

PART M: OVERALL APPROACH

General comments

[1] Many of the potential adverse effects of the WNP are typical of those associated with large scale development. These include noise, lighting, stream diversions and vegetation clearance (outside the Coromandel Forest Park) and impacts on the Ohinemuri River (from the wastewater treatment plant), historic heritage, landscape character, air quality and the transportation network. They are all addressed in Part E of this Decision.

[2] Other effects that are particular to underground gold mining (such as blasting and vibration, ground settlement and subsidence and acid and metalliferous drainage from the waste rock stacks) are not new as they have been associated with the operation of the Martha mine for several decades and are generally well understood and managed. These effects are also addressed in Part E of this Decision.

[3] While the effects were the subject of a number of comments, we consider that they were generally adequately addressed by OGNZL's technical assessments, the technical peer reviews undertaken by the Hauraki District Council and the Waikato Regional Council and the extensive and comprehensive proposed conditions in relation to the resource consents and other approvals.

[4] The principal issues in contention were:

- (a) The nature and scale of the regional or national benefits of the WNP. We address this in Part F of this Decision;
- (b) The effects of mining activities on flora and fauna within the Coromandel Forest Park, in particular Archey's and Hochstetter's frogs. This relates to both investigative activities (the site selection process for drill sites and ventilation shafts and the effects of those activities) and operational mining activities (in particular vibration and potential stream dewatering on native frogs and lizards). Also, the efficacy of the measures proposed to mitigate residual effects on native

frogs and lizards, including by way of their salvage and relocation. These matters are primarily discussed in sections E7 and E8 of this Decision;

- (c) The effects of vegetation clearance and associated loss of habitat which we discussed in section E8 of this Decision;
- (d) The dewatering of surface streams and wetlands as a result of underground mining activities, and the loss of stream extent as a result of reclamations and diversions, which we discussed in sections E3, E7, E9 and E10 of this Decision;
- (e) The social impacts of the WNP which are reviewed in section E22 of this Decision; and
- (f) Effects on the values and interests of tangata whenua, particularly with regard to any active role they may play in monitoring and reviewing the effects of the WNP. These matters are discussed in section E2 of this Decision.

[5] In summary, the Panel's conclusions are:

- (a) The WNP will generate significant regional benefits, in terms of increased employment, and additional Government revenue.
- (b) The potential adverse effects of investigative activities on flora and fauna in the Coromandel Forest Park will be adequately managed by robust site selection processes that avoid adverse effects on Archey's and Hochstetter's frogs, to the extent practicable. The few individual frogs that cannot be avoided will be salvaged and relocated to a secure and pest-free habitat.
- (c) The potential adverse effects of operational mining activities on Archey's and Hochstetter's frogs will be offset by extensive and robust pest control within and around the area of the Forest Park directly affected by underground mining induced vibration. Additionally, the Waihi North Biodiversity Project will

achieve long-term (inter-generational) positive ecological outcomes for the wider area.¹

- (d) The loss of a small area of high value vegetation and habitats within the Coromandel Forest Park, and the loss of a larger area of lower value vegetation elsewhere, will be addressed by the substantial offset mitigation package proposed. That includes a mixture of planting, fencing, and animal pest control.
- (e) Potential impacts of dewatering on the loss of stream extent and wetland condition will be minimised by the proposed conditions of consent. Any residual uncertainty with respect to dewatering effects will be addressed by monitoring and the proposed remedial measures. The unavoidable reclamation of waterways will be largely mitigated by ensuring that newly created diversions are ecologically robust. Any residual effects will be offset by measures including riparian planting and enhancement.
- (f) The WNP will result in increased job security and sustained livelihoods for existing OGNZL employees. OGNZL's Waihi Skills Development and Training Action Plan will improve local skills and expand the locally available workforce for employment in mining and its servicing sectors. The Workforce Accommodation Assessment will reduce the extent to which the WNP activities contribute to any local housing shortages. OGNZL will provide further compensation to potentially affected landowners by the continuation and extension of an existing Amenity Effects Programme and ex-gratia payments to properties that the Wharekirauponga Access Tunnel passes directly beneath. And
- (g) Tangata whenua will be involved the ongoing monitoring and review of the WNP activities to the extent that they wish to be, primarily through the establishment and functioning of the Iwi Advisory Group. In particular the Iwi Advisory Group will assist in the development of management plans that

¹ See Part F2 of this Decision where we address the Waihi North Biodiversity Project.

directly affect taonga resources within and outside the Coromandel Forest Park.² Tangata whenua (through the Iwi Advisory Group) will also be enabled to assist with the development and implementation of a Cultural Practices Plan that will guide the application of tikanga to the WNP activities and a Mātauranga Māori Monitoring Programme. Tangata whenua will be actively involved in managing any accidental discovery of koiwi and monitoring effects (through participation in the Peer Review Panel and the Expert Groundwater Management Panel).

[6] As will be apparent, we consider that these principal issues in contention have been adequately addressed by OGNZL and appropriate responses have been codified in conditions attached to the various approvals required for the WNP.

Section 85

[7] We may decline an approval if, in complying with section 81(2), we conclude under s 85(3) that:

- (a) there are 1 or more adverse impacts in relation to the approval sought; and
- (b) those adverse impacts are sufficiently significant to be out of proportion to the project's regional or national benefits that the panel has considered under section 81(4), even after taking into account—
 - (i) any conditions that the panel may set in relation to those adverse impacts; and
 - (ii) any conditions or modifications that the Applicant may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those adverse impacts.³

[8] Section 85(4) provides that:

- (4) To avoid doubt, a panel may not form the view that an adverse impact meets the threshold in subsection (3)(b) solely on the basis that the adverse impact is inconsistent with or contrary to a provision of a specified Act or any other document that a panel must take into account or otherwise consider in complying with section 81(2).

² Including the Ecology and Landscape Management Plans, Coromandel Forest Park Kauri Dieback Management Plan, Wharekirauponga Animal Pest Management Plan and Vibration Management Plan.

³ Section 82 FTAA

[9] As discussed in Part C of this Decision, there is an overlap between s 85(4) and some of the clauses in the Schedules that prescribe decision-making criteria. As well, and more generally, the decision-making criteria in the Schedules impose obligations that are never more stringent than to “take into account” the various matters specified. Section 104D of the RMA is specifically disapplied and with it the s 104D(1)(b) “not be contrary to” planning instrument objectives and policies for non-complying activities.

[10] If OGNZL had persisted with the WNP outside the FTAA, OGNZL would have been exposed to prolonged processes and debate that would have extended to the application of s 104D(1)(b) of the RMA in the context of NPS:FM and Waikato Regional Policy and lengthy debate whether the location of elements of OGNZL’s surface infrastructure reflected functional (as opposed to operational) necessity (and no doubt other issues as well). As it happens, and as will be apparent, we consider that the WNP is consistent with all relevant policies. More generally we are of the view that the WNEP was consentable outside the FTAA procedure and criteria.

[11] The reality nonetheless remains that the FTAA criteria are, in some respects, distinctly different from those that would otherwise have been applicable. It follows that our Decision to grant the approvals sought does not depend upon the WNP being consentable outside of the FTAA.

[12] The differences just referred to include the following overlapping considerations:

- (a) The s 85(3) test and the decision-making criteria in the Schedules require a weighing of incommensurables (at its most general, between economic benefits and environmental impacts) which, at least sometimes, is likely to involve something akin to the overall judgment approach that was rejected by the Supreme Court in *Environmental Defence Society v The New Zealand King Salmon Company Limited & Ors*.⁴
- (b) Associated with this, there are no “bottom lines” of the kind applied in *King Salmon*.

⁴ *Environmental Defence Society v The New Zealand King Salmon Company Limited & Ors* [2014] NZSC 38; [2014] 1 NZLR 593.

- (c) Planning objectives and policies do not play as critical a role in relation to resource consent applications (particularly for non-complying activities) as they would under the RMA.
- (d) There is thus scope for a greater than usual focus on the actual and potential scale of the effects that are in issue.

[13] For the reasons given in Part E of this Decision, we conclude that the conditions imposed mean that the potential adverse environmental effects of the WNP are able to be avoided, remedied or mitigated to the extent that they will be no more than minor. Given this, along with the conclusions we have reached in relation to cultural and social impact effects, the “significance” of the “adverse impacts” for the purposes of s 85(3) is limited.

[14] In light of our conclusions in relation to the regional and national benefits of implementation of the WNP, the significance of the adverse impacts is not “out of proportion” to the benefits, in the sense envisaged by s 85(3). This would also be the position even if, and contrary to our view, implementation of the WNP is not completely consistent with the objectives and policies of all relevant planning instruments.

Decisions

[15] We grant the approvals sought to the approvals sought and impose the conditions set out in in Appendices B – I.