

Your Comment on the Waihi North draft conditions

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.			
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Please provide your comments below, include additional pages as needed.

Overview

- 1 The approach we take in assessing these conditions is that the Applicant, OGLNZ, and the Panel are genuine in their desire and commitment to ensure environmental and social impacts are avoided, remedied or mitigated, and that the proposed mine does indeed contribute a net benefit to the region and the nation.
- 2 Provided the above is true, our intention here is to highlight where we have concerns that the quality of evidence, or the way in which this evidence was assessed, leads to mistaken conclusions or underestimates of the uncertainty of scale or risk of negative effects.
- 3 We are conscious that the current application is just a single mining application, and the Applicant and other parties have ambitions to seek further mining permits in the Coromandel. It is critical therefore to ensure that the correct processes are followed, and decisions are made in this case so that it provides a robust template for future applications.
- 4 In several areas, the Panel recognises significant concerns raised by commenters, but there is no closure from the Panel in terms of conditions that will adequately address these concerns. These include, but are not limited to:
 - A. Cultural deficit
 - B. The consequences of the conceptual geological assessments
 - C. Overall appropriateness of commercial benefit from activities with uncertain impacts within an area of public conservation land
 - D. Vibration effects on leiopelmatid frogs
- 5 We believe that the proposed conditions do not adequately address concerns raised by the Department of Conservation (DOC), the Waikato Conservation Board, and other commentators about these issues.

- 6 In addition, E., we have significant concerns about how the Department of Conservation has been removed as a certifying authority of management plans. We request that this decision be reversed, and the statutory and regulatory role of the Department be adequately recognised.

A. Cultural Deficit

- 7 The Panel notes, in Part E, paragraph 35: “There is a clear aspiration for meaningful, ongoing iwi involvement in decision-making, consistent with the principles of partnership and co-governance”.
- 8 Paragraph 37 then states that all Māori groups consulted view that the FTAA process itself embodies “cultural deficit”, and “this cultural deficit will increase if the WNP is implemented”. The Panel further acknowledges “the implementation of the WNP (and the FTAA process) will cause distress to Māori, and for many, this may feel like a continuation of historical injustices”.
- 9 For this panel to acknowledge this, and yet for the proposed amendments to conditions to be based on wording such as “may form”, “provide for”, “will be involved in”, “may assist”, demonstrates that this consultation is likely to be exactly the sort of box-ticking exercise that Māori are understandably frustrated with.
- 10 The amendments to the conditions to address the concerns of iwi/hapū only provide weak opportunities that are not commensurate with the mana of the role iwi/hapū have in exercising rangatiratanga as agreed to in the Treaty of Waitangi, while simultaneously imposing a significant burden of time commitment on iwi/hapū to participate in multiple different fora and groups or otherwise lose their ability to co-design or co-manage.
- 11 Based on the current wording of this document, and the proposed conditions, we consider the WNP (and the FTAA process) may be viewed as a fresh breach of the Treaty of Waitangi, which would take many years to investigate and compensate for. We urge the panel to be proactive to honour the Treaty of Waitangi in their decision making, and provide a template for how the Treaty can be adhered to even in such a large and complex proposal.
- 12 We recommend that the wording of the conditions be amended to put the burden of work on the commercial, profit-making party, OGLNZ, rather than on overstretched iwi/hapū. The wording should capture that OGLNZ is required to secure participation of iwi/hapū in developing and managing the project, due to the need to provide for rangatiratanga under the Treaty of Waitangi

B. Conceptual Geological Assessments

- 13 We welcome the inclusion of further conditions around monitoring the surface water flows and the ground water inflows in the Waiharakeke Stream. This is appropriate given the uncertainty in the geology of the dual tunnel, which the panel rightly points out is “at a conceptual level only”. This is also the case for the strengthened conditions added around monitoring dewatering associated with the WUG access tunnel.
- 14 While we support the strengthening of the conditions around monitoring dewatering, we highlight this because the acknowledgement by the Panel here that the geological assessment of the access tunnel and the WUG is “at a conceptual level only”, is at odds with subsequent statements in the decision and the conditions that the risks are low and the effects will thus be minor. We except that the probability of severe effects is low, but it is not non-existent. The monitoring is critical for ongoing evaluation of effects, including effects on water flows and threatened species; these monitoring plans are not merely a box-ticking exercise, they are indeed the very mechanism

to ensure that unforeseen severe impacts are detected early enough that works can be stopped and the effects remedied or mitigated.

- 15 We recommend that a systematic assessment of the decision around conditions is conducted to ensure the precautionary principle is adhered to by including mechanisms to halt activity and seek solutions if severe impacts are detected through the monitoring. The extensive nature of the conditions and reports, in comparison to the time we have to comment, means that we are not able to provide here an exhaustive list. Rather we highlight this underlying point, which is particularly obvious in relation to the “conceptual” geological assessment; that the response to received comments is often inadequate to address the concerns acknowledged by the panel.

C. Commercial activity in designated conservation lands

- 16 Another example of this is the response to our (the Waikato Conservation Board) comments highlighting the conflict between the purposes of the conservation designation of the lands and the commercial activity of mining.
- 17 The Panel recognised the Waikato Conservation Board comments several times, in particular in paragraph 253 and 268, with repeated reference to our statement that “It needs to be established whether this level of impact from a commercial activity is appropriate in land specifically designated as a conservation park”. Yet in response, in paragraphs 258 – 270, this broader issue is never addressed.
- 18 What is apparent to us is that this FTAA process forces the Applicant and the Panel to consider the minutiae of effects, but as a consequence these larger scale questions remain un-addressed. We appreciate that the Panel acknowledges our concerns, and we would appreciate a genuine engagement with, and response to, our comments.
- 19 It is our position that a commercial company seeking private gain from an extractive activity (with moderate regional financial benefits as described in the assessment of economic benefits), from within the designation of a public conservation land, needs to be assessed from the perspective that even low probability but high impact effects could permanently diminish the communally owned ecological values. This is why we advocate for trigger conditions that would lead to a pause in mining operations if the monitoring exposes more-than-minor effects. We are mindful that the Pike River mine was regarded, during the same stage of application as this current project, as the pinnacle of modern best-practice mining. The negative impact of the mine on the ecological values of the National Park was regarded as minor compared to the significant social and economic benefit of the mine. We all know the unfortunate end of that story; it is incumbent on us in the present to consider all possibilities and weigh up whether the potential and probably ecological impact is truly balanced by potential future benefit in the uncertain world of underground mines in conservation lands.

D. Uncertainty of Impact on Frogs

- 20 Bio researchers (report B.39) states that potential effects of vegetation clearance are low to very low, as sites with high frog numbers were patchy and rare. This highlights that the frog experts recognise that there is not a consistent frog density throughout the site. Yet much of the assessment of the scale of the risk to frogs assumes a largely consistent density of frogs based on the surveys that found record high densities within the WUG footprint.
- 21 The experts have not identified what determines high versus low frog densities, and the Panel and OGLNZ made no response to our point that there could be underlying variability in the habitat that

influences frog density, especially as frog surveys were conducted almost entirely in the footprint of a single underlying soil/rock type (Rhyolite pyroclastics) out of about four types in the WUG area (Figure 16, report B.11). Current proposed monitoring conditions are insufficient to be able to detect negative effects on frogs and trigger a cessation of works if needed.

- 22 Essentially, by failing to adequately address these points, the Panel appears to take the position that the loss of a significant population of a threatened frog species through damage to their habitat within a protected area specifically set aside for public conservation purposes is a risk that they are willing to take in order to allow a private company to make profit through extraction of minerals for private gain under this publicly-owned land.
- 23 There is no evidence of no effect on frogs of vibrations over 2mm/s. The WUG in the proposal has an upper limit of 15mm/s, not 2mm/s. As detailed in report B.39, a large portion of the WUG site is likely to experience vibrations up to 4mm/s, and significant areas will experience vibrations many times this amount. In comparison, the same report (B.39) shows that the Archey's frog populations near Golden Cross mine only experienced up to 2mm/s, and only one frog location (Location 1) experienced significantly higher vibrations, up to 10mm/s. And even at this location, the report estimates that only one single blast may have reach 10mm/s, with "most blasts" generating 1-1.5 mm/s vibrations, and most not exceeding 4mm/s. The evidence provided in this report, which is the basis for the Panel's consideration of the potential effects of vibration on native frogs, does not answer the question about whether many vibrations over 4mm/s will have a negative impact on frog populations or not. The conclusion cannot be that the risk is low and the impact minor, but rather that the risk and the impact is unknown at vibration intensities beyond 4mm/s. As a significant proportion of the WUG footprint will experience vibrations 4mm/s or higher, a more precautionary approach is required, with clear trigger events through monitoring that would lead to a pause in activity while the appropriate solution is determined.
- 24 The area of potential disturbance from vibration is 315ha, in a location where there is a higher density of Archey's frog recorded than anywhere else in the country. The claim this density of frogs should be applied across the entire Coromandel Range (within a few key limits) in order to determine the total frog population is an interesting hypothesis, but this has not been empirically tested and is an extreme claim that requires extreme evidence to support it. This claim would not be able to stand up in a peer-reviewed publication as anything more than an intriguing hypothesis at this stage. So, the statement at paragraph 244 in Part 3 that "the area affected is small relative to their full distribution range" is correct only at a very surface level of geographic extent. This ignores, deliberately or inadvertently, that this 315ha represents the most significant population centre of Archey's frogs ever discovered. Whether this density can be found elsewhere (which it has not, despite decades of survey efforts), is a question that has not been tested, and this is not proposed to be tested in the current conditions. It is entirely inappropriate and premature to conclude that potential impacts would only affect a small proportion of the species. This Panel needs to recognise that this single project could negatively affect the most significant population centre of a globally unique species and assess the relative risks and benefits in this context.
- 25 To address these concerns, at a minimum, we contend that the Frog Management Plan (as detailed in the HDC specific conditions) needs to include 1) a clear feedback mechanism to pause operations if significant negative impacts are detected, to provide time for the Application to remedy or mitigate these effects, and 2) a research plan that includes the broader regional frog surveys as anticipated by report B.38 to support or disprove the hypothesis that the densities of Archey's frogs found within the WUG footprint are indicative of densities more broadly across the Coromandel.
- 26 We support the revised conditions as set out in paragraph 266.

- 27 We do not believe that the Panel's conclusions set out in paragraph 271 follow from the discussion of the concerns raised in paragraphs 268, 269, and 270; namely that the potential risk is too high and uncertainty too great to determine whether this activity should be allowed in a conservation park, that the Applicant's expert's assessments of risks are inadequate and not appropriately conservative, and that the potential benefits of the proposed pest control plan are overstated by the Applicant. There may have been some other discussion or evidence presented to the panel that has addressed these issues, and we would welcome clarification about this. We believe this leaves the decision of the Panel open to costly and time-consuming legal challenge, and we request a more detailed explanation from the panel about how they came to this conclusion based on the evidence that they have described in this decision.
- 28 Furthermore, the conclusion drawn in paragraph 272 that the risk of impact to Hochstetter's frogs is small is based on an assumption that the dewatering effects will be small, which is in turn based on the incomplete assessment of the groundwater effects that that Panel recognises is based on a report completed "at a conceptual level only". This cascade of uncertainty, and the apparent lack of recognition by the Panel of the potential accumulation of negative impacts from such a cascade, gives us concern about the Panel's ability to make their decisions as detailed in this document.
- 29 Regarding the Panel's assessment of the alignment of the Application to the NPS:IB (Part G: 26-37), there is a disconnect between their statement that the approvals "adopt a precautionary approach", and the fact that the decisions outlined in these documents fail to recognise:
- a) the significant status of this site as a "hotspot" for Archey's frog,
 - b) that the assumption that the population densities found at this site are likely to be found across a significant proportion of the species' range is a speculative hypothesis that has not been tested, and
 - c) that there is considerable remaining uncertainty about the extent of possible dewatering and vibrations in the WUG footprint, as well as considerable uncertainty about the effects of these on threatened frog species.
- 30 At a minimum, as stated earlier, to truly reflect a precautionary approach as required by the NPS:IB, the conditions need to include trigger points where activity/developed is halted if key negative impacts are detected, and a formal process needs to be followed to determine how best to respond to these trigger points in terms of further research, monitoring and adaptation of plans.
- 31 Part M, paragraph 5c states that the Waihi North Biodiversity Project will achieve "inter-generational" positive ecological impacts. Since the project will only run for 10 years (in terms of guaranteed funding), how does the Panel anticipate inter-generational positive outcomes, especially when there is a real (if small) risk that this project could hasten the extinction of the Archey's frog and/or a collapse of the mining company (like Solid Energy's Pike River mine) could leave a permanent negative impact in an public conservation park.

E. DOC as a Certifying Agency

- 32 We believe the consent conditions around certification of management plans by HDC and WRC, while only providing the Department of Conservation the ability to comment, are entirely inappropriate and need to be changed as a matter of priority.
- 33 The Department of Conservation is not merely an interested stakeholder, but a government department with statutory and regulatory authority under the Conservation Act and the Wildlife Act. Permits from the Department of Conservation are required for these activities to occur. The primary monitoring plans dealing with biodiversity monitoring are listed as conditions to be certified by HDC, who do not have the specialist capacity to do so. The timeframe for DOC to respond stated in these conditions (10 working days), is entirely insufficient for this purpose.

- 34 These proposed conditions also place an unfair burden on HDC and WRC (or their replacements) to assess the suitability of plans for which they may not have sufficiently internal expertise, nor the statutory authority to consider matters that fall under the Conservation Act or the Wildlife Act.
- 35 The point that needs to be clear to the Panel is that this large and complex project has the potential to have significant effects on the ecology of the area, and the most significant population site that we know of for the threatened Archey's Frog. The Panel's decision states that this project should proceed, in large part due to the comprehensive management plans that will ensure that the Applicant can respond in a timely manner if negative effects start to occur. Therefore it is critical that these management plans are done well and are certified by those who a) have the authority to do so, and b) have the required knowledge to assess them.
- 36 We request that the Department of Conservation be reinstated as a certifying agency at the same level as HDC and WRC, in particular with respect to:
- Coromandel Forest Park Kauri Dieback Management Plan
 - Wharekirauponga Pest Animal Management Plan
 - Archaeological Management Plan
 - Native Frog Monitoring Plan
 - TSF3 Wetland Restoration Plan
 - Mataura Wetland Restoration and Monitoring Plan
 - WUG Ecology and Landscape Management Plan
 - Waihi Area Ecology and Landscape Management Plan
- 37 This will require a substantial re-write of the consent conditions because of the way that DOC has been removed from the certification process. In particular, a decision will need to be made as to whether management plans need to be "co-certified" or whether separate versions will need to be made to cover aspects rightly under the authority of TLAs and DOC respectively.

Other matters - Species designation

- 38 As a small note, the consent conditions list the Coromandel Striped Gecko as *Toropuku* "Coromandel". This nomenclature is out of date. The species now fully recognised as *Tokopuku inexpectatus*. See: Hitchmough, R.A., Nielsen, S.V. & Bauer, A.M. (2020) Earning your stripes: a second species of striped gecko in the New Zealand gecko genus *Toropuku* (Gekkota: Diplodactylidae). *Zootaxa*, 4890 (4), 578–588. <https://doi.org/10.11646/zootaxa.4890.4.9>

Summary

- 39 In conclusion, the Waikato Conservation Board wishes to thank the Panel, the Applicant and all experts and commentators who have committed their time, for the immense work that has gone into this proposal and deliberations. We believe it is in the best interests of the nation that this project be robustly assessed, even despite the time and logistical pressures imposed by the FTAA process. We trust our recommendations and concerns expressed here will be considered carefully by the Panel, to ensure that the any decision is made with full understanding of the issues and our responsibility in this present time to ensure we provide future generations with the opportunities and well-being that we have benefited from ourselves.

Ngā mihi
Waikato Conservation Board