

In response quote reference:
In response enquire to:

MAGIQ No: 2520151
Mark Buttimore



Resource Management Act 1991

Report to correct minor mistakes or defects in a resource consent (s.133A)

A report determining whether or not minor mistakes or defects in a resource consent should be corrected – within 20 working days of the consent being granted

Consent Number:	LUSE-202.2018.00000857.001
Project Name:	Project Martha
Requestor:	Oceana Gold (New Zealand) Ltd
Request to:	Correct minor mistakes or defects in conditions of the Project Martha consents under s133A of the Resource Management Act 1991

1.0 INTRODUCTION

On 25 January 2019, Oceana Gold Ltd (variously, OGNZL/consent holder/holder) sent an email to the Hauraki District Council (HDC) and Waikato Regional Council (WRC) identifying a number of minor mistakes or defects in the resource consents issued to the holder on 14 December 2018 relating to Project Martha. The land use consent issued by the HDC is LUC 202.2018.00000857.001. The HDC land use consent and the regional consents include a set of common conditions which are set out in Schedule One to those consents.

The consent holder invites the Councils to remedy a number of minor mistakes or defects via an action under s133A of the Resource Management Act 1991 (the RMA).

Section 133A of the RMA provides as follows:

133A Minor corrections of resource consents

A consent authority that grants a resource consent may, within 20 working days of the grant, issue an amended consent that corrects minor mistakes or defects in the consent.

As the decision was provided to OGNZL on 14 December 2018 (forwarded by M Buttimore electronically after it having been posted that day by the Hearings Co-Ordinator) and disregarding the period from 20 December until 10 January (inclusive) as not being “working days” for the purposes of the RMA, any amended consents correcting the minor mistakes or defects identified by OGNZL must be issued by the Councils by 4 February 2019.

2.0 Minor Mistakes or Defects Proposed to be Corrected

In its request for a s133 correction, OGNZL states that the main matter needing attention is to delete Appendix 4 from the land use consent and include it as Appendix 1 of the Schedule One common conditions, more specifically.

- Delete Appendix 4 from the Land Use Consent; and
- Instead, add it as Appendix 1 to Schedule One, and change the cross-references in conditions 31 and 41 of Schedule One to refer to Appendix 1 rather than Appendix 4.

OGNZL also set out the additional minor matters that could be corrected in the land use consent and in the regional consents for Project Martha.

The changes to conditions that relate to the HDC land use consent are as follow:

HDC Land Use Consent

- Condition 14: Last paragraph 'a'. Change to an 'f'.
- Condition 34A. Paragraph 'c'. Insert semi-colon at end of the paragraph.
- Condition 56: 4th paragraph, 3rd sentence "30 working days"
- Condition 72 g & h: Would read better if they started with "The conducting of" and "Reviewing" respectively.
- Condition 74 a: The reference in parentheses should be "(m³)" rather than "(m3)".
- Condition 74 e: Remove one of the "as provided".
- Condition 106: Advice Note, change "Stage Highway" to "State Highway".
- Appendix 1: 2nd page, 2nd heading. "Exsisting" should be 'Existing'.

Changes are also proposed to the Schedule One common conditions. Any such changes must be agreed by HDC and WRC, as Schedule One is common to the District land use consent and the regional consents issued for Project Martha. The changes proposed for Schedule One are as follows:

Schedule One – Common Conditions

- Condition 15: "submit to the Councils for its certification" – change "its" to "their"
- Condition 19: "In the event that a tilt greater than 1 in 1,000"
- Condition 22f: "...in a form acceptable to the Councils."
- Condition 24: 2nd sentence. "The plan shall be submitted to the Councils..."
3rd sentence. "If certification is not provided within 30 working days of Council's receipt..." should be "If certification is not provided within 30 working days of the Councils' receipt..."
- Condition 26b: Change "Their" to "Its".
- Condition 37: The words "as that phrase is elsewhere defined" aren't necessary. "Completion of closure of the site" is defined in condition 38.

2.0 Consideration of Proposed Changes

3.1 Timing

Council has the authority to make changes to a resource consent to correct minor mistakes or defects within 20 working days of the decision to grant the consent(s). As noted above, this decision must be made on or by 4 February 2019.

3.2 Appendix 4

The land use consent includes 5 Appendices including Appendix 4 which relates to the land that is to be settled on the Martha Trust once rehabilitation and closure of the Martha Pit, Tailings Storage Facilities and Processing Area have been completed. Schedule 4 includes a table identifying the property titles that will need to be subdivided so that the agreed land as identified on plans also included in Appendix 4 can be transferred to the Martha Trust.

The land use consent conditions (in contrast to the 'Common Conditions' in Schedule One) do not include any references to Appendix 4. The land use conditions do not provide for the rehabilitation bond and the Martha Trust – which are the subject matters of Appendix 4. These are matters that are included in Schedule One – Common Conditions. The inclusion of Appendix 4 in the land use consent is an error.

Actions

Delete Appendix 4 for the land use consent and include this as an appendix (Appendix 1) to Schedule One (the Common Conditions) with the following consequential amendments also being required:

Schedule One

Change conditions 31 and 41 a. by replacing the references to "Appendix 4" (two references in each condition) with "Appendix 1"

Land use consent

Change condition 71 d. by deleting the reference to "Appendix 5" and replace this with "Appendix 4".

Appendix 5 (Extent of Milking Cow Zone) to be re- named as Appendix 4.

These changes are to correct a minor mistake whereby the Appendix relating to identification of the Trust land was incorrectly included as an Appendix to the land use consent, when it should have been included as an Appendix to Schedule One (Common Conditions).

3.3 Other changes to the Land Use Consent

The other corrections proposed by OGNZL to the conditions of the HDC land use consent are commented upon as follows:

- Condition 14. Last paragraph 'a'. Change to an 'f'.
Comment: This corrects an error in condition 14.
- Condition 34A. Paragraph c. Insert semi-colon at end of para.
Comment: This change corrects a punctuation error.
- Condition 56, 4th paragraph, 3rd sentence "30 working days"
Comment: This change corrects a minor error.
- Condition 72 g. and h. would read better if they started with "The conducting of" and "Reviewing" respectively.
Comment: This condition relates to the Void Management Plan and sets out the matters that are to be included in this Plan. The changes proposed are essentially grammatical and are supported.
- Condition 74 a. The reference in parentheses should be "(m³)" rather than "(m3)".
Comment: Change agreed.

- Condition 74 e. Remove one of the “as provided”.
Comment: Duplication of wording and correction required.
- Condition 106 Advice Note, change “Stage Highway” to “State Highway”.
Comment: This corrects a minor typographical error and is supported.
- Appendix 1 – 2nd page, 2nd heading. “Exsisting” should be ‘Existing’.
Comment: Corrects a minor typographical error and is supported.

3.4 Other Changes: Schedule One Common Conditions

OGNZL also proposes a number of changes to the Common Conditions set out in Schedule One. This Schedule applies to the HDC land use consent and also to the regional consents that were issued in relation to Project Martha. Accordingly, both councils will need to accept the changes that are proposed. The changes proposed are commented upon below.

- Condition 15, “submit to the Councils for its certification” – change “its” to “their”.
Comment: this condition relates to the Dewatering and Settlement Monitoring Plan which is to be submitted to both HDC and WRC for certification. As such the condition should refer to “their” certification as both Councils are required to action. Change supported.
- Condition 19, “In the event that a tilt greater than 1 in 1,000”
Comment: The proposed additional wording makes the condition read correctly and is supported.
- Condition 22 f, “...in a form acceptable to the Councils.”
Comment: The proposed additional wording makes the condition read correctly and is supported.
- Condition 24, second sentence. “The plan shall be submitted to the Councils...” and third sentence. “If certification is not provided within 30 working days of Council’s receipt...” should be “If certification is not provided within 30 working days of the Councils’ receipt...”
Comment: This condition relates to the Rehabilitation and Closure Plan which is to be submitted to both the WRC and HDC for certification. The changes proposed reflect that both the Councils are to undertake this certification function. Accordingly, the apostrophe should follow the ‘s’ in Councils.
The word “the” in the third sentence is shaded because although it is clear that OGNZL has requested that it be added, it was not underlined in the amended sentence provided.
- Condition 26b, change “Their” to “Its”.
Comment: In this condition the Councils are to consider the usefulness and practicality of the Rehabilitation and Closure Plan for the Waihi community. Accordingly condition 326 b. should refer to “its” (i.e. the Rehabilitation and Closure Plan’s) usefulness etc. The change is supported.
- Condition 37, the words “as that phrase is elsewhere defined” aren’t necessary. “Completion of closure of the site” is defined in condition 38.
Comment: It is agreed that the words noted are not necessary as condition 38 defines what “completion of closure of the site” means.

4.0 Conclusion and Recommendation

The changes proposed and sought by OGNZL are to correct minor mistakes and defects in the conditions of land use consent LUC 202.2018.00000857.001 (Project Martha) including Schedule One to that land use consent.

These changes clarify the meaning of the conditions concerned and have no effect on the outcomes that the conditions are intended to achieve.

Accordingly, I consider that the changes proposed by OGNZL and discussed in this report are within the scope of the minor mistakes and defects that the Council may correct under s133A.

Track change versions of LUC 202.2018.00000857.001 and Schedule One showing the changes that are recommended are attached to this report (documents 2520173 and 2520174 respectively).

Reported and recommended by:

Dave Burton, Director, Dave Burton Planning Ltd

DECISION: **That the minor mistakes and defects identified in land use consent 202.2018.00000857.001 (Project Martha), as noted in this report, be corrected via s133A of the Resource Management Act 1991.**

Delegated Officer: _____

Peter Thom / Group Manager – Planning and Environmental Services

Date: _____