is inconsistent with that policy including the principle of *stewardship* (the obligations of all New Zealanders to manage freshwater in a way that ensures it sustains present and future generations) and *care and respect* (the responsibility of all New Zealanders to care for freshwater in providing for the health of the nation).

Policy 6

160. Policy 6 of the NPSFM is that there is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted. This is supported by clause 3.22 of the NPS-FM which provides that every regional council must include a policy in its regional plan to the effect that the loss of extent of natural inland wetlands is avoided, their values are protected, and their restoration is promoted except where (amongst others) the activity is necessary for the purpose of the extraction of minerals and ancillary activities; the extraction of the mineral will provide significant natural or regional benefits; there is a functional need for the activity to be done in that location; and the effects of the activity will be managed through applying the effects management hierarchy.

161. In accordance with clause 3.22, Policy 3.A.2 of the Waikato Regional Plan states:

> The loss of extent of natural inland wetlands is avoided, their values are protected, and their restoration is promoted, except where:
>
> e. the regional council is satisfied that:
>
> i. the activity is necessary for the purpose of the extraction of minerals and ancillary activities; and
> ii. the extraction of the mineral will provide significant national or regional benefits; and
> iii. there is a functional need for the activity to be done in that location; and
> iv. the effects of the activity will be managed through applying the effects management hierarchy; or …

162. In this case the application does result in the potential for loss of extent of natural inland wetlands (as set out above in the section on environmental effects).

163. The applicant's assessment in relation to this policy does not acknowledge that with respect to the Gladstone Wetland a reduction in groundwater discharge to the wetland of approximately 30% and a reduction in

[150] Policy 1 is relevant notwithstanding recent amendments to s 104 RMA. Section 104(2F) only excludes consideration of clauses 1.3(5) and 2.1 of the NPSFM 2020 (which relates to the hierarchy of obligations in the NPSFM 2020)

groundwater level of approximately 0.5m adjacent to the wetland is predicted.

164. The application identifies that hydrological changes arising from dewatering, if they were to occur, could lead to reductions in wetland extent, or changes in hydrological regimes of the wetlands. The proposal is that if effects of dewatering are detected, remedial actions such as provision of supplementary water, grouting of fissures which drain shallow groundwater and/or reinjections of water into aquifers may occur to augment flows. If these measures are unsuccessful, inadequate or otherwise unable to be undertaken, it is stated that an offsetting or compensation package will be developed to address any residual effects and ensure that the project results in no net loss of wetland habitat or wetland ecological values.[151]

165. Subsection (3) of clause 3.22 NPSFM requires (amongst other matters) that that the conditions specify how the requirements in (a)(iii) will be achieved (i.e. there are methods or measures that will ensure that the offsetting or compensation will be maintained and managed over time to achieve the conservation outcomes). The development of an offsetting or compensation package in the future, if that becomes necessary, does not satisfy this.

166. Further, the principles for aquatic offsetting and aquatic compensation in Appendices 6 and 7 are not met. Principle 2 of Appendix 6 - Principles for aquatic offsetting specifies when aquatic offsetting is not appropriate:

> 2. When aquatic offsetting is not appropriate: Aquatic offsets are not appropriate in situations where, in terms of conservation outcomes, the extent or values cannot be offset to achieve no net loss, and preferably a net gain, in the extent and values. Examples of an offset not being appropriate would include where:
>
> (a) residual adverse effects cannot be offset **because of the irreplaceability or vulnerability of the extent or values affected:**
>
> (b) **effects on the extent or values are uncertain, unknown, or little understood, but potential effects are significantly adverse:**
>
> (c) there are no technically feasible options by which to secure proposed no net loss and preferably a net gain outcome within an acceptable timeframe.

167. Principle 2 of Appendix 7 – Principles for aquatic compensation specifies when aquatic compensation is not appropriate and has similar limits:

> 2. When aquatic compensation is not appropriate: Aquatic compensation is not appropriate where, in terms of conservation outcomes, the extent or

[151] A.09 Substantive Application Report Assessment of Effects; page 448.

values are not able to be compensated for. Examples of aquatic compensation not being appropriate would include where:

(a) the affected part of the natural inland wetland or river bed, or its values, including species, are irreplaceable or vulnerable:

(b) effects on the extent or values are uncertain, unknown, or little understood, but potential effects are significantly adverse:

(c) there are no technically feasible options by which to secure gains within an acceptable timeframe.

168. In assessing Policy 6 (and Policy 3.A.2) the application does not address the exceptions in the policy (or clause 3.22), but rather takes the position that:

> There are 50 natural wetlands located within the Coromandel Forest Park above the proposed subsurface mining activities, the Matarua Wetland located within Area 2, the Gladstone Wetland located within Area 5. … the activities within these areas are being managed in such a way as to ensure dewatering effects associated with the proposed works will be monitored and managed to **ensure that there is no loss in the extent or values of these wetlands**

169. The comment that the proposed works will be monitored and managed to ensure that there is no loss in the extent or values of the wetlands is not consistent with the AEE which refers to the potential for reductions in wetland extent. As set out above the AEE states that:[152]

> If effects of dewatering are detected, it is proposed that remedial actions such as provision of supplementary water, grouting of fissures which drain shallow groundwater and / or reinjection of water into aquifers may occur to augment flows. **If these measures are unsuccessful, inadequate or otherwise unable to be undertaken,** an offsetting or compensation package will be developed to address any residual effects and ensure that the project results in no net loss of wetland habitat or wetland ecological value.

170. If the applicant is seeking to rely on a statement that it will ensure that there is no loss in the extent or values of the wetlands then, in the event that consent is granted, this should be imposed in the conditions as an environmental bottom line that must be achieved.

171. However, even then, a "no net loss" outcome is not consistent with the NPSFM wetland policies discussed above, which specify limits to offsetting and compensation that are breached by this application.

Policy 7

[152] P 448

172. NPSFM 2020 Policy 7 is to avoid the loss of river extent and values to the extent practicable. Clause 3.24(1) of the NPSFM 2020 similarly provides that every regional council must include a policy in its regional plan to the effect that the loss of river extent and values is avoided unless the council is satisfied that there is a functional need for the activity in that location; and the effects of the activity are managed by applying the effects management hierarchy.

173. Policy 3.A.3 of the Waikato Regional Plan provides:

> Policy 3.A.3: Rivers
> The loss of river extent and values is avoided, unless the council is satisfied:
>
> (a) that there is a functional need for the activity in that location; and
>
> (b) the effects of the activity are managed by applying the effects management hierarchy.

174. The application summarises "the unavoidable reduction in the extent of waterbodies in several locations":[153]

> > Dewatering associated with the WUG will result in the removal of a small warm natural spring located within the Wharekirauponga Stream catchment;
>
> > Dewatering associated with the WUG has an unlikely potential to result in changes to the water levels and flow of Natural State Water Bodies and natural inland wetlands located within the Coromandel Forest Park;
>
> > TSF3 will affect several unnamed tributaries of Ruahorehore Stream;
>
> > The GOP and GOP TSF will affect the headwaters of the Gladstone Stream;
>
> > The NRS will affect a tributary to the Ohinemuri River known as TB1 Stream and various tributaries thereof; and
>
> > The WRS will temporarily affect part of a tributary of Mataura Stream known as Tributary 2.

175. The application accepts that it results in the loss of river extent and values and that the policy requires a functional need for the activity in that location; and says the effects of the activity are managed by applying the effects management hierarchy:[154]

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[153] p 585
[154] P 617.

> In respect to the loss of river extent and values of the tributaries of the Mataura Stream, Gladstone Stream, Ohinemury River and Ruahorehore Stream, there is a demonstrated functional need for activities associated with the WNP to occupy part of the aforementioned waterbodies. The effects management hierarchy has subsequently been applied for the design of the features within and affecting the relevant waterbodies …

176. The ecological assessment states that across the footprints of works for the project there is an overall expected loss of some 4,122m of low to high value stream loss as well as some 9m2 of warm spring. The report states:[155]

> In total, a 4,112 m length of watercourses will be reclaimed by the WNP project, increased to 4,119 m when the warm spring is included (Table 50). A total of at least 3,469 m of watercourse will be created (noting there is no diversion creation for the warm spring). **Accordingly, the NPSFM requirement to avoid loss of extent of watercourses is unfulfilled, with a shortfall of 644 m (16% of loss).** This shortfall will be addressed through the planting of an additional length of 644 m of stream within the Mataura and Ohinemuri River catchments. **We consider that the planned diversions and the additional enhancement of existing stream length is sufficient to fulfil the requirement to avoid loss of stream extent.**

177. Forest & Bird does not agree with the suggestion that the planned diversions and the additional enhancement of existing streams is sufficient to fulfil the requirement to avoid loss of stream extent.

178. The NPSFM defines "aquatic offset" as meaning a measurable conservation outcome resulting from actions that are intended to achieve "*no net loss, and preferably a net gain, in the **extent and values** of the wetland or river.*" (emphasis added). This is consistent with Policy 7 (which sits at the top of the effects management hierarchy) which applies to both river extent and values (*The loss of river extent and values is avoided to the extent practicable*).

179. In *Te Runanga o Ngati Whatua v Auckland Council*[156] the High Court stated:

> [300] … the offset must relate to the adverse effect to be avoided. This may be the area of greatest contention — is there a demonstrable connection between the loss of wetland or river extent and values and any offset or other remediation? Relevant to that assessment will be the definition provided in the NPS-FM as to "no net loss". I am not in a position to test that in any meaningful sense on this appeal of the Environment Court interim decision. It is certainly not for this Court on an appeal on a point of law to presuppose that the no material harm standard cannot be met in this case. I simply observe in this regard that, intuitively, **it is the**

[155] B.43 Boffa Miskell Freshwater Ecological Assessment; page 127.
[156] *Te Runanga o Ngati Whatua v Auckland Council* [2024] NZHC 3794

> **function served by river extent that must surely be the focus of the inquiry**. An extensive network of open pipes and culverts might replace the extent of river loss but could be worthless ecologically or significantly worse for the environment than an extensive programme of river and stream enhancement. In any event, **it is a matter for the Environment Court, as an expert tribunal of fact, to identify and explain in its reasons as to what is properly needed to "offset" the loss of river extent.** If in the end it reaches a no net loss view, this Court will then be in a proper position to assess whether that finding was available to it as a matter of law.

180. Here the "no net loss" threshold has not been met for river extent, including because:

    a. The planting to compensate for the 16% loss in stream extent does not address the loss in stream extent but rather goes to stream value.

    b. The reduction in value resulting from the loss of 4112 m of watercourses, some of which are assessed to have high value, will not be replaced by diversions.

    c. In some cases the created diversions are not at or near the locations of stream reclamation, for example the headwater gully at the Gladstone Open Pit.

Functional need

181. It is necessary under this policy (relating to the loss of river extent and values) and Clause 3.22 (relating to loss of extent of natural inland wetlands) to show a functional need for the activity in that location. Similarly, under the NESFW (discussed above) there is a need to show a functional need for the reclamation of a river bed at that location (regulation 57); and in relation to various activities affecting wetlands there is a requirement for a functional need for the extraction of minerals and ancillary activities in that location.

182. The proposal includes the following reclamations:

    a. Tailings Storage Facility 3 (TSF3) will affect several unnamed tributaries of the Ruahorehore Stream (diversion of 2,118m of stream)
    b. The Gladstone Open Pit (GOP) and GOP TSF will affect the headwaters of the Gladstone Stream (loss of 47m of intermittent stream length)

    c. The Northern Rock Stack (NRS) will affect a tributary to the Ohinemuri River known as TB1 Stream and various tributaries thereof (diversion of 1,389m length of stream)

d. The Willows Rock Stack (WRS) will temporarily affect part of a tributary of Mataura Stream known as Tributary 2 (reclamation of 558m of stream habitat)

183. So: for the vast majority of the reclamation extent, the reclamations are not for mining but for overburden or tailings storage.

184. "Functional need" means:[157]

> … the need for a proposal or activity to traverse, locate or operate in a particular environment because that activity can only occur in that environment

185. This can be compared to "operational need" which means:

> "… the need for a proposal or activity to traverse, locate or operate in a particular environment because of technical or operational characteristics or constraints.

186. The definition has been considered in various authorities. Most recently, the High Court in *Te Rūnanga o Ngāti Whātua v Auckland Council* considered the meaning of functional need in the NPSFM. The case involved an application for the Dome Valley landfill which would reclaim several kilometres of stream bed. The Court said that "functional need" must be applied in a commonsense way:[158]

> Furthermore, and linking back to the concern expressed by Mr Matheson that the effect of the NPS-FM policies and exceptions standards are prohibitive insofar as it requires an assessment of functional need and alternative sites and methods, these requirements must be applied in a common sense way. That requires a realistic appraisal of need and the available alternatives having regard to in this case the proposed scale of the activity and the corresponding function performed by it. Plainly scale is relevant to the assessment of whether the activity is contrary to the NPS-FM "avoid" policies, and the scale of its effects may mean it is unable to satisfy the second step in the exceptions pathway. But need and availability of alternative sites must be assessed in terms of the proposed activity, not based on theoretical need and availability of site for that type of activity generally. A landfill provides a useful illustration. Given that even a small landfill will in most if not all cases need to be located in an environment where the presence of small streams are highly likely, it would accord with common sense to construe "functional" need in a way that would accord with this reality. To hold otherwise and effectively prohibit all but the smallest of landfills, would be an altogether perverse outcome having regard to the fact the NPS-FM envisages landfills in wetlands (many wetlands either contain, are fed by, or are almost wholly composed of areas of moving water i.e. streams) without the requirement to show "functional" need.

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[157] National Planning Standards 2019
[158] At [286].

187. In that case although the Court gave the example of a landfall needing to be located in an environment where small streams are likely – the same cannot be said of environment where 4,112 m length of watercourses will be reclaimed (as is the case here) and mostly for tailings or overburden storage.

188. We comment on the analysis provided by the applicant as follows:

    a. Land ownership and control is listed as a relevant factor, stating that WNP components can only be located on land which the company owns or controls and which is available for development. This is an unduly narrow way of considering functional need. If consideration of functional need could be constrained based on land ownership this would mean functional need could be established in almost any case. There has been no information provided by the applicant as to landownership of other nearby areas and whether these may be made available for development.

    b. The application cites efficiency benefits (including for example material movement costs; efficiency benefits associated with proximity to existing mining infrastructure etc). However where there are technical, logistical or operational reasons why it is preferred for the activity to occur at the location there is no functional need – rather these are operational needs.

    c. Although the application includes a technical report by EGL which assesses options for tailings storage and rock disposal, the identification of the proposal as the preferred option does not equate to functional need.

    d. Figure A3 of the EGL report demonstrates that some of the other locations considered overlap to a much lesser extent with rivers/streams/tributaries yet seem to be discounted due to land ownership or operational reasons. Further other technologies exist that would use less space.

    e. It is unclear whether the size and shape of the Northern Rock Stack could be adjusted (even if it were to stay at its current location) so as to significantly reduce the impact on waterbodies.

189. Another example of the applicant conflating functional need with operational need is in the ecological report which includes the following extract:[159]

> WSP Golder (2022) outline the functional requirements for the rock stack being placed in the tributary 2 catchment:

[159] B.43 Boffa Miskell Freshwater Ecological Assessment Part; page 63.

• Close proximity to the WUG portal.

• Location furthest from the public roads and adjacent properties, with the WRS sited in a natural depression that would lead to least visual amenity and landscape effects.

• The low value of the tributary; the WRS was located above an existing farm access track, in an active grazing area, avoiding the higher ecological value of the lower reach and Mataura Stream.

• Gradient and shape of the natural depression that allows effects to be effectively and efficiently managed.

• Foundation soil conditions and shape of the natural depression that allows for geotechnical stability, a thicker layer of weak clay founding soils in Tributary 1 was a key reason for selecting Tributary 2.

• Size of natural depression was large enough to accept the required rock storage volume

We understand that a single WRS option was preferred over two facilities to manage volume requirements, mainly due to additional disturbance footprint required for rehabilitation, and to best minimise effects on surface water bodies. The haulage gradient and distance from the portal has a twofold effect on cost first for initial placement and secondly when reclaimed as backfill material for the WUG (WSP Golder 2022).

190. These matters do not demonstrate a functional need. Rather it is an analysis of the benefits of the option from an operational perspective; takes into account other factors such as amenity effects; and also factors in the 'low value' of the tributary which is not relevant when establishing functional need. The application does not include a comprehensive assessment of alternatives of options that would avoid the extent of loss, and therefore has not shown a functional need to choose the option that causes this extent of loss.

191. Forest & Bird submits that functional need has not been established.

Effects management hierarchy

192. When applying the effects management hierarchy, the applicant has not demonstrated that they have met the requirement to avoid adverse effects where practicable, and the offsetting/compensation does not comply with the relevant principles.

193. The proposal is contrary to Policy 7.

Policy 8

194. The focus of Policy 8 NPSFM is protecting the significant values of outstanding water bodies. There are seven watercourses traversing Area 1 which are included in the Regional Plan's "Natural State Class" for

"outstanding waterbodies and important habitats because they are unmodified or substantially unmodified by human intervention". The application identifies a potential risk of dewatering on Natural State Class waterbodies and the extent of that risk is uncertain. The proposal is contrary to Policy 8.

National Policy Statement for Indigenous Biodiversity (NPSIB)

195. The NPSIB provides direction to councils to protect, maintain and restore indigenous biodiversity requiring at least no further reduction nationally. It requires protection of significant natural areas ("SNAs") through policies that direct a specific approach to managing effects on SNAs, which only allow certain effects if the activity passes thresholds or gateways relating to functional need and significance, and which set limits on when offsetting or compensation can be used (to ensure that the most vulnerable ecological features are not jeopardised).

Policy 3

196. Policy 3 of the NPS IB seeks to adopt a precautionary approach when considering adverse effects on indigenous biodiversity. This is not met, with some key effects left uncertain with no effective measures for mitigation of the effects.

Policy 7

197. *Policy 7* seeks to protect SNAs by avoiding or managing adverse effects from new use and development on these areas with significant biodiversity values. Clause 3.11 requires that certain effects must be *avoided*, including "a reduction in the population size or occupancy of a Threatened or At Risk (declining) species that uses an SNA for any part of their life cycle".[160]

198. Exceptions to Clause 3.10(2) are set out at 3.11. The application acknowledges that the project interacts with SNAs and that therefore clause 3.11 is applicable. The exceptions include:

> (a) the new … use or development is required for the purposes of any of the following:
> …
> (ii) mineral extraction that provides significant national public benefit that could not otherwise be achieved using resources within New Zealand
> …
> (b) there is a functional need or operational need for the new subdivision, use or development to be in that particular location; and
> (c) there are no practicable alternative locations for the new subdivision, use or development.

[160] Policy 3.10(2)(e)

199. The project affects two SNAs (SNA 166 and SNA T 13 P152). The establishment of Tailing Storage Facility will permanently remove a 8.3ha area of Moderate value rewarewa / tree fern forest within the southern SNA 166 fragment.[161]

200. SNA T13 P152 is a predominately rimu tawa forest in Coromandel Forest Park and the WUG is located under this SNA. The Hauraki District Plan lists this SNA as having "National" significance" in terms of its terrestrial ecosystem and it is 7185.22 ha in total.[162] Figure 3 – 7 shows Area 1 (the underground mine and dual tunnel) located entirely within this SNA. We note that Figure 3 – 7 of the application includes the surface zoning but does not identify in the key that the horizontal dashed line means it is within an SNA:

201. The application does not meet the exceptions set out in this clause, including the need to demonstrate that there are no practicable alternative locations for the development.

202. In relation to SNA166 we refer to the report by EGL which assesses various alternatives for tailings storage and rock disposal and gives the alternatives an environmental score. One of the scores is based on the impact on SNAs, with a score of 5 being does not impact an SNA.

203. The score of the preferred option is 3 for Impact on SNA (*moderate impact on SNA (less than 4 ha impacted and SNA does not have unique or high quality characteristics*) but a number of other options assessed scored a 5 (*SNA avoided*). This demonstrates that there are alternatives available that would avoid the SNA, and that there is no functional need for that particular location.

204. In the event that an exception is held to apply then any adverse effects on an SNA must be managed in accordance with clause 3.10(3) and (4) including by applying the effects management hierarchy. Here the applicant has not properly applied an effects management hierarchy as it has not been demonstrated that adverse effects have been avoided, minimised or remedied where practicable.

205. Further if biodiversity offsetting or biodiversity compensation is applied the applicant must comply with principles 1 to 6 in Appendix 3 and 4.

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[161] 443.

[162] Identified on planning maps 12, 18, 19, 24, 25

Those principles state that offsetting and compensation is not appropriate where (amongst other matters) effects on indigenous biodiversity is uncertain, or little understood, but the potential effects are significantly adverse or irreplaceable.

206. The application in discussing SNA T13 P152 states:[163]

> The majority of the WNP works and activities interacting with this SNA occur underground, which avoids adverse effects on the biodiversity values of SNA T13 P152. Potential effects of the project on this SNA include a temporary loss of vegetation and habitat (0.66 ha). There is also a low (but uncertain) risk of adverse effects on Archey's and Hochstetter's frogs as a result of vibration effects. The potential areas of frog habitat impact include 314 ha for Archey's frogs and up to 12.1 km of stream in the Edmonds Catchment for Hochstetter's frogs.

207. Given that the effects on frogs are so uncertain an offsetting and compensation approach does not meet the requirements of the NPS IB. As such, the proposal is contrary to Clause 3.11 of the NPSIB.

<u>Other planning instruments</u>

208. The application is contrary to the objectives and policies of other relevant planning documents. Whilst we do not intend to address these in detail we note the following:

    a. Objective LF-01 (Regional Policy Statement) seeks to maintain or enhance the mauri and identified values of freshwater bodies, including by safeguarding indigenous species habitats; the outstanding values of the identified outstanding freshwater bodies and the significant values of wetlands.

    b. Objective LF-03 of the Regional Policy Statement seeks that riparian areas and wetlands are managed to maintain or enhance a range of values including water quality, indigenous biodiversity, cultural values and the quality and extent of riparian and wetland habitats.

    c. Policy 5 (section 3.2.3) of the Waikato Regional Plan states that the purpose of the natural state water class is to protect the flow regime, water quality and riparian and aquatic habitat for indigenous species in order to maintain the aesthetic and intrinsic values derived from the unmodified or largely unmodified nature of the catchment. The Policy states that these outstanding waterbodies are important habitats because they are unmodified or substantially unmodified.

    d. Policy 1 (section 3.7.3) of the Waikato Regional Plan seeks to ensure that land drainage activities within or immediately adjacent to

[163] Page 596.

wetlands identified as areas of significant indigenous vegetation or habitats of indigenous fauna are undertaken in a manner which avoids changes in water levels that result in (amongst other matters): shrinking or loss of the wetland; accelerated dewatering and oxidation, or adverse effects on the natural character of wetlands.

209. The proposal is contrary to these objectives and policies. Dewatering has the potential to lead to adverse effects on natural state waterbodies and wetlands; and will not lead to the protection of these features.

210. Also particularly relevant are objectives and policies which seek to protect indigenous biodiversity and significant natural areas:

a. Objection 1 (Hauraki District Plan – section 6.2.3) is to protect Significant Natural Areas for the purpose of maintaining and enhancing their intrinsic, cultural and amenity values for the benefit and enjoyment of future generations. Objective 2 seeks to maintain and enhance the life supporting capacity of ecosystems, the mauri of natural resources and the extent and representativeness of the District's indigenous diversity.

b. Policy ECO-P2 (Waikato Regional Policy Statement) states that significant indigenous vegetation and significant habitats of indigenous fauna shall be protected by ensuring the characteristics that contribute to its significance are not adversely affected to the extent that the significance of the vegetation or habitat is reduced.

c. Method ECO-M3 (Waikato Regional Policy Statement) which relates to remediation, mitigation and offsetting only applies to indigenous biodiversity that is not significant. The method is explicit that for significant indigenous vegetation and significant habitats of indigenous fauna ECO-M13 applies. Amongst other matters ECO-M13 seeks to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna and requires that activities avoid the loss or degradation of areas of significant indigenous vegetation and significant habitats of indigenous fauna in preference to remediation or mitigation. The method includes recognition that remediation, mitigation and offsetting may not be appropriate where the indigenous biodiversity is rare, at risk, threatened or irreplaceable.

Section 81(3): applicable clauses for approval types: Concessions

211. DOC has commented on a number of issues arising from the concessions, wildlife approvals and access arrangements. The discussion includes a raft of changes required to conditions and management plans. We do not generally repeat those deficiencies in the conditions and management plans but rather we highlight the key concerns held by Forest & Bird with respect to these approvals.

212. Clauses 7 to 9 of Schedule 6 apply to a substantive application for a concession.[164] Clause 7 requires the panel to take into account the matters in clauses 7(a) and (b), giving the greatest weight to the FTAA purpose. Forest & Bird's comments above regarding this weighting are also relevant to clause 7.

213. The proposed measures do not adequately mitigate effects on frogs and lizards. The concession and wildlife approval activities have the potential to adversely affect conservation values, including the likely disturbance and killing of threatened and at risk fauna. Forest & Bird agrees with the comments in the s 52 report that:

    a. The MCA's current criteria relating to frogs and lizards will not result in the avoidance of effects and will result in adverse impacts on frogs and lizards within the 'low' and 'moderate' categories. Adverse impacts within 'low' and 'moderate' categories, and no exclusion provision for 'higher' categories is not acceptable for Threatened or At Risk frog and lizard species. [165]

    b. The proposed mitigation measures with respect to the northern area concession are not sufficient to meet the Waikato Conservation Management Strategy; the Coromandel Peninsula Conservation Land Management Plan 2002; and the Conservation General Policy 2005; and the purpose for which land is held under s 19 of the Conservation Act (protecting its natural ad historic resources and to facilitate public recreation and enjoyment). Forest & Bird note that the Waikato Conservation Management Strategy includes the objective of conserving threatened species to ensure persistence with an emphasis on those species listed in Appendix 6 (which includes those with a threat status of At Risk or Threatened).

    c. The concession activities have the potential to adversely affect conservation values with a high impact within the footprint of proposed activities.[166]

Section 81(3): applicable clauses for approval types: Wildlife approvals

214. Clauses 5 and 6 of Schedule 7 apply to a substantive application for a wildlife approval.[167] When considering an application for a wildlife approval, including conditions, the panel must take into account, giving the greatest weight to paragraph (a):[168]

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[164] Section 81(3)(f)
[165] Concessions approval report, p 7.
[166] Concessions approval repore=t, paragraph 202.
[167] Section 81(3)(i). "Wildlife approval" is defined in clause 1 of Schedule 7.
[168] Clause 5 Schedule 7.

a. the FTAA purpose; and

b. the purpose of the Wildlife Act 1953 and the effects of the project on the protected wildlife that is to be covered by the approval; and

c. information and requirements relating to the protected wildlife that is to be covered by the approval (including, as the case may be, in the New Zealand Threat Classification System or any relevant international conservation agreement).

215. A panel may set any conditions on a wildlife approval that the panel considers necessary to manage the effects of the activity on protected wildlife.[169] In setting conditions, the panel must:[170]

a. consider whether the condition would avoid, minimise, or remedy any impacts on protected wildlife that is to be covered by the approval; and

b. where more than minor residual impacts on protected wildlife cannot be avoided, minimised, or remedied, ensure that they are offset or compensated for where possible and appropriate; and

c. take into account, as the case may be, the New Zealand Threat Classification System or any relevant international conservation agreement that may apply in respect of the protected wildlife that is to be covered by the approval.

216. With respect to the phrase "the purpose of the Wildlife Act 1953 and the effects of the project on the protected wildlife that is to be covered by the approval" in cls 5 and 6:

a. The Wildlife Act declares all wildlife to be subject to it,[171] and, except in the case of wildlife specified in schs 1—5, wildlife is absolutely protected throughout New Zealand. It is "the principal means by which wildlife in New Zealand, including many of its most endangered species, are protected" and it is the "fall-back protection mechanism in cases not specifically provided for by other legislation".[172] It is the "mainstay of statutory protection of animals in the environment'."[173]

b. The purpose of the Act is to protect wildlife.[174]

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[169] Clause 6(1) Schedule 7.
[170] Clause 6(2) Schedule 7.
[171] Section 3 WA 1957
[172] *Shark Experience Ltd v PauaMAC5 Inc* [2019] NZSC 111, [2019] 1 NZLR 791 at [45].
[173] At [46]
[174] At [66]

c. The Bledisloe panel applied that interpretation in context of cl 5(b) FTAA. It said:

> a. The Wildlife Act does not have a specific purpose section but it still has a purpose. Section 10, Legislation Act 2019, provides that "legislation must be construed in light of its purpose, and the word legislation is defined to include both the whole and any part of an Act. So, in cases of the kind we are now considering, the provision concerned must be interpreted to advance its own purpose."[175] That provision is section 3: "the protection of wild animals".
> b. The wildlife to be covered by the approval is the kororā | little penguin, and accordingly it is the effects on that species that we must consider under this sub-clause.

217. Here, the wildlife approval concerns frogs and lizards. Its conditions envisage killing individuals. If the scope of the wildlife approvals includes harm to frogs by vibration (which is not currently the case, as addressed above), there may be significant adverse effects at a species level particularly for Archey's Frogs. For those reasons, the proposal is not consistent with the purpose of the Wildlife Act.

218. In addition:

a. Forest & Bird agrees with DOC that the application contains substantial gaps.

b. The report by the Department of Conservation has raised a number of important queries in relation to the proposal. It states:[176]

> As the activity is not fully described or understood, DOC is only able to offer high-level comments on conditions. While OGNZL has provided detailed technical reports on the potential effects of its activities on wildlife, its application is not clear about what activities the approval is intended to cover. DOC is therefore not able to comment at this stage on the extent to which the effects of the project on protected wildlife that is to be covered by the approval would be consistent with the purpose of the Wildlife Act.

c. Forest & Bird agrees that the lack of clarity in the application makes it difficult to assess the application and it means that the application is fundamentally flawed. We have addressed this issue further above under the heading of scope.

219. With respect to cls 5(c) and 6(2)(b) "information and requirements …", Forest & Bird submits that the Convention on Biological Diversity and the

[175] Citing Burrows and Carter Statute Law in New Zealand (6th Ed, 2021), Chapter 8, p 314.
[176] Wildlife approval report, paragraph 191.

declarations, protocols and strategies agreed or prepared pursuant to it are "relevant international conservation agreements."

220. The Convention on Biological Diversity is a global treaty aimed at conserving biological diversity. Adopted at the Earth Summit in 1992, the Convention sets global priorities for biodiversity conservation and sustainable use. New Zealand is a party to the Convention, and recently re-committed to the Convention's priorities through the Kunming-Montreal Global Biodiversity Framework.

221. Article 8 of the Convention is In-situ Conservation. It requires each Contracting Party to "as far as possible and as appropriate" take measures that include the following:

    a. Establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity

    b. Regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use

    c. Promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings

    d. Develop or maintain necessary legislation and/or other regulatory provisions for the protection of threatened species and populations

222. One of New Zealand's obligations under the Convention is to have a National Biodiversity Strategy and Action Plan. This is Te Mana o Te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020. The Strategy contains Outcomes which include:

    a. All indigenous species are protected and secure, and none are at risk of extinction due to human activity.

    b. Economic activity has neutral or beneficial impacts on biodiversity.

223. At the same 1992 Earth Summit that produced the Convention, the parties endorsed the Rio Declaration. Principle 15 is concerned with taking a precautionary approach where there are threats of serious or irreversible damage but lack of full scientific certainty. [177] The precautionary principle accords with favouring caution.[178]

224. Granting the wildlife approval would be inconsistent with Article 8 of the Convention, the Strategy's Outcomes, and with a precautionary approach.

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[177] Principle 15 Rio Declaration.

[178] Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board [2021] NZSC 127 at [113]

225. The proposed term of permit is 30 years. In light of the uncertainty as to effects this term is inappropriate and should a permit be granted a very short term should be imposed.

226. It is notable that where more than minor residual impacts on protected wildlife cannot be avoided, minimised, or remedied, the panel must "ensure that they are offset or compensated for **where possible and appropriate**".[179] It is neither possible nor appropriate to offset or compensate for residual adverse effects on frogs, and as such this effect should be given significant weight in the s 85(3) assessment.

Section 81(3): applicable clauses for approval types: Access Arrangements

227. Forest & Bird agrees with DOC that:

> Overall, the access arrangement site contains very high ecological values in relation to Archey's and Hochstetter's frogs. These will be impacted by the proposed operations and the current conditions proposed do not currently adequately mitigate these effects. The effects on these values is therefore high. There is potential for these effects to be permanent or long term. [180]

and

> … the ecological values of the vegetation and the fauna they support in the impacted area is considered very high. It is very likely that Threatened and At Risk species will be impacted by vegetation clearance and the importance, and current limitations, of the proposed management of this is discussed elsewhere in this report. DOC considers that the overall magnitude of the effects remains very high. …[181]

228. In relation to vegetation clearance, should consent be granted Forest & Bird agree with DOC's recommendation to include a condition to achieve the avoidance of any at risk or threatened species found within the sites.[182]

229. Forest & Bird agrees with the conclusion in DOC's report that the proposed access arrangement - Wharekirauponga is inconsistent with the purpose of the Conservation Act and the purpose for which the Conservation Park is held.[183]; and the objectives of the Conservation Acv[184]; the provisions of the Conservation General Policy; and the Waikato CMS. Those are all matters to take into account under cls 7 – 10 of Schedule 11 FTAA.

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[179] Clause 6(2)(b), Schedule 7 FTAA
[180] Access arrangement approvals report, paragraph 81.
[181] Access arrangement approvals report, paragraph 97.
[182] DOC report, para 94.
[183] DOC report, 131.
[184] DOC report 132.

Other comments on conditions

230. Updated conditions were uploaded to the fast track website on 13 August 2025 (despite apparently being provided to the EPA on 28 July 2025). At the time of upload over half the time period for making comments had passed. This has meant Forest & Bird has had only very limited time to review the proposed changes.

231. We have made some comments on conditions throughout the body of these comments. In the event that the panel is minded to grant consent, Forest & Bird seeks that the conditions are changed to address the concerns raised.

232. As a general comment we note that it is critical that where recommended mitigation is set out in the expert reports that this is secured by way of consent conditions which are clear, enforceable and enduring.

233. Further we agree with DOC that the conditions setting up the management plans do not contain detailed objectives with defined outcomes. This is important to ensure that management plans are effective.

234. Forest & Bird intends to comment on conditions in more detail if the panel decides to grant the approvals and to release draft conditions. We make the following initial comments in addition to those above:

    a. The Hauraki District Council conditions seem to authorise a range of activities that are not evident from the consent. Condition 1 sets out the activities that are authorised by the consents. It includes the following catch all:

        Activities not listed above may also be carried out, but only provided they are directly related to, and form part of, the Waihi North Project as described in the Application and supporting technical documents submitted by OceanaGold New Zealand Limited to the Environment Protection Authority in support of authorisations for the Waihi North Project under the Fast-track Approvals Act 2024.

        This condition is too broad and must be deleted.

    b. The proposed Waikato Regional Council conditions are unclear regarding the process for addressing potential adverse effects on wetlands from mine dewatering.

    c. The conditions are ambiguous about whether any wetlands are to be reclaimed. One of the consents (SCF.2) is "To disturb and reclaim the bed of an unnamed tributary of the Mataura Stream to establish the Willows Rock Stack". The consent does not authorise the reclamation of a wetland. However, Condition F29 of the consent anticipates the reclamation of the Mataura Wetland:

> Prior to any disturbance or reclamation of the Mataura Wetland authorised by this consent the Consent Holder must undertake baseline monitoring of the Mataura Wetland vegetation and confirm the hydrological conditions that sustain this vegetation.
>
> The conditions must make it clear that wetland reclamation is not authorised.

Section 81(2)(f): decline only in accordance with s 85

235. A panel may decline an approval only in accordance with s 85.[185] A panel may decline an approval if it forms the view that:

    a. there are 1 or more adverse impacts in relation to the approval sought; and

    b. those adverse impacts are sufficiently significant to be out of proportion to the project's regional or national benefits that the panel has considered under section 81(4), even after taking into account—

        i. any conditions that the panel may set in relation to those adverse impacts; and

        ii. any conditions or modifications that the applicant may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those adverse impacts.

236. "Impacts" is not limited to adverse effects, and includes any matter considered by the panel under s 81(2) that weighs against granting the approval.[186] It is not met solely on the basis that an impact is inconsistent with the RMA or a planning document.[187] This means that the threshold for decline is not met where a project is inconsistent with an objective or policy in a planning instrument. However, it could be met where a project has one or more adverse effects and is inconsistent with a planning instrument.

237. Section 85(3) should be approached by a panel as a four stage assessment:[188]

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[185] Section 81(2)(f).
[186] Section 85(5).
[187] Section 85(4).
[188] The Maitahi panel approached this as a 3 stage assessment: first assessing the extent of the project's regional or national benefits, second identifying the significance of adverse impacts (after applying conditions), and thirdly assessing whether any were sufficiently significant to be out of proportion to the project's regional or national benefits. It did not need to exercise the discretion to decline or not, as it did not find

a. Assess the extent of the project's regional or national benefit.

b. Assess the significance of adverse impacts.

c. Assess whether any adverse impacts are sufficiently significant to be out of proportion to the project's regional or national benefits

d. Exercise the discretion to decline (or not) the approval.

238. This provision has been described as the "proportionality test"[189] or "proportionality exercise"[190] because of the proportionality assessment required by step 3. That assessment was described by the Maitahi panel as "[not] formulaic or mathematical … Rather, because the impacts are not always such as to allow precise quantification (particularly when taking into account conditions), the process has been treated as inherently evaluative".[191]

239. The term "out of proportion" can be distinguished from "out of all proportion"[192] and "grossly disproportionate",[193] and indicates that it is met where one or more adverse impacts is more significant (at all) than the project's benefits, rather than requiring a larger degree of disproportionality.

240. In terms of step 4, any statutory discretion must be exercised in accordance with the statutory purpose. The statutory purpose of "facilitating" (meaning "to make easier the progress of"[194]) developments with significant national or regional benefits is implemented by the expedited process and enabling consenting framework provided by the FTAA, and does not indicate that decisions will necessarily result in an approval. If that were not correct, the FTAA could have taken an approach that guaranteed approval, subject only to an assessment of what conditions should apply.

241. Speaking to the Bill in committee, the provision (previously numbered cl 24WD) was described as "a very clear decline clause" by Minister Bishop, which demonstrates the intention was not "development at all costs".[195]

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any adverse impact to be sufficiently significant. However, it noted that "even if the adverse impacts are significantly out of proportion to the anticipated benefits, it appears that the Panel still has a discretion to allow the approval(s) to proceed. That discretion will necessarily be informed by the purposes of the Act" (at [92]).

[189] Maitahi panel draft decision at [99].

[190] Bledisloe panel draft decision at [76].

[191] Maitahi panel draft decision at [99].

[192] For example, s 107 Sentencing Act 2002 regarding discharge without conviction.

[193] For example, s 22 Health and Safety at Work Act 2015 regarding the meaning of "reasonably practicable" in relation to a duty

[194] Collins New Zealand Dictionary, Harper Collins 2017.

[195] Fast-track Approvals Bill – In Committee – Part 1 10 December 2024

> ... the various pieces of underlying legislation are in the schedules and all of the environmental considerations as part of those statutes are part of the bill. The member says, "Is the Government's position development at all costs?" No it isn't. And I point him to clause 24WD, which is "When panel must or may decline approvals", which is the panel must decline an approval if the panel forms the view that there are one or more adverse impacts in relation to the approval sought. And this is the key issue: those adverse impacts are sufficiently significant to be out of proportion for the project's regional or national benefits that the panel has considered under section 24W(3)(a) after taking into account conditions, etc. So there's a very clear decline clause.

242. Returning to the purpose indicated by the Legislative Statement,[196] it is "to ensure key infrastructure and other development projects with significant benefits for communities are not declined where the benefit of approving the project outweighs any issue identified".[197] Where the benefit of approving *is* outweighed by issues identified, that statutory purpose is implemented by declining the approval.

243. In the present case, the following adverse impacts are sufficiently significant to be out of proportion to the project's regional or national benefits, even after taking into account conditions. Those adverse impacts are addressed above. In summary they are:

    a. For all approvals:

        i. Effects on Threatened and At Risk frog species that cannot be avoided, remedied, mitigated, offset or compensated for.

        ii. Effects on Threatened and At Risk lizard species that cannot be avoided, remedied, mitigated, offset or compensated for.

        iii. Reclamation and loss of waterbodies including springs and streams, and potential loss of wetland extent and values.

    b. For the resource consents:

        i. nconsistency with the NESFW.

        ii. Inconsistency with the NPSFM.

        iii. Inconsistency with the NPSIB.

    c. For the wildlife approvals:

(https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20241210_20241211_04). Although the Minister identified cl 24WD as stating that the panel "must decline" in those circumstances, cl 24WD provided a discretion whether to decline, just as s 85(3) does.

[196] As noted by the Maitahi panel (Draft decision at 50).

[197] Legislative Statement, para 17.

i. Significant residual adverse effects on frogs and lizards in circumstances where offset or compensation is not possible or appropriate.

ii. Inconsistency with relevant international agreements (specifically the Convention on Biological Diversity and protocols and strategies prepared under the Convention).

#3866914

Leigh Robcke

From: Stephen Christensen [redacted]
Sent: Monday, 17 February 2025 3:28 pm
To: Sheryl Roa; Leigh Robcke
Cc: Kerry Watson; Alison Paul; Mick Lovely; Andrew Green
Subject: OceanaGold Waihi North Project - Draft Letter to Panel Convener
Attachments: Panel Convener Letter.docx

Sheryl/Leigh

Attached is a draft letter I have prepared to send to the panel convener addressing the composition of a panel for the WNP and the timeframe for the panel to make decisions. I would be grateful for your consideration of it and any comments you may have.

I find it strange in section 79 of the Fast-track Approvals Act that the panel convener must consult with central government agencies before setting a timeframe for the panel to do its work other than the Act's default 30 working days from receipt of comments, but that there is no obligation to consult with the parties that are likely to have a full appreciation of an application's scale and complexity – the applicant and the regional and district councils!

Perhaps when both Councils have had an opportunity to consider this draft letter it would be good for us to have a discussion to see if we are all on the same page around how the process would be best run. Ultimately I think it would be of considerable assistance to the panel convener if we were able to present a collective view on this.

Regards

Stephen Christensen
Project Barrister

[redacted]

421 Highgate
Dunedin 9010
New Zealand

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Stephen Christensen
Project Barrister

421 Highgate
Dunedin 9010
New Zealand

XX February 2025

Judge Jane Borthwick
Fast-track Panel Convener
Rātā Chambers
Christchurch

[redacted]

Dear Jane

Fast-track Approvals Act Application – Waihi North Project

Introduction

1 I act for Oceana Gold (New Zealand) Limited (**OceanaGold**). Pursuant to Schedule 2 of the Fast-track Approvals Act 2024 (**Act**) OceanaGold is the authorised person in relation to the Waihi North Project (**WNP**)[1].

2 OceanaGold intends to lodge its substantive application for approvals required for the WNP with the EPA on or about 4 March 2025 and expects the application will be forwarded to you in your capacity as panel convener, once the EPA has done its completeness check under section 46 of the Act.

3 The WNP is a large and complex mining proposal to extend OceanaGold's existing mining operations at Waihi. The WNP requires a large number of approvals under the Act including resource consents, access arrangements under the Crown Minerals Act, a concession under the Conservation Act, and approvals under the Wildlife Act, Heritage New Zealand Pouhere Taonga Act, and Freshwater Fisheries Regulations.

4 The application documents are expected to comprise something in the order of 11,000 pages, including and AEE and supporting technical reports, proposed conditions, management plans, and related material.

5 My purpose in writing to you is to provide information to assist you in the discharge of your functions as panel convener under the Act. In particular I am conscious of your role in appointing an appropriate panel to consider and determine the application under section 50, and your discretionary power to set a timeframe within which the panel must issue its decision documents pursuant to section 79(2).

6 This letter has been reviewed by, and is copied to the relevant representatives of the local authorities within whose areas the WNP activities are proposed – the Waikato Regional Council and Hauraki District Council (**Councils**). OceanaGold has consulted with the Councils around the process requirements of the Act and how they might apply to the WNP.

Timeframe for panel decisions

[1] The listing of the Waihi North Project can be found in Schedule 2 of the Act, pages 113-114

7 I note that pursuant to section 79(1)(b) the default time limit for a panel to issue final decision documents is 30 working days from the date the panel specifies comments on the application must be received. That date must be 20 working days after the invitation to provide comments is given[2]. In turn, the invitation to provide comments must be made no later than 10 working days after the panel is appointed.

8 In order to get to final decisions on the substantive application for the WNP the appointed panel will need to:

(a) Consider the application documents

(b) Consider the section 18 report[3]

(c) Consider the reports you are required to direct the EPA to obtain from DOC and Heritage New Zealand pursuant to section 51

(d) Consider comments made from invited parties

(e) Consider any responses to those comments from the applicant

(f) Decide whether it will seek further information pursuant to section 67, and consider any such information provided

(g) Decide whether it needs to have a 'hearing', determine the nature of that hearing, give notice in accordance with section 57(3) and (4), and conduct the hearing process

(h) Prepare draft conditions and draft decision documents and provide these to the participants inviting comments on the draft conditions[4]

(i) Provide the applicant an opportunity to comment on the other participants' comments on the panel's draft conditions[5]

(j) Complete final deliberations, and prepare and issue final decision documents, incorporating final conditions.[6]

9 In my opinion it is unrealistic to expect a panel to be able to complete the above tasks within the 60 working days default time limit specified in the Act[7] in relation to the WNP because of the project's scale and complexity.

---

[2] Section 54(1)

[3] Required pursuant to section 49 in relation to a listed project

[4] Section 70(1) and (2)

[5] Section 70(4)

[6] Section 87

[7] 10 working days from panel appointment until invitations to provide comments must be issued (s53(1)) + 20 working days for comments (s54(1)) + 30 working days to issue decisions (s79(1)(b)) = 60 working days

DRAFT

10 OceanaGold has consulted with the Councils on this issue, and the Councils agree that the default timeframe in the Act is not realistic for the WNP. In this regard I note that the Councils have a detailed understanding of the WNP. In June 2022 applications under the RMA were lodged with the Councils for resource consents for the WNP. That application has been subject to detailed evaluation by both Councils and their technical experts leading to requests for further information covering a wide range of topics. That application has not been notified and will be withdrawn when the substantive fast-track application is accepted as complete[8]. The application OceanaGold will make under the Act is for substantially the same project as was applied for under the RMA in 2022, and addresses the matters raised by the Councils in their section 92 RMA requests. Technical reports responding to most of those requests have already been provided to and reviewed by the Councils and their experts. I expect that the formal comments the Councils will make on the application will be well-informed, backed by expert technical evaluation where appropriate, and very helpful to the panel. The fact that the Councils have had the opportunity to have their experts independently evaluate many aspects of the WNP and will be able to provide informed comments is likely to obviate the need for the panel to commission additional expert advice on many topics.

11 I note that in relation to the setting of a different timeframe for the panel to complete its work you are required to consult with the relevant administering agencies[9] (in this case MBIE[10], DOC[11], the Ministry of Culture and Heritage[12], and Heritage New Zealand Pouhere Taonga[13]) but there is no statutory obligation to consult with the parties that are likely to have the greatest understanding of the extent and complexity of the entire application - the applicant and Councils.

12 After consulting with Councils OceanaGold respectfully suggests that giving the panel an additional 30 – 45 working days to issue its decisions (i.e., decisions must be issued within 60 – 75 working days after the date specified for receiving comments under section 53) would strike a better balance between the Act's procedural principles which emphasise the importance of prompt and timely actions[14], and the need to provide adequate time for the panel to ensure that any approvals it grants are subject to appropriate and workable conditions that will achieve their intended outcome while facilitating the delivery of projects in accordance with the Act's purpose[15].

13 In proposing such a timeframe for your consideration OceanaGold and the Councils have assumed that the panel will adopt collaborative workshopping aimed to facilitate resolution of any issues around the most appropriate conditions to attach to the various approvals rather than a more traditional formal 'hearing' processes. While it is a matter for the panel to set its own processes, it is OceanaGold's view that in the WNP context a traditional 'hearing' approach seems poorly-suited to the Act's requirements and expected outcomes. It was certainly my

---

[8] Section 94

[9] Section 79(2)(c)

[10] Administering agency for the Crown Minerals Act

[11] Administering agency for the Conservation and Wildlife Acts, and in relation to the Crown Minerals Act pursuant to section 4(1)(b)(iii)(A) of the Act

[12] Administering agency for the Heritage New Zealand Pouhere Taonga Act

[13] Pursuant to section 4(1)(b)(i) of the Act

[14] Section 10

[15] Section 3

experience under the previous COVID-19 fast-track legislation that adopting a rigid and formal approach to engaging with the participants during the limited time available did not assist a panel to understand the details of a novel project nor to arrive at the best possible set of conditions to attach to the approvals being sought.

14 OceanaGold has consulted with MBIE and DOC in relation to the question of an appropriate timeframe for the panel to complete its work but has not had any indication of their respective positions.

Panel appointment

15 I note that the Act specifies no timeframe within which you must appoint a panel under section 50, subject to the general procedural principles in section 10. While I understand the practical reasons for this, OceanaGold hopes that by providing early notice of its pending application progress on identifying appropriate panel members and confirming their availability can begin ahead of the application being lodged and accepted as complete by the EPA.

16 I understand the Councils are advancing their consideration of a suitable nominee for appointment to the panel[16]. I understand the individuals under consideration are experienced planners with knowledge of relevant and comparable complex mining developments[17]. As you will appreciate the Councils cannot confirm a nominee without ascertaining their availability, and to do that an indication as to the likely time commitment would greatly assist.

17 OceanaGold and the Councils' view is that in addition to an appropriately qualified and experienced chairperson, and the mandatory requirement that the panel have at least 1 member with an understanding of te ao Māori and Māori development[18] the panel should also include individuals with knowledge and experience in civil (or mine) engineering and large scale biodiversity management associated with development projects (planting, pest control, and management of freshwater values).

18 Regardless of the makeup of the panel, the scale and complexity of the WNP are such that an early opportunity for the applicant to meet with the panel to provide an overview of the project and to answer any initial questions the panel may have would be valuable.

19 I am happy to discuss any matters raised in this letter with you.

Yours faithfully

Stephen Christensen
Project Barrister
[redacted]

[16] Schedule 3, clause 3(3)

[17] Schedule 3, clause 4(1)

[18] Schedule 3, clause 7(1)(b)

Cc Waikato Regional Council – Sheryl Roa

Hauraki District Council – Leigh Robcke and Andrew Green (counsel)

DRAFT

3866915

Leigh Robcke

From: Stephen Christensen [redacted]
Sent: Wednesday, 26 February 2025 2:58 pm
To: Sheryl Roa; Leigh Robcke
Cc: Andrew Green; Alison Paul; Kerry Watson; Mick Lovely
Subject: Waihi North Project - Letter to Panel Convener
Attachments: Panel Convener Letter.docx

Hi Sheryl and Leigh.

I've amended my draft letter following on from our discussion last Friday. It's attached for your review. I'd like to get this away by the end of this week if possible.

A couple of points to note please:

- We had a Teams meeting with a bunch of officials from MBIE and DOC yesterday. Amongst other things we briefly discussed the processing timeframe for the WNP approvals. The DOC/MBIE people indicated that what we were proposing in terms of an extension to the default processing timeframe was generally aligned with their thinking (although they are clearly still coming to grips with what the process is going to require of them). I'm reporting that in the letter to the panel convener.
- I understand from OGNZL that Rob vV is also lined up to be on a panel considering consents for an expansion at Macraes Mine which is due to be heard around the end of July. I know Rob has a huge ability to get through mountains of work, but he is going to be busy! I think originally the Macraes hearing was going to be late June, but for a variety of reasons has slipped out a month or so. I don't think that changes what we are proposing for WNP but wanted to bring that to you attention.

Do let me know if you are happy with the contents of the revised letter or have changes you would like to see made.

Regards

Stephen Christensen
Project Barrister

[redacted]

421 Highgate
Dunedin 9010
New Zealand

Whakaarohia a Papatūānuku i mua i te tānga mai i tēnei īmera.
Please consider the environment before printing this email.

Stephen Christensen
Project Barrister

421 Highgate
Dunedin 9010
New Zealand

XX February 2025

Judge Jane Borthwick
Fast-track Panel Convener
Rātā Chambers
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[redacted]

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DRAFT

experience under the previous COVID-19 fast-track legislation that adopting a rigid and formal approach to engaging with the participants during the limited time available did not assist a panel to understand the details of a novel project nor to arrive at the best possible set of conditions to attach to the approvals being sought.

14 OceanaGold has consulted with MBIE and DOC in relation to the question of an appropriate timeframe for the panel to complete its work but has not had any indication of their respective positions other than an initial acknowledgement that the default decision-making timeframe will not be adequate and that the suggested timeframe set out above appears aligned with their thinking.

Panel appointment

15 I note that the Act specifies no timeframe within which you must appoint a panel under section 50, subject to the general procedural principles in section 10. While I understand the practical reasons for this, OceanaGold hopes that by providing early notice of its pending application progress on identifying appropriate panel members and confirming their availability can begin ahead of the application being lodged and accepted as complete by the EPA, with a view to the panel being appointed in April.

16 I understand the Councils are advancing their consideration of a suitable nominee for appointment to the panel[16]. I understand the Councils have approached Mr Rob van Voorthuysen who has indicated his availability for appointment on the basis that a panel appointment occurs in April[17] and the panel has an extended timeframe to complete its work generally as described above. As you will be aware Mr van Voorthuyzen is a vastly experienced planning Commissioner. He holds the MFE "Making Good Decisions" certificate with Chair endorsement and has knowledge of relevant and comparable complex mining developments[18]. It is the view of the Councils that Mr van Voorthuyzen would be a suitable person to chair the panel.

17 OceanaGold and the Councils' view is that in addition to an appropriately qualified and experienced chairperson, and the mandatory requirement that the panel have at least 1 member with an understanding of te ao Māori and Māori development[19] the panel should also include individuals with knowledge and experience in civil (or mine) engineering and large scale biodiversity management associated with development projects (planting, pest control, and management of freshwater values).

18 Regardless of the makeup of the panel, the scale and complexity of the WNP are such that an early opportunity for the applicant to meet with the panel to provide an overview of the project and to answer any initial questions the panel may have would be valuable.

19 I am happy to discuss any matters raised in this letter with you.

[16] Schedule 3, clause 3(3)

[17] Noting that the appointment of the panel effectively starts the clock with mandatory timeframes set out for invitations to provide comments and receipt of those comments, followed by the default 30 working days to issue decisions or such longer period as you may set under section 79.

[18] Schedule 3, clause 4(1)

[19] Schedule 3, clause 7(1)(b)

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DRAFT

Yours faithfully

Stephen Christensen
Project Barrister
[redacted]

Cc Waikato Regional Council – Sheryl Roa

Hauraki District Council – Leigh Robcke and Andrew Green (counsel)

DRAFT

3866944

Debbie Clarke

From: Stephen Christensen <[redacted]
Sent: Thursday, 27 February 2025 9:59 am
To: Sheryl Roa; Leigh Robcke
Cc: Andrew Green; Alison Paul; Kerry Watson; Mick Lovely
Subject: Re: Waihi North Project - Letter to Panel Convener

Thanks for your comments Sheryl and Leigh. Much appreciated. I'll tidy up the letter addressing the matters you have raised and get it away later today if time allows, otherwise tomorrow.

Regards

Stephen Christensen
Project Barrister

[redacted]

421 Highgate
Dunedin 9010
New Zealand

Whakaarohia a Papatūānuku i mua i te tānga mai i tēnei īmera.
Please consider the environment before printing this email.

From: Sheryl Roa [redacted]
Date: Thursday, 27 February 2025 at 9:18 AM
To: Leigh Robcke [redacted] Steve Christensen [redacted]
Cc: Andrew Green [redacted] Alison Paul <Alison.Paul@oceanagold.com>, Kerry Watson <Kerry.Watson@oceanagold.com>, Mick Lovely <Mick.Lovely@oceanagold.com>
Subject: RE: Waihi North Project - Letter to Panel Convener

Thanks Stephen,

I agree the letter looks fine from WRC's perspective.

The only matter that may need clarification is that Rob vanV indicated his availability was more July – is that the intent of your reference to the panel appointment in April? i.e. panel appointed in April with work on the substantive decision by the panel occurring from July onwards after the other FT timeframes/matters have been met? If so could that be made clear in the letter please – it may be appropriate to have as a footnote.

Sheryl

Sheryl Roa | PRINCIPAL CONSENTS ADVISOR | Regional Consents, Resource Use
WAIKATO REGIONAL COUNCIL | **Te Kaunihera ā Rohe o Waikato**
[redacted]
F: facebook.com/waikatoregion

Private Bag 3038, Waikato Mail Centre, Hamilton, 3240

From: Leigh Robcke [redacted]
Sent: Wednesday, 26 February 2025 4:51 pm
To: Stephen Christensen [redacted]; Sheryl Roa[redacted]
Cc: Andrew Green [redacted] Alison Paul <Alison.Paul@oceanagold.com>; Kerry Watson <Kerry.Watson@oceanagold.com>; Mick Lovely <Mick.Lovely@oceanagold.com>
Subject: RE: Waihi North Project - Letter to Panel Convener

CAUTION: This email originated from outside of Waikato Regional Council. Do not follow guidance, click links, or open attachments unless you recognise the sender and know the content is safe.

Hi Stephen.

Your letter reads well and HDC only has a few minor typos to point out (attached).

Regards

Leigh Robcke
kaiwhakamaherehere whakatakanga matua
Senior Project Planner

[redacted]

Hauraki District Council
1 William Street, Paeroa, 3600 | PO Box 17, Paeroa, 3640
ph: (07) 862 8609 or 0800 734 834 (from within district)

From: Stephen Christensen [redacted]
Sent: Wednesday, 26 February 2025 2:58 pm
To: Sheryl Roa[redacted]; Leigh Robcke [redacted]
Cc: Andrew Green [redacted]; Alison Paul <Alison.Paul@oceanagold.com>; Kerry Watson <Kerry.Watson@oceanagold.com>; Mick Lovely <Mick.Lovely@oceanagold.com>
Subject: Waihi North Project - Letter to Panel Convener

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A couple of points to note please:

- We had a Teams meeting with a bunch of officials from MBIE and DOC yesterday. Amongst other things we briefly discussed the processing timeframe for the WNP approvals. The DOC/MBIE people indicated that what we were proposing in terms of an extension to the default processing timeframe was generally aligned with their thinking (although they are clearly still coming to grips with what the process is going to require of them). I'm reporting that in the letter to the panel convener.
- I understand from OGNZL that Rob W is also lined up to be on a panel considering consents for an expansion at Macraes Mine which is due to be heard around the end of July. I know Rob has a huge ability to get through mountains of work, but he is going to be busy! I think originally the Macraes hearing was going to be late June, but for a variety of reasons has slipped out a month or so. I don't think that changes what we are proposing for WNP but wanted to bring that to you attention.

Do let me know if you are happy with the contents of the revised letter or have changes you would like to see made.

Regards

Stephen Christensen
Project Barrister

[redacted]

421 Highgate
Dunedin 9010
New Zealand

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##
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****

Stephen Christensen
Project Barrister

421 Highgate
Dunedin 9010
New Zealand

XX February 2025

Judge Jane Borthwick
Fast-track Panel Convener
Rātā Chambers
Christchurch

[redacted]

Dear Jane

Fast-track Approvals Act Application – Waihi North Project

Introduction

1 I act for Oceana Gold (New Zealand) Limited (**OceanaGold**). Pursuant to Schedule 2 of the Fast-track Approvals Act 2024 (**Act**) OceanaGold is the authorised person in relation to the Waihi North Project (**WNP**)[1].

2 OceanaGold intends to lodge its substantive application for approvals required for the WNP with the EPA on or about 4 March 2025 and expects the application will be forwarded to you in your capacity as panel convener, once the EPA has done its completeness check under section 46 of the Act.

3 The WNP is a large and complex mining proposal to extend OceanaGold's existing mining operations at Waihi. The WNP requires a large number of approvals under the Act including resource consents, access arrangements under the Crown Minerals Act, a concession under the Conservation Act, and approvals under the Wildlife Act, Heritage New Zealand Pouhere Taonga Act, and Freshwater Fisheries Regulations.

4 The application documents are expected to comprise something in the order of 11,000 pages, including an AEE and supporting technical reports, proposed conditions, management plans, and related material.

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5 My purpose in writing to you is to provide information to assist you in the discharge of your functions as panel convener under the Act. In particular I am conscious of your role in appointing an appropriate panel to consider and determine the application under section 50, and your discretionary power to set a timeframe within which the panel must issue its decision documents pursuant to section 79(2).

6 This letter has been reviewed by, and is copied to the relevant representatives of the local authorities within whose areas the primary WNP activities are proposed – the Waikato Regional Council and Hauraki District Council (**Councils**). OceanaGold has consulted with the Councils around the process requirements of the Act and how they might apply to the WNP.

Timeframe for panel decisions

[1] The listing of the Waihi North Project can be found in Schedule 2 of the Act, pages 113-114

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7 I note that pursuant to section 79(1)(b) the default time limit for a panel to issue final decision documents is 30 working days from the date the panel specifies comments on the application must be received. That date must be 20 working days after the invitation to provide comments is given[2]. In turn, the invitation to provide comments must be made no later than 10 working days after the panel is appointed.

8 In order to get to final decisions on the substantive application for the WNP the appointed panel will need to:

(a) Consider the application documents

(b) Consider the section 18 report[3]

(c) Consider the reports you are required to direct the EPA to obtain from DOC and Heritage New Zealand pursuant to section 51

(d) Consider comments made from invited parties

(e) Consider any responses to those comments from the applicant

(f) Decide whether it will seek further information pursuant to section 67, and consider any such information provided

(g) Decide whether it needs to have a 'hearing', determine the nature of that hearing, give notice in accordance with section 57(3) and (4), and conduct the hearing process

(h) Prepare draft conditions and draft decision documents and provide these to the participants inviting comments on the draft conditions[4]

(i) Provide the applicant an opportunity to comment on the other participants' comments on the panel's draft conditions[5]

(j) Complete final deliberations, and prepare and issue final decision documents, incorporating final conditions.[6]

9 In my opinion it is unrealistic to expect a panel to be able to complete the above tasks within the 60 working days default time limit specified in the Act[7] in relation to the WNP because of the project's scale and complexity.

---

[2] Section 54(1)

[3] Required pursuant to section 49 in relation to a listed project

[4] Section 70(1) and (2)

[5] Section 70(4)

[6] Section 87

[7] 10 working days from panel appointment until invitations to provide comments must be issued (s53(1)) + 20 working days for comments (s54(1)) + 30 working days to issue decisions (s79(1)(b)) = 60 working days

DRAFT

10 OceanaGold has consulted with the Councils on this issue, and the Councils agree that the default timeframe in the Act is not realistic for the WNP. In this regard I note that the Councils have a detailed understanding of the WNP. In June 2022 applications under the RMA were lodged with the Councils for resource consents for the WNP. That application has been subject to detailed evaluation by both Councils and their technical experts leading to requests for further information covering a wide range of topics. That application has not been notified and will be withdrawn when the substantive fast-track application is accepted as complete[8]. The application OceanaGold will make under the Act is for substantially the same project as was applied for under the RMA in 2022, and addresses the matters raised by the Councils in their section 92 RMA requests. Technical reports responding to most of those requests have already been provided to and reviewed by the Councils and their experts. I expect that the formal comments the Councils will make on the application will be well-informed, backed by expert technical evaluation where appropriate, and very helpful to the panel. The fact that the Councils have had the opportunity to have their experts independently evaluate many aspects of the WNP, and will be able to provide informed comments, is likely to obviate the need for the panel to commission additional expert advice on many topics.

11 I note that in relation to the setting of a different timeframe for the panel to complete its work you are required to consult with the relevant administering agencies[9] (in this case MBIE[10], DOC[11], the Ministry of Culture and Heritage[12], and Heritage New Zealand Pouhere Taonga[13]) but there is no statutory obligation to consult with the parties that are likely to have the greatest understanding of the extent and complexity of the entire application - the applicant and Councils.

12 After consulting with the Councils OceanaGold respectfully suggests that giving the panel an additional 30 – 45 working days to issue its decisions (i.e., decisions must be issued within 60 – 75 working days after the date specified for receiving comments under section 53) would strike a better balance between the Act's procedural principles which emphasise the importance of prompt and timely actions[14], and the need to provide adequate time for the panel to ensure that any approvals it grants are subject to appropriate and workable conditions that will achieve their intended outcome while facilitating the delivery of projects in accordance with the Act's purpose[15].

Commented [LR1]: long sentence

13 In proposing such a timeframe for your consideration OceanaGold and the Councils have assumed that the panel will adopt collaborative workshopping aimed to facilitate resolution of any issues around the most appropriate conditions to attach to the various approvals rather than a more traditional formal 'hearing' processes. While it is a matter for the panel to set its own processes, it is OceanaGold's view that in the WNP context a traditional 'hearing' approach seems poorly-suited to the Act's requirements and expected outcomes. It was certainly my

---

[8] Section 94

[9] Section 79(2)(c)

[10] Administering agency for the Crown Minerals Act

[11] Administering agency for the Conservation and Wildlife Acts, and in relation to the Crown Minerals Act pursuant to section 4(1)(b)(iii)(A) of the Act

[12] Administering agency for the Heritage New Zealand Pouhere Taonga Act

[13] Pursuant to section 4(1)(b)(i) of the Act

[14] Section 10

[15] Section 3

experience under the previous COVID-19 fast-track legislation that adopting a rigid and formal approach to engaging with the participants during the limited time available did not assist a panel to understand the details of a novel project nor to arrive at the best possible set of conditions to attach to the approvals being sought.

14 OceanaGold has consulted with MBIE and DOC in relation to the question of an appropriate timeframe for the panel to complete its work but has not had any indication of their respective positions other than an initial acknowledgement that the default decision-making timeframe will not be adequate and that the suggested timeframe set out above appears aligned with their thinking.

Panel appointment

15 I note that the Act specifies no timeframe within which you must appoint a panel under section 50, subject to the general procedural principles in section 10. While I understand the practical reasons for this, OceanaGold hopes that by providing early notice of its pending application progress on identifying appropriate panel members and confirming their availability can begin ahead of the application being lodged and accepted as complete by the EPA, with a view to the panel being appointed in April.

16 I understand the Councils are advancing their consideration of a suitable nominee for appointment to the panel[16]. I understand the Councils have approached Mr Rob van Voorthuysen who has indicated his availability for appointment on the basis that a panel appointment occurs in April[17] and the panel has an extended timeframe to complete its work generally as described above. As you will be aware Mr van Voorthuyzen is a vastly experienced planning Commissioner. He holds the MFE "Making Good Decisions" certificate with Chair endorsement and has knowledge of relevant and comparable complex mining developments[18]. It is the view of the Councils that Mr van Voorthuyzen would be a suitable person to chair the panel.

17 OceanaGold's and the Councils view is that in addition to an appropriately qualified and experienced chairperson, and the mandatory requirement that the panel have at least 1 member with an understanding of te ao Māori and Māori development[19] the panel should also include individuals with knowledge and experience in civil (or mine) engineering and large scale biodiversity management associated with development projects (planting, pest control, and management of freshwater values).

18 Regardless of the makeup of the panel, the scale and complexity of the WNP are such that an early opportunity for the applicant to meet with the panel to provide an overview of the project and to answer any initial questions the panel may have would be valuable.

19 I am happy to discuss any matters raised in this letter with you.

[16] Schedule 3, clause 3(3)

[17] Noting that the appointment of the panel effectively starts the clock with mandatory timeframes set out for invitations to provide comments and receipt of those comments, followed by the default 30 working days to issue decisions or such longer period as you may set under section 79.

[18] Schedule 3, clause 4(1)

[19] Schedule 3, clause 7(1)(b)

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Yours faithfully

Stephen Christensen
Project Barrister
[redacted]

Cc Waikato Regional Council – Sheryl Roa

Hauraki District Council – Leigh Robcke and Andrew Green (counsel)

DRAFT

#3819565

Leigh Robcke

From: Stephen Christensen [redacted]
Sent: Thursday, 27 February 2025 4:42 pm
To: Jane Borthwick | Rata Chambers
Cc: Sheryl Roa; Leigh Robcke; Andrew Green
Subject: OceanaGold Waihi North Project - Imminent Fast-track Application
Attachments: WNP Panel Convener Letter[F].pdf

Hello Jane

Please find attached my letter to you in your capacity as panel convener under the Fast-track Approvals Act 2024 in relation to the Waihi North Project – a large project listed in Schedule 2 of the Act in respect of which my client OceanaGold will be making a substantive application for multiple approvals next week.

I am unsure whether the EPA notifies you when it receives substantive applications and provides you with access to application documents while the completeness assessment is taking place. If not, please let me know and I will ensure you receive links to allow you to see the documents once they are lodged with the EPA.

You may wish to discuss the matters I raise in my letter with me. If that is the case I would welcome hearing from you.

I have also copied Sheryl Roa and Leigh Robcke into this correspondence. Sheryl and Leigh are respectively the relevant Waikato Regional Council and Hauraki District Council officers with primary responsibility for managing the processing of the Waihi North Project and the Councils' relationships with OceanaGold. I am sure either or both Sheryl or Leigh would also be happy to discuss the matters this letter raises with you if that would be helpful. Hauraki District Council has engaged Andrew Green of Brookfields as counsel in relation to this project, and he is also copied into this correspondence.

Regards

Stephen Christensen
Project Barrister

[redacted]

421 Highgate
Dunedin 9010
New Zealand

Whakaarohia a Papatūānuku i mua i te tānga mai i tēnei īmera.
Please consider the environment before printing this email.

Stephen Christensen
Project Barrister

421 Highgate
Dunedin 9010
New Zealand

27 February 2025

Judge Jane Borthwick
Fast-track Panel Convener
Rātā Chambers
Christchurch

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[17] Noting that the appointment of the panel effectively starts the clock with mandatory timeframes set out for invitations to provide comments and receipt of those comments, followed by the default 30 working days to issue decisions or such longer period as you may set under section 79. Mr van Voorthuyzen has indicated good availability from July to undertake substantive consideration of the application, and this aligns well with a panel appointment in April, and completion of the necessary reports and written comment processes that will precede substantive consideration by the panel

[18] Schedule 3, clause 4(1)

with an understanding of te ao Māori and Māori development[19] the panel should also include individuals with knowledge and experience in civil (or mine) engineering and large scale biodiversity management associated with development projects (planting, pest control, and management of freshwater values).

18 Regardless of the makeup of the panel, the scale and complexity of the WNP are such that an early opportunity for the applicant to meet with the panel to provide an overview of the project and to answer any initial questions the panel may have would be valuable.

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Yours faithfully

Stephen Christensen
Project Barrister
[redacted]

Cc Waikato Regional Council – Sheryl Roa

Hauraki District Council – Leigh Robcke and Andrew Green (counsel)

[19] Schedule 3, clause 7(1)(b)