

**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

**MEMORANDUM OF COUNSEL FOR OCEANA GOLD (NEW ZEALAND)
LIMITED: RESPONSE TO COMMENTS ON CONDITIONS**

11 December 2025

Counsel acting:
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MAY IT PLEASE THE PANEL

Introduction

1. On 25 November 2025 the Panel released its draft decision document and draft conditions on the application accompanied by Minute 7 which, in accordance with section 70 of the Act, invited the applicant, every person or group that provided comments on the application under section 53, and all relevant local authorities or statutory bodies to provide comments on the draft conditions. The date by which comments were to be provided was set by the panel as 4 December 2025.
2. As required by section 72 the panel also invited comments on the draft decision and draft conditions from the Minister for Māori Crown Relations: te Arawhiti and the Minister for Māori Development. Those Ministers were invited to provide comments by 9 December 2025.
3. In addition to comments from the applicant, comments¹ were received from the following parties invited under section 70:
 - a. Minister for Resources
 - b. Andrew and Rachel Wharry
 - c. Ministry of Business, Innovation and Employment
 - d. John Perrins
 - e. Heritage New Zealand Pouhere Taonga
 - f. Hauraki District Council
 - g. Gloria Sharp
 - h. Forest & Bird
 - i. Coromandel Watchdog of Hauraki
 - j. Bryce Ede
 - k. Bruce Morrison
 - l. Anne and Chris Hatton
 - m. Waikato Conservation Board
 - n. Waihi Community Forum

¹ Parties invited under section 70 are restricted to comments on conditions and while provided with the draft decision are not invited to comment on that – section 70(1)

- o. Thames Coromandel District Council
 - p. New Zealand Transport Authority
 - q. Ngāti Tara Tokanui Trust
 - r. Ngāti Pū
 - s. Ngāti Porou ki Hauraki
 - t. Department of Conservation.
4. Comments² were also received from Hon James Meager as Acting Minister for Māori Crown Relations: te Arawhiti and Acting Minister for Māori Development in response to the invitation given under section 72.
5. Section 70(4) of the Act allows an applicant 5 working days to provide a response to comments on conditions made by other parties invited under section 70(1). Minute 7 records that any response by the applicant is to be provided by 11 December 2025.
6. This memorandum and its attachment together comprise the applicant's response to comments on conditions. The applicant has carefully considered all comments made and wishes to recognise the effort participants have gone to in providing comments within the timeframe set by the Panel.
7. Counsel notes that in relation to comments on the draft decision including draft conditions received from Ministers under section 72 the Act provides no opportunity for an applicant to respond. For the sake of completeness, the applicant records that it accepts and would wish to make no response to the Ministers' comments other than to acknowledge and thank the Acting Minister for his comments.

Overview of Applicant's Response

8. The Panel's draft decision document records an intention to grant the approvals applied for, and the reasons for that decision. The draft conditions reflect the Panel's view as to the appropriate conditions to which each approval should be subject in order to facilitate the delivery of the WNP in a

² Under section 72 the Minister for Māori Crown Relations: te Arawhiti and the Minister for Māori Development are invited to comment on the draft decision, including any draft conditions. This can be contrasted with the more limited invitation to comment on conditions contained in section 70 and is discussed later in these submissions at paragraph 14.

way that achieves the purpose of the Act and appropriately addresses impacts the project will or may have on the environment.

9. As would be expected, the Panel's draft conditions generally follow the conditions proposed by the applicant as modified through the process because of comments on the substantive application and expert workshopping with the Panel, and as amended by the Panel to reflect its findings. The conditions that were proposed by the applicant in turn reflect the expert advice of the applicant's experienced planning and technical consultants, and the extensive consultation that has occurred over a significant time period with the Waikato Regional Council, Hauraki District Council and Department of Conservation in particular, but also with iwi and other stakeholders.
10. From the applicant's perspective, where the Panel's draft conditions substantively differ from those proposed by the applicant, the applicant understands and accepts those changes as reflecting the Panel's considered view as to the most appropriate conditions that ensure the necessary controls are in place to address actual and potential impacts of the WNP while being no more onerous than they need to be to achieve their intended purpose³.
11. In my submission the purpose of allowing participants to provide comments on the Panel's draft conditions is to provide a check to ensure that the conditions are workable and will achieve the outcomes the Panel has determined are appropriate, that they do so clearly and efficiently, and that they are no more onerous than is necessary to achieve their intended purpose.
12. To that end, the applicant's response to the comments on conditions from others seeks to differentiate between:
 - a. Comments that address a perceived lack of clarity in conditions; or that identify where conditions could be more efficient; or that address discrepancies between the Panel's findings and the wording of conditions; or where there is inconsistency between conditions, or typographical or cross-referencing errors; and

³ Section 83

- b. Comments that seek to achieve an outcome that is substantively different from the Panel's findings and draft conditions.
- 13. Comments of others that fit into a. above are addressed in the attached table, where the applicant suggests rewording of conditions in the light of those comments is appropriate. Where the table is silent in relation to changes that could be described as coming within a. above, the applicant's view is that the Panel's draft wording of conditions remains appropriate and to be preferred.
- 14. Comments of others that fit into b. above are not addressed in substance. That is because, in my submission, they go beyond the scope of comments that are envisaged by section 70 (*Panel seeks comment on draft conditions before granting approval*) and instead stray into an attempt to reopen matters the Panel has already determined. It is significant that the scope of comments envisaged under section 70 is limited to the draft conditions, in contrast to the scope of comments under section 72 (*Panel seeks comments from Minister for Māori Crown Relations: Te Arawhiti and Minister for Māori Development*), which is extended to the draft decision, including any draft conditions. In my submission the different approaches in these two sections are significant and reflect a clear difference in the intended scope of comments.
- 15. I discuss below four topics addressed in comments of others that fall into category b:
 - a. Management plans and certification
 - b. Reducing the number of authorised drill sites under the Wharekirauponga Access Arrangement
 - c. Conditions addressing cultural impacts
 - d. Request that the Panel provide further information to a commenter.

Management plans and their certification

- 16. The Panel discusses management plans and their certification at Part E1 of the draft decision. The draft decision records what the Panel's findings are in connection with the use of management plans and their certification for the WNP, and the role of non-certifying third parties including DOC. The applicant accepts the Panel's findings and considers they are properly reflected in the draft conditions.

17. There is no force in the argument that DOC *must* have a certifying role in relation to management plans that address matters in which it has a legitimate statutory role or interest. There is no mandatory requirement that management plans be certified, and their use is a planning technique that has been developed and is used in a variety of contexts. Equally, there are many occasions when approvals require management plans to be prepared and that activities be undertaken in accordance with those management plans but no certification of those plans is required.
18. Accordingly, the applicant accepts that while it was comfortable with a limited management plan certification role for DOC, the Panel has found in the present context (and recognising this is an application under the FTAA and not the specified Acts) that limiting the formal certification role to Councils under resource consents is more appropriate. Related to this, there is no force in the argument that Council certification of management plans that address activities in which DOC has a relevant statutory interest and are also authorised by DOC approvals amounts to an unlawful delegation. There is simply no requirement in law that DOC must certify management plans.
19. Where appropriate the Panel has provided for DOC to have an opportunity to have input into the development of management plans and in my submission this is an available and efficient approach in the circumstances.

Reducing the number of authorised drill sites under the Wharekirauponga Access Arrangement

20. Table 1 in the First Schedule of the Panel's draft conditions for the Wharekirauponga Access Arrangement correctly records the number of exploration drill sites as sought and assessed in the application – being 8.
21. A comment from DOC⁴ on draft condition 1.2(a)(ii) appears to suggest that the applicant now only seeks that the Wharekirauponga Access Arrangement authorise 6 exploration drill sites. In support of that comment DOC refers to a memorandum of the applicant dated 12 November 2025.

⁴ Comment A2

22. The applicant's memorandum dated 12 November 2025 includes the following (paragraph 7):

"OceanaGold considers it appropriate to proceed on the basis that the scope of the proposed Access Arrangement in its substantive application is limited to 18 drill sites, comprised of the 10 drill sites that were authorised by Access Arrangement 48614 at the time the application was made, plus 8 additional sites (the level of impact sought in the substantive application). In practice 2 of those 8 additional sites would comprise an already-permitted level of activity and the Panel's decision would authorise a level of activity representing 6 additional sites, for a total of 18 sites overall."

23. DOC appears to have incorrectly interpreted this statement as suggesting that the Wharekirauponga Access Arrangement should only authorise 6 exploration drill sites. That is not the position, and the applicant confirms that Table 1 is correct.

Conditions to address cultural impacts

24. Cultural impacts are addressed at Part E2 of the draft decision. The Panel has identified cultural impacts of the WNP; has identified that iwi feel frustrated when consultation is perceived as tokenistic and aspire for more meaningful involvement; that for iwi and hapū there is a recognised cultural deficit and distress associated with the Act's processes and that for many this deficit will increase if the WNP is implemented; and that there is a diversity of opinion within iwi and hapū about the WNP.

25. The Panel's draft conditions respond to these findings by making several changes to the applicant's proposed conditions to provide greater opportunities for iwi and hapū to participate in the implementation of the WNP, including monitoring, supervision, kaitiakitanga, and co-governance.

26. The applicant accepts these changes.

27. Comments from iwi and others that the conditions should go further are not accepted by the applicant. Conditions need to be workable and realistic, and many of the changes suggested in comments are neither. The Panel has reached a reasoned and reasonable conclusion on the most appropriate way to address cultural impacts, and the applicant supports the Panel's approach as set out in the Panel's draft conditions.

Request that the Panel provide further information to a commenter

28. Andrew and Rachel Wharry (**Wharrys**) have asked the Panel to provide them with “complete technical detail of the proposed tunnelling activities to properly assess impacts, please provide within 10 working days the tunnel location and depth”.
29. I submit there is no requirement on the Panel to provide a commenter with information.
30. The Wharrys maintain that the applicant requires an access arrangement with them under the Crown Minerals Act for tunnelling through their property on the basis that the requirements in section 57 Crown Minerals Act are not met.
31. The applicant does not agree, and an access arrangement has not been sought.
32. The Wharrys have indicated an intention to seek a Court determination as to whether an access arrangement is required. Any such process is not under the FTAA and need not concern the Panel.

Concluding comment

33. The applicant thanks the Panel for the considerable effort it has gone to in considering matters in detail and addressing a large amount of technical material in a short timeframe to be able to provide reasoned decisions on the application and appropriate conditions within the time limit set for the task. The applicant thanks the Panel for the constructive process it adopted to enable it to progress matters that required additional information and discussion.
34. While the conditions that attach to final approvals that the Panel may grant set out the things that the applicant must do as a minimum, I am instructed to advise that the applicant fully intends to continue to conduct all its authorised activities in ways that respect the reasonable needs and concerns of its host community and the environment within which it operates. While compliance is a minimum requirement, OGNZL will continue to seek excellence in the way it operates.

35. The applicant looks forward to receiving the final decision documents.

Dated 11 December 2025

A handwritten signature in dark ink, appearing to read 'S Christensen', written in a cursive style.

Stephen Christensen

Counsel for Oceana Gold (New Zealand) Limited