

Before the Waikato Regional
and Hauraki District Councils

Under the Resource Management Act 1991 (**RMA**)

In the matter of An application for resource consents to extend the Waihi Gold Mine via underground and open pit mining methods known as Project Martha

By **Oceana Gold (New Zealand) Limited**
Applicant

Statement of evidence of John Kyle for Oceana Gold (New Zealand) Limited

29 October 2018

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Qualifications and experience

- 1 My name is John Clifford Kyle.
- 2 I hold an honours degree in Regional Planning from Massey University, obtained in 1987. I am a Director with the firm Mitchell Daysh Limited, which practices as a planning and environmental consultancy throughout New Zealand.
- 3 I have been engaged in town and country planning and resource management for 30 years. My experience includes a mix of local authority and consultancy resource management work. Since 1994, I have been involved with providing consultancy advice with respect to regional and district plans, designations, resource consent applications, environmental management and environmental effects assessments. This work includes extensive experience with large-scale consenting projects involving inputs from multi-disciplinary teams. An outline of projects in which I have been called upon to provide resource management advice in recent times is included as **Appendix A**.
- 4 In preparing for this hearing I have visited Waihi and the mines operated by Oceana Gold (New Zealand) Limited (**OGNZL**).
- 5 In preparing this evidence I have reviewed:
 - (a) The reports and statements of evidence of all of the other witnesses giving evidence on behalf of OGNZL;
 - (b) The section 42A reports by Mr Burton and Ms Roa; and
 - (c) Submissions relevant to my area of expertise.
- 6 I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014. This evidence has been prepared in accordance with it and I agree to comply with it. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

Scope of evidence

- 7 I have been asked by OGNZL to prepare planning evidence in relation to Project Martha. This includes:
 - (a) An overview of the resource consent applications for Project Martha;
 - (b) Comment on key matters raised in the section 42A reports by Mr Burton and Ms Roa, as well as submissions;
 - (c) An assessment of the resource consent applications against the relevant statutory planning documents; and

- (d) An assessment of the resource consent applications against the Resource Management Act 1991 (**RMA**).
- 8 My colleague, Mr Turner has prepared evidence which provides an overview of the key potential effects of Project Martha and how those effects are addressed in consent conditions.
- 9 I confirm that my evidence relates to the proposal known as Project Martha as described in Chapter 3 of the Assessment of Environmental Effects dated 25 May 2018 (**AEE**).
- 10 My firm was the primary author of the AEE for Project Martha. My firm also contributed to the compilation of the additional information supplied to the Hauraki District Council (**HDC**) and the Waikato Regional Council (**WRC**) in response to requests made under section 92 of the RMA.

Executive Summary

- 11 A new land use consent is sought to authorise Project Martha. A subdivision consent to subdivide land to accommodate the re-alignment of Bulltown / Cambridge Roads around the Phase 4 Cutback is also required. Both these consents are non-complying activities under the Hauraki District Plan (**District Plan**).
- 12 A combination of new and existing regional resource consents will be relied upon to authorise Project Martha. The new consents sought are all discretionary activities under the Waikato Regional Plan (**Regional Plan**)
- 13 In my view there is no impediment in the planning provisions to granting the consents sought, noting in particular that:
 - (a) The most relevant planning direction when considering these applications is contained in the district and regional plans.
 - (b) The Waihi mines contribute to, and underpin, the social and economic wellbeing of Waihi. This is recognised in the District Plan, which seeks to provide for mining activities in Waihi, particularly in the Martha Mineral Zone where most of the Project Martha activities would be located.
 - (c) The proposal is proposed to be coupled with methods to manage effects on amenity values in accordance with the outcomes envisaged within the District Plan.
 - (d) There is policy in the District Plan which seeks that activities not reduce the historical, cultural and spiritual values associated with sites of significant heritage value. Pukewa comprises such a site. In my assessment there is

an inherent tension between this policy and the fact that the Martha Mineral Zone seeks to enable mining (subject to methods to avoid, remedy and mitigate adverse effects). I address this matter in more detail later in this evidence. In summary though I do not consider that the proposal is contrary to the objectives and policies of the District Plan when they are viewed in the appropriate context.

- (e) The various 'regional' activities associated with Project Martha will be managed such that the project is generally consistent with the relevant objectives and policies of the Regional Plan, and there is no impediment in the Regional Plan provisions to granting the consents sought.

Resource Consent Applications

- 14 A detailed description of Project Martha, the consents required to authorise the various activities and their status, is contained in Chapters 3 and 4 of the AEE. In the interests of brevity, I do not repeat that analysis here. However, I have set out below my precis of the key aspects of the resource consent applications.

Land Use Consent

- 15 A new land use consent is sought to authorise Project Martha and a detailed analysis of the relevant rules in the District Plan which apply to each aspect of the activity is contained in Section 4.1 of the AEE. Three parts of the activity to be authorised by the land use consent attract non-complying activity status under the District Plan, namely:
 - (a) The Phase 4 Cutback activities where they encroach into the margins of the Residential and Low-Density Residential Zones;
 - (b) The use and storage of hazardous substances in the Martha Underground Mine¹; and
 - (c) The use of existing and consented underground mine facilities for ventilation of, and access to, the Martha Underground Mine.
- 16 All other aspects of the land use consent sought are discretionary activities. This includes all the Phase 4 Cutback activities where they are located within the Martha Mineral Zone.

¹ This consent is a non-complying activity, because, somewhat unusually, and unlike in other zones, the District Plan does not provide for any new hazardous facility in the Martha Mineral Zone where most of the Martha Underground Mine will be located.

- 17 However, when bundled together the overall activity status of the land use consent sought for Project Martha is non-complying. I note the section 42A report of Mr Burton reaches the same conclusion².
- 18 A key aspect of the rule analysis for this project is identifying which parts are classified as 'surface mining', 'underground mining' or 'mining operations', as per the District Plan definitions of those terms. The detailed analysis of which terms apply to the various activities associated with Project Martha is provided in section 4.1 of the AEE and I understand the interplay between the definitions will be addressed further in legal submissions. In my view, the key points to note are:
- (a) The only aspect of Project Martha which is classified as 'surface mining' is that part of the Phase 4 Cutback from which ore will be extracted. This is confined to the part of the activity contained within the Martha Mineral Zone;
 - (b) The definition of 'underground mining' includes surface disturbance associated with underground mining. Therefore, the definition would capture the Martha Underground Mine and its portals and shafts, and the stockpiling of rock material from underground mining in the Martha Pit; and
 - (c) All other land use activities associated with Project Martha are termed 'mining operations', including the use of existing underground mine facilities for access purposes and ventilation.
- 19 I note the section 42A report of Mr Burton agrees with this analysis.
- 20 A subdivision consent to subdivide land to accommodate the re-alignment of Bulltown / Cambridge Roads around the Phase 4 Cutback is also required. The District Plan attributes it the same activity status as the associated land use activity, which in this case is non-complying.

Waikato Regional Council Consents

- 21 A combination of new and existing regional resource consents will be relied upon to authorise Project Martha.
- 22 The new water permits, discharge permits and land use consents which are sought from the WRC for Project Martha are described in Table 4.2 of the AEE. They would authorise various activities associated with the construction, operation and rehabilitation of the Martha Pit and Martha Underground Mine, including several consents which are specific to rehabilitation and the establishment and operation of the pit lake. A change to the conditions of existing RC123859, which authorises the discharge of contaminants to air from the Martha Pit and Golden Link Project

² Section 7.0 at pages 11-12

Area, is also sought under section 127 of the RMA so it covers all the discharge to air activities associated with Project Martha.³

- 23 All the resource consents required from the WRC are discretionary activities and the rationale for each consent and relevant rule is described clearly in Table 4.2 of the AEE. I note that Ms Roa in her section 42A report agrees with this analysis⁴. Ms Roa also expresses the view that the use of water to fill the pit lake is a permitted activity under Rule 3.4.5.4 of the Regional Plan. I generally agree with that analysis, but note a conservative approach has been taken within the application and consent has been sought to also cover the use of this water given it is unclear how the water management class standards in Method 3.2.4 of the Regional Plan may apply at that time.⁵
- 24 The existing resource consents that will be relied on for Project Martha are described in Table 4.4 of the AEE. They authorise the operation of various existing ancillary mine facilities that will be used to transport, process and dispose material extracted as part of the Martha Underground Mine and Phase 4 Cutback. This includes the conveyor, Processing Plant, Water Treatment Plant, Rock Storage Area and Tailings Storage Facilities. Some of these existing resource consents will expire prior to the completion of Project Martha in 2031, and the continued operation of those activities for the full duration of Project Martha will be reliant on new resource consents being obtained for those activities (or them being managed in accordance with permitted activity conditions). However, the need to obtain these replacement resource consents is not considered to impact on the viability or operation of Project Martha, nor do applications for those activities need to be made now to better understand the nature of the proposal at hand.

Commencement, Lapse and Term of Consent

- 25 An unlimited term of consent and standard lapse date of five years has been sought for all the resource consents sought for Project Martha from the HDC. I consider this to be appropriate as the land use activities will be permanent modifications to the environment (e.g. the realignment of Bulltown / Cambridge Roads) or will need to occur well into the future as part of the rehabilitation of the pit lake.

³ RC124859 authorises various discharges to air from within the Marth Pit and the Golden Link Project Area. However, it does not cover the discharge from the new ventilation shafts and fresh air portals, nor those parts of the Phase 4 Cutback located outside of the boundary of ML 32 2388 and LUC 97/98-105. In addition, the discharge of contaminants to air from the Concrete Batching Plant is limited to the manufacture of cement for underground mines in the Golden Link Project Area. As such, a change to the conditions of RC124859 is sought so it authorises discharges from the new areas / activities.

⁴ Section 3 of the WRC Section 42A report

⁵ The relevant rule is not stated in the AEE, however, it would be a restricted discretionary activity under Rule 3.4.5.5.

26 The commencement date, lapse date and consent terms sought for the resource consents from the WRC are detailed in Table 4.3 of the AEE and align with the approach taken for previous mining projects in Waihi, particularly in relation to those activities associated with the formation of the pit lake. They include staggered commencement dates which correlate with when the different activities are expected to occur (for example, the formation of the pit lake will not commence until mining is completed). They also include consent terms of 10, 20, 25 or 35 years depending on how long each activity is expected to occur.

Effects and the Permitted Baseline

27 The panel will be aware that section 104(2) of the RMA affords a consent authority discretion to disregard a potential adverse effect of allowing an activity if the relevant plan permits an activity with that effect.

28 In my view this discretion is particularly relevant when considering the effects of the Phase 4 Cutback, because the District Plan permits surface mining and mining operations activities in the Martha Mineral Zone when undertaken in accordance with the relevant terms and conditions of the ML 32 2388 and LUC 97/98/105 – after these approvals expire. As noted in the AEE⁶ and in legal submissions, ML 32 2388 has expired and LUC 97/98/105 will expire in 2019.⁷

29 Applying section 104(2) of the RMA to the Phase 4 Cutback means it is only those effects that would be in excess of or different in character to those that are permitted by ML 32 2388 and LUC 97/98-105 that are relevant when considering the activities associated with the Phase 4 Cutback.

30 While application of the permitted baseline is discretionary, in my view this is an example of where it is clearly appropriate to do so because:

- (a) The relevant permitted activity rules apply to the subject site;
- (b) The activities permitted by the District Plan are directly comparable to the surface mining and mining operations proposed as part of Project Martha, with the only difference being Project Martha will include earthworks in a

⁶ Section 2.6.2

⁷ As was outlined by [insert witness], depending on where they are located in the pit, activities in the Martha Pit have historically been authorised by expired Mining Licence 32 2388 (ML 32 2388) and District Council Land Use Consent 97/98-105 (LUC 97/98-105). Appendix 1 of my evidence contains a map which shows the area to which each applies. During the last District Plan review process the activities authorised by ML 32 2388 and LUC 97/98-105 were grandfathered into the District Plan and made permitted activities upon their expiry. ML 32 2388 expired on 16 July 2017. LUC 97/98-105 remains active but the activities it authorises will become a permitted activity when it expires on 18 October 2019.

small area outside the areas covered by permitted activity rules in the plan;
and

- (c) The effects on the environment that are permitted by Rules 5.7.4.1(P1) and 5.7.4.1(P2) of the District Plan are clearly articulated in ML 32 2388 and LUC 97/98-105, as are the comparative effects of Project Martha in this AEE, and it is relatively straightforward to compare them.
- (d) The effects of the existing pit works authorised by the P1 and P2 are either currently observed or have been experienced in the recent past via the mining of the pit.

Matters Raised in the Section 42A Report and Submissions

- 31 A summary of the issues raised by submitters is provided in the section 42A report.
- 32 I agree with that analysis.
- 33 The only submissions which directly raise matters on the planning documents are those from Fish & Game, Forest & Bird and others which identify the Regional Plan policy for fishery class waters is relevant when considering the effects of the proposed abstraction to fill the pit lake on the Ohinemuri River. I agree with that proposition and have included it in my analysis of the Regional Plan provisions below.
- 34 The other submissions raise various concerns with the effects of the project, and I have considered them when addressing the relevance of the various statutory planning documents to this proposal.

Statutory Planning Assessment

- 35 The relevant planning documents are set out in the AEE, and the section 42A reports of Mr Burton and Ms Roa. They include:
 - (a) Resource Management (National Environmental Standard for Air Quality) Regulations 2004;
 - (b) Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011;
 - (c) Resource Management (National Environmental Standard for Sources of Human Drinking Water) Regulations 2007;
 - (d) The National Policy Statement for Freshwater Management;
 - (e) The Hauraki Gulf Marine Park Act 2000;

- (f) The Waikato Regional Policy Statement (**RPS**);
- (g) The Regional Plan;
- (h) The District Plan; and
- (i) The Hauraki Iwi Environmental Plan.

- 36 An analysis of the planning provisions which are relevant to the land use and resource consents being sought is contained in section 8 of the AEE. At a general level I concur with that analysis and, in my opinion, it is a comprehensive assessment of the relevant provisions.
- 37 In the following sections I include a summary of my key conclusions on the relevance of the various planning documents based on my review of those documents, my understanding of the proposal and its effects, and my review of submissions. I also address any areas of disagreement with the reporting officer. Rather than repeat large tracts of material already referred to in the AEE I have cross referred to it, noting my previous conclusion that its assessment is comprehensive.

The Regional Policy Statement

- 38 A detailed analysis of the RPS is contained in section 8.4.7 of the AEE.
- 39 The RPS was made operative in 2016. It contains provisions which address the key matters at issue when considering these consent applications, including provisions that relate to the use and development of mineral resources, provisions that recognise and provide for the relationship of tangata whenua with their ancestral rohe and protecting cultural heritage, and provisions relating to urban development, protection of amenity values, and management of freshwater.
- 40 However, the way most of those provisions are framed, is that they direct how subsequent plans should be shaped to address various resource management issues rather than needing to be strictly applied in their own terms on a case by case basis to an assessment of a consent application such as this. For example, they direct:
- (a) The WRC and territorial authorities to initiate a collaborative work programme to identify and map the region's significant mineral resources;⁸
 - (b) District plans and regional plans to include provisions to protect, as appropriate, access to the identified significant mineral resources, and may

⁸ Policy Implementation Method 6.8.1.

identify areas where new mineral extraction activities are appropriate and areas where new mineral extraction activities should be avoided;⁹

- (c) Regional and district plans to identify areas of amenity value to district and regional communities, and that valued qualities and characteristics of those areas be maintained or enhanced;¹⁰
- (d) That tangata whenua are to be provided appropriate opportunities to express, maintain and enhance their relationship with their rohe through resource management and other local authority processes, and that the WRC and territorial authorities should work with tangata whenua to develop appropriate mechanisms for this to occur;¹¹
- (e) The WRC should improve understanding of heritage resources and facilitate the establishment of a Regional Heritage Inventory of areas and places with historic and cultural heritage;¹²
- (f) The relationship of tāngata whenua and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga shall be recognised and provided for - by the WRC and territorial authorities working with tangata whenua to identify cultural heritage values and appropriate protocols and actions for their future management;¹³
- (g) Regional and district plans should provide for the protection of historic and cultural heritage from inappropriate subdivision, use and development, and in determining whether an activity is inappropriate, the regional and district plans require regard be given to a specified list of matters;¹⁴
- (h) That the WRC facilitate a process that will involve regional communities to identify values and establish subsequent fresh water objectives, limits and targets for fresh water bodies; and¹⁵
- (i) That the WRC manage the increasing demand and competition for water through the setting of allocation limits, efficient allocation within those limits,

⁹ Implementation Method 6.8.2.

¹⁰ Policy 12.3.1 and Implementation Method 12.3.1.

¹¹ Policy 4.3 and its associated implementation methods.

¹² Policy 10.1 and its associated implementation methods.

¹³ Policy 10.2 and its associated implementation methods.

¹⁴ Policy 10.3 and its associated implementation methods.

¹⁵ Policy 8.1 and its associated implementation methods.

and other regional plan mechanisms which achieve identified freshwater objectives.¹⁶

- 41 In the light of the above, I would expect that regional and district plans will need to be refined to address these matters in those circumstances where the RPS provides direction on a resource management issue and the subservient plans do not properly reflect that direction. One would expect this process to take some time as the various local authorities take stock of what these directives mean in a local context, promulgate appropriate responses (including the appropriate evaluative process that primarily derives from section 32 of the RMA) and pursue changes through the Schedule One process.
- 42 To my knowledge no formal review of the current provisions of the District Plan has been undertaken in response to the directives in the RPS, and if it has, the outcomes have not been made public or shared with OGNZL. I note that the District Plan was made operative relatively recently in 2014. It includes provisions that are specific to mining and the effects that emanate from mining and its associated activities which is reflective of the importance of this industry to Waihi in particular. As I describe later the District Plan requires a broad range of effects-based matters to be considered and accounted for in assessing this project. For this reason, whilst the District Plan has yet to be changed to follow the directives set out in the RPS, it still has considerable utility in the way that it informs this decision-making process.
- 43 With respect to the key water related regional planning issues raised by this proposal, the panel will be aware the water allocation provisions in the Regional Plan were recently updated via Variation 6, and when the RPS was proposed there was a concerted effort to align its freshwater provisions with the planning framework of Variation 6. In turn, while the RPS contemplates an individual catchment review process occurring for the Ohinemuri River, in my view the Regional Plan contains relatively complete and up to date coverage of the key regional council issues of relevance here.
- 44 Given the above, in my view the key matters arising from the RPS insofar as these consent applications are concerned are:
- (a) At a general level for the reasons set out in section 8.4.7 of the AEE the proposal is not inconsistent with the RPS;
 - (b) There are no particularly directive policies in the RPS which represent a policy hurdle for the consent applications;

¹⁶ Policy 8.6 and its associated implementation methods.

- (c) However, most of the RPS provisions are framed to direct how subsequent plans should be shaped rather than being strictly relevant on a case by case basis to an assessment of an application such as this;
- (d) The District Plan and Regional Plan contain relatively complete and recent coverage of the key issues at hand;
- (e) Any attempt to quantify how those existing provisions could change through a future process to give effect to the RPS would be somewhat speculative given the Schedule One process it would need to pass; and
- (f) It can generally be expected that for a proposal of this nature that the lower order plans will have more specific relevance.

The District Plan

- 45 When considering the proposal and the primary concerns raised in submissions, in my view the key District Plan matters to be examined are contained in:
- (a) The zone-based provisions in Chapter 5 which address the role of mining in Waihi, and provide direction on how its effects on the environment, including on residential amenity values, must be managed; and
 - (b) The provisions in Chapter 6.1 which seek to protect sites of significance to Maori.

46 I address each below.

Zone Provisions

- 47 Chapter 5.6 of the District Plan provides an overview of the approach to be applied in managing land use in Waihi's urban area. In addition to the role and significance of mining to the town, key matters addressed include its service town and tourist industry role. Maintenance of Waihi as an attractive residential environment is also a promoted outcome. The most relevant provisions state [**emphasis added**]:

5.6.4 OBJECTIVES AND POLICIES - WAIHI

(1) OBJECTIVE 1

To enable the people and community of Waihi to provide for its service town role to the surrounding rural area, as well as its role in the mining and tourist industries, at the same time as maintaining an attractive residential environment.

(a) Policies

Objective 1 will be achieved by implementation of the following policies:

- (i) **Make adequate provision for Waihi Town and its role as a service town to the surrounding rural areas as well as its role in the mining and tourist industries.**
- (ii) **Recognise the significance of mining and the ongoing associated developments to the social and economic wellbeing of the residents of Waihi, subject to maintaining the amenity values of Waihi.**
- (iii) Recognise and protect the Goldfields Steam Train complex, **protect buildings and sites for their historic importance**, and seek to retain and enhance other heritage features (eg. group of historic "Miners Cottages").
- (iv) Provide some low density residential areas at the edge of Waihi as an alternative living choice.
- (v) Recognise the location of existing industrial activities and provide for the location of new industrial activities.
- (vi) **Protect the amenity of residential environments from adverse effects of commercial, mining and industrial activities.**

(2) OBJECTIVE 2

To enable and encourage development that responds to and enhances the distinctive natural and built character of Waihi.

(a) Policies

Objective 2 will be achieved by implementation of the following policies:

- (i) Enhance the mainstreet historic mining character of the central area in respect of the form, scale, bulk, location, heritage and architecture of buildings and infrastructure.
- (ii) Respect the existing townscape character of Waihi (street layout, existing residential character, cottages) in new development and encourage visual and physical linkages to local features such as the Pumphouse, Waitete Stream, Ohinemuri River, and hills of the Coromandel Range (to the north of Waihi).
- (iii) Enhance the presence of town centre heritage/character buildings and local landmarks through streetscape design and any redevelopment/development initiatives that may affect the viewing quality and appreciation of these buildings/features.
- (iv) Use the natural features around Waihi to define the boundaries of the urban area (eg the Ohinemuri River, the Waitete Stream, the hills to the north and west).

- (v) Concentrate administrative, commercial and business activities in the Central Business Area in a manner that does not detract from the amenities of the town and the state highway frontage, while recognising the economic benefit of appropriately located and well designed large format retail developments outside of this area, in a manner that does not adversely affect the efficient functioning and community focus of the town centre.
- (vi) Maintain and enhance the amenity of the residential environment in the Residential and Low Density Residential Zones.

48 The District Plan then distils the Waihi urban area into a series of zones based on the anticipated land use for that area – and attributes to each zone its own specific planning framework. Sections 8.4.9.1 – 8.4.9.7 of the AEE addresses these provisions in detail.

49 From the outset of this consenting process it was evident that achieving good alignment with District Plan policy relating to residential amenity would be a key consideration. The key provisions in this respect are those cited from section 5.6.4 of the District Plan above, as well as:

- (a) The following policy direction which applies to activities in the Martha Mineral Zone:

“Ensure the amenity values of Waihi and the wider community are protected”.

- (b) The following policy direction which applies to the residential zone:

“... avoid, remedy or mitigate any adverse effect of ... non-residential developments on the environment and character of the locality ... by [ensuring] development is designed and located to:

- (1) integrate well with the immediate locality;
- (2) contribute positively to the streetscape;
- (3) provide occupants of dwellings with a reasonable outlook, access to sufficient open space and reasonable aural and visual privacy.”

- (c) The following policy direction which applies to the low-density residential zone:

Protect and enhance the rural-residential amenities of the zone (eg privacy, space, quiet) by controlling the scale, location and type of activities compatible with the environment they are located within.

- 50 These matters assisted to inform the briefing process for the various technical consultants engaged to assess the effects of the proposal. The evidence of Mr Turner addresses the effects assessment process that was subsequently undertaken to address these matters by the various technical witnesses, and the conditions that the applicant now promotes to address these key amenity considerations
- 51 Given the significant recent role mining has played in Waihi, I think it is reasonable to conclude that the people of Waihi will have a well-developed understanding of mining and how this proposal could affect amenity values. The proposed effects management methods are largely based on standards and performance measures that have been employed already and I would expect there to be a comparatively good understanding of how these measures will work and their expected effectiveness.
- 52 Against that background matters raised in submissions, and Mr Wilson's summary of the feedback received during consultation, assist to highlight the key issues which will need particularly close scrutiny when considering whether this project will appropriately protect amenity values. My main observations after reviewing those submissions, and reading Mr Wilson's evidence are:
- (a) There remains, understandably in my view, concern amongst some residents who live immediately adjacent to the Phase 4 Cutback with how noise, dust and vibration and ongoing environmental disruption associated with the cutback will affect the quality of their home life.¹⁷
 - (b) There remains concern from residents who live east of Martha Pit in the area where Correnso is located, with ensuring that the detail of the various conditions intended to manage effects of underground mining on amenity values is properly ironed out. However, for the most part residents seem to have a good understanding about how similar measures currently work, and how the proposed measures will work into the future.
- 53 Because of the way amenity values are defined in the Act, the panel will be aware that it needs to account for the surrounding residents' appreciation of the areas' pleasantness, aesthetic coherence, and cultural and recreational attributes when considering the acceptability of the activity. Moreover, some useful guidance on the nature of the amenity that is to be maintained or protected is also contained in the District Plan itself.
- 54 The first thing that stands out to me in that context, is the extent to which this District Plan contemplates and provides for mining in Waihi, both in its objective and policy

¹⁷ Nauman (submission 24), Holland (188 & 189 and Purcell (215

framework, and in its rules and performance standards. There is also a permitted baseline to consider here, with existing permitted activity rules allowing works in the Martha Mineral Zone to generate certain vibration and noise effects so long as these effects meet prescribed limits. In my opinion, this specific recognition of mining activity and the effects associated with it colours how the expected effects of the proposal on amenity values should be assessed. How “protection of amenity values” is achieved needs to be viewed in the context of the District Plan’s direct provisioning for mining within the Martha Mineral Zone and the expectation that this mining will generate some noise, vibration and dust related effects, albeit subject to limits on their severity.

55 Having said that, it is clear to me that relevant matters from the District Plan with respect to amenity require the effects of mining activity to be very carefully managed so that people can continue to enjoy their properties and Waihi life in general. For this reason, the proposed conditions which are attached to the evidence of Mr Turner have been informed by appropriate expert assessment and based on the application of recognised standards for achieving good practice in order to protect a reasonable degree of amenity. In my view this is an appropriate response in this location and will ensure that the proposed activities will protect a level of amenity which is consistent with that contemplated by the District Plan.

56 However, I acknowledge that for some submitters there is also a cumulative and emotional aspect to the effect this proposal will have, and this is particularly evident for some submitters immediately adjacent to the Phase 4 Cutback. For some, mitigation of the effects within accepted standards of good practice will not go far enough and in these circumstances the only way to address those effects is to move elsewhere. For that reason, I think there is considerable merit in OGNZL’s proposal that its property support fund programme be available to those properties immediately adjacent to the Phase 4 Cutback to ensure that if those persons who are affected in this way wish to sell they can apply to do so without suffering financial loss and without undue delay.

57 I also acknowledge there is also a cultural dimension to the amenity values attributed to Waihi insofar as tangata whenua are concerned, and it is apparent from submissions that those values have been progressively and substantially degraded by previous mining activities. It is for tangata whenua to speak on whether this proposal will maintain or protect the cultural aspect of Waihi’s amenity values. The only matter I note is that the amenity related policies contain direction to maintain or protect those values. There is no directive that the cultural dimension of Waihi’s amenity values is to be restored. I address this cultural aspect further from paragraphs 59 of my evidence when discussing the historic heritage provisions.

58 In conclusion, I reach the opinion that:

- (a) The District Plan seeks to provide for mining activities in the Martha Mineral Zone where most of the activities associated with the Phase 4 Cutback and Martha Underground Mine will be located, and the proposed activity will manage its effects in accordance with the planning framework which applies to managing the effects of such activities in that zone; and
- (b) The objectives and policies for the other zones in which Project Martha activities would be located do not expressly contemplate mining activities, nor do they direct that they be avoided in those areas, and the effects of the activity could not be said to be contrary to the objectives and policies for those zones given the approach to mitigation proposed via the proffered conditions.

Chapter 6 – Historic Heritage

59 Chapter 6.1 of the District Plan contains relevant provisions on sites of significance to Maori. The District Plan does not identify or schedule sites of significance to Maori, nor does it provide a definition of the term or any criteria sites must meet to be deemed significant. However, based on the information provided in the Ngāti Hako submission, and in previous RMA processes relating to Pukewa, I suggest that Pukewa is the type of site the term is intended to capture.¹⁸ I also understand from discussions with OGNZL and from reading Mr Watson's evidence that OGNZL does not dispute that Pukewa is a site of significance to Maori. The relevant provisions state [**emphasis added**]:

(3) OBJECTIVE 3

To recognise and protect sites of significance to Maori.

(a) Policies

Objective 3 will be achieved by the implementation of the following policies:

- (i) **Identification and protection, in consultation and partnership with local iwi**, of sites of significance to Maori.
- (ii) **Avoid a reduction of historical, cultural and spiritual values associated with** sites of significance to Maori.
- (iii) Avoid, remedy or mitigate the adverse effects of subdivision, land use and development on identified Areas of Significance to Maori.

¹⁸ I note for completeness that the District Plan does identify and schedule Areas of Significance to Maori and that Pukewa Maunga is not included in this list.

- (iv) **Ensure that local iwi are consulted over the use, development or protection of sites of significance to Maori.**

- 60 There are both procedural and effects-based directives in these policies.
- 61 The procedural directives are manifest in Policy (i) insofar as it directs identification and protection of significant sites to occur 'in consultation and partnership with local iwi', and Policy (iv) which directs consultation to occur over the use, development and protection of such sites. In my view the engagement undertaken thus far by OGNZL, and the tangata whenua related conditions described by Mr Turner and Mr Watson (which require further consultation and collaboration with tangata whenua in respect of the mining activity and the restoration and enhancement of Pukewa), are a genuine attempt to align with these procedural directives.
- 62 I accept that how the proposal will affect the historical, cultural and spiritual values associated with Pukewa is for tangata whenua to speak on.
- 63 Policy (ii) seeks to avoid a reduction of historical, cultural and heritage values. At one level any proposal affecting Pukewa might be said to reduce its value in this respect. However, in my opinion it is important to account for the fact that for the most part Pukewa lies within the Martha Mineral Zone which is generally enabling toward mining activities such as that proposed here. It might be said that outright achievement of Policy (ii) is difficult to achieve in this context and in the context of the activities that have already been authorised and occurred.
- 64 Leaving the pit in its current form is in my opinion not a sustainable long-term proposition and I understand that remedying the instability issues that are present at the pit is necessary and will take some time to complete. I defer to tangata whenua on the extent of any adverse effects further in pit work will cause, however, it would seem to me that in the short term at least, the proposal will mean adverse effects on the historical, cultural and spiritual values attributed to Pukewa will endure. However, I note Mr Watson has outlined that there are methods that are being discussed between OGNZL and Ngati Hako that could achieve some restoration of Pukewa's mauri now, as well as providing the opportunity to bring some closure to the issue now so it is not passed on to the next generation. In the long term, it would also seem that if the methods outlined by Mr Watson were accepted and implemented this brings with it the opportunity to ultimately restore or enhance Pukewa's mauri through appropriate rehabilitation and re-engagement of tangata whenua with the area. I think that these initiatives are very important in the context of Policy (ii) in that they are positive methods to address issues of redress for the historical reduction in Pukewa's ascribed values.

Conclusion

- 65 The District Plan seeks to provide for mining activities in the Martha Mineral Zone where most of the Project Martha activities would be located, and in my opinion the proposed activity will also be managed such that its effects on the environment are in accordance with the objectives and policies for that zone. While the objectives and policies for the other zones in which Project Martha activities would be located do not expressly contemplate mining activities, nor do they direct that they be avoided in those areas, and in my view the proposal could not be said to be contrary to the objectives and policies for those zones.
- 66 It is obviously for tangata whenua to say how the proposal will affect the values that are important in terms of Chapter 6.1 of the District Plan. In my opinion there is something of a tension in the District Plan between the enabling approach taken in the Martha Mineral Zone and the fact that Pukewa is so substantially affected by it. It appears to me that OGNZL has approached the partnership with Ngāti Hako in good faith and there are methods that are being discussed between them that could achieve some restoration of Pukewa's mauri now, as well as providing the opportunity to bring some closure to the issue so it is not passed on to the next generation. In the long term, it would also seem that if the methods outlined by Mr Watson were accepted and implemented this brings with it the opportunity to ultimately restore or enhance Pukewa's mauri through appropriate rehabilitation and re-engagement of tangata whenua with the area.
- 67 The panel will be familiar with the well-established jurisprudence that the term 'not contrary to' used in section 104D(1)(b) of the RMA does not mean that the activity must comply with each and every objective and policy in the relevant plan. Rather, the objectives and policies must be looked at in a holistic and overall way. An activity will be contrary to the objectives and policies only if it is clearly 'opposed in nature' or 'repugnant' to the overall policy direction of the relevant plan.
- 68 When assessed in this manner and considering the aforementioned tension in the District Plan provisions, and the historic circumstances that present here, I do not consider the proposal failing to comply with Policy (ii) of Section 6.1.3(3) renders it contrary to the objectives and policies of the District Plan when these matters are viewed in the round, and in my view the activity is able to pass the s104(1)(b) gateway test.
- 69 I note the section 42A report of Mr Burton also reaches the conclusion the activity can pass the s104(1)(b) gateway test¹⁹.

¹⁹ Page 14 of the District Council s42A report.

The Regional Plan

70 The Regional Plan was made operative prior to the RPS, and it has not yet been revisited in order to give better effect that later document. However, for the reasons set out in paragraph 43 and 44 of my evidence I suggest that considerable weight can still be given to the Regional Plan provisions when considering these applications.

The Take and Use of Water from the Ohinemuri River

71 In my view the only activity which is somewhat contentious in terms of how it aligns with the Regional Plan provisions is the proposed take and use of water to help fill the pit lake.

72 It was raised early in this process by staff from the WRC that there may be a policy barrier in the Regional Plan to granting the proposed take, because it is not from one of the three allocation bands the Regional Plan explicitly contemplates water being abstracted within. Those bands being:

- (a) The A or B allocation bands; and
- (b) The water harvesting band which enables up to 10% of the river flow to be abstracted for 'water harvesting' when flow is greater than median flow.

73 My firm provided some preliminary views on this matter to the WRC prior to lodgement of the consent applications, and a detailed analysis of why there is no policy barrier to allocating water outside these bands where effects can be managed appropriately is also included in Section 8.4.8.2 of the AEE. I agree with that analysis.

74 The submissions of by Fish & Game, Forest & Bird and others highlighted the Ohinemuri River is attributed Trout Habitat Class and Indigenous Fishery Class by the Regional Plan, and in turn that the AEE analysis should have specifically addressed Policy 7 of section 3.1.2 of the Regional Plan which states:

Policy 7: Fishery Class

The purpose of the fishery class is to maintain or enhance existing water quality and aquatic habitat in water bodies that currently support a diverse range of fish species and fish habitats with significant conservation values², or which support significant recreational, traditional or commercial fisheries so that for these fisheries, trout or indigenous fish can complete their life cycles and/or maintain self-sustaining populations and managed trout and indigenous fisheries can be sustained.

This will include consideration of the need to:

- a. Minimise fish entrapment at water intake structures.

- b. Minimise adverse effects on fish spawning patterns in areas where spawning occurs
- c. minimise adverse effects of sediment loads and other contaminants on fish or their habitat.
- d. Maintain water temperatures and dissolved oxygen levels that are suitable for aquatic habitat and spawning.
- e. Ensure that fish living in these waters are not rendered unsuitable for human consumption by the presence of contaminants.
- f. Minimise structural or temperature barriers and changes in flow regimes that would otherwise prevent fish from completing their life cycle and/or maintaining self-sustaining populations, including migration and spawning.
- g. Minimise the adverse effects of physical disturbance to aquatic habitat.

75 I agree with the submitters observation that the AEE does not properly address Policy 7. As outlined by Dr Boothroyd, the proposed abstraction regime will maintain existing water quality and aquatic habitat in the Ohinemuri River so that trout or indigenous fish can complete their life cycles, and/or maintain self-sustaining populations, and managed trout and indigenous fisheries will be sustained. This accords with Policy 7 in my assessment. I also note some additional conditions are proposed in response to concerns raised in submissions by Fish & Game, Forest & Bird and others to ensure this outcome is achieved with respect to water temperature. Mr Turner deals with those matters.

76 In conclusion, and for the foregoing reasons I have formed the opinion that there is no regional plan impediment to granting the proposed take of water from the Ohinemuri River to fill the pit lake.

Other Key Matters

77 With respect to the other 'regional' activities for which consent is sought, I draw the panel's attention to the analysis in sections 8.4.8.3 – 8.4.8.9 of the AEE. I agree with its key conclusions and note that:

- (a) The effects of the dewatering abstraction described by Mr Simpson, including the lack of effects on shallow groundwater levels or other groundwater users, means there is no planning related reason this consent cannot be granted;
- (b) The various management measures described by Ms Harwood and Mr Turner mean the activity can be undertaken in such a manner that it will meet the management outcomes sought by the objectives and policies of the

Regional Plan for discharges to air, including those which specifically address deposited particulate and dust.

- (c) With the proposed management methods described by Mr Jenkins in place, the placement and storage of waste rock at the Martha Pit and Processing Plant, and the use of waste rock and concrete aggregate fill to back fill the stopes of the Martha Underground, will achieve the outcomes sought by Objective 5.2.2 and its associated policies for discharges to land.
- (d) The rehabilitation of the pit lake and discharge of overflow water to the Mangatoetoe Stream will be managed in accordance with appropriate water quality standards, will not have a discernible impact on flood levels in the stream, and will not have an adverse effect that is inconsistent with the policies in Section 3.2.3 of the Regional Plan.

78 Ms Roa has observed that the role of tangata whenua as kaitiaki which is recognised in Section 2.3.2 of the Regional Plan would be better served if iwi were represented as part of the Peer Review Group required by the proposed conditions. I agree with that observation and note the new conditions discussed by Mr Turner which would provide a mechanism for this to occur.

Conclusion

79 In conclusion it is my opinion that the various 'regional' activities associated with Project Martha will be managed such that the project is generally consistent with the relevant objectives and policies of the Regional Plan, and there is no impediment in the Regional Plan provisions to granting the consents sought.

Section 105, Section 106 and Section 107 of the RMA

80 I draw the panels attention to the analysis of these matters in Section 8.5, 8.6 and 8.7 of the AEE and Ms Roa's assessment of these matters. I agree with the respective conclusions that there is no impediment under section 105, 106 or 107 of the RMA to granting the consents sought.

Part 2 of the RMA

81 The various elements of Part 2 will be well known to the Panel, and I draw your attention to the analysis in Section 8.4.11 of the AEE of how the various matters have been addressed in these applications.

82 Many of the relevant Part 2 issues are directly addressed by the various planning instruments that I have referred to earlier, and I do not wish to repeat that analysis here. That analysis is directly applicable to your ultimate evaluation of Part 2 matters, insofar as you need to do that, in light of the most recent determination on *Davidson*.

83 By way of summary, the key matters which stand out to me are:

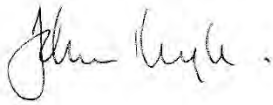
- (a) The extent to which the Waihi mines contribute to and underpin the social and economic wellbeing of Waihi, and the way in which Project Martha will contribute to the industry continuing to fulfil this role in the future;
- (b) That particular consideration has been given to the management of significant risks from natural hazards in the technical assessments commissioned by OGNZL, and in the context of s6(h) it is considered that there are appropriate factors of safety in the design of the remediation of the north wall of the Martha Pit and the management of the Martha Underground Mine;
- (c) The work OGNZL has undertaken to address the various tangata whenua aspects of Part 2, including s6(e), 7(a), 7(aa) and 8. There are now various mechanisms proposed which would recognise and provide for the relationship of Ngāti Hako with their ancestral lands, water, sites, wāhi tapu, and other taonga, including Pukewa. There is still some work to do in this space, but the proposed consent conditions provide a mechanism for this to occur over time.
- (d) The project would enable the efficient use and development of the mineral resource contained in Waihi in the context of s7(b).
- (e) With respect to s7(c) amenity values will be maintained in accordance with the expectations set out within the District Plan.
- (f) The proposed take and use of water from the Ohinemuri River to fill the pit lake would safeguard the life supporting capacity of the river (s5(2)(b)), retain the characteristics and qualities that contribute to the natural character of that River (s6(a)), protect the habitat of native fish (s6(c)), and will protect the habitat of trout and salmon (s7(h)).

Conclusion

84 In my view there is no impediment in the planning provisions to granting the consents sought, noting in particular that:

- (a) The most relevant planning direction when considering these applications is contained in the District and Regional Plans.
- (b) The Waihi mines contribute to and underpin the social and economic wellbeing of Waihi, and this is recognised in the District Plan, which seeks to provide for mining activities in Waihi, particularly in the Martha Mineral Zone where most of the Project Martha activities would be located.

- (c) The proposal would manage effects on amenity values in accordance with the expectations of the District Plan.
- (d) There is policy in the District Plan which seeks the proposal not reduce the historical, cultural and spiritual values Ngāti Hako associated with Pukewa. I have noted the initiatives proposed by OGNZL to address the significance of Pukewa and the partnership arrangements with Ngāti Hako earlier in this evidence. These measures are directed at addressing the Chapter 6.1 heritage matters,
- (e) The various 'regional' activities associated with Project Martha will be managed such that the project is not contrary to the relevant objectives and policies of the Regional Plan, and there is no impediment in the Regional Plan provisions to granting the consents sought.



John Kyle

29 October 2018

Appendix A

Summary of Recent Experience of John Kyle

- Wellington International Airport Limited – Lead consultant – notice of requirement for airport site and former Miramar School site – Wellington City.
- Queenstown Airport Corporation – Lead consultant - Proposed plan change to manage the effects of aircraft noise – Queenstown Lakes District.
- Alliance Group Limited – Lead consultant – renewal of all discharge and land use consents Matura Meat Processing Works, Matura - Southland Region.
- Simcox Construction – Lead consultant – Quarry operation consent renewal, Marlborough District.
- Pernod Ricard NZ Limited – Planning witness – Marlborough Environment Plan submissions – Marlborough District.
- Alliance Group Limited – Lead consultant – renewal of all discharge and land use consents Lorneville Meat Processing Works, Lorneville - Southland Region.
- Alliance Group Limited – Air Discharge Consents – Pukeuri Meat Processing Works, Pukeuri - Otago Region.
- Queenstown Lakes District Council – preparation of a Plan Change to expand Queenstown town centre, including to accommodate a convention centre.
- Wellington International Airport Limited – Lead consultant - strategic and resource management advice with respect to the proposed runway extension – Wellington City.
- Ryman Healthcare – resource consent applications for new retirement villages – New Zealand wide role.
- Environmental Protection Authority – advisor to the Minister appointed Board of Inquiry regarding a Plan Change by Tainui Group Holdings and Chedworth Properties for the Ruakura Inland Port Development, Hamilton.
- Environmental Protection Authority – advisor to the Minister appointed Board of Inquiry regarding a Notice of Requirement and resource consent applications by the New Zealand Transport Agency with respect to the Expressway between Peka Peka and North Otaki on the Kapiti Coast.
- Environmental Protection Authority – advisor to the Minister appointed Board of Inquiry regarding a Notice of Requirement and resource consent applications by the New Zealand Transport Agency with respect to the Expressway between MacKays Crossing and Peka Peka on the Kapiti Coast.
- Environmental Protection Authority – advisor to the Minister appointed Board of Inquiry regarding resource consent applications and designations by the New Zealand Transport Agency with respect to the proposed Transmission Gully Project – Wellington Region.
- Queenstown Lakes District Council – member of the review team commissioned to undertake a review of Council consenting and resource management policy operations.

- Environmental Protection Authority – advisor to the Minister appointed Board of Inquiry regarding a plan change application to the Wellington Regional Water plan to assist with the proposed Transmission Gully Project – Wellington Region.
- Queenstown Airport Corporation – lead consultant - Notice of Requirement for land adjacent to QAC in order provide for the future expansion of airport operations, Queenstown Lakes District.
- Genesis Power Limited – due diligence Slopedown Wind Farm, Southland District and Southland Region.
- TrustPower Limited – Planning witness - proposed Kaiwera Downs Wind Farm, Gore District and Southland Region.
- TrustPower Limited – Planning witness - proposed alteration to the Rakaia Water Conservation Order – Lake Coleridge Hydro Electric Power Scheme – Canterbury Region.
- Meridian Energy Limited – Planning witness -Proposed Mokihinui Hydro Electric Power Scheme, damming, water and land use related consents, Buller District and West Coast Region.
- TrustPower Limited – Planning witness - Wairau Hydro Electric Power Scheme, water and land use related consents, Marlborough District.
- Southern Health – Plan Change Invercargill Hospital Development - Invercargill City.
- Sanford Limited, various marine farm proposals Marlborough Sounds, Marlborough District.
- Port Marlborough Limited – Lead consultant - Plan Change proposal to alter the marina zone within the Marlborough Sounds Resource Management Plan to provide for consolidation of marina development in Waikawa Bay, Marlborough District.
- Port Marlborough Limited – Resource consent application for occupation of coastal space – Shakespeare Bay port facilities – Marlborough District.
- Meridian Energy Limited – Planning witness - proposed Wind Farm, Lammermoor Range, Central Otago District and Otago Region.
- Queenstown Airport Corporation – Lead consultant - Runway End Safety Area, designation and construction related consents, Queenstown Lakes District and Otago Region.
- Riverstone Holdings Limited – Lead consultant - Proposed Monorail Link – Lake Wakatipu to Fiordland, Department of Conservation Concession Application – Southland Conservancy.
- Otago Regional Council – Planning witness - Consents required for controlling the Shotover River to mitigate flood risk – Queenstown Lakes District and Otago Region.
- Queenstown Airport Corporation – Lead consultant - aircraft noise controls and flight fan controls – Plan Change and Designations, Queenstown Lakes District.
- Todd Property Pegasus Town Limited – Pegasus Town, North Canterbury – Waimakariri District, Canterbury Region.

- Willowridge Developments – Lead consultant - 3 Parks Plan Change to create new commercial, large format retail, service, tourist and residential land use zones, Wanaka, Queenstown Lakes District.
- Gibbston Valley Station – Lead consultant - Land use and regional consents, Viticulture and Golf Resort, Gibbston – Queenstown Lakes District and Otago Region.
- Marlborough District Council – Business Park Plan Change, Blenheim - Marlborough District.
- Ravensdown Fertiliser Limited – Lead consultant - Coastal and Air Discharge Consent Renewal, Dunedin – Otago Region.
- Irmo Properties Limited – Resource consent application for retail complex, Green Island – Dunedin City.
- Infinity Investment Group and JIT Investments – Lead consultant - Hillend Station Farm Park development, Wanaka – Queenstown Lakes District.
- Infinity Investment Group – Lead consultant - Peninsula Bay Plan Change, Wanaka – Queenstown Lakes District.
- Genesis Power Limited – Planning witness - Tongariro Power Development, Water Related Consents, Central North Island – Environment Waikato and Horizons MW.
- Genesis Power Limited – Planning witness - Waikato District Plan review and provision for the Huntly Power Station, Waikato District.
- Department of Corrections – Planning witness - New Corrections Facility, Milton - Clutha District and Otago Region.
- Department of Child Youth and Family – Lead consultant - Youth Justice Facility, Rolleston – Selwyn District and Canterbury region.
- Kuku Mara Partnerships – Planning witness - Large Scale Marine Farms, Marlborough Sounds – Marlborough District.
- Marine Farming Industry – Plan Appeals, Tasman Aquaculture Inquiry, Tasman and Golden Bays – Tasman District.