

## Hauraki District Council

### SUBMISSION TO THE FINANCE AND EXPENDITURE SELECT COMMITTEE ON THE OVERSEAS INVESTMENT AMENDMENT BILL 2017

22 January 2018

#### Summary

- Mining operations in Waihi are an important component of the Hauraki District's economy, in 2016 contributing 26.2% of Hauraki District's GDP and providing a significant number of jobs within the district (source: Infometrics).
- The acquisition of residential properties by mining company OceanaGold (an overseas registered company) is a necessary component of the industry continuing in the region, due to the location of Waihi gold mines within an established residential area and the associated potential adverse amenity effects of mining. Because of the timeline involved in operations, exploration and preparation, there is often a time lag of several years between acquisition of a property and mining or mining operations commencing.
- Hauraki District Council seeks amendment to the Bill to ensure mining operators continue to be able to purchase residential properties that are, or will be affected by mining operations, and to enable the Council to be able to consider property purchase conditions through the resource consent process.

#### Background

1. The Hauraki District spans from the Kaiaua (Seabird) Coast along the reclaimed, rich dairy lands of the Hauraki Plains which border the Firth of Thames, and then onto the rugged Karangahake and Kaimai/Coromandel ranges before reaching the Golden Valley farmlands in the northeast and the Pacific Ocean at Whiritoa.
2. The Hauraki District is a relatively small territorial area, although it is geographically very diverse. All up the District covers an area of 1,269 square kilometres.
3. The latest census data shows Hauraki's population is around 17,811 people.
4. Gold mining is a significant industry for the Hauraki District and dates back to the mid-to-late 1800s. The Martha (open pit), Favona (underground), Trio Mine (underground), Correnso (underground) and Slevin Mine (underground) have operated within an established residential area in Waihi.
5. The mines have been operated by Oceana Gold (New Zealand) Limited (**OGNZL**) since 2015. OGNZL's parent company, OceanaGold Corporation, is a Canadian-registered company with its head office in Melbourne, Australia.
6. Mining under current consents is due to finish in the third quarter of 2019. OGNZL has announced that it expects the permitting process for a new mine to commence in the first quarter of 2018.

7. Gold mining activity contributes approximately 26% of the Hauraki District's GDP. In 2016 the Waihi mine had a workforce of 351, which is around 4.4% of total employment in the Hauraki District.
8. In addition, the Council recognises the contribution OGNZL makes to the local community, through grants to and sponsorships of local schools, educational trusts and local sports and arts programmes.

#### **Gold mining within a residential area**

9. Because the mines operate within an established residential area, there is a natural tension between the economic and community benefits of the mining industry to Waihi, and the property rights of home owners within and near the mines.
10. A robust process is undertaken under the Resource Management Act 1991 before a resource consent is granted for mining operations. Economic, social and environmental costs and benefits are assessed and balanced. A detailed Social Impacts Assessment and Management Plan forms part of any resource consent and requires mining operators to identify, assess, monitor, manage and re-assess the social effects (positive and negative) of a mining project on the local community.
11. A vital part of the balance between these sometimes conflicting values is the ability for a mining operator to purchase residential properties. OGNZL purchases residential properties from home owners where land is directly required for mining purposes, and where residential properties are adjacent to mines, and may be subjected to adverse amenity effects (noise, vibration, dust). In addition, the Council has imposed conditions on resource consents it has granted for the mines, requiring OGNZL to purchase residential property that sits above or near underground mines at any point if called upon by the owner of that property, should the owner decide they would prefer not to be subjected to the adverse amenity effects associated with the mining activity. A similar condition is expected to be included in a resource consent granted for any new underground mine.
12. An extract from the resource consent for the Correnso Underground Mine, showing conditions of consent relating to the Social Impact Assessment and Property Acquisition is attached as Appendix 1 to this submission.
13. Typically, there is a time delay between properties being purchased and mining operations commencing. In these circumstances, residents generally continue to reside in their properties and rent them back from OGNZL until mining operations commence.
14. The Council considers that the ability for OGNZL to acquire residential properties is a vital component of the successful continuation of mining activities in Waihi. In particular, the Council considers it important that property owners are given an element of control and choice in whether, and when, to sell their properties, and whether to continue living in their properties.

#### **Overseas Investment Amendment Bill 2017 (Bill)**

15. OGNZL is an overseas person for the purposes of the Act. The Bill will impact upon OGNZL's acquisition of residential properties in Waihi by extending the reach of the definition of "sensitive land" to include "residential" or "lifestyle" land for the purposes of the Overseas Investment Act.

16. The proposed section 16E(c) would require OGNZL to meet one of three conditions if it wishes to purchase residential land, namely:
  - a. Development of land that will add to New Zealand's housing supply;
  - b. Conversion of land to another use, and demonstrating that this would have wider benefits to New Zealand; or
  - c. Visa status showing they have committed to reside in New Zealand.
17. Because of the time delay that often occurs between purchasing properties and mining operations commencing and being completed, Condition b above, as currently drafted, would not apply to OGNZL's acquisition, and the conditions of consents for the three current operational mines, and any future mining consents. In addition, it would not apply to properties that are acquired not for mining or mining operations, but where the properties are adversely affected by amenity effects of mining or mining operations.
18. Council understands that OGNZL does not have any interest in residential property development, and divests properties after they are no longer needed for mining operations. As such, the Council considers that an amendment to the Bill in order to specify a time period for OGNZL to divest properties following mining operations would be appropriate. Such a time period would need to be set following the time at which the land is no longer required for the mining purpose for which it was purchased. This amendment is necessary because of the nature of timelines involved in mining operations, specifically the time taken for exploration and mining preparation, meaning it is not possible at the time of purchasing a property to determine when it will no longer be required.
19. In addition, because a large number of properties will no longer be required by mining operations at the same time (i.e. when a mine closes) the Council considers it important that OGNZL be given a lengthy time period over which to divest properties, in order to avoid market distortion.
20. The Hauraki District Council wishes to be heard before the Select Committee in support of its submission.

23 January 2018

John P Tregidga JP, MNZM  
District Mayor  
Hauraki District Council.

# Appendix 1

## Social Impacts Management Plan

- 1 Prior to the first exercise of this consent, the consent holder shall engage a suitably qualified and independent social impact assessment (SIA) specialist or specialists, whose brief and appointment shall be approved by the Council, to prepare a Social Impact Management Plan (SIMP) and a Social Impact Assessment (SIA). The SIMP shall be submitted to the Council for approval within 3 months of the notice given under condition 4 or as otherwise approved by the Council in writing.
- 2 The purpose of the SIMP shall be to provide an updateable framework to identify, assess, monitor, manage, and re-assess the social effects (positive and negative) of the Correnso Underground Mine in combination with the other Newmont Waihi Gold (NWG) mining projects operating in the area, on the community, and also to provide an annual report on the outcomes of this work.
- 3 The responsibilities of the independent SIA specialist(s), engaged under Condition 38, will include:
  - a) Recommending indicators and methods of measuring to be used in monitoring;
  - b) Advising the Council on trigger points for mitigation actions in terms of other conditions of this consent;
  - c) Developing data collection and analysis, methodologies and an annual reporting template;
  - d) Finalising the initial SIMP for consideration by the Council;
  - e) Preparing an initial SIA for submission to the Council as required by Condition 41 b), including consideration of previous SIA's.
- 4 The SIMP will be based on best practice guidelines and procedures for social impact assessment and shall include:
  - a) A set of indicators covering the drivers and outcomes of potential social effects attributable to mining within CEPPA in combination with the other NWG mining projects in Waihi. This may include:
    - i) Numbers employed in the mine operations – NWG and contractors ('workers').
    - ii) Location of mine workers i.e. numbers of workers residing locally (Waihi/Waihi Ward/Waihi Beach) regionally and beyond.
    - iii) Workers' housing (rental vs owner occupied, new builds and existing houses).
    - iv) Location and number of NWG owned houses in Waihi and breakdown between employee/contractor renters and public renters.
    - v) Changes in housing market – house and rent prices and relationship to mine operations, including variations or trends in property sales and enquiries.
    - vi) Relationship of mine operations to any impacts on local services (education, health, vulnerable members of the community etc).
    - vii) Relationship of mine operations to any impacts on emergency services (fire, civil defence, ambulance).
    - viii) Changes in participation of voluntary and recreational groups.
    - ix) Changes in local business activity arising from mining activity.
    - x) Take up of the consent holder's property purchases and top up policy.
    - xi) Distribution and use of the AEP.

- xii) Complaints and associated information received by the consent holder and the response to those complaints.
  - b) An initial SIA is to be undertaken by the independent SIA specialist once the SIMP is approved by the Council, to provide baseline figures for the agreed indicators. The SIA shall be submitted to the Council within nine (9) months of the notice given under Condition 4.
- 5 Annually following the submission of the first SIA to the Council the consent holder shall engage a social impact assessment specialist approved by the Council to prepare a report on the monitoring results, analysis of those results, and management of effects outlined in the SIMP. The report will also include any recommendation on changes to the agreed indicators. The annual report shall be provided to the Council and made publicly available.
- 6 In the event that the SIMP identifies a significant adverse trend in the indicators that are the result of the consent holder's mining activities within CEPPA, the consent holder shall undertake appropriate mitigation action to implement the SIA recommendations and shall report to Council on any appropriate mitigation actions it has taken in response to the trend. For the avoidance of doubt the effect of cessation or suspension of mining will not be considered when assessing adverse trends.
- 7 The SIMP shall be reviewed as required over the life of the consent but at a minimum every 5 years from the approval of the initial SIMP by Council.
- 8 The consent holder shall consult with the Council and with key stakeholders identified in the SIMP in undertaking the review of the SIMP and the reviewed SIMP shall be approved by the Council before it is implemented.

### **Property Programme**

- 9 At least three months prior to the placement of the first explosives for any blasts immediately beneath any part of the legal title to a residential property overlying stopes for any mining provided for under this consent, the consent holder shall offer to:
- a) Purchase that property from the registered proprietor at market value this offer shall be set by reference to the two independent valuations required by condition 52); or
  - b) If the registered proprietor prefers, to provide an ex gratia payment equal to 5% of the property's market value to the registered proprietor.

Compliance with Condition 46 requires the offer to be made three months prior to the placement of the first explosive under the subject property, but not the resolution of the process prior to the start of blasting.

#### **Advice Note**

For the purpose of conditions 46 to 61 "Residential Property" means a property that has a residential dwelling constructed on it.

- 10 Prior to the placement of the first explosives for any development blasts immediately beneath any part of the legal title to a residential property for any mining provided for under this consent, the consent holder shall offer to provide an ex gratia payment equal to 5% of the property's market value to the registered proprietor of that title. The definition of "development blasts" is as per Condition 14.

The location of any mining operation, and in particular whether any obligation under Condition 46 or 47 has been triggered, shall be determined by reference to the plan of existing and proposed operations required under Condition 22 a).

Any agreement entered into pursuant to the processes set out in Conditions 46 or 47 will include the registered proprietor's acceptance (and the acceptance of any tenant) of blasting occurring beneath their property, subject to compliance with the other conditions of this

resource consent. It will be at the registered proprietor's discretion as to whether and if so how much of the ex gratia payment is passed on to any tenant.

- 11 If the consent holder's offer under Condition 46 or 47 is not accepted, but the registered proprietor wishes to negotiate, the consent holder shall offer to commit to a binding arbitration process in relation to the property purchase or ex gratia payment referred to above (whichever is applicable), provided that the basis for determining the ex gratia payment is not amenable to further negotiation.
- 12 The arbitration process, which can be initiated by either party by written notice to the other party, shall be in accordance with the provisions of the Arbitration Act 1996. If the parties cannot agree upon an arbitrator within a week of receiving the written notice, then an arbitrator shall be appointed by the President of the Property Institute of New Zealand. Such arbitrator shall give an award in writing within 30 days after his or her appointment, unless the consent holder and the registered proprietor agree that time shall be extended. The consent holder shall bear the reasonable costs of the arbitrator and the venue. In all other respects, the provisions of the Arbitration Act 1996 shall apply. If the registered proprietor does not wish to enter into that binding process, then the consent holder's obligations under Conditions 46 to 48 are at an end. For the avoidance of doubt, provided that the consent holder has made the offer in Condition 46 or 47, there is nothing that prevents the consent holder from commencing mining activities beneath that residential property.
- 13 Only one offer under Conditions 46 or 47 need be made for any property in order for the conditions to be satisfied.
- 14 For the purpose of this consent, "market value" is the value determined by a registered valuer at the time of making the valuation, ignoring the announcement of, and the existence/operation of the Correnso Underground Mine but including sales data from outside Waihi if appropriate, and any other relevant information.
- 15 The market valuation required by Conditions 46 and 47 shall be undertaken by two independent registered valuers paid for by the consent holder, one of whom shall be selected by the consent holder and the registered proprietor shall be given the option of selecting another valuer.
- 16 A registered proprietor electing to sell their property under the terms of Condition 46 a) shall receive the following additional payments as part of the payment on settlement of the transaction:
  - a) \$1,500 to assist with legal costs;
  - b) \$3,000 to assist with moving costs;
  - c) \$15,000 as an inconvenience payment.

The above payments apply from 1 July 2013. They shall be adjusted annually by the Consumer Price Index (CPI) published by Statistics New Zealand.
- 17 Upon receipt of a confirming letter from a registered proprietor's bank or other financial institution, the consent holder shall reimburse a registered proprietor electing to sell their property under the terms of Condition 46a) for any penalty interest charged for breaking a fixed mortgage associated with that property. For the avoidance of doubt, the consent holder need not reimburse the registered proprietor where the mortgage is cancelled or transferred to a new property without a penalty being charged.
- 18 A registered proprietor electing to sell their property under the terms of Condition 46 a) can choose to remain in that property and pay rent at a reduced rate in lieu of receiving the AEP.
- 19 A recipient of an ex gratia payment made under Condition 46 b) has the right to require the consent holder to purchase the property at any time during the mining activities provided for under this consent under the same terms provided for in Condition 46 a), including receiving the payments specified in Condition 53, except that the ex gratia payment shall be deducted from the market value.
- 20 A recipient of an ex gratia payment made under Condition 46 b) or 47 shall be eligible for the AEP pursuant to Condition 15 b).

- 21 The processes described in Conditions 46 and 47 shall be managed by an independent third party engaged and funded by the consent holder.
- 22 Conditions 46 to 58 do not apply if the consent holder and the landowner have entered into a separate agreement that constitutes an agreement for the purposes of these conditions.
- 23 At the commencement of this consent, and annually thereafter until all offers required under Conditions 46 and 47 have been made, the consent holder shall provide a report to Council on the offers made.
- 24 The consent holder shall:
- a) Confirm that the property purchases recommended by the Independent Review Panel under the arrangements existing at the time of grant of this consent are complete or will be completed up to the previously committed funding level of two million dollars.
  - b) Upon notice being given under Condition 4, make available funding in addition to the funding in 61 a) of not less than four million dollars to be used to purchase properties at market value as recommended by the Independent Review Panel in accordance with the procedure established by the Waihi Community Forum (WCF) and as amended from time to time by the WCF. The offer of funding under this condition is subject to:
    - i) the criteria being amended to ensure that priority is given to people living in proximity to mining operations under this consent; and
    - ii) specific consultation being undertaken with the homeowners of Waihi East in respect of all of the criteria to be applied by the IRP for the purchase of properties under this consent.
  - c) In addition to the payments under Conditions 61 a) and b) above, upon the commencement of production blasting within the Grace/Empire and Daybreak ore bodies identified in Figure 1, the consent holder shall make available a sum not less than \$500,000 for each of the two ore bodies. That money is to be used for the same purposes and on the same terms as condition 61 b) above. (For the avoidance of doubt, the maximum amount of money for which the consent holder is liable under this condition 61 c) is \$1m.)
  - d) The consent holder shall report the number of purchases it has made and the quantum of any remaining funds to the attendees of the public meeting required under Condition 62.
  - e) A registered proprietor electing to sell their property under the terms of Condition 61 shall receive the following additional payments as part of the payment on settlement of the transaction:
    - i) \$1,500 to assist with legal costs, and
    - ii) \$3,000 to assist with moving costs.
  - f) The above payments apply from 1 July 2013. They shall be adjusted annually by the Consumer Price Index (CPI) published by Statistics New Zealand.
  - g) Upon receipt of a confirming letter from a registered proprietor's bank, the consent holder shall reimburse a registered proprietor electing to sell their property under the terms of Condition 61 for any penalty interest charged by the bank for breaking a fixed mortgage associated with that property. For the avoidance of doubt, the consent holder need not reimburse the registered proprietor where the mortgage is cancelled or transferred to a new property without a penalty being charged.
  - h) For the purposes of this consent the WCF shall be as described in the Terms of Reference adopted by the WCF at its meeting of 13 December 2012 and as amended from time to time. If the WCF ceases to exist for whatever reason, the Council shall take over the WCF's responsibilities under this consent.
  - i) Properties eligible for purchase under Conditions 46 to 60 are not eligible under Condition 61.

Advice Note relating to conditions 46 to 61

For the avoidance of doubt, nothing in Conditions 46 to 61 affects the consent holder's rights as the holder of any relevant permits under the Crown Minerals Act 1991.