

PART G: APPROVALS RELATING TO THE RESOURCE MANAGEMENT ACT

G1 Decision-Making Criteria For Consents Under The RMA

[1] In considering whether to grant resource consents, we must apply clauses 17 – 22 of Schedule 5 to the FTAA.¹ For present purposes, it is cl 17 that is primarily important.

[2] Clause 17 is relevantly in these terms:

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.

(2) For the purpose of applying any provisions in subclause (1),—

- (a) a reference in the Resource Management Act 1991 to Part 2 of that Act must be read as a reference to sections 5, 6, and 7 of that Act; and

...

[sub-clauses (2)(b)-(c), and (3) – (7) omitted]

Section 104D of the RMA provides decision-making criteria for non-complying activities. Relevantly for the WNP, the effect of clause 17(1)(b) is that those criteria do not apply.

[3] We understand the phrase “take into account” as requiring us to consider the matters so identified and give them genuine consideration; rather than mere lip service, such as by listing them and setting them aside.² This can be best effected (and demonstrated) by considering them first in ways that are uninfluenced by the FTAA’s purpose and secondly, only then carrying out the weighing exercise required by clause 17(1).

¹ See s 81(2)(a) of the FTAA.

² *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2024] NZSC 26.

[4] 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.

[5] These subclauses should be read in conjunction with s 85(4). They mean that directive avoidance policies in planning instruments are to be taken into account in the manner outlined in clause 17(4), by :

- (a) recognising that they would usually require applications for consent to be declined on the basis of the “bottom line” approach taken in *King Salmon*;³ but
- (b) do not require the Panel to decline an application.

³ *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited & Ors* – [2014] NZSC 38; [2014] 1 NZLR 593.

G2 RMA Statutory Instruments

[6] OGNZL's Application listed what it considered to be the relevant statutory instruments and provided an assessment of each of those instruments.⁴ We have carefully reviewed that assessment. While we generally concur with it, we provide our own assessments as follows.

National policy statements

[7] The relevant National Policy Statements that we must take into account to under clause 17 of the FTAA were addressed in section 10 of the AEE and include:

- (a) National Policy Statement for Freshwater Management 2020 (NPS:FM);
- (b) National Policy Statement for Highly Productive Land 2022 (August 2024) (NPS:HPL)
- (c) National Policy Statement for Indigenous Biodiversity 2023 (NPS:IB).

National Policy Statement for Freshwater Management 2020 amended 2024

[8] The NPS:FM sets out a framework under which local authorities are to manage freshwater (including groundwater).⁵ The objective of the NPS:FM is to ensure that natural and physical resources are managed in a way that prioritises:⁶

- (a) First, the health and well-being of water bodies and freshwater ecosystems;
- (b) Second, the health needs of people (such as drinking water); and
- (c) Third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

⁴ A.11, section 8.7.3

⁵ NPS:FM clause 1.5.

⁶ NPS:FM clause 2.1.

[9] This objective reflects the hierarchy of obligations in Te Mana o te Wai.⁷ Policies 1, 2, 6, 7, 8, 9 and 10 are particularly relevant to the WNP.⁸

[10] Regarding Policy 1, we are satisfied that the WNP will accord with Te Mana o te Wai, insofar as the activities have been identified and assessed to ensure that the health of freshwater and of the wider environment is prioritised and protected. In that regard we refer and adopt to the explanation provided in the Application documents.⁹

[11] In addition, regarding the six principles of Te Mana o te Wai, the Iwi Advisory Group will enable tangata whenua to play a role in the formulation of the various management plans that will govern much of the day-to-day WNP activities. The iwi Advisory Group will be able to nominate tangata whenua participants for the Peer Review Panel and Expert Groundwater Panel. They will also be enabled to participate in the development of a Mātauranga Māori environmental monitoring programme.

[12] Consequently, we disagree with Forest and Bird that the WNP is inconsistent with Policy 1.

[13] Regarding Policy 2 we note tangata whenua have commented on the WNP proposal and consent conditions are proposed to enable their ongoing involvement with the WNP.

[14] Policy 3 is primarily directed to the role of WRC, but we observe that OGNZL has considered the actual and potential effects of the WNP on land and freshwater resources in an integrated manner.

[15] Policy 6 seeks to ensure that there is no loss to the extent of natural inland wetlands and that their values are protected. We are satisfied that the WNP activities affecting the wetlands within the Coromandel Forest Park above the proposed subsurface mining activities (including the Matura Wetland located within Area 2 and the Gladstone Wetland located within Area 5) can be managed in such a way so as to ensure works will either avoid the wetlands (for those located in Areas 2, 4, and 5), or that potential dewatering effects associated with the proposed

⁷ NPS:FM clause 1.3.

⁸ Policy 5 relates to the National Objectives Framework which is relevant to the role of the WRC. Policy 11 is not relevant because there is sufficient groundwater available in the Otahu Catchment for the proposed take of groundwater / dewatering of the WUG.

⁹ Application A11, pages 579 to 581

works will be monitored and managed to ensure that there is no loss in the extent or values of these wetlands.

[16] Relevantly, Policy 3.A.2 of the Waikato Regional Plan requires the avoidance of the loss of extent of natural inland wetlands, except where the loss derives from an activity is necessary for the purpose of the extraction of minerals and ancillary activities; the extraction of the mineral will provide significant national or regional benefits; there is a functional need for the activity to be done in that location and the effects of the activity will be managed through applying the effects management hierarchy. We are satisfied that if there were to be a loss of wetland extent, then the WRP exception criteria would apply.

[17] We disagree with Forest and Bird that the WNP is inconsistent with Policy 6.

[18] Policy 7 seeks to ensure the loss of river extent and values is avoided to the extent practicable. In terms of that requirement, we are satisfied that there is a functional need to locate the mine where the mineral resource occurs. Consequently, we find that facilities associated with that mining will involve the unavoidable reduction in the extent of waterbodies in several locations and that OGNZL has adequately considered the factors relevant to assessing their functional need¹⁰. It is not practicable to avoid that reduction should the WNP be enabled to proceed. However, any loss of extent and values is mitigated (or compensated) by the creation of ecologically robust stream diversions and riparian planting on existing lengths of streams. In that regard we disagree with Forest and Bird who commented that in their view functional need had not been established.

[19] Policy 8 is about protecting the significant values of outstanding water bodies. We understand from Section 3.2 Policy 5 of the WRP that the Natural State Water Class streams in the Coromandel Forest Park are considered to be outstanding waterbodies. Six natural state streams are potentially affected by mining activities and we are satisfied that consent conditions will mitigate adverse effects on those waterbodies to the extent practicable. In that regard we observe that the underground mining methodology within Area 1 has been carefully developed to monitor and manage the unlikely but potential risk of dewatering effects on those natural state waterbodies, such that any anticipated effects on stream flows will be less than minor, and

¹⁰ WUG, TSF3, GOP and GOP TSF, NRS and WRS. See the discussion in the Application A11, pages 587 - 588.

within the range of naturally expected variations. We disagree with Forest and Bird that the WNP is contrary to Policy 8.

[20] Policies 9 and 10 address the protection of the habitats of indigenous freshwater species and trout and salmon respectively. We are satisfied that will be achieved through measures such as the WTP discharge standards, erosion and sediment controls, the creation of new stream habitats associated with stream diversions, the implementation of the Aquatic Fauna Salvage and Relocation Plan, maintain appropriate fish passage, riparian planting, and maintaining water levels in the Natural State Waterbodies in the Coromandel Forest Park.

[21] The Panel has taken into account the NPS:FM when assessing the effects of the WNP as set out in Part E of this Decision.

Panel finding

[22] The Panel is satisfied that the WNP is not inconsistent with the NPS:FM.

National Policy Statement for Highly Productive Land 2022 (August 2024)

[23] There are several components of the WNP located within areas of HPL (including within Area 2, Area 3, Area 5 and Area 7). Clause 3.9(2)(j)(iii) of the NPS:HPL provides that the use and development of HPL for mineral extraction is not inappropriate and is not an activity to be ‘avoided’ where there is a functional or operational need for the mineral extraction activities to be located on the HPL.^{11\}

[24] As we discuss in Part F, we are satisfied that the WNP will have significant local, regional and national benefits. As outlined above in relation to the NPS:FM, we are also satisfied that the WNP components in question have a functional need to be located in the areas where OGNZL wishes to site them.

Panel finding

[25] We are satisfied that the NPS:HPL does not present a barrier to granting consents for the WNP.

¹¹ Where it provides a significant national benefit that could not otherwise be achieved using resources within New Zealand.

National Policy Statement for Indigenous Biodiversity 2023

[26] The objective of the NPS:IB is:

- (a) to maintain indigenous biodiversity across Aotearoa New Zealand so that there is at least no overall loss in indigenous biodiversity after the commencement date; and
- (b) to achieve this:
 - (i) through recognising the mana of tangata whenua as kaitiaki of indigenous biodiversity; and
 - (ii) by recognising people and communities, including landowners, as stewards of indigenous biodiversity; and
 - (iii) by protecting and restoring indigenous biodiversity as necessary to achieve the overall maintenance of indigenous biodiversity; and
 - (iv) while providing for the social, economic, and cultural wellbeing of people and communities now and in the future.

[27] The Panel considers that the conditions imposed on the relevant approvals adopt a precautionary approach and are necessary and appropriate to avoid outcomes for indigenous biodiversity that would otherwise be contrary to the objective of the NPS:IB.

[28] The Objective of the NPS:IB is to be achieved through the implementation of the NPS:IB policies. Policies 1, 2, 3, 5, 7, 8, 10 and 13 particularly relevant to the WNP. Other policies are more relevant to the management activities of HDC and TCDC.

[29] Policies 1 and 2 respectively relate to managing indigenous biodiversity in a way that gives effect to the decision-making principles and takes into account the principles of the Treaty of Waitangi and enables tangata whenua to exercise kaitiakitanga for indigenous biodiversity on their land, by identifying taonga biodiversity elements, and by actively participating in decision-making.

[30] While none of the WNP activities occur on Māori-owned land, we received comments from a range of tangata whenua who identified biodiversity that was considered a taonga. The comments actively received from tangata whenua have been taken into account in our decision-making and the conditions provide extensively for iwi-participation in the implementation of the WNP.

[31] Policy 3 requires a precautionary approach. A precautionary approach is generally required when there is uncertainty about potential adverse effects. That arguably applies to the

effects of the WNP on frogs in the Coromandel Forest Park. We consider that OGNZL's site selection process for drill and evasé sites is suitably precautionary, as are the methods for dealing with any frogs discovered in site surveys.

[32] Policy 5 requires indigenous biodiversity to be managed in an integrated way, within and across administrative boundaries. We are satisfied that will occur in this case as the biodiversity management conditions (including the WUG-ELMP and Pest Management Plan) traverse the HDC and TCDC district boundary. The WUG-ELMP also integrates biodiversity and landscape matters.

[33] Policy 7 is that SNAs are protected by avoiding or managing adverse effects from new use and development. In addition, clause 3.11 of the NPS:IB requires that adverse effects on a SNAs associated with mineral extraction be managed by applying the effects management hierarchy, if there is a functional or operational need for the development to be in that particular location and there are no practicable alternative locations for the activity. That is the case here (we discuss functional need below in relation to the NES:FM).

[34] The WNP affects SNA 166 and SNA T13 P152 that are identified in the HDP. We discussed the effects of the WNP on those SNAs in section E8 of this Decision. As noted in that section, we are satisfied that adverse effects have been avoided to the extent practicable and residual effects will be managed in accordance with the effects management hierarchy.

[35] Policy 8 requires us to recognise and provide for the importance of maintaining indigenous biodiversity outside SNAs. The NPS:IB requires that adverse effects on indigenous biodiversity which is not protected by a SNA be managed by applying the effects management hierarchy where those effects are significant. We have recognised and provided for such biodiversity, as shown by our assessments in sections E7 to E10 of this Decision. We agree with OGNZL that when considering the WNP as a whole, subject to compliance with conditions of consent, the permanent loss of non-SNA terrestrial biodiversity has a "low" to "very low" level of adverse effect and is not significant.

[36] Policy 10 requires us to recognise and provide for activities that contribute to New Zealand's social, economic, cultural, and environmental wellbeing. The very process of considering the WNP FTAA application achieves that purpose.

[37] Policy 13 is to promote and provide for the restoration of indigenous biodiversity. In that regard the environmental mitigation, remediation, offsetting, and compensation measures proposed as part of the WNP will positively contribute to the restoration of indigenous biodiversity and an increase in indigenous vegetation cover in the Waihi area, resulting in an overall net gain in indigenous biodiversity values. In addition, the WNBP, while not required to manage the effects of the WNP, will assist in achieving the overall objective of the NPS:IB.

Panel finding

[38] The Panel is satisfied that the WNP is not inconsistent with the NPS:IB.

National Environmental Standards

[39] Those that are relevant are:

- (a) Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES:FM)
- (b) Resource Management (National Environmental Standards for Air Quality) Regulations 2004 (NES:Air)
- (c) Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009 (NES:ET)
- (d) Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES:CS)
- (e) National Environmental Standards for Sources of Human Drinking Water 2008 (NES:DW)

Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES:FM)

[40] The NES:FM sets national standards for activities affecting freshwater to protect and improve water quality. It regulates activities including vegetation clearance and land

disturbance affecting rivers and wetlands in ways that supplement district and regional rules (see Regulation 6).

[41] Referred to by Forest and Bird were Regulations 45D and 57D. Reg 45D is not engaged because the WNP earthworks are situated more than 100m from the Gladstone Wetland. Reg 57(2) is not a bar to the granting of consent because we are satisfied that there is a functional need to locate the WNP infrastructure in locations that necessitate the reclamation of stream beds and OGNZL have applied the effects management hierarchy regarding the loss of stream extent.

Resource Management (National Environmental Standards for Air Quality) Regulations 2004 (NES Air)

[42] We are satisfied that the concentrations of PM₁₀, NO₂, CO and SO₂ associated with air discharges from the WNP are with the relevant standards in the NES:Air, as outlined in section E16 of this Decision.

Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009

[43] These regulations are relevant to the relocation of an existing powerline running through Gladstone Hill in the vicinity of the GOP.

[44] We are satisfied that this can be undertaken as a discretionary activity with no more than minor adverse effects on visual, landscape, ecological or heritage values, and sensitive land uses. We note no commentator suggested otherwise.

National Environmental Standards for Sources of Human Drinking Water 2008 (NES:DW)

[45] We are satisfied that the granting of water and discharge permits for activities upstream of the HDC water abstraction points will not affect the quality of water at the abstraction point and is thus consistent with Regulations 7 and 8 of the NES:DW.

[46] As noted in section E3 of this Decision, an additional consent condition has been imposed that addresses the highly unlikely event of a WTP system failure in Area 2.

Panel finding

[47] We find that the WNP is not inconsistent with the relevant national environmental standards and so they are not an impediment to the granting of consents.

G3 - Regional and District Planning Framework

[48] An assessment of the relevant statutory instruments was included within the AEE as is required by Schedule 5, clause 5(1)(h).

[49] The Panel has reviewed and considered the assessments provided by OGNZL and the comments provided by DOC, the councils and other commentators. In Part E of this Decision, we discussed the few provisions that were brought to our attention by commentators. In these comments there was only limited reference to the regional and district planning framework.

Waikato Regional Policy Statement

[50] The Waikato Regional Policy Statement 2016 (updated in 2018) (RPS) sets out resource management issues for the Waikato region and associated objectives, policies and methods relating to those issues.

[51] OGNZL undertook a comprehensive assessment of relevant provisions of the RPS in section 8.7.3.10 of application document A11. The assessment spanned 16 pages and was set out under the following headings:

- (a) Integrated Management;
- (b) Resource Use and Development;
- (c) Decision Making;
- (d) Relationship of Tangata Whenua with the Environment;
- (e) Air Quality;
- (f) Built Environment;
- (g) Freshwater Management;
- (h) Riparian Areas and Wetlands;

- (i) Historic Heritage;
- (j) Indigenous Biodiversity and Ecosystem Services;
- (k) Landscape, Natural Character and Amenity;
- (l) Public Access;
- (m) Natural Hazards; and
- (n) Soils.

[52] We have read, agree with and adopt OGNZL's assessment of the RPS. In making that finding we observe that in its comments the WRC did not suggest that the WNP was inconsistent with any RPS provisions, which lends weight to the appropriateness of OGNZL's assessment. Consequently, rather than repeat that assessment here, we note:

- (a) The technical assessments commissioned by OGNZL and the peer reviews of those assessments commissioned by the councils considered the actual and potential effects of the WNP on land, flora and fauna and freshwater resources in an integrated manner which has assisted us undertaking our decision-making in a holistic manner; and
- (b) Based on the range of information before us, we find that the effects of the WNP are generally well understood and subject to the imposition of conditions of consent, potential adverse effects on those resources will be avoided, remedied, or mitigated. However, there are a number of aspects of the WNP where a precautionary approach will be taken and an adaptive management approach including offsetting adopted.¹² We discuss that in Parts D and E and so do not repeat that detail here.

[53] We note the Forest and Bird considered that the WNP the application was contrary to RPS Objectives LF-01 and LF-03 of the RPS. Objective LF-O1 seeks to maintain or enhance

¹² Such as potential effects on leiopelmatid frogs within Area 1

the mauri and identified values of freshwater bodies in a manner not dissimilar to some aspects of the NPS:FM. Objective LF-O3 and its associated policies seek that riparian areas and wetlands be managed to maintain or enhance a range of values including water quality.

[54] As outlined in sections E3, E4, E9 and E10 of this Decision we are satisfied that the WNP will maintain the values of the affected waterbodies and wetlands, including the natural state waterbodies in the Coromandel Forest Park. In fact, proposed riparian planting will enhance some of those values. We have also discussed these matters earlier in terms of the superior instruments. Consequently, we do not agree with Forest and Bird that the WNP, subject to imposition of conditions of consent, is contrary to these RPS objectives.

Panel finding

[55] In overall terms we are satisfied that the WNP is not inconsistent with the RPS.

Waikato Regional Plan

[56] OGNZL sought all necessary land use consents, discharge permits, and water permits under the Waikato Regional Plan (WRP) to authorise activities associated with the construction, operation, maintenance and rehabilitation of the WNP, as outlined in section 4.2.5 of the AEE. The most restrictive consent activity status is non-complying. Under the “bundling” principle this is taken to be the overall activity status for the WRP approvals required.

[57] The WRP contains objectives, policies, rules and other methods relating to the management of natural and physical resources of the Waikato Region. We note that the WRP predates the NPS:FM and RPS and has not been reviewed or updated to give effect to these higher-order statutory planning documents in their current form, with the exception of those clauses of the NPS:FM that require mandatory inclusion.

[58] We discussed Policy 3.A.2 of the Waikato Regional Plan in the preceding section dealing with the NPS:FM.

[59] OGNZL undertook a comprehensive assessment of relevant provisions of the WRP in section 8.7.3.11 of application document A11. The assessment spanned 19 pages and was set out under the following headings:

- (a) Tangata Whenua Relationship with Natural and Physical Resources;
- (b) National Direction;
- (c) Management of water resources;
- (d) Water Takes;
- (e) Efficient Use of Water;
- (f) Discharges to Water;
- (g) Damming and Diversion;
- (h) Wetlands;
- (i) Drilling;
- (j) River and Lake Bed Structures;
- (k) Accelerated Erosion;
- (l) Discharges to Land;
- (m) Contaminated Land; and
- (n) Air Quality.

[60] We have read OGNZL's assessment of the WRP and we agree with and adopt it. We do not repeat that detailed assessment here. We observe that in its comments the WRC did not suggest that the WNP was inconsistent with any WRP provisions, which lends weight to the appropriateness of OGNZL's assessment.

[61] Forest and Bird considered that the WNP the application was contrary to Policy 5 (section 3.2.3) and Policy 1 (Section 3.7.3) of the WRP. Those policies are:

Policy 5: Natural State Water Class

The purpose of the natural state water class is to protect the flow regime, water quality and riparian and aquatic habitat for indigenous species in order to maintain the aesthetic and intrinsic values derived from the unmodified or largely unmodified nature of the catchment. These are outstanding waterbodies and important habitats because they are unmodified or substantially unmodified by human intervention.

...

Policy 1: Control Land Drainage in Areas Adjacent to Identified Wetlands and Within Wetlands

Ensure that land drainage activities within wetlands that are areas of significant indigenous vegetation and/or significant habitats of indigenous fauna, or immediately adjacent to wetlands identified in Section 3.7.7, are undertaken in a manner that avoids changes in water level that lead to:

- a. shrinking or loss of the wetland, or
- b. accelerated dewatering and oxidation, or
- c. significant adverse effects on tangata whenua values of the wetland, or
- d. adverse effects of flooding on neighbouring properties, or
- e. significant adverse effects on the relationship tangata whenua as Kaitiaki have with the wetland, or
- f. adverse effects on the natural character of wetlands or
- g. adverse effects on the ability to use the wetlands for recreational purposes

[62] Regarding Policy 5, as we outlined in sections E3, E9 and E10 of this Decision, we are satisfied that any potential adverse effects on the natural state water bodies resulting from the dewatering activities in the WUG mine will be either avoided, remedied or mitigated.

[63] As to Policy 1, we firstly note that the WNP is arguably not a land drainage activity. Nevertheless, as we outlined in sections E3, E9 and E10, we are satisfied that any potential adverse effects on the natural state water bodies resulting from the dewatering activities in the WUG mine will avoid changes in water level that that lead to the outcomes specified in relevant clauses a, b, c and f of Policy 1. We refer to WRC conditions UG.7 and UG.12 to UG.18 which collectively achieve those outcomes.

[64] We consequently disagree that the WNP is contrary to those two WRP policies.

Panel finding

[65] In overall terms we are satisfied that the WNP is not inconsistent with the WRP.

Thames Coromandel District Plan

[66] Thames Coromandel is currently operating under two District Plans - the Operative in part District Plan (2024) and the Operative District Plan (2010). The rules in the 2024 TCDP relevant to the activities subject to OGNZL's Application are not subject to appeal and are deemed operative (and the corresponding 2010 District Plan rules inoperative).

[67] The only approval required for the WNP under the TCDP comprises a land use consent for the installation of two near stream piezometers adjacent to the Otahu River in the Conservation Zone and Rural Zone (to be drilled with the portable rig). OGNZL considered¹³ that given the minor nature of the activities proposed (which are largely associated with monitoring and mostly permitted activities), and the associated negligible effects, the WNP was consistent with the applicable provisions of the TCDP.

[68] We received no comments to the contrary and we accept OGNZL's assessment.¹⁴

Panel finding

[69] The Panel is satisfied that the WNP is not inconsistent with the TCDP.

Hauraki District Plan

[70] The HDP was made operative in 2014 and includes objectives, policies and methods intended to achieve the integrated management of the use, development or protection of land (and associated natural and physical resources) in the Hauraki District.

[71] OGNZL sought land use consents under the HDP to authorise activities associated with the construction, operation, maintenance and closure of the WNP. That included activities

¹³ Application A11, section 8.7.3.13.

¹⁴ The comments provided by the TCDC focused on the consent activity category (which TCDC considered to be non-complying) as opposed to objective and policies.

listed in section 4.2.3 of the AEE which are either wholly or partly located within the Conservation (Indigenous Forest) Zone, Rural Zone, Martha Mineral Zone, Reserve (Passive) Zone, and Residential Zone. The most restrictive consent activity status is non-complying. Under the “bundling” principle this is taken to be the overall activity status for the HDP approvals required.

[72] OGNZL undertook a comprehensive assessment of relevant provisions of the HDP in section 8.7.3.12 of application document A11. The assessment spanned 11 pages and was set out under the following headings:

- (a) Rural Zone;
- (b) Conservation (Indigenous Forest) Zone;
- (c) Residential Zone;
- (d) Reserve (Passive) Zone;
- (e) Mineral Martha Zone;
- (f) Historic Heritage;
- (g) Indigenous Biodiversity and Significant Natural Areas;
- (h) Outstanding Natural Landscapes / Features and Amenity Landscapes;
- (i) Riparian Margins and Esplanade Reserves;
- (j) Hazardous Substances and Contaminated Land; and
- (k) Transportation Network.

[73] We have read OGNZL’s assessment of the HDP and we agree with and adopt it. We do not repeat that detailed assessment here. We observe that in its comments the HDC did not

suggest that the WNP was inconsistent with any HDP provisions, which lends weight to the appropriateness of OGNZL's assessment.

[74] We place weight on the HDC's comment that "The engagement process undertaken has enabled the HDC team to be well informed of the nature of the proposal such that the feedback provided is refined and focussed on outstanding matters requiring attention to enable consent to be granted.¹⁵ In this regard, the HDC team have assessed the proposal and consider that there are no adverse impacts that are sufficiently significant that cannot be avoided, remedied, mitigated, offset, or compensated for by suitable conditions of consent being imposed."

[75] We also note HDC's comment that "Relative to section 85(4) of the Act, HDC's assessment has considered the identified adverse impacts, and concludes that they will not result in a situation which overall can be found to be inconsistent with or contrary to a provision of a specified Act or any other document that the Panel must take into account or otherwise consider in complying with section 81(2)."¹⁶

Panel finding

[76] The Panel is satisfied that relevant key matters pertaining to the HDP have been addressed in our assessment of effects in Part E of this Decision, including any HDP provisions relevant to the setting of consent conditions.

[77] In overall terms we are satisfied that the WNP is not inconsistent with the HDP.

Planning documents recognised by a relevant iwi authority and lodged with the Council

[78] An application for a resource consent must include an assessment of the activity against any relevant provisions of a planning document recognised by a relevant iwi authority and lodged with a local authority.¹⁷

¹⁵ Page 40 of the HDC comments.

¹⁶ Page 24 of the HDC planning assessment comments.

¹⁷ Schedule 5, clause 5(1)(h) and clause 5(2)(g).

[79] It is the Panel's understanding that there are four planning documents recognised by relevant iwi authorities have been lodged with WRC which are potentially relevant:¹⁸

- (a) Ngaati Whānaunga Environmental Management Plan 2019 (NWEF);
- (b) Ngāi Tai Ki Tāmaki Take Taiaomaaurikura September 2022 (NTKTTTEP);
- (c) Ngāti Porou Ki Hauraki Marine and coastal area plan 12/09/2015 (NPKHMCAP); and
- (d) Whaia te Mahere Taiao a Hauraki Iwi Environmental Plan March 2024 (HIEP).

[80] As we noted in Part D of this Decision, comments were received from three iwi authorities:

- (a) Ngāti Porou ki Hauraki;
- (b) Ngāti Tara Tokanui, Ngāti Koi; and
- (c) Hako Tūpuna Trust.

[81] No comments were received from Ngāi Tai or Ngaati Whānaunga. Nevertheless, for the sake of completeness we have reviewed the NWEF and the NTKTTTEP to determine if they contain environmental objectives relevant to the Panel's decision-making.

[82] The NWEF is primarily focused on opportunities for partnership and collaboration between Ngaati Whānaunga and their strategic partners, including local and central government. It includes goals for healthy land, freshwater, biodiversity and air. Freshwater specific goals include protecting and enhancing water quality and water availability. Specific goals for biodiversity include enhancing native biodiversity, ecosystem functions and processes.

¹⁸ The "Ngāti Porou Ki Hauraki Marine and coastal area plan 12/09/2015" addresses the eastern Coromandel coastal marine area and is not relevant here because the WNP activities are unlikely to lead to contamination of that area.

[83] From our assessments undertaken in Part E of this Decision, we are satisfied that subject to the suites of consent conditions addressed in this Decision, should the WNP proceed it will do so in a manner that is consistent with those goals.

[84] The NTKTTTEP addresses how Ngāi Tai wishes to be involved in resource management issues. It also sets out objectives for freshwater, air, land and biodiversity.

[85] For freshwater the objectives include protecting water's health and well-being and that there are no discharges that impact negatively on water quality. In that regard we addressed the potential adverse effects of OGNZL's WTP on the Ohinemuri River in Part E4 of this Decision, concluding that the existing WTP discharge standards have appeared to have avoided the occurrence of adverse effects on the aquatic ecology of the Ohinemuri River.

[86] NTKTTTEP objectives for air include that discharges with the potential to have adverse effects on human health are not supported. From our assessment in Part E16 we are satisfied that will be the case should the WNP proceed, particularly with regard to dust, PM₁₀, respirable crystalline silica, nitrogen oxides and carbon monoxide; all of which were assessed as remaining within the Resource Management (National Environmental Standards for Air Quality) Regulations 2004 guideline values and current consent limits.

[87] NTKTTTEP objectives for land and biodiversity are wide ranging, including that it will be "lush, healthy and sustaining for all" and "covered by thriving native forests that are free of pests". Unreasonable direct or indirect contamination of the land or water should be avoided and mining should not degrade "te Mauri o te whenua". New earthworks undertaken must include a condition addressing an accidental discovery protocol. The unnecessary clearance of indigenous vegetation and the degradation of habitat for native species should be avoided.

[88] We are satisfied that the WNP will largely achieve these objectives. In particular we note OGNZ's intended weed and pest control measures for WNP Area 1 and the requirements for the Waihi Biodiversity Offset Area, Waihi Biodiversity Offset Enhancement Area, and Ventilation Shaft Offset Area that we discussed in Part E of this Decision. OGNZL has committed to implementing an Accidental Discovery Protocol should any unidentified archaeological sites be encountered during WNP related earthworks. Site selection criteria for

drilling sites and ventilation shafts will seek to avoid or remedy adverse effects on indigenous biodiversity, particularly taonga species.

[89] The NPKHMCAP relates to the eastern Coromandel coastal marine area from Kennedy Bay to Waikawau Bay and its associated fisheries resources. The NPKHMCAP states that the threats to that coastal water quality derive from sedimentation, oil spills, septic tank leachate and other waste discharges. It states the biggest risks to coastal fisheries are the non-reporting of the recreational fisheries catch and the commercial fishing activities.

[90] We acknowledge that the streams in the Wharekirauponga area of the Coromandel Forest Park drain to the eastern Coromandel coast. Subject to compliance with conditions of consent, it is highly unlikely that the limited OGNZL activities in that area (drill sites, evasé sites, stream monitoring, groundwater piezometers, and groundwater pump test discharges) will result in adverse effects on the eastern Coromandel coastal water quality and its associated fisheries. This is particularly so given that OGNZL have proposed robust erosion and sediment control measures for the drill sites that will be located within the Coromandel Forest Park.

[91] The HIEP addresses land, freshwater, air and biodiversity. Relevant objectives include protecting and restoring wetlands and the riparian margins of rivers, reducing the risk from new mines, undertaking animal and plant pest eradication programmes, protecting wāhi tapu and cultural heritage sites, undertaking environmental monitoring, and Hauraki Whānui participate in environmental decision making.

[92] As was the case for the NWEP and the NTKTTTEP, based on our assessments in sections E7, E8, E9 and E10 we are satisfied that these objectives will largely be achieved should the WNP proceed. We note the intended riparian planting that is proposed for the Ohinemuri River and stream diversions, and as we discussed in section E23, the conditions offered by OGNZL include extensive monitoring obligations that will be codified in a number of documents including the Waihi Area Water Quality Management Plan, Wharekirauponga Underground Mine Water Management Plan, and Air Quality Management Plan; all of which will need to be certified by WRC.

[93] Importantly, OGNZL has committed to working with iwi who choose to engage in the development of a mātauranga Māori-based monitoring programme, which is proposed as part of a Cultural Practices Plan. Those matters are codified in offered conditions of consent.

[94] Ngāti Porou ki Hauraki did not mention the HIEP in their comments. Nor did the CIA authored by Ngāti Pu. Ngāti Hako noted that the HIEP was “... a foundational document that articulates the environmental, cultural, and spiritual values of iwi across the Hauraki rohe. It provides a robust framework for assessing development proposals, particularly those with potential to impact freshwater, coastal ecosystems, and sites of significance.”

[95] Relevantly, Ngāti Hako advised that the HIEP requires that mātauranga Māori must be integrated alongside western science in all environmental assessments. Seasonal indicators, species relationships, and tikanga-based restoration practices were said to offer critical insights into ecosystem health. To the extent practicable, those matters were acknowledged in our Part E assessments.

[96] OGNZL addressed the HIEP in section 8.7.3.14 of application document A11 noting that the HIEP addressed the following in relation to mining activities:

- (a) The extraction of gold, silver and other mineral resources has left long-standing environmental problems in the Hauraki rohe. The disposal of wastewater, chemicals and spoil from the mining process, although much improved, remains an environmental concern to Hauraki iwi.
- (b) The loss of waahi tapu, including Pukewa (the site of Martha Hill mine and not impacted by the WNP).
- (c) Hauraki iwi seek reduced environmental risk from mining in the Hauraki rohe.
And
- (d) Hauraki iwi seek to enhance their capacity by monitoring mine sites.

[97] We are satisfied that, should the WNP proceed, as described in Part E of this Decision, the robust suites of consent conditions that will be imposed will ensure that new environmental

problems are highly unlikely to arise as a result of the WNP activities. As mentioned above, iwi will have an opportunity to be part of a mātauranga Māori-based monitoring programme.

[98] Having assessed the iwi management plans that we understand are relevant to the WNP, we are satisfied that relevant objectives they contain will largely be achieved by the WNP (inclusive of its associated consent conditions and environmental restoration, enhancement and offset initiatives) such that we find that having regard to the iwi management plans does not weigh against a grant of consent.

G4: Part 2 of the RMA

[99] Clause 5 (1)(g) of Schedule 5 of the Act requires an assessment of the WNP against ss 5, 6 and 7 of the RMA. OGNZL addressed Part 2 of the RMA in the AEE.¹⁹

[100] The purpose of the RMA set out in s 5 is to promote the sustainable management of natural and physical resources. In light of the preceding Parts of this Decision, we are satisfied that the WNP will enable the social and economic wellbeing of Waihi and the Hauraki District through the provision of additional and continued employment, and the generation of significant benefits to the local, regional and national economy.

[101] Subject to the imposition of conditions of consent that avoid, remedy or mitigate potential adverse effects, the WNP will safeguard the life-supporting capacity of air, water, soil and ecosystems.

[102] Sections 6(e), 7(a) and (aa) of the RMA are all relevant to the WNP. They require the recognition of the relationship Māori have with their ancestral lands, water, sites, wahi tapu and other taonga, as well as having regard to kaitiakitanga. We discussed those matters in section E2 of this Decision where we concluded that the conditions of consent will offer Māori significant opportunities for participation in the implementation of the WNP, including monitoring, supervision, kaitiakitanga, and co-governance. While these measures do not fully address the cultural concerns expressed by tangata whenua, they represent steps towards genuine partnership and the recognition of Mātauranga Māori in decision-making.

[103] Taking into account our assessments of effects in Part E, we consider that the WNP is not “inappropriate” in the context of ss 6(a) or (b). Appropriate conditions of consent seek to preserve the natural character of the wetlands, rivers and their margins and to protect the outstanding natural landscape of the Coromandel Forest Park. Consent conditions will also enable areas of significant indigenous vegetation and significant habitats of indigenous fauna to be protected (s 6(c)) and regard has been had to the intrinsic values of those resources (s 7(d)).

¹⁹ Application document A11, section 8.7.2.

[104] The WNP activities will not restrict public access to the Ohinemuri River, Ruahorehore Stream or their tributaries (s 6(d)). The WNP will affect some scheduled sites of historic heritage listed in the HDP (s 6(f)) but an appropriate Archaeological Authority has been sought. The design of the WNP (including the GOP, TSF3 and the various rock stacks) has accounted for the risks posed by natural hazards (s 6(h)).

[105] The WNP has been designed to make use (where appropriate) of existing infrastructure associated with the existing mining operations at Waihi (s 7(b)).

[106] The amenity values of Waihi and the surrounding rural areas will be maintained to the extent practicable given the intended extension of mining activity contemplated by the WNP. That will be achieved by the imposition of limits on noise, vibration, lighting and dust from mining (and associated processing) activities (s 7(c)). Conditions of consent will also maintain the quality of the environment and some aspects of the environment will be enhanced, particularly in light of the proposed riparian planting, pest management within the Coromandel Forest Park and the Waihi North Biodiversity Project (s 7(f)).

[107] The habitat of trout in the Ohinemuri River will be protected by the discharge standards imposed on the WTP discharge. That habitat will be enhanced by the proposed riparian planting. All instream works will be undertaken in accordance with a site wide aquatic fauna salvage and relocation plan (included within the applicable ELMP) which will protect any trout encountered in instream works or diversions (s 7(h)).

[108] OGNZL advised that it applies, to the extent practicable, an emissions reduction hierarchy by firstly evaluating opportunities to reduce and ideally avoid greenhouse gas emissions via procurement, feasibility, design and process decisions.²⁰ It then seeks to replace or substitute emissions intensive energy sources with renewable or lower emissions alternatives that are commercially feasible. Regarding the effects of climate change (such as changes to rainfall), we are satisfied that the assessments of WNP activities have taken that into account. (s 7(i)).

²⁰ Application document B.08, Technical Report Climate Change, Energy Use and Greenhouse Gas.

[109] As summarised above, as a result of the conclusions reached on the effects of the WNP and in the context of the relevant planning provisions and the imposition of appropriate consent conditions, the Panel finds that the WNP is consistent with Part 2 of the RMA.

G5: Decisions as to resource consents

[110] In light of our assessment of the potential adverse effects of the WNP that we set out on Part E and our preceding assessment of the relevant Statutory instruments that guide our decision-making, we are satisfied that subject to the imposition of clear and certain conditions of consent, the resource consents sought from the HDC, TCDC and WRC can be granted.

[111] We discuss conditions of consent in Part N of this Decision.