Before a panel appointed under the Fast-track Approvals Act 2024 **FTAA-2504-1046**

UNDER	the Fast-track Approvals Act 2024 (**Act**)
IN THE MATTER	an application for approvals for the Waihi North Project (**WNP**) – a listed project described in Schedule 2 of the Act
BY	**OCEANA GOLD (NEW ZEALAND) LIMITED** **Applicant**

STATEMENT OF EVIDENCE BY JOHN KYLE AND ABBIE FOWLER ON BEHALF OF OCEANA GOLD (NEW ZEALAND) LIMITED

PLANNING

Dated 1 September 2025

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1. Introduction

1.1 Our names are John Kyle and Abbie Fowler. Our qualifications and experience are set out in in **Appendix 1.**

1.2 We have been asked by OceanaGold (New Zealand) Limited (the "**Applicant**") to provide a response to some specific matters contained in written comments on the Waihi North Project ("**WNP**" or the "**Project**") application from persons invited by the Panel to comment under section 53 of the Act. We have approached this on a joint basis as Ms Fowler was the author of the Statutory Assessment Chapter in the application, and Mr Kyle the peer reviewer.

1.3 Specifically, this statement of evidence addresses the statutory planning matters raised by the following parties in their written comments on the application:

(a) Department of Conservation ("**DOC**"): Section 53 Comments on a Project under the Fast-Track Approvals Act;

(b) Royal Forest and Bird Protection Society of New Zealand Incorporated ("**Forest & Bird**"); and

(c) Coromandel Watchdog of Hauraki ("**Coromandel Watchdog**").

1.4 Our statement of evidence provides a response to the following matters on a thematic basis, rather than covering each point raised in the written comments:

(a) Precautionary approach;

(b) Functional need and the effects management hierarchy;

(c) Matters relating to the National Policy Statement for Freshwater Management 2020 ("**NPS-FM**") and Resource Management (National Environmental Standards for Freshwater) Regulations 2020 ("**NES Freshwater**");

(d) Matters relating to the National Policy Statement for Indigenous Biodiversity 2023 ("**NPS-IB**");

(e) Other planning instruments under the Resource Management Act 1991 ("**RMA**");

(f) Part 2 of the RMA;

(g) Planning documents under the Conservation Act 1987 ("**Conservation Act**");

(h) Updated approval conditions.

1.5 We have prepared this statement within the limited time available to us. Consequently, it is necessarily at a high level. We are able to provide a more fulsome response to the issues covered in this statement if the Panel requires further assistance from us.

Code of conduct

1.6 We confirm that we have each read the code of conduct for expert witnesses contained in section 9 of the Environment Court Practice Note 2023 and have complied with it in preparing this evidence. We each confirm that the issues addressed in this evidence are within our area of expertise, and we have not omitted material facts known to us that might alter or detract from this evidence.

2 Precautionary Approach

2.1 There is criticism from Forest & Bird,[1] Coromandel Watchdog[2] and DOC[3] regarding the way the precautionary approach is applied to the management of some of the environmental effects that arise from the WNP. In particular, this criticism applies to the approach proposed to

[1] For example, at paragraphs 4, 92, 94, 95, 135, 196, 223 and 224.

[2] In section 2 of the written comments.

[3] At paragraph 132 of the DOC written comments.

manage effects on native frogs and their habitat and on groundwater in circumstances where changes in groundwater may affect the natural state waterways at the surface. We agree that the precautionary approach is relevant to the management of effects on these two matters. Mr Kyle, in particular, has extensive experience with the approach, having appeared before numerous courts and panels in cases where the approach has been important in the decision making process. The approach is a very useful one when the effects of an activity are not well understood but are potentially significant.

2.2 Forest & Bird discusses the precautionary approach within the written comments, including the following statements:[4]

> *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, 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. This has not been demonstrated.*
>
> *…*
>
> *92. The Applicant accepts that a precautionary approach is necessary. However, Forest & Bird submits that the Applicant's approach is far from precautionary.*

2.3 The DOC written comments[5] also set out a view that the Project does not adequately consider the uncertainty associated with the biodiversity effects of the Project, particularly on leiopelmatid frogs. The particular

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[4] For example, at paragraphs 4 and 92.

[5] At paragraph 132 of the DOC written comments.

concerns are framed in terms of the adequacy of the relevant conditions and associated management plans.

2.4 We do not agree with these comments.

2.5 As indicated above, two key areas involve the application of the precautionary approach, native frogs and management of groundwater. Both areas have been subject to extensive technical review and assessment, by a range of independent experts in order to properly inform the application. Proposed conditions of consent have been prepared, which (expectedly) draw heavily on the technical work. All of this technical work and the proposed conditions of consent have been shared with experts for DOC and the respective councils and in the light of feedback received, more work has been completed to progressively improve the collective understanding of these two issues. In our opinion, forming a proper understanding of the proposed conditions is critically important to understanding the extent to which a precautionary approach is relied upon. Moreover, where it has been relied upon proposed conditions must be sufficiently robust to ensure that there are sound methods employed to progressively reduce uncertainty and better understand risk, to require the application of scenario analysis to better understand cause and effect relationships and enable the implementation of adaptive and flexible measures to respond to risk. Of course, proposed conditions should also enable approaches to be altered as more is learned.

2.6 In our opinion the conditions relating to the management of effects on native frogs and on groundwater meet these requirements and result in a strong application of the precautionary approach. In particular, we note:

Leiopelmatid frogs

(a) All of the technical assessments that address leiopelmatid frogs conclude that that the likelihood of effects in respect of vibration and other forms of habitat disturbance are low.

(b) The vegetation clearance protocols to be followed have been designed to minimise effects on frogs, by selecting sites with a low density of leiopelmatid frogs. Prior to any vegetation clearance occurring, any leiopelmatid frogs detected in the area will be captured and relocated to a pre-prepared site (that is fenced from predators). Ms McArthur sets out how these protocols are to be applied. These protocols are supported by the ecologists that have assisted the applicant with assessing the effects of the project on native frog species.

(c) Any mine related dewatering related risks to the habitat of Hochstetter's frogs are expected to be very low (and effects of dewatering can be managed appropriately, as described in the evidence of Mr Simpson and discussed later in our statement of evidence).

(d) Despite these conclusions in respect of the level of effect, the Applicant is proposing intensive pest control within 314 ha of the Wharekirauponga Underground Mine ("**WUG**") surface footprint, and this is coupled with intensive pest control within an additional 318 ha of habitat for Archey's frog to the east and west of the WUG. This work is specifically directed at significantly improving native frog habitat such that an increase in frog numbers can be reliably expected. This increase is expected to be capable of verification within 15 years from the commencement of pest control (beginning 18 months ahead of the start of mining) and DOC's concern that any population recovery would take at least 28 years to be seen is not supported by the expert evidence of Dr Ussher.

(e) Comprehensive monitoring of native frogs is proposed, which will enable the pest control approach to be adapted and improved as more is learned.

Effects of Groundwater Drawdown on Natural State Waterbodies

(f) Extensive assessment and modelling of the groundwater system has been undertaken, and a range of technical reports are included in the application which describes this. This work has enabled the applicant to better understand the ground and surface water system and the potential for mine related groundwater draw down to affect waterways at the surface. Mr Simpson describes this work in his evidence.

(g) It is accepted that until such time as mining properly commences there will be uncertainty associated with the extent to which groundwater drawdown could potentially affect waterways on the surface. The proposed conditions of consent require that during tunnelling activities and subsequently during stoping activities a comprehensive monitoring programme is undertaken. Mr Simpson sets out that this monitoring is structured in a manner that includes multiple layers of defense and allows for early identification of any dewatering / depressurization effects in the ground, initially through observations from water pressure probes in the deep groundwater system, then via the use of near stream piezometers and ultimately by directly monitoring within the surface water bodies.

(h) This monitoring includes the collection of data in real time, and any issues will be able to be identified and acted on immediately.

(i) Monitoring will be used to inform those measures that need to be applied during tunnelling (if any) and during stoping to ensure that the effects of mine associated groundwater drawdown do not give rise to unexpected adverse outcomes within surface water bodies. Triggers have been established to indicate when monitoring and

assessment effort needs to be increased (Alert Triggers) and responsive action implemented (Respond Triggers). A range of conventional management methods are available to respond to such triggers being activated. These are set out in the Ground and Surface Water Management Plan and include:

i. Utilising grouting to seal fissures to maintain shallow groundwater levels above the grouted area (to maintain flows to streams sustained by shallow groundwater)

ii. Utilising groundwater reinjection, which includes capturing the groundwater inflowing to the mine as part of normal operations and re-injecting this back to selected locations of an impacted overlying aquifer; and

iii. Providing supplementary water to maintain stream flows and / or wetlands utilising mine intercepted groundwater.

2.7 Proposed consent conditions have been developed to require adherence to these approaches.

2.8 For managing the potential effects on leiopelmatid frogs, the proposed conditions require the following:

(a) The commencement of ground pest management within the 632 ha Wharekirauponga Animal Pest Management Area ("**WAPMA**") at least 18 months prior to stoping at the WUG; [6]

(b) This pest control must occur until the later of: [7]

i. Two years after the completion of stoping activities within the WUG; or

ii. Monitoring undertaken in accordance with Native Frog Monitoring Plan shows leiopelmatid frog numbers within the

[6] Proposed HCC Condition 172.

[7] Proposed HCC Condition 173.

WAPMA are no lower than would be expected in this area had the mining activity not occurred considering frog numbers in nearby habitat which was unaffected by blasting vibration.

(c) Undertake comprehensive monitoring in accordance with a Native Frog Monitoring Plan. The purpose of the monitoring plan is to ensure appropriate monitoring is undertaken with regard to potential vibration, dewatering, and pest control effects on native frogs, and to determine whether pest control measures are achieving a net gain in native frogs within the WAPMA [8]

(d) Annually report on the monitoring required by the Native Frog Monitoring Plan[9] and the pest management undertaken in the WAPMA; [10]

(e) In respect to vegetation clearance within the Coromandel Forest Park, the Applicant must:

i. Establish a 5 ha Native Fauna Release Area within the WAPMA prior to undertaking any vegetation clearance within the Coromandel Forest Park [11] This Native Fauna Release Area must provide suitable and protected habitat which supports the release of native lizards, frogs and invertebrates;[12]

ii. Prior to clearing vegetation or undertaking drilling activities, undertake comprehensive ecological surveys[13] for each potential site and apply the requirements of the site selection protocol.[14] At portable rig sites (where vegetation clearance is not expected to be necessary) a single night-survey is

[8] Proposed HCC Condition 175.
[9] Proposed HCC Condition 177.
[10] Proposed HCC Condition 178.
[11] Proposed HCC Condition 111.
[12] Proposed HCC Condition 112.
[13] Proposed HCC Condition 115, 119 to 121, 137, 152 to 154.
[14] Which is attached to the HCC consent conditions as Attachment 6.

proposed to be undertaken. A report then must be prepared that documents the results of the site selection protocol, results of the ecological surveys and lists the locations of the selected sites. The siting report must be certified by Hauraki District Council Waikato Regional Council and DOC; [15]

iii. Establish (and maintain) exclusion fences around drill sites and vent raise sites prior to vegetation clearance to ensure frogs / lizards are not able to re-colonise these areas;[16]

iv. Have an ecologist on site during any vegetation clearance;[17]

v. For drill-sites (but not vent raise sites, where the requirement is not practically achievable) if one or more northern striped gecko (*Toropuku "Coromandel"*) or five or more 'At Risk' or 'Threatened' frogs or lizards are found immediately prior to, or during vegetation clearance then all exploration operations at the drill site(s) will immediately cease and alternative site(s) may be selected;[18] and

vi. If 'At Risk' or 'Threatened' frogs or lizards are found on the proposed drill sites (being four or less found) or vent raise site(s) immediately prior to, or during vegetation clearance than they will be salvaged and moved to the Native Fauna Release Area.[19]

2.9 For managing the potential groundwater draw down effects from underground mining, the proposed conditions require the following:

(a) Prior to mining activities, undertake at least two years of additional baseline data collection to confirm key hydrological and hydrogeological statistics (including seasonal variations where

[15] Proposed HCC Conditions 115, 116, 127 and 160.
[16] Proposed HCC Conditions 122, 123, 137 and 156.
[17] Proposed HCC Conditions 130, 143 and 162.
[18] Proposed HCC Condition 131.
[19] Proposed HCC Conditions 132, 144 and 163.

appropriate) of the hydrological and hydrogeological systems in the Wharekirauponga Catchment; [20]

(b) The establishment of an Expert Groundwater Management Panel, whose purpose is to, among other matters, provide advice to Waikato Regional Council, Department of Conservation and the Applicant as to the appropriateness of the groundwater related reports, plans and programmes required by the consent conditions. The members of the Expert Groundwater Management Panel, and their defined field(s) of expertise, must be approved by the Waikato Regional Council prior to appointment to the Panel; [21]

(c) Prior to mining activities, form a better understanding of groundwater conditions and the potential for ingress by: [22]

i. Conducting drilling and investigative work in advance of tunnelling activities to assess geotechnical and hydrogeological conditions and evaluate where and what type of grouting or alternative mitigation measures may be required to manage any groundwater effects; and

ii. Carry out necessary mitigation, test the efficacy of measures employed and if required, implement alternative mitigation to control groundwater ingress.

(d) From the commencement of stoping activities, groundwater ingress into the area being mined must also be controlled. The Applicant must install monitoring instruments and undertake hydraulic testing in groundwater zones potentially affected by mining;[23]

[20] Proposed WRC Condition UG.6.
[21] Proposed WRC Conditions UG.30 to UG.38.
[22] Proposed WRC Condition UG.4.
[23] Proposed WRC Condition UG.19.

(e) Regularly communicate with the Waikato Regional Council, DOC and the Expert Groundwater Management Panel which, amongst other matters, must include an analysis of the mitigation measures required to control groundwater ingress and to summarise the data collected; [24]

Natural State Waterbodies

(f) In respect to Natural State Waterbodies, implement a comprehensive monitoring programme that must: [25]

i. Measure and record the daily volume of water pumped from the underground mine;

ii. Provide data on the dewatering effects on groundwater at different levels;

iii. Measure and record daily rainfall data specific to the catchments above the WUG; and

iv. Provide data on the stream flow of Natural State Water Bodies above, and in the vicinity of, the WUG, and at control sites in similar nearby catchments that will not be affected by mining activities.[26]

(g) At all times during mining activities the Applicant must compare the stream flows at the required monitoring locations and rainfall conditions against set 'Alert Trigger Levels' that are specified in the conditions; [27]

(h) If a flow less than an **Alert Trigger Level** is recorded, the Applicant must: [28]

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[24] Proposed WRC Conditions UG.5, UG.25 & UG.26.

[25] Proposed WRC Condition UG.8.

[26] Proposed WRC Condition UG.9 sets out the monitoring locations where this monitoring must occur.

[27] Proposed WRC Condition UG.10.

[28] Proposed WRC Condition UG.10.

i. Undertake daily reviews of the flows until flows are no longer less than the Alert Trigger Level;

ii. Check and verify stream flow data, rainfall data and groundwater level data from piezometers;

iii. Check and verify data from the control sites for evidence of similar or trending flow patterns;

iv. Provide a summary report setting out the findings of the investigation;

v. If this investigation demonstrates that mining activities have resulted in unanticipated effects on flows, the Applicant must:[29]

- Engage a suitably qualified and experienced professional approved by the Waikato Regional Council to investigate the cause of the Alert Trigger Level exceedance;

- Provide a report to the Waikato Regional Council which summarises the findings of the investigation; and

- Implement mitigation measures in accordance with the WUG Water Management Plan if required (as determined by the investigation.

(i) If a flow less than a **Respond Trigger Level** is recorded, the Applicant must: [30]

i. Immediately cease any upstream surface water abstraction;

ii. Engage a suitably qualified and experienced professional approved by the Waikato Regional Council to investigate the cause of the Respond Trigger Level exceedance;

[29] Proposed WRC Condition UG.11.

[30] Proposed WRC Condition UG.10.

iii. Provide a report to the Waikato Regional Council which summarises the findings of the investigation.

(j) If the investigation into the Respond Trigger Level exceedance finds that mitigation measures are required to be implemented to ensure that the flow in the relevant waterbodies increases above the trigger level, the Applicant must implement those measures in accordance with the WUG Water Management Plan.

Natural Inland Wetlands

(k) In respect to Natural Inland Wetlands, implement a comprehensive monitoring programme that must:[31]

i. Measure and record the water levels in Natural Inland Wetlands that are potentially affected by mining activities and at a wetland control site in a similar nearby catchment that will not be affected by mining activities; and

ii. Measure and record (through visual inspection) characteristics associated with natural water levels in Natural Inland Wetlands that are potentially affected by mining activities. These are to include:

- Signs of composition shifts towards dryland plant species measured using national wetland delineation protocols for Dominance and Prevalence from representative vegetation plots within each wetland specified in the conditions; and
- Increase in % cover of invasive non-native Facultative, Facultative Upland or Upland plant species, including pampas and blackberry.

[31] Proposed WRC Condition UG.12.

(l) If a wetland level drops below expected levels, the Applicant must:[32]

i. Check and verify water level and groundwater level data from piezometers;

ii. Check and verify data from the control sites for evidence of similar or trending patterns;

iii. Undertake a visual inspection of the Natural Inland Wetlands potential affected by mining activities to ass the water level of those wetlands;

iv. Provide a summary report setting out the findings.

v. If this investigation demonstrates that mining activities have resulted in unanticipated effects on wetland water levels, the Applicant must:[33]

- Engage a suitably qualified and experienced professional approved by the Waikato Regional Council to investigate the cause;
- Provide a report to the Waikato Regional Council which summarises the findings of the investigation; and
- Implement mitigation measures in accordance with the WUG Water Management Plan if required (as determined by the investigation.

2.10 Proposed condition UG.29 provides a framework for reassessing and adjusting the Alert Trigger Levels and / or Respond Trigger Levels in response to additional information gathered from monitoring. Any change to these levels requires Waikato Regional Council certification.

[32] Proposed WRC Condition UG.14.

[33] Proposed WRC Condition UG.11.

2.11 The conditions also propose the imposition of standard review conditions on resource consents also provide an opportunity for the consenting authorities to review the appropriateness of the consent conditions for managing and monitoring the effects of the Project.

2.12 With all of the above in mind, we do not agree with DOC and Forest & Bird that the Project does not properly apply the precautionary approach to the management of effects on indigenous frogs or freshwater bodies.

3 Functional Need and the Effects Management Hierarchy

3.1 The substantive application provides an assessment of functional need in the context of the NES-Freshwater, NPS-FM and NPS-IB. Forest & Bird consider that that application conflates a 'functional need' with an 'operational need'. We do not agree with that assertion.

3.2 The substantive application deals with functional need by assessing a range of relevant factors to show why elements of proposed mining related infrastructure can only occur where they are planned to occur. These include:[34]

(a) proximity to the orebody;

(b) proximity to, and location of, existing mining related infrastructure;

(c) land ownership and control (noting that the Applicant requires Overseas Investment Office approval for any land acquisitions);

(d) efficiency benefits associated with material movement costs,

(e) proximity to roading infrastructure,

(f) geotechnical and hydrogeological constraints,

[34] See pages 587 & 588 of the substantive application (Part A).

(g) construction efficiency,

(h) known technology,

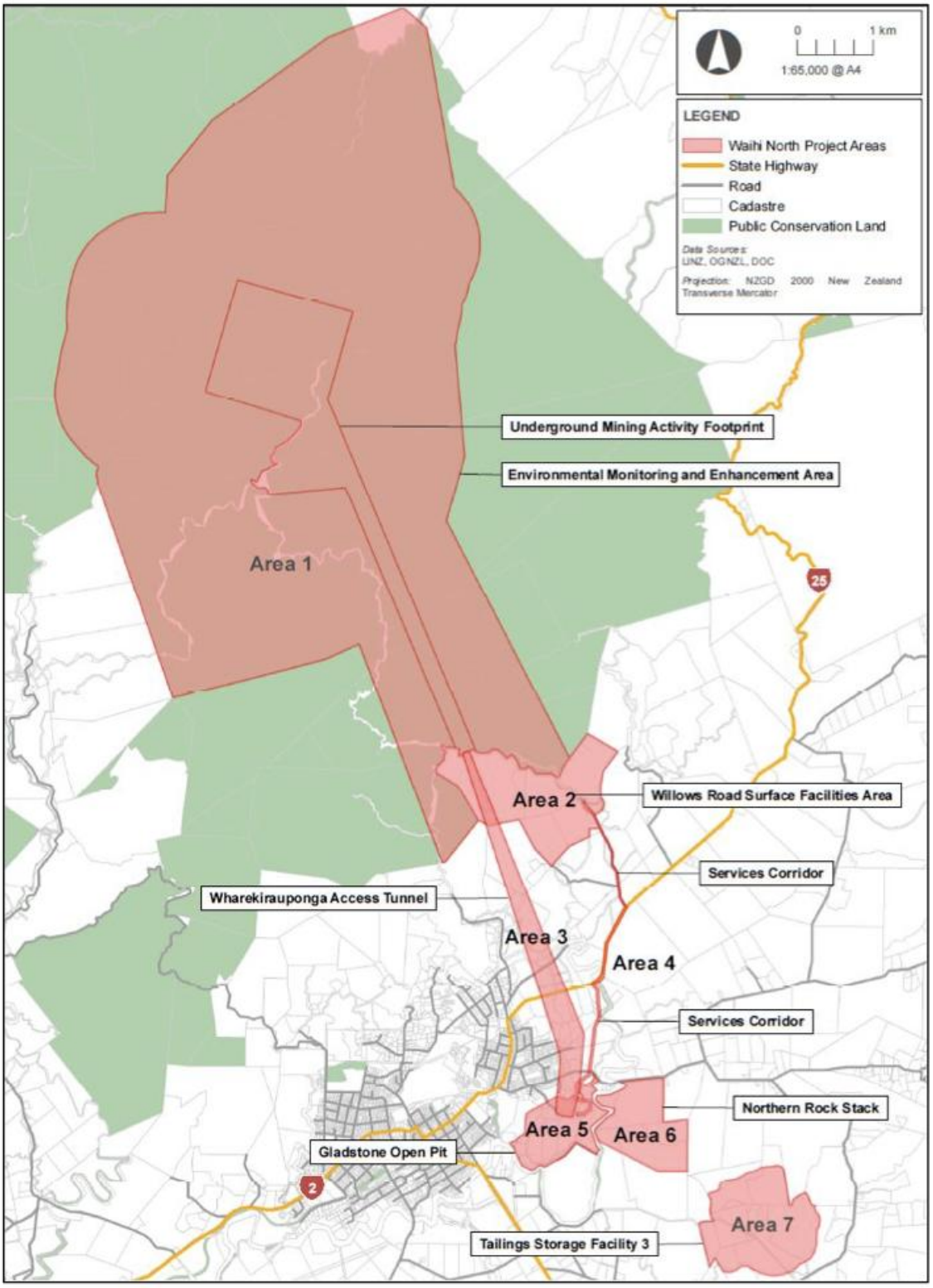
(i) scale.

3.3 It is almost trite to say that the infrastructure required to support mining activities must, logically, be located close to where mining occurs and can only occur in an environment where mining (and the orebody) occurs, and on land which can be legally and physically accessed and used

3.4 'Functional need' was a highly relevant matter in the Mt Messenger Bypass case. There, the Court held that:

- The presence of alternative routes for a proposal is not in itself a sufficient argument to indicate a lack of "functional need", because with linear infrastructure, alternatives will always exist, and their existence could not have been intended to make the specified infrastructure exception serve no practical purpose.
- The "location" in which the activity occurs does not mean the specific wetland in question, but the broader environment (as defined in section 2 of the RMA) that is subject to the activity).

3.5 While the WNP is not 'linear' infrastructure like the roading network, there is a high degree of connectiveness required to support the mining proposed. This is demonstrated in the Project Area figure that was included in the substantive application, which is replicated below. This figure shows the infrastructure that connects the proposed mines at the WUG (Area 1) and the Gladstone Open Pit ("**GOP**") (in Area 5) with the existing mining infrastructure within the Waihi area (also largely in Area 5 and Area 7):



3.6 We also note that:

(a) Section 2.4 of the substantive application report (Part A) provides an overview of the Applicant's proposal to utilise existing already authorised mining infrastructure as part of the WNP – this includes

the processing plant and water treatment plant (noting that as part of the Project, these are required to be upgraded). These two existing features represent "connection points" that the WNP infrastructure must connect to in order to process the ore mined from the WUG and GOP, and treat water. They are also physical resources that, in the RMA context, would need to be sustainably managed. There is no suggestion from commenters that the construction of a new processing plant and water treatment plant would be feasible or appropriate;

(b) The Willows Surface Facilities area (Area 2) is required to provide surface-based supporting mine infrastructure for the tunnelling and mining activities associated with the WUG. This is located outside, but directly adjacent to, the Coromandel Forest Park. Its existence and location determines the nature and extent (5.5 km in length) of the underground dual tunnel access to the Wharekirauponga ore-body and as such it is a significant determinant of the project;

(c) The GOP is proposed to be located adjacent to land already developed and utilised for mining activities, including the existing processing plant and water treatment plant (as shown on Figure 2-39 of the substantive application report). Following mining activities, the GOP will be utilised for tailings storage (becoming the GOP TSF). The WUG portal, providing access to the Wharekirauponga Access Tunnel is also proposed to be located in this area (Area 5);

(d) TSF 3 is proposed to be located directly adjacent to two existing tailing storage facilities (Area 7). Commenters, including Forest & Bird, emphasise the importance of locating the TSF away from landslide risks and Mr Matuschka refers to the proven stability of this existing location. Figure 2-70 of the substantive application report shows TSF 3's proximity to existing TSF 1A;

(e) The NRS (Area 6) is proposed to be located within, and around, the area currently used for the existing Northern Stockpile (Figures 2-64 and 2-65 of the substantive application report documents this) and its location, close to the source and main destinations for rock stored in it, is the main determinant of its location; and

(f) For every one of the new landforms described above, geotechnical and other fundamental engineering prerequisites have been met.

3.7 We consider that the same constraints and rationale applies in respect of the WNP as applied in the Mt Messenger case, and a functional need exists for the activities proposed in the substantive application. In short, the elements of proposed mining related infrastructure can only occur where they are planned to occur. They have a functional need to be located as they are proposed.

4 National Policy Statement for Freshwater Management

Natural Inland Wetlands

4.1 As described by Forest & Bird, Policy 6 of the NPS-FM requires that there is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.

4.2 The WNP interacts with wetlands, including:

(a) Natural inland wetlands within the Coromandel Forest Park above the WUG;

(b) Gladstone Wetland; and

(c) Mataura Wetland.

4.3 To manage the interactions of the various Project components on wetlands, the Applicant is proposing to:

(a) Undertake a comprehensive monitoring programme within the wetlands most at risk within the Coromandel Forest Park, and should this monitoring identify any dewatering effects, mitigation measures will be implemented (as described in paragraph 2.9 earlier in this statement) to ensure the extent of these wetlands is not reduced;

(b) The works associated with the Willows Surface Facilities Area will avoid the Mataura Wetland. The technical assessment by Boffa Miskell (2025c) demonstrates that any potential reduction of flows to this wetland is not likely to be discernible from natural variability. Despite this this conclusion, substantial habitat enhancement is proposed which will enhance its values; and

(c) The reclamation of a headwater gully (47 m) associated with the establishment of the GOP will reduce groundwater and surface flows to the Gladstone Wetland. Boffa Miskell (2025c) sets out that an assessment of the hydrology of this wetland suggests that it has been formed as a result of the formation of a farm track and associated culvert. A 0.5 m reduction in the groundwater level adjacent to the wetland has been predicted by Boffa Miskell. However, this variability is within the natural fluctuations of the Gladstone Wetland, is expected to be unmeasurable and is not expected to reduce the extent of the wetland. Boffa Miskell (2025c) considers that the magnitude of this effect is low, as minimal hydrological variation is anticipated. Boffa Miskell (2025c) sets out that this reduction in groundwater and surface water flows will only occur until the closure of the GOP TSF. Notwithstanding this conclusion, a collective compensation package has been designed for the effects associated with the GOP, Northern Rock Stack ("**NRS**") and the Tailings Storage Facility 3 ("**TSF3**") which will result in the restoration of 7,646 m of stream margins along the Mataura Stream and Ohinemuri River catchments.

4.4 Based on the conclusions of the various technical assessments, it is our opinion that the various Project components, with the monitoring and effects management measures proposed, will not reduce the extent or values of any natural inland wetlands and is the Project is consistent with Policy 6 of the NPS-FM.

Stream Reclamations

4.5 Policy 7 of the NPS-FM requires the avoidance of the loss of river extent and values *to the extent practicable*. Forest & Bird consider that the no net loss threshold has not been met for the following reasons:

(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 4,112 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.

4.6 DOC also considers that is difficult to assess the Project against the NPS-FM due to the different figures used across the substantive application reports.[35]

4.7 We note that the policy framework does qualify the avoidance of the loss of river extent and values by using the phrase “to the extent practicable.”

4.8 Notwithstanding this, we note that:

[35] At paragraphs 144 & 145 of the DOC written comments.

(a) Boffa Miskell (2025c) already addresses these matters and considers that the diversions and plantings proposed do satisfy the NPS-FM requirements from a technical freshwater ecology perspective. The report states that:[36]

> *Application of the effects management hierarchy means that:*
>
> - *There shall be no net loss of freshwater ecological function.*
> - *Permanent loss of some 16% of extent (length) of streams.*
> - *A combination of ecologically functioning diversion channels and existing stream channel restoration are to be undertaken as offset for the permanent and temporary loss of stream habitat.*
>
> ***We consider that in considering the shortfall of 16% of loss of extent of watercourse, a further equivalent length of 644 m of stream length is sufficient and appropriate compensation for loss of exten****t. One benefit of the additional planting is that it can all be accommodated on land owned by the Applicant providing a greater degree of certainty. In addition, we consider that the planting can occur in advance of loss of stream extent*.
>
> …
>
> *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 NPS- FM 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.***

[36] Pages 126 to 128 of Boff Miskell (2025c).

We emphasise that the proposed additional stream enhancement is not included in the enhancement of streams for loss of aquatic ecological values, and in cases the requirement of additionality (i.e. is additional to) is satisfied.

The total length of the reclamations and diversions have been compiled as one as a 'whole of project' assessment. However, for the most part, the created diversions occur at or near to the locations of stream reclamation. Where that has not been feasible, notably the warm spring and the headwater gully at the GOP, the loss extent has been incorporated into the all-project diversions' calculation.

(b) We note that the *Te Runanga o Ngati Whatua* v *Auckland* case referred to by Forest & Bird also contemplates that river or stream enhancement can provide ecological benefits to offset of compensate for the loss of river extent:

[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 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.

(c) In this case, Boffa Miskell consider that ecological mitigation package that consists of the creation of ecologically functioning stream diversions and stream / river enhancements do appropriately compensate for the loss of river extent and values, from an ecological perspective, as required by the NPS-FM.

(d) The aquatic offset / compensation proposed is addressed comprehensively in the substantive application documents, including:

i. Appendix 9 of Boffa Miskell (2025c) (*Waihi North Project – Freshwater Ecological Assessment*) contains the ecological compensation ration and mitigation quantum for streams;

ii. Appendix 11 of Boffa Miskell (2025c) (*Waihi North Project – Freshwater Ecological Assessment*) provides indicative stream channel diversion designs;

iii. Appendix 14 of Boffa Miskell (2025c) (*Waihi North Project – Freshwater Ecological Assessment*) provides a draft stream diversion and development plan which sets out the diversion design objectives, construction methodology, fish passage details, ecological colonisation details and monitoring requirements;

iv. Appendix 15 of Boffa Miskell (2025c) (*Waihi North Project – Freshwater Ecological Assessment*) provides a draft stream enhancement riparian planting plan for the 10,285 m of riparian planting proposed.

Outstanding Waterbodies

4.9 DOC and Forest & Bird consider that the Project is contrary to Policy 8 of the NPS-FM due to the potential effects of the WUG on the Natural

State Class waterbodies within the Coromandel Forest Park. Policy 8 requires the protection of the *significant values* of outstanding waterbodies.

4.10 For the reasons already discussed in this statement of evidence, we consider that the monitoring, response and mitigation measures proposed will ensure that the significant values of the Natural State Class waterbodies are not affected by mining activities.

4.11 Proposed condition UG.7 provides a bottom line compliance limit for flows in Natural State Water Bodies. Mining activities, including mitigation, must be managed to ensure that mining activities do not result in flows in these waterbodies dropping below set 'Respond Trigger Levels' that are described in Condition UG.10.

4.12 In preparing the application and in guiding technical assessment before that, we were particularly mindful of Policy 8 and policy relating to natural state waterbodies set out in the Waikato Regional Plan. This has resulted in the extensive body of work that has been undertaken to show that the groundwater drawdown effects of mining do not bring about conflict with the relevant matters pertaining to natural state water bodies. We see no conflict with the requirements of Policy 8.

5 National Policy Statement of Indigenous Biodiversity

Protection of Significant Natural Areas

5.1 Policy 7 of the NPS-IB requires the protection of Significant Natural Areas ("**SNA's**") by avoiding *or managing*, adverse effects from new use and development on areas with significant biodiversity values.

5.2 As described in the substantive application, the WNP directly affects two SNAs:

(a) SNA166, which is impacted by the NRS and TSF3; and

(b) SNA T13 P152, which is the Coromandel Forest Park.

SNA 166

5.3 Existing mining facilities, tailings storage facilities TSF 2 and TSF 1A, are located directly adjacent to SNA 166. The Applicant is proposing that an additional tailings storage facility, TSF 3, be located to the east of existing TSF 1A.

5.4 The establishment of TSF 3 will result in 8.3 ha of vegetation clearance from SNA 166. The Bioresearches assessment describes in some detail the potential effects on this SNA.

5.5 The Ecology and Landscape Management Plan for the Waihi Area contains a residual effects offset plan, which provides the details of the offset and compensation proposed to address the loss of this area. In summary, the Applicant is proposing 17.5 ha of new planting adjacent to, and in the wider landscape of the SNA to offset loss of SNA vegetation (with associated pest control and monitoring).

SNA T13 P152

5.6 Forest & Bird consider that the Project does not meet the exceptions set out in Clause 3.11 of the NPS-IB, including the need to demonstrate that there are no practicable alternative locations for the development. In respect to SNA T13 P152, we do not consider that this is the case as the WUG must be located where the ore is located – there are no practicable alternative locations for this mine, and underground mining has, in our experience, substantially less environmental effects than surface mining. The mine itself has been limited to ensure stoping is no closer than 100m from the surface. Further, the applicant's decision to access the underground mine via a dual tunnel, rather than surface roading, drives significant reduction in surface disturbance that would otherwise occur in SNA T13 P152. Helicopter-supported exploration drilling and using directional drilling techniques to minimise the number

of drill-sites required at surface, represents a further level of avoidance. Both drill and ventilation raise sites will be selected using criteria that require large numbers of sites to be “disqualified” (in order to avoid unacceptable levels of effects on flora and fauna).

5.7 For underground mining, we understand that there must be some surface expressions to provide fresh air vents and emergency escape routes for the underground activities. The Applicant has designed this component of the Project such that only 0.66 ha of vegetation clearance in SNA T13 P152 is required. These sites will be rehabilitated following the cessation of mining activities.

5.8 To compensate for the loss of this vegetation for the life of the mine, the Applicant is proposing to undertake enhancement planting outside, but immediately adjacent to, the Coromandel Forest Park (21 ha). This regeneration planting will occur on the northeast ridge of the Willows Site and will connect an existing remnant bush fragment occupied by Hochstetter’s frog, to the Coromandel Forest Park. This area will be fenced to exclude stock and pigs and subject to pest control (rodents, possums and mustelids).

5.9 In addition, the Applicant is proposing to undertake additional planting along the boundary of the Coromandel Forest Park, which is proposed to address the impacts of vegetation clearance within the forest that creates a temporary interior forest edges (as described in Boffa Miskell (2025a).

5.10 In respect to frogs, the substantive application acknowledges that there is a degree of uncertainty regarding effects on frogs from vibration, given the limited studies that have been undertaken. However, the evidence of Dr Ussher is that:

> *While I acknowledge uncertainty in relation to potential effects on native frogs, I reiterate my opinion that the level of uncertainty is low and that even if adverse effects were to occur across the vibration footprint of the*

underground mine, and on the majority of the native frog population at the site, the proposed pest control programme would still result in a considerable net-gain outcome for frogs. The biodiversity offset models used to evaluate potential outcomes (the BOAM and BCM models) require that the level of uncertainty of effects or outcomes is not great, as offsetting should not be undertaken where uncertainty is high (for example, the BCM model does not work where uncertainty is high). Uncertainty is a feature of all forecast events that are subject to environmental variation, especially so in ecology where multiple variables may dictate variation from expected outcomes (in a positive or negative way). In the case of this project, and where there is the potential for mining effects on native frogs, I do not consider that the level of uncertainty around effects or pest management outcomes to be so sufficiently great so as to violate the uncertainty principle of the NPS-IB or similar principles of accepted offsetting practice.

5.11 It is our view that in the light of the responses mentioned above and the proposed 633 ha of intensive pest control within the Coromandel Forest Park, that the proposal is consistent with the overarching direction of the NPS-IB, including Policy 7.

Principles for biodiversity offsetting / compensation

5.12 As identified by the Department of Conservation,[37] the statutory planning assessment contained in of the substantive application does not include an assessment of the principles of biodiversity offsetting and compensation.

5.13 The requirements of Appendix 3 (Principles for biodiversity offsetting) and Appendix 4 (Principles of biodiversity compensation), as well as the various biodiversity / compensation modelling results, are addressed in the following reports submitted with the substantive application:

[37] At paragraphs 134 to143 of the DOC written comments.

(a) Boffa Miskell (2025a): *Waihi North Project – Terrestrial Ecological Vales and Effects of the WUG*, in Section 8 of this report and Appendix 5;

(b) RMA Ecology (2025a*): OGNZL Wharekirauponga Mine – Assessment of Effects on Native Frogs*, in Section 3 of this report (in respect to effects on Archey's and Hochstetter's frogs);

(c) Boffa Miskell (2025c): *Waihi North Project – Freshwater Ecological Assessment*, in various locations in the report; and

(d) Ecology and Landscape Management Plan – Waihi Area, in Section 4 (residual effects offset plan).

5.14 Our observation is that the assessment of the NPS-IB appendices across the suite of reports is comprehensive and demonstrates the proposed approach to offsetting and compensation across the WNP is appropriate and, given the technical nature of those principles, need not be repeated in a statutory planning assessment.

6 Other Planning Instruments Under the RMA

6.1 Forest & Bird consider that the Project is not consistent with several other objectives and policies in the various planning instruments, which is described at paragraphs 208 to 210 of the written comments. For the reasons we already describe in this statement of evidence, we consider that the Project is consistent with the relevant statutory planning instruments.

7 Part 2 of the RMA

7.1 Forest & Bird consider that the Project is contrary to Part 2 of the RMA including the purpose of sustainable management and the need to safeguard the life-supporting capacity of water and ecosystems.

7.2 Section 8.7.2 of the substantive application report (Part A) provides an analysis of the WNP against Part 2 of the RMA. We consider that analysis remains applicable and that the Project, overall and with the comprehensive effects management approach proposed, is consistent with the principle of sustainable management.

7.3 Numerous management measures are intended to facilitate the safeguarding the life supporting capacity of water and ecosystems.

8 Planning documents under the Conservation Act

8.1 DOC considers that the "Northern Concession" and "Wharekirauponga Access Arrangement" are not consistent with the applicable conservation management strategies and policies (the Conservation General Policy, Waikato Conservation Management Strategy 1996 and 2014 and the Coromandel Peninsula Conservation Land Management Plan 2002).[38]

8.2 We understand that this is based on (primarily) the uncertainty associated with the proposed mitigation measures on indigenous biodiversity, and due to the view that the proposed mitigation measures proposed do not adequately address the adverse effects on natural resources.

8.3 We do not agree. It is our view that the comprehensive measures proposed in respect of activities within, and under, the Coromandel Forest Park, will ensure that the effects on indigenous biodiversity are appropriately managed (including through the effects management hierarchy required by the various RMA related planning documents). The evidence prepared on behalf of the Applicant from various independent technical experts is that the effects can be managed and

[38] At paragraph 150 of the DOC written comments.

the overall package of mitigation measures will result in a net gain in biodiversity values.

9 Updated Proposed Approval Conditions

9.1 We have reviewed the comments and amendments made by various commenters on the proposed approval conditions. A new version of all proposed conditions is included in Appendix C. Where we agree with the comments, we have included them. Where there has not been agreement we have stated why and/or the technical advisers to the applicant have done so via a series of brief memoranda. For those conditions relating to resource consents required from the HDC (and the combined set of resource consent conditions) we have utilised the version provided by Mr McGarr for the Hauraki District Council.

9.2 The NZTA has suggested some amendments to the conditions and those have largely been included in the revised version.

9.3 The Department of Conservation advisers have also suggested some amendments to conditions on the DOC related approvals and those relating to the resource consents required. We have reviewed these comments and have included quite extensive changes to the DOC related approvals. As stated in legal submissions, the applicant's approach as proposed in the application documents had been to effectively mirror the management plans in the context of the proposed conditions on the required DOC approvals. In light of the concerns expressed by DOC around the way management plans are used in these conditions and with respect to certification issues, we have recast the proposed DOC approval conditions to significantly reduce reliance on management plans and instead to include more detail in the conditions themselves.

9.4 Our changes in response to comments from DOC on the resource consent conditions have been more conservative. This is because we

either do not agree that the suggested refinement is necessary, or the suggested refinement is at odds with the approach already agreed in workshopping with the councils. Of course, we acknowledge that this may not be the final opportunity to look at conditions due to the requirements of section 70 of the Fast Track Approvals Act.

Dated: 1 September 2025

John Clifford Kyle and Abbie Maree Fowler

APPENDIX 1

QUALIFICATIONS AND EXERIENCE OF JOHN KYLE

1 My full name is John Clifford Kyle. I hold an honours degree in Regional Planning from Massey University, obtained in 1987. I am a founding director of the firm Mitchell Daysh Limited, which practices as a resource management planning and environmental consultancy throughout New Zealand.

2 I have been engaged in the field of resource and environmental management for 37 years. My experience includes a mix of local authority and consultancy resource management work. For the past 30 years, this experience has retained a particular emphasis on providing consultancy advice with respect to regional and district plans, plan change applications, designations, resource consents, environmental management, and environmental effects assessment.

3 For most of my consulting career I have been involved with the consenting of large-scale, and often nationally significant projects involving inputs from a multidisciplinary team. I have provided advice to Boards of Inquiry with respect to nationally significant infrastructure projects, and to other Environmental Protection Authority-appointed panels. I have very broad experience in the Environment Court dating back to 1988 (then the Planning Tribunal) and experience with High Court proceedings.

4 I work extensively on projects in the renewable energy generation sector (hydro, wind, solar and recently green hydrogen), extractives (quarrying and mining), infrastructure (ports, airports, network utilities), industrial processing (fertiliser, meat, forestry), land development (urban expansion, new town development), government facilities (regional prisons, youth justice facilities), health and aged care (hospitals and retirement villages) and water (irrigation, water storage, wastewater treatment). My work regularly takes me all over New Zealand.

5 I am a member of the Resource Management Law Association. For a number of years, I assisted the New Zealand Planning Institute with instructing planning practitioners on how to give effective expert evidence.

QUALIFICATIONS AND EXERIENCE OF ABBIE FOWLER

1. My full name is Abbie Maree Fowler.

2. I have a Bachelor of Environmental Planning degree from the University of Waikato and have approximately 13 years' experience in the resource management field. I am currently working as a contractor for Mitchell Daysh Limited ("Mitchell Daysh"), assisting with several projects being considered under the Fast Track Approvals Act 2024. In this capacity, I was one of the primary authors of the substantive application report (Part A of the application) for the Waihi North Project and wrote the 'Fast Track Act Requirements' section of that report.

3. I am currently also employed part time as a Teaching Fellow at the University of Waikato where I teach an environmental planning paper to fourth year planning, as well as Masters students.

4. Prior to being a contractor, I was employed by Mitchell Daysh, as an Associate, based in the Hamilton office, between March 2018 and April 2024. During this time, I was involved in the preparation of submissions and resource consent applications, including statutory planning assessments, and providing resource management advice to a wide range of clients in relation to their development aspirations in respect of both district council and regional council processes. This work largely focused on large scale projects in the Waikato Region.

5. I have been responsible for the drafting of several private plan changes and section 32 evaluation reports.

6. I have also prepared submissions on various iterations of the National Policy Statement for Freshwater Management and the Draft National Policy Statement on Indigenous Biodiversity for a large electricity generator.

7. Prior to joining Mitchell Daysh, I spent approximately five years employed by Genesis Energy Limited, one of New Zealand's largest electricity generators. I held various roles at Genesis, including as an Environmental Coordinator at the Huntly Power Station, the Environmental Lead for the North Island renewable schemes based at the Tokaanu Power Station (secondment) and as Environmental Coordinator – Policy and Planning. In this latter role, I led their national, regional and local policy and planning workstreams. In this position, I represented the company on the Land and Water Forum Plenary, was an electricity sector representative on the Biodiversity Collaborative Group (which was responsible for developing the National Policy Statement for Indigenous Biodiversity), and prepared a number of submissions on national, regional and local policy instruments under the Resource Management Act 1991.

8. I was also the project manager of a significant resource consenting project which resulted in 400MW of peaking electricity generation being consented at the Huntly Power Station.

9. I was also employed at the Waikato Regional Council where my role focused on assessing resource consent applications and undertaking compliance monitoring, primarily for municipal wastewater discharges and water takes.