

PART A: EXECUTIVE SUMMARY

[1] This is an application for the Waihi North Project (WNP) by OceanaGold (New Zealand) Limited (OGNZL or Applicant) to enable the development of the Wharekirauponga ore deposit, located beneath the Coromandel Forest Park, together with associated infrastructure and mining activities, and a significant biodiversity enhancement project.

[2] This comprises mining activities in 7 geographically distinct areas as follows:¹

- (a) Area 1: Comprising the Wharekirauponga Underground Mine, Wharekirauponga Underground Mine Dual Tunnel, and surface exploration, environmental monitoring, and pest control activities;
- (b) Area 2: Comprising the Willows Road Surface Facilities Area, the Willows Access Tunnel, and supporting infrastructure;
- (c) Area 3: Comprising the Wharekirauponga Access Tunnel;
- (d) Area 4: Comprising the Services Trench²;
- (e) Area 5: Comprising the Gladstone Open Pit, Gladstone Open Pit Tailings Storage Facility, and Waihi Surface Facilities Area;
- (f) Area 6: Comprising the Northern Rock Stack and borrow pit; and
- (g) Area 7: Comprising Tailings Storage Facility 3 and borrow pits.

[3] In addition to above, a small number of activities associated with the WNP will occur outside Areas 1 to 7, including the operation of the existing conveyor in the reverse direction; terrestrial and riparian restoration and enhancement planting; and the establishment of carparking at Kenny Street, Waihi.

¹ As shown spatially on Figure 2-1 (page 36) of the substantive application.

² This was separately consented and does not form part of this FTAA application.

[4] The Application was included as a listed project in Schedule 2 of the FTAA. On 1 July 2025 an expert panel was appointed to determine the Application (Panel).

[5] The Panel has assessed the Application applying the relevant statutory criteria within the purpose and context of the FTAA.

[6] The Panel received comments from commentators and a response to those comments from OGNZL. The Panel has carefully reviewed all of that information in evaluating the Application.

[7] The following FTAA Schedules apply to the Application:

- (a) Schedule 5, clause 17 sets out the criteria and other matters for assessment of resource consent applications under the Resource Management Act.
- (b) Schedule 11, clause 8 sets out the criteria for assessment of an application for an access arrangement or a variation to an existing access arrangement under the Crown Minerals Act.
- (c) Schedule 6, clause 7 sets out the criteria for assessment of an application for concession under the Conservation Act.
- (d) Schedule 7, clause 5 sets out the criteria for assessment of an application for a wildlife approval under the Wildlife Act.
- (e) Schedule 8, clause 4 sets out the criteria for assessment of an application for an archaeological authority under the HNZTP Act.
- (f) Schedule 9, clause 5 sets out the criteria for assessment of applications for complex freshwater fisheries activities.

[8] The Panel considers that, having considered all relevant matters, the WNP meets the purpose of the FTAA and that having regard to all the relevant decision-making criteria, the approvals sought should be granted. The Panel therefore grants approvals sought, as set out in Appendices A to J.

[9] This Decision is made in accordance with s 87 of the FTAA. covers all the approvals sought under the substantive application and it includes:

- (a) Executive summary – Part A
- (b) An overview of the WNP application - Part B;
- (c) The legal context for the Panel’s consideration of each approval sought – Part C;
- (d) The input received from iwi authorities and the legal context for the Panel’s consideration of that input – Part D;
- (e) An assessment of the effects of the WNP– Part E.;
- (f) The regional and national benefits of the WNP– Part F;
- (g) Approvals that would otherwise be applied for under the Resource Management Act – Part G
- (h) Approvals relating to access arrangements that would otherwise be applied for under the Crown Minerals Act – Part H;
- (i) Approvals relating to concessions that would otherwise be applied for under the Conservation Act – Part I;
- (j) Authorities that would otherwise be applied for under the Wildlife Act - Part J;
- (k) Approvals relating to access arrangements that would otherwise be applied for under the Heritage New Zealand Pouhere Taonga Act – Part K;
- (l) Approvals relating to Complex Freshwater Fisheries – Part L;
- (m) Overall approach – Part M; and

(n) Conditions – Part N.

PART B: OVERVIEW OF THE APPLICATION AND PROCEDURE

Application

OGNZL's existing mining activities in Waihi

[1] OGNZL's existing and consented mines and mining activities at Waihi include:

- (a) A currently inactive open pit mine (the Martha Mine) located adjacent to the Waihi Township.
- (b) A series of underground mines beneath, and to the east and southeast of, the Martha Mine.
- (c) Ancillary facilities associated with the above mines, including the Waihi Surface Facilities Area (Waihi SFA) located east of Waihi Township beyond Union Hill. This contains an ore Processing Plant (Processing Plant), Water Treatment Plant (WTP), stockpiles and various other ancillary facilities.
- (d) The Central, Northern and Eastern Stockpiles and two Tailings Storage Facilities (TSF) (TSF1A and TSF2) which are located further to the east across the Ohinemuri River. And
- (e) A conveyor which connects the Martha Mine with the surface features listed above (the Conveyor).³

[2] OGNZL also maintains an active mineral exploration programme in the region.

Environmental Setting

[3] OGNZL provided a detailed description of the environmental setting for the Waihi North Project (WNP) in s 3 of the AEE, including the following key characteristics:

³ Paragraph 1.2, Part A, of the Substantive application.

- (a) relevant authorisations and approvals;
- (b) site zonings, land ownership and residential activities;
- (c) cultural setting;
- (d) geology, hydrology and hydrological characteristics;
- (e) aquatic and terrestrial ecological values;
- (f) landscape and natural character values; existing water users;
- (g) archaeological and historic heritage features;
- (h) existing noise and vibration levels;
- (i) meteorology;
- (j) air quality; and
- (k) the transport network.

[4] We adopt that description without repeating it here.

[5] In Part E we set out relevant components of that setting with respect to various effects of the WNP. By way of an overview, that setting includes 7 geographically distinct areas as follows:⁴

- (a) Area 1: Comprising the Wharekirauponga Underground Mine, Wharekirauponga Underground Mine Dual Tunnel, and surface exploration, environmental monitoring, and pest control activities;
- (b) Area 2: Comprising the Willows Road Surface Facilities Area, the Willows Access Tunnel, and supporting infrastructure;

⁴ As shown spatially on Figure 2-1 (page 36) of the substantive application.

- (c) Area 3: Comprising the Wharekirauponga Access Tunnel;
- (d) Area 4: Comprising the Services Trench;
- (e) Area 5: Comprising the Gladstone Open Pit, Gladstone Open Pit Tailings Storage Facility, and Waihi Surface Facilities Area;
- (f) Area 6: Comprising the Northern Rock Stack and borrow pit; and
- (g) Area 7: Comprising Tailings Storage Facility 3 and borrow pits.

[6] In addition to the above, a small number of activities associated with the WNP will occur outside Areas 1 to 7, including the operation of the existing conveyor in the reverse direction; terrestrial and riparian restoration and enhancement planting; and the establishment of carparking at Kenny Street, Waihi.

[7] The location of the above listed Areas is shown in Figure 1 below.

Overview of the application

[8] OGNZL seeks authorisations for the integrated development of the Wharekirauponga ore deposit together with associated infrastructure and mining activities. The Wharekirauponga ore deposit is beneath the Coromandel Forest Park, approximately 10 km north of Waihi.⁵

[9] The WNP comprises the following key activities:

- (a) Further mineral resource investigation and exploration progression at Wharekirauponga;
- (b) Establishing a surface facilities area housing the surface infrastructure necessary to facilitate the development and operation of an underground mine (the Wharekirauponga Underground Mine or WUG), located on OGNZL owned farmland on Willows Road (the Willows Road Surface Facilities Area, or

⁵ Paragraph 1.1, Part A, of the Substantive application.

Willows SFA), including the Willows Rock Stack (WRS) which is a temporary waste rock stockpile;

- (c) The construction, operation, and maintenance of an access portal (Willows Portal) and associated tunnel decline (Willows Access Tunnel);
- (d) The construction, operation, and maintenance of a dual tunnel (WUG Dual Tunnel) extending from the termination of the Willows Access Tunnel to the Wharekirauponga orebody;
- (e) The construction operation, and maintenance of a tunnel (the Wharekirauponga Access Tunnel) connecting the southern terminus of the WUG Dual Tunnel to the existing Waihi SFA located off Baxter Road;
- (f) The construction, operation, and maintenance of an access portal (the WUG Portal) to the Wharekirauponga Access Tunnel at the Waihi SFA adjacent to the Processing Plant;
- (g) The construction, operation, and maintenance of the WUG at Wharekirauponga;
- (h) The construction, operation, and maintenance of the Gladstone Open Pit (GOP), which is a new open pit mine located to the southwest of the existing Waihi SFA, which at the completion of open pit mining activities will be utilised as a TSF (GOP TSF);
- (i) The establishment and operation of the Northern Rock Stack (NRS), being a waste rock stockpile located to the east of the Waihi SFA;
- (j) The establishment and operation of Tailings Storage Facility TSF3, being a new TSF located to the east of the existing TSF1A;
- (k) An upgrade of the existing Processing Plant located within the Waihi SFA to provide for additional ore processing associated with the WNP;

- (l) An upgrade of the existing Wastewater Treatment Plan (WTP) located within the Waihi SFA, to double its current treatment capacity to provide for the treatment requirements of the WNP;
- (m) The re consenting of existing treated water discharge consents from the WTP;
- (n) The establishment of new treated water discharge pipelines;
- (o) The handling and salvage of native frogs, lizards and avifauna on both public conservation land and privately owned land;
- (p) On public conservation land: mining and exploration activities; surface water, groundwater and geotechnical investigations and monitoring (including the installation, maintenance and replacement of equipment, and continued use of existing equipment); long term monitoring of native frogs and research associated with the efficacy of predator control strategies and techniques to improve populations of native frogs; conservation planting and habitat enhancement activities (including pest control, monitoring and maintenance); low impact monitoring activities; continued occupation for a laydown and bridge footings for the existing Mill Bridge, and an existing heavy vehicle crossing of the Ohinemuri River;
- (q) The damming or diverting of watercourses;
- (r) The salvaging of aquatic species from the footprints of the WRS, the NRS, and TSF3, and their release into nearby streams.

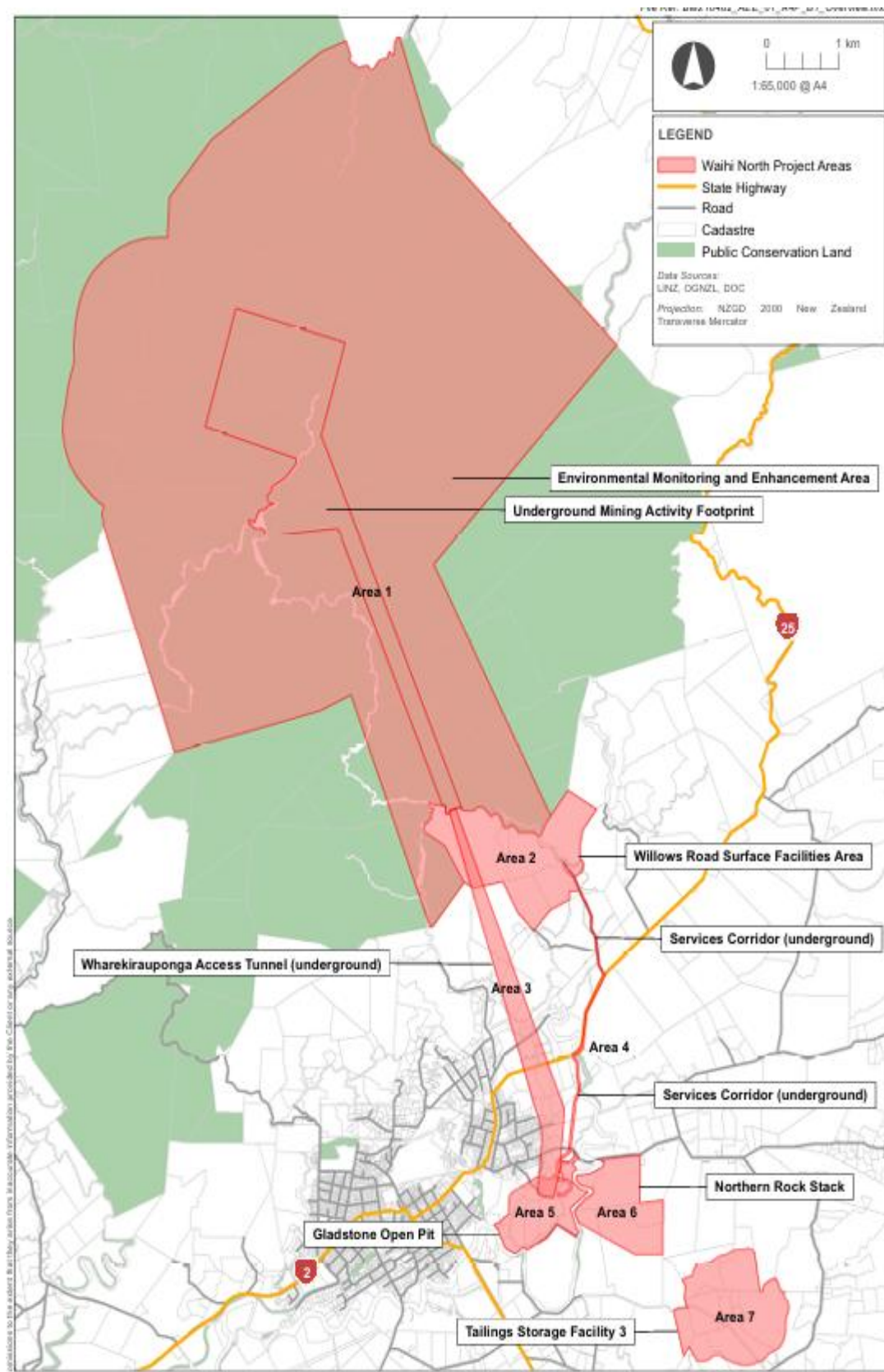


Figure 1: Location of activities.

[10] OGNZL also proposes to establish and implement a \$8.4 million predator control and ecological enhancement project (the Waihi North Biodiversity Project or WNBP) within an area of up to 18,870 ha of the southern Coromandel Forest Park. The WNBP is intended to achieve long-term (intergenerational) positive ecological outcomes for the area and is additional to the measures necessary to mitigate, offset or compensate for the environmental effects associated with the WNP. The WNBP is said by OGNZL to align with New Zealand's goal of being predator-free by 2050. It is intended that the specific objectives and details of the WNBP will be developed and implemented in partnership with tangata whenua and other key stakeholders.

[11] The WNP relies on the construction, operation, and maintenance of a buried services trench (Services Trench) connecting the Willows SFA to the Waihi SFA. This Services Trench has been consented by WRC and HDC. An application for an easement required for the Services Trench has been approved by the Department of Conservation. No approvals are being sought for the Service Trench as part of this FTAA application.

Resource consents

[12] The Panel has reviewed all the documentation and the further information provided by OGNZL and other participants and lists the necessary resource consents in Appendix A. The Panel agrees with OGNZL that, in terms of the relevant regional and district plans the overall activity status of the resource consents required is:

- (a) Non-complying for the Hauraki District Plan (HDP) consents;
- (b) Non-complying for the Thames Coromandel District Plan (TCDP) consents;⁶
and
- (c) Non-complying for the Waikato Regional Plan (WRP) consents.

⁶ In their comments TCDC advised that overall, it was considered that the proposal would be a non-complying activity pursuant to Rule 4.4 of the TCDC District Plan because the activity is within the Conservation Zone and Rural Zone and is subject to the Outstanding Natural Features and Landscapes overlay and takes on the activity status in Rule 8 Table 1A. We note that this makes no difference to the overall 'bundled' consent category.

[13] Discretionary land-use and discharge consents and a water permit are required under the Resource Management (National Environmental Standards for Freshwater) Regulations 2020.

[14] A restricted discretionary land-use consent is required under Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009.

[15] Under the “bundling” principle the overall activity status for the WNP resource consents is a non-complying Activity.

Approvals relating to the Crown Minerals Act 1991

[16] OGNZL holds an existing Access Arrangement 48614-AA for its operations within the Coromandel Forest Park. OGNZL have sought to replace this existing Access Arrangement with a new Access Arrangement for activities within public conservation land associated with Mining Permit 60541 (Wharekirauponga Access Arrangement) as follows:

- (a) Exploratory drilling activities;
- (b) The installation and maintenance of ventilation shafts;
- (c) Minimum impact activities (as defined by the Crown Minerals Act);
- (d) The installation and maintenance of piezometers at any existing and all new drill sites and ventilation shaft sites, including an extension of term for all existing piezometers installed at drill and camp sites under Concession 87585-OTH;
- (e) Permeability testing in new piezometer holes;
- (f) The installation and maintenance of two shallow piezometers at each of a maximum of six wetlands and two control wetlands;
- (g) The installation and maintenance of three river pumps for extracting surface water;

- (h) The installation and maintenance of eight river flow monitoring stations, including an extension of term for all existing flow monitoring stations installed at drill sites under concession 87585-OTH;
- (i) The installation and maintenance of two rain gauges and a meteorological monitoring station, including an extension of term for all existing meteorological monitoring equipment installed under concession 87585-OTH;
- (j) The installation and maintenance of a telemetry system to transmit environmental data, including the continued use of the existing telemetry system authorised under concession 101993-OTH;
- (k) The installation and maintenance of fauna release sites, including the installation of an electric fence and fenced frog release pens;
- (l) Pest control and monitoring;
- (m) Continued use of a track counter and dust monitor authorised by concession 101993-OTH;
- (n) Low impact surface and groundwater, ecological, noise and vibration monitoring;
- (o) Tent-based camping anywhere within the area to support field work;
- (p) Locating portacoms and a portaloos at up to two drill sites at any time, to support environmental monitoring and pest control field work;
- (q) Helicopter access throughout the life of the mine and post-closure period for equipment lifting and personnel access;
- (r) Planting of native vegetation and maintenance of planted areas throughout the life of the WNP; and

- (s) The use of drones.⁷

[17] The Wharekirauponga Access Arrangement does not encompass mining carried out below the surface of the land.

[18] OGNZL also holds Access Arrangement 62342 with the Department of Conservation to undertake mining operations on public conservation land at Community Buildings – Waihi Scout Hall and Conservation Area – Mueller Street, Waihi. OGNZL has sought to vary this access arrangement to encompass WNP activities that are within the Favona Mining Permit area (Favona Access Arrangement). These activities include rehabilitation planting with continued access for planting maintenance and pest control at various locations along the Ohinemuri River; continued occupation for a lay down yard and bridge footings for the Mill Bridge; a heavy vehicle crossing of the Ohinemuri River; and continued occupation, upgrade and maintenance of a treated water discharge line and manifold on the banks of the Ohinemuri River. OGNZL are seeking to align the conditions of the Favona Access Arrangement with those sought as part of the Wharekirauponga Access Arrangement.

Approvals relating to concessions under the Conservation Act 1987

[19] OGNZL has sought two concessions under the Conservation Act 1987 – referred to as the Northern Concession Area and the Willows Concession Area.

[20] Within the Northern Concession Area, OGNZL has sought approval for activities occurring on public conservation land, but outside the Access Arrangement and Mining Permit area. Those activities include all pest control and monitoring within the Coromandel Forest Park (excluding any areas listed in Schedule 4 of the Act) associated with the WNP; the installation and maintenance of a telemetry system; the installation and maintenance of river flow monitoring stations and near-stream piezometers; the continued use of a flow tracker for flow gauging; and low impact monitoring activities.

[21] Within the Willows Concession Area, OGNZL has sought approval for activities occurring on public conservation land, but outside the Access Arrangement and Mining Permit

⁷ In addition to above, the Wharekirauponga Access Arrangement sought by OGNZL includes all activities identified in Section 4.2.5 of the application in respect to the activities requiring resource consent from HDC and WRC listed under the “Area 1” and “Activities Which May Take Place in any Area” headings.

area. These activities include rehabilitation planting and access for planting maintenance and pest control.

An approval under the Wildlife Act 1953

[22] OGNZL have sought approval under the Wildlife Act to:

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

An archaeological authority under the Heritage New Zealand Pouhere Taonga Act 2014

[23] OGNZL have sought approval for the following activities:

- (a) Effects on a number of listed heritage features, including partial removal of:
 - (i) T13/961 - The Mataura or Waihi Gold Mining Co. Water Race (Area 2);
 - (ii) T13/963 - High-Level Walmsley Timber Tramway (Area 2);
 - (iii) T13/820 - Winner Hill gold mining complex (Area 5 - GOP);

- (iv) T13/ 817 - Lower-Level Water Race (Area 5 - GOP);
- (b) Activities in Area 1, including the establishment of ventilation shafts and drill sites, in proximity to the Royal Standard Battery and Gold Mining Area (T12/681) and Royal Standard Gold Mining Tramway (T12/1290); and
- (c) Works in Areas 6 and 7 that have the potential to unearth unknown heritage features.

[24] OGNZL acknowledge that there is potential for further (yet unidentified) heritage and archaeological values to be discovered as the WNP progresses. OGNZL sought that the Authority be applicable to the entirety of the WNP work areas, with the exception of the proposed works within Areas 2 and 4.⁸

Approvals for Complex Fisheries Activities

[25] OGNZL has sought dispensation under Regulation 43 of the Freshwater Fisheries Regulations for the Northern Uphill Diversion Drain, being a diversion of watercourse TB1 around the Northern Rock Stack; and the Southern Uphill Diversion Drain, being a diversion of the Ruahorehore Stream around Tailings Storage Facility.

[26] OGNZL considers that the Northern and Southern Uphill Diversion Drains are designed to maintain fish passage (and habitats) to a standard that is similar to what presently exists, and a dispensation has been sought to not include a fish facility.

[27] Approvals for standard freshwater fisheries activities are included in the relevant approvals relating to RMA consents for structures in the beds of streams and rivers (RMA s 13) and damming and diversion of water (RMA s 14).⁹

Procedure

[28] The following matters of procedure are relevant for this Decision.

⁸ The Services Trench and does not form part of this application.

⁹ There are several approvals required for the WNP that are outside of the FTAA (and are therefore not considered further in this application) which are required under the Fisheries Regulations.

Panel Convener steps

[29] The Panel was set up under s 50 of the FTAA with effect from 14 July 2025.

Initial Panel briefing and site visit

[30] The Panel undertook a site visit on 24 July 2025. The Panel also attended a briefing session hosted by OGNZL on 25 July 2025.

Other Panel meetings

[31] Much of the Panel's correspondence, deliberations and decision-making occurred over email following the receipt of comments (including on the draft Decision and approval conditions) and the Panel's review of available documentation. Notwithstanding this, the Panel met on Teams or in person on the following occasions:

- (a) 29 August 2025;
- (b) 5 September 2025;
- (c) 12 September 2025;
- (d) 22 September 2025;.
- (e) 30 September 2025;
- (f) 2 October 2025;
- (g) 6 October 2025;
- (h) 9 October 2025;
- (i) 15 October 2025;
- (j) 16 October 2025;

(k) 4 November 2025; and

(l) 21 November 2025.

Comments and reports on the application

[32] The FTAA does not contain a notification process and there is no obligation to hold a hearing. The primary mechanism by which third parties can provide information to a Panel is through the provision of comments (s 53, FTAA).

[33] The Panel invited comments in accordance with s 53. Comments received from the parties summarised in Appendix K. Also considered were the reports required by ss 18 and 51 of the FTAA.

[34] The Panel thanks all parties who commented for their contributions. The matters raised in the comments are primarily discussed in Part E of this Decision under the relevant effects-based headings to which the comments relate.

OGNZL's response to invited persons comments

[35] OGNZL responded to the s 53 comments. This response included, amongst other matters, an updated set of draft conditions for all of the approvals sought.

[36] The Panel has considered OGNZL's responses, and, where appropriate, refers to those responses primarily in Parts E and F of this Decision.

Appointment of technical advisor

[37] The Panel appointed Carey Vivian as a technical adviser to assist the Panel with drafting Parts of this Decision and later assisting in the review process. This appointment was made under clause 10(3) of Schedule 3 of the FTAA.

Further information

[38] Panel members conferred in person or on Teams with invited parties as to:

- (a) Ecology (on 13 October 2025);
- (b) Economic benefits (on 14 October 2025);
- (c) As to bonds (on 24 October 2025);
- (d) As to iwi matters on 5 November 2025, with Ngāti Tara Tokanui and Ngāti Pū, separately, 14 November with Ngāti Hako and on 20 November with Ngāti Porou ki Hauraki, and
- (e) Blasting (on 20 November 2025).

[39] As well, the Panel, from time to time, sought further clarifying information, mainly from OGNZL.

[40] A draft of this Decision (including proposed conditions) was circulated to relevant parties and their comments have, where appropriate, been taken into account.

Conditions

[41] The Panel's procedure relating to the establishment of conditions is set out in Part N of this Decision and is summarised below.

[42] In accordance with s 51 of the FTAA, the Department of Conservation (DOC) prepared four reports on behalf of the Director-General of Conservation, Those reports related to:

- (a) The concessions;
- (b) The wildlife approval;
- (c) Complex freshwater fisheries activity; and
- (d) Access arrangements.

[43] The DOC reports set out suggested amendments to OGNZL's draft conditions.

[44] DOC prepared a further report (the weighting report), on behalf of the Director-General, advising how the weighting of relevant matters should be approached.

[45] Heritage New Zealand Pouhere Taonga (HNZPT) prepared a report in accordance with s 51 of the FTAA. That report was prepared in accordance with the requirements for an archaeological authority, as outlined in Schedule 8 of the FTAA Act, and addressed appropriate conditions.

[46] A number of commentators also commented on OGNZL's draft conditions. We discuss those comments primarily in Part E of this Decision where relevant. The Panel considered all comments received on the draft conditions as required under s 70 of the FTAA and amended the conditions where appropriate. .

Comments from the Minister for Māori Crown Relations: Te Arawhiti and Minister of Māori Development

[47] Under s 72 of the FTAA the Panel invited comment from the Ministers for Māori Crown Relations: Te Arawhiti and Māori Development. No comments were received.

No hearing required

[48] The Panel exercised its discretion under s 56 of the FTAA to not require a hearing on any issue. The Panel was able to adequately consider all issues based on the information available including the Application, comments received, responses to comments, the conferences already mentioned, and the further information provided by OGNZL, DOC, HNZZ, the councils and invited persons.

[49] The Panel is mindful of the emphasis on time limited decision-making in the present process, the purpose of the FTAA in s 3 to facilitate the delivery of infrastructure and development projects with significant regional or national benefits, and the procedural principles in s10 of the FTAA that require the Panel to take all practicable steps to use timely, efficient, consistent, and cost-effective processes that are proportionate to the Panel's functions, duties and powers.

Timing of the Panel Decision

[50] In accordance with the Panel convenor minute dated 4 July 2025 the Panel is to issue its decision documents on or before 18 December 2025.

PART C: GENERAL LEGAL CONTEXT

What this Part is about

[1] The Applicant seeks all necessary approvals for the construction, operation, maintenance and ultimate the closure of the WNP. These involve:

- (a) resource consents that would otherwise be applied for under the RMA;
- (b) access arrangements (including a variation of an existing access arrangement) that would otherwise be applied for under the Crown Minerals Act.
- (c) concessions that would otherwise be applied for under the Conservation Act;
- (d) an authority that would otherwise be applied for under the Wildlife Act;
- (e) an authority that would otherwise be applied for under the HNZPT Act; and
- (f) approvals that would otherwise be applied for under the Freshwater Fisheries Regulations.

[2] Schedules to the FTAA set out decision-making criteria that apply in relation to the different types of approval that can be granted. They are reasonably specific and best understood, and therefore are discussed, when we come to deal with the particular approvals sought. And we will likewise defer discussion of the FTAA provisions that are particularly relevant in relation to iwi authorities until we discuss their position.

[3] With those exceptions, this Part discusses the general operation of the FTAA.

The scheme of the FTAA

The purpose of the FTAA

[4] Section 3 of the FTAA states:

The purpose of this Act is to facilitate the delivery of infrastructure and development projects with significant regional or national benefits.

[5] The FTAA provides a single process for seeking a range of approvals which would otherwise have to be sought under different statutes and by different processes. This is provided for in s 42 and the approvals which can be granted include all those sought by the Applicant.

General provisions that apply in relation to all fast-track approval applications

[6] Section 81 provides:

- (1) A panel must, for each approval sought in a substantive application, decide whether to—
 - (a) grant the approval and set any conditions to be imposed on the approval; or
 - (b) decline the approval.
- (2) For the purpose of making the decision, the panel—
 - (a) must consider the substantive application and any advice, report, comment, or other information received by the panel under section 51, 52, 53, 55, 58, 67, 68, 69, 70, 72, or 90:
 - (b) must apply the applicable clauses set out in subsection (3) (see those clauses in relation to the weight to be given to the purpose of this Act when making the decision):
 - ...
 - (d) must comply with section 83 in setting conditions:
 - ...
 - (f) may decline the approval only in accordance with section 85.

[7] Section 81(3) refers to the schedules to the FTAA that provide specific criteria to be taken into account in relation to the different types of applications that may be dealt with under the FTAA. As noted already, they are discussed later when we address the particular approvals that are sought.

[8] Section 81(4) provides:

When taking the purpose of this Act into account under a clause referred to in subsection (3), the panel must consider the extent of the project's regional or national benefits.

[9] Sections 83 and 85 relevantly provide:

83 Conditions must be no more onerous than necessary

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.

...

85 When panel must or may decline approvals

- (3) A panel may decline an approval if, in complying with section 81(2), the panel 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 projects 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.
- (4) To avoid doubt, a panel may not form the view that an adverse impact meets the threshold in subsection (3)(b) solely on the basis that the adverse impact is inconsistent with or contrary to a provision of a specified Act or any other document that a panel must take into account or otherwise consider in complying with section 81(2).
- (5) In subsections (3) and (4), **adverse impact** means any matter considered by the panel in complying with section 81(2) that weighs against granting the approval.

[10] Section 85(4) means that non-compliance with say avoidance policies that would usually preclude the granting of an approval is not itself fatal to an application.¹⁰ As we will explain shortly, there are provisions in the Schedules that are generally to a similar effect.

¹⁰ For an example of a consent being refused on this basis, see *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited & Ors* – [2014] NZSC 38; [2014] 1 NZLR 593

Application of s 85(3)

[11] Consistent with the approach adopted by other Panels, we see the exercise provided for by s 85(3) as requiring assessments:

- (a) of the extent of the WNP's regional or national benefits;
- (b) of the significance of adverse impacts; and
- (c) whether the adverse impacts are "sufficiently significant" to be out of proportion to the WNP's regional or national benefits after allowing for, amongst other things, compensation that may be provided.

A general comment on the way the Schedules work

[12] As we have explained, we will leave for later in this Decision detailed reviews of the ways in which the decision-making criteria operate in respect of the different approvals that are sought. However, a brief comment at this point on the general way in which they operate is appropriate.

[13] The Schedules specify that the Panel must take into account a list of criteria. These lists always start with the "purpose of this Act" and direct the Panel to give the greatest weight to that purpose. It will be recalled that that purpose is:

.. to facilitate the delivery of infrastructure and development projects with significant regional or national benefits.

[14] By way of illustration, clause 17(1) of Schedule 5 (which applies to resource consents) provides:

17 Criteria and other matters for assessment of consent application

- (1) For the purposes of section 81, when considering a consent application, including conditions in accordance with clauses 18 and 19, the panel must take into account, giving the greatest weight to paragraph (a),
 - (a) the purpose of this Act; 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.

[15] Clauses 17(3) and (4) provide:

- (3) Subclause (4) applies to any provision of the Resource Management Act 1991 (including, for example, section 87A(6)) or any other Act referred to in subclause (1)(c) that would require a decision maker to decline an application for a resource consent.
- (4) For the purposes of subclause (1), the panel must take into account that the provision referred to in subclause (3) would normally require an application to be declined, but must not treat the provision as requiring the panel to decline the application the panel is considering.

[16] These subclauses should be read in conjunction with s 85(4) with which they in part overlap. They mean that directive policies in legislation that would usually require an application to be declined are to be taken into account in the manner outlined in clause 17(4), by recognising that:

- (a) they would usually require the applications to be declined; but
- (b) do not require the Panel to decline the application.

D IWI GROUPS AND THE REQUIREMENTS OF THE FTAA

What this Part is about

[1] The FTAA imposes a number of requirements on the procedure we must adopt and the decision we can make. In this Part we review these requirements.

[2] The particular concerns that iwi groups raised with us are addressed later, in s E2.

The relevant provisions of the FTAA

The primarily relevant provisions of the FTAA

[3] Section 7(1)(a) of the FTAA provides:

All persons performing and exercising functions, powers, and duties under this Act must act in a manner that is consistent with—

(a) the obligations arising under existing Treaty settlements ...

[4] Section 82 provides:

Effect of Treaty settlements and other obligations on decision making

(1) This section applies if a Treaty settlement is relevant to an approval.

(2) If the settlement or Act provides for the consideration of any document, the panel must give the document the same or equivalent effect through the panel's decision making as it would have under any relevant specified Act.

(3) The panel must also consider whether granting the approval would comply with section 7.

(4) In this section, *document*—

(a) means any document, arrangement, or other matter; and

(b) includes any statutory planning document amended as a result of the settlement or Act referred to in subsection (1).

[5] Section 84 provides:

84 Conditions relating to Treaty settlements and recognised customary rights

(1) For the purposes of section 7, the panel may set conditions to recognise or protect a relevant Treaty settlement ...

(2) This section applies in addition to, and does not limit, any other powers to set conditions under this Act.

Definitions

[6] “Treaty settlements” is defined in s 4 as meaning:

- (a) a Treaty settlement Act; or
- (b) a Treaty settlement deed.

[7] A “Treaty settlement Act” is “an Act listed in Schedule 3 of the Treaty of Waitangi Act 1975.

[8] A “Treaty settlement deed” means:“

- (a) a deed or other agreement that—
 - (i) has been signed by or on behalf of a Minister of the Crown and representatives of a group of Māori; and
 - (ii) is in settlement of the claims of that group or in express anticipation, or on account, of that settlement; and
- (b) to avoid doubt, includes a deed or other agreement of the kind described in paragraph (a) that relates to the claims of a collective or combination of Māori groups; but
- (c) does not include an agreement in principle or any document that is preliminary to a signed and ratified deed.

Section 18

[9] Section 18(2) of the FTAA) – along with s 49 – requires the preparation of a report that addresses a list of specified matters. They include:

- (a) any relevant iwi authorities and relevant Treaty settlement entities:
- (b) any Treaty settlements that relate to land, species of plants or animals, or other resources within the project area:
- (c) the relevant principles and provisions in those Treaty settlements, including those that relate to the composition of a decision-making body for the purposes of the Resource Management Act 1991:
- (d) any recognised negotiation mandates for, or current negotiations for, Treaty settlements that relate to the project area:

...

- (k) any other Māori groups with relevant interests:

...

[10] The expressions “relevant iwi authorities” and “Māori groups with relevant interests” are not defined.

Clause 5, Schedule 3 of the FTAA

[11] Schedule 3 of the FTAA deals, amongst other things, with the appointment and processes of panels.

[12] Clause 5 relevantly provides:

5 Conduct of hearings and other procedural matters in context of Treaty settlements and other arrangements

(1) This clause applies if any Treaty settlement Act, the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, or any other iwi participation legislation, or any Mana Whakahono a Rohe or joint management agreement, includes procedural arrangements relating to the appointment of a decision-making body for hearings and other procedural matters, such as the following:

- (a) a requirement for iwi or hapū to participate in the appointment of hearing commissioners to determine resource consent applications or notice of requirement lodged under the Resource Management Act 1991:
- (b) a requirement that notice be given to any person or specified class of person of any steps in a resource management process:
- (c) any consultation requirements with iwi or hapū:
- (d) any other matter of procedure for determining a matter granted under a specified Act that corresponds to an approval under this Act.

(2) The panel convener or panel must—

- (a) comply with the arrangements in the legislation, arrangement, or agreement referred to in subclause (1) as if they were a relevant decision maker (such as a local authority, department, Crown entity, or board of inquiry)

The Ministry of the Environment’s section 18 report

[13] The Ministry of the Environment’s s 18 report identifies the Ngāi Tai ki Tāmaki Claims Settlement Act 2018 as the only relevant Treaty settlement Act and deeds of settlement between

the Crown and Pare Hauraki Collective (in 2018) and Ngāti Tara Tokanui (in 2022) as the relevant Treaty settlement deeds.

[14] It listed a number of groups which it considered to be “the relevant iwi authorities for the project area”. This list did not include Ngāti Porou ki Hauraki who were, however, identified (as Ngāti Porou ki Harataunga ki Mataoraaa) as having “relevant interests” under s 18(2)(k). All those identified as relevant Māori authorities and Ngāti Porou ki Hauraki were invited to comment on the application under s 53 of the FTAA.

Ngāi Tai ki Tāmaki Claims Settlement Act 2018

[15] This is the only Treaty Settlement Act that could be relevant to the WNP.

[16] Under this Act, the Coromandel Peninsula is within Ngāi Tai ki Tāmaki’s “area of interest” but the “statutory areas” referred to in the Act do not encompass the land affected by the WNP.

[17] We do not see its provisions as material to our decision-making, and we note that Ngāi Tai ki Tāmaki has elected not to participate in this consenting process.

The Pare Hauraki Collective Redress Deed and Settlement Bill

[18] The Pare Hauraki Collective Redress Deed is between the Crown and 12 iwi, including three who participated in our process, namely Ngāti Hako, Ngāi Tai ki Tāmaki and Ngāti Porou ki Hauraki.

[19] Section 4 of the deed sets out a “programme for a culture of natural resource partnership”. Clauses 14.17, 14.18 and 14.20 provide:

4.17 Effective implementation of the Programme requires mobilisation of commitments or resources by Pare Hauraki and government (central and local).

4.18 Commitments to a whole of world approach that:

4.18.1 produces holistic and vertically integrated policy and planning instruments; and

4.18.2 encourages cross-boundary initiatives.

...

- 4.20 Processes to effect meaningful natural resource partnerships, including to:
- 4.20.1 restore the mana of the Iwi of Hauraki to make decisions in relation to the Pare Hauraki world and exercise kaitiakitanga;
 - 4.20.2 promote iwi as decision makers along with government (central and local) on the use, development, management and protection of all natural resources;
 - 4.20.3 commit to enabling and supporting te reo Pare Hauraki me ona tikanga;
 - 4.20.4 provide for cultural use and access by the Iwi of Hauraki to their ancestral maunga, moana, awa and other taonga;
 - 4.20.5 strengthen processes for early engagement on issues; and
 - 4.20.6 ensure working together between the Iwi of Hauraki and government (central and local) using shared knowledge, information and expertise.

[20] This deed also provides that settlement legislation will establish a statutory authority, the Waihou, Piako, Coromandel Catchment Authority, the purpose of which will be:

.. to provide co-governance, oversight and direction for the taonga that is the waterways of the Coromandel, Waihou and Piako catchments ...

One of its intended functions is to:

... prepare and approve the Waihou, Piako and Coromandel Catchments Plan for the waterways of the Waihou, Piako and Coromandel catchments;

[21] The Pare Hauraki Collective Redress Bill which is to give effect to this deed is currently before Parliament.

[22] Clauses 64 to 85 of that Bill provide for the establishment of a Pare Hauraki conservation management plan (which will extend to the Coromandel Peninsula), a review of the Waikato Conservation Management Strategy, the preparation of a conservation management plan for Pare Hauraki, and the transfer of decision making and review in relation to certain activities. As well, Schedule 4 creates an iterative decision-making framework, which, if the Bill had been enacted, would have applied to aspects of the WNP.

[23] Clauses 86 – 129 provide for the Waihou, Piako, and Coromandel Catchment Authority to have functions that correspond to those contemplated by the settlement deed.

[24] The Pare Hauraki Collective Redress Deed is conditional on what is now the Pare Hauraki Collective Redress Bill being passed. As a contract, it has therefore not come into effect. So, on the face of it, there are no “obligations” under it, in terms of s 7(1)(a) of the FTAA. We will come back to this later.

The Ngāti Tara Tokanui deed of settlement and settlement bill

[25] The deed was executed on 28 July 2022. As is customary, it is conditional on settlement legislation coming into effect, a point to which, as already noted, we will return shortly.

[26] The deed anticipates that:

- (a) the settlement legislation will:
 - (i) provide a Crown acknowledgement of the statements by Ngāti Tara Tokanui of their particular cultural, spiritual, historical, and traditional association with a number of areas including the Ohinemuri River and its tributaries (see clause 5.3.1(d);
 - (ii) require “consent authorities”, to have regard to the statutory acknowledgement (clause 5.3.2); and
- (b) The parties will enter into a conservation relationship agreement (clause 5.19).

[27] The Ngāti Tara Tokanui Claims Settlement Bill is currently before Parliament. It is consistent with the settlement deed. As giving effect to the commitment to enter into a relationship agreement with the Department of Conservation does not require legislative sanction, it is not addressed in the Bill.

Recognition of and compliance with Treaty settlements

[28] OGNZL has engaged extensively with iwi groups. This is addressed in the Application (Section B.3) and in OGNZL’s response to the s 53 comments (Part 3 – 9 (Appendix I). Such consultation has been on-going.

[29] Minutes 7, 8 and 9 of the Panel Convenor set out the process she followed in relation to the appointment of this Panel. Schedule 3 to Minute 7 sets out the “relevant iwi authorities and relevant Treaty settlement entities” who were consulted and Minutes 8 and 9 record some difficulties that were experienced and how they were overcome.

[30] As noted, we invited (under s 53) the “relevant iwi authorities for the project area” as identified in the s 18 report to comment and also Ngāti Porou ki Hauraki, and we have offered opportunities for further engagement to those iwi entities who commented.

[31] The Ngāi Tai ki Tāmaki Claims Settlement Act 2018 has not been relied on by anyone and we do not see it as material to our decision-making.

[32] To return to a point already flagged, the Treaty settlement deeds that have yet to result in Treaty settlement legislation are conditional on such legislation being passed. This means that no contractual obligations exist. On a strict view, this might be thought to mean that there are no “obligations” for the purposes of s 7(1)(a) and nothing that requires compliance for the purpose of s 82(2).

[33] We do not take that strict view. We see those settlement agreements as creating good faith obligations that extend to not acting in a way that breaches legitimate understandings of the parties as to what will happen between execution of the deeds and the enactment of settlement legislation. Recognition of good faith obligations is consistent with s 84(1) of the FTTA which refers to recognition and protection of Treaty settlements. Indeed, since Treaty settlements are often (probably customarily) conditional on the enactment of settlement legislation, there would not be much point in the references to them in the FTTA unless a broad view of this kind is taken.

[34] Such good faith obligations (or the recognition and protection of Treaty settlements) cannot logically extend to require compliance with what, once Treaty settlement legislation is passed, will be obligations predicated on new statutory authorities and a statutory scheme that are not currently in existence. This is particularly relevant to the Pare Hauraki Collective Redress Deed and Settlement Bill.

Conclusions as to sections 7(1)(a) and 82 and clause 5 of Schedule 3 of the FTAA

[35] As is apparent, there has been substantial consultation with iwi groups by OGNZL. As well, the Panel Convenor consulted iwi groups on the appointment of this Panel. Further, we have engaged with iwi groups participating in the process in ways that went beyond those offered to other participants. And we take into account the acknowledgment by the Crown of Ngāti Tara Tokanui's association with the Ohinemuri River.

[36] For the reasons generally provided in this Part, we conclude that:

- (a) The process has been conducted in way that is not inconsistent with obligations under Treaty settlements (for the purposes of s 7(1)(a));
- (b) Granting of the approvals complies with s 7(1) (for the purposes of s 84(3));
- (c) There are no conditions beyond those that we are imposing that would be appropriate for recognition or protection of Treaty settlements (for the purpose of s 84(1)); and
- (d) There being no relevant Treaty settlement legislation, clause 5 of Schedule 3 is not engaged.