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## 1 INTRODUCTION

1. This is the decision of a hearing commissioner, Dr Brent Cowie, appointed jointly by the Otago Regional Council (the ORC), the Dunedin City Council (DCC) and the Waitaki District Council (WDC) to hear and decide a suite of applications made by OceanaGold (the applicant) to allow the expansion of the existing mining network mine on Macraes Flat, Otago. The applications were made under the Resource Management Act 1991 (the RMA; the Act). The applicant referred to these applications as being for the Coronation North Extension (CNE), and I will use that same terminology here. It is unusual for a group of applications to be made to three councils, but the reason for this is the area embraced by the land use consent application straddles the boundary between the Dunedin and Waitaki councils (the Territorial Authorities).
2. I had previously in 2016 been one of three commissioners who had been appointed by the same Councils to hear and decide a more complex suite of applications for the development of the Coronation North mine pit, and associated activities, including new waste rock stacks and discharges to land and water. Those decisions were appealed by two parties but settled in Environment Court mediation and were granted on 24 April 2017. The applicant referred to these as the 2017 consents; again I use the same terminology here.
3. I had inspected the Macraes Flat area by 4WD vehicle and foot on Monday 2 September 2019, which was prior to the hearing commencing. I was accompanied by Scott Mossman, one of the environmental staff at Oceana Gold, and I thank him and the applicant for the opportunity to look around the site (and arranging to do so on a lovely day). We travelled via the haul road and down into the existing Coronation North Pit, the area where that pit is to be extended, the existing Waste Rock Stacks (WRS) for the Coronation pits, and the area in Trimbell's Gully where as part of the present proposal the applicant no longer seeks to construct a further WRS.
4. The hearing took place in the Southern Cross Hotel, Dunedin on the morning of 3 September 2019, and was adjourned at about 12.15pm that day. The applicant's right of reply was to be provided by Wednesday 18 September, following a process that involved other parties to the hearing and the two reporting officers. That reply was duly received, and after seeking some clarification of the figures and maps provided by the applicant, I closed the hearing on Wednesday 25 September.
5. By the time the hearing commenced there was little if any opposition to the consents sought being granted. This was largely because the applicant had worked alongside the two reporting officers and submitters in a constructive way to address the submitters' concerns. For this reason the hearing focused on conditions of consent, and I discuss these in Section 5 of this decision.

## 2 THE PROPOSAL

## 2.1 Background to Mining at Macraes Flat

6. The area around Macraes Flat has been mined since the mid 1800's, but it has only been since 1990 that large scale open cast mining has been carried out continuously on the site by the applicant and its predecessors. The veins of gold, which are of alluvial origin, follow what is known as the Hyde-Macraes Shear Zone.
7. This past mining has left:
  - eight large open pits, some of which have been partly backfilled while others like the Coronation North Pit are still in operation;
  - several tailings dams and waste rock stacks, some of which have been rehabilitated and are now used for grazing;
  - a network of "haul roads" used by the huge trucks which carry rock containing ore to a processing plant;
  - a processing plant to extract gold from the rock ore, with a capacity of nearly 6 million tonnes of ore per annum; and
  - a mosaic of protected areas of various kinds in and around Macraes Flat, which have been provided as mitigation for the effects of previous mining activities.
8. Suites of new consents were granted to expand gold mining activities at Macraes in each of 2011, 2013 and 2016. The 2011 consents were for what is known as the Macraes Phase III consents. I need not describe all that here; suffice to say it included the expansion of existing pits and underground mining in Frasers Pit, all of which was intended to allow mining to continue post 2020.
9. In 2013 the applicant sought and was granted consents for what is known as the Coronation Pit, with an associated waste rock stack covering 105ha to the north. Similarly in 2017 the applicant was granted consents to extend the Coronation Pit by 23ha, to develop the Coronation North Pit over a 63ha area, to extend the haul road from the Coronation North pit to the processing plant (it is now about 7km long), and to construct new waste rock stacks, with preference given to one of three areas to the east of the Coronation pits.
10. OceanGold currently provides about 575 jobs for employees and contractors at Macraes, with a further 25 staff employed in the Dunedin Office. The future of those employees and contractors relies on future open cast mining at Macraes.

## 2.2 The Current Proposal

11. The present applications were lodged on with the two Territorial Authorities and the ORC on 1 February 2019, and were supported by a comprehensive Assessment of Environmental Effects (AAE) and expert assessments. In summary the applicant proposed to:
- a) Make a “pit cutback” to the west of the current Coronation North Pit that would increase the size of the pit by 25.8 ha and which would enable about a further 2.8 million tonnes of ore to be extracted, adding about four months to mining in this pit.
  - b) Extend the pit stability layback to the south and east of the Coronation North Pit that would increase the size of the pit by a further 7.6ha, which is necessary for safety.<sup>1</sup>
  - c) Partially back fill the western end Coronation North Pit, where mining has been completed, with about 19.3 million tonnes of waste rock, which will help stabilise the pit wall.
  - d) Waste rock also being deposited in Area “A” of the consented Coronation North WRS, and in a new Trimbells WRS covering 17.5ha. This brings the total new area of disturbed land to 50.9ha.
  - e) The surrender of existing consent rights for part of the Coronation North WRS covering 52.9ha within Trimbells Gully, and within a Recommended Area for Protection (RAP).<sup>2</sup> The applicant referred to this as a “give up” area. It means that overall about 2ha less would be disturbed, albeit with more land taken into the depths of a mine pit. It also means that the WRS’s will be slightly less prominent in the local landscape, as their final heights are a little lower than the previously consented footprint.
  - f) A final re-alignment made to Mathesons Road around the Coronation area to cross over part of the Trimbells WRS to a standard suitable for 4WD vehicles.

## 2.3 Consents Sought and Notification

12. To authorise these proposed activities there was one new land use consent application made to the District Councils, and two new land use consents, and one replacement discharge permit application made to the ORC.<sup>3</sup> These were given the processing numbers:

- WDC Reference 201.2019.1241
- DCC Reference LUC-2019-42

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<sup>1</sup> This was originally proposed to be 14.3ha, but was reduced by 6.5ha to avoid a basalt seepage wetland.

<sup>2</sup> In 1997 a survey carried out as part of the Protected Natural Areas Programme in the Macraes Ecological District recommended that 564ha in Trimbells Gully be listed as a Recommended Area for Protection (RAP). The most important natural feature in the RAP was the landform-vegetation combination of moist tussock shrub land on a basalt boulder slope.

<sup>3</sup> These were originally sought as variations to existing permits, but quite correctly the ORC insisted they be for new applications.

- ORC: Land Use Consents RM19085.01 and RM19085.02, and Discharge Permit RM19085.03 (which replaces discharge permit 16.138.09) <sup>4</sup>

13. The Councils decided to “limit notify” the applications under the provisions of s95B of the Resource Management Act 1991. The ORC notified the Department of Conservation (DoC) and Aukaha representing “Nga Rūnanga” (i.e. Te Rūnanga o Moeraki, Kati Huirapa Runakaki Puketeraki and Te Rūnanga o Otakou) on 15 April 2019 with submissions closing on 16 May. The Territorial Authorities limit notified the same two parties, along with six others, five local residents plus Macraes Community Incorporated (MCI), on 24 April 2019, with submissions closing on 5 June. The submissions from DoC and MCI to the Territorial Authorities were late, but were given a waiver.
14. DoC and Nga Rūnanga submitted on both the District and ORC consents. Other submitters to the District consents were: MA and VC O’Neill; Mr Neil Roy, CA and EM Howard, M and K O’Connell and MCI. Details of the matters raised by submitters are provided in the two primary Officer’s reports, and do not need to be repeated here.
15. A pre-hearing meeting took place on 28 June 2019. This, together with follow-up discussions between the applicant and submitters, resulted in both Aukaha and DoC withdrawing their right to be heard as their submission points had been addressed in draft conditions of consent.

## 3 The Hearing

### 3.1 Evidence for the Applicant

16. The applicant provided legal submissions and three written briefs of expert evidence: from Gavin Lee, the Community and Environment Manager at the mine; from Dr Mike Thorsen, an ecologist; and from Dr Jeremy Trevathan, a mechanical engineer who specialises in acoustics. The expert evidence was taken as read, and as I had no questions for the two latter witnesses, they did not appear at the hearing.
17. Ms Jackie St John presented legal submissions. She traversed the proposal (which I have already described), the activity status of the various applications, the decision making criteria I have to follow and her assessment of most of those matters, with a focus on actual and potential effects, the submissions and the evidence for the company.

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<sup>4</sup> It is also noted that as part of this decision, and updated maps and case law, consequential changes are made to a number of the other ORC permits granted in 2016. These are: RM16.138.01, RM16.138.04-06, RM16.13810-15, RM16.138.17 and RM16.138.19-20. All are included as part of the appended consents decisions, but otherwise do not need to be detailed here.

18. Mr Lee's evidence traversed a number of matters including:

- a) The evidence of both Dr Thorsen and Mr Ewans (an expert in terrestrial ecology from the DCC whose evidence was appended to Mr Purves' report) was that there was a net gain in biodiversity from the CNE proposal.<sup>5</sup>
- b) The fairly extensive mitigation programme associated with the original Coronation North pit development proposal. However no formal protection was being offered for the "give up" area provided for as part of the CNE project (which I take to mean that in the future, consent could be sought again to construct a WRS in this "give up" location).
- c) As a result of submissions OceanaGold had "improved" the design of the CNE Project by reducing the proposed pit layback extension by 6.5ha to protect a wetland, and the evidence was the hydrological regime of the wetland would not be changed.

19. Mr Lee's evidence also detailed the additional mitigation offered following discussions with DoC and Aukaha. This included: plant salvage of additional three species (along with the 12 provided for in the 2017 consents): a cryptic skink survey in the "give up" area and its surrounds; an invertebrate survey of the Trimbells Gully RAP, and the removal of about 3.6ha of pine trees at another location to improve habitat for lizards and skinks. All these are covered in the conditions of consent.

20. Mr Lee said management of noise had been an important issue since the initiation of the Coronation North Project. More specifically, I note Dr Trevathan's evidence was that continuous noise monitoring for six weeks, along with attended monitoring, had shown that under still conditions the night time noise limit in the 2017 consents of 40 dB LAeq could not be complied with at the house owned by Craig and Erin Howard at 406 Horse Flat Road. The noise is generated by the very large trucks on the haul road carrying ore from the Coronation pits to the processing plant. For this reason Mr Lee said that OceanaGold had initiated a "no haul at night" policy in October 2018, which remains extant and is made formal in Condition 8.2 of the District consents (albeit with provisions to make the condition void and change the night time noise limit with the written agreement of the Howards).

21. Mr Lee also outlined the consultation undertaken with other submitters, and commented briefly on the Officers' Reports.

22. I do not need to comment further here on the evidence provided by Dr Trevathan or Dr Thorsen, as it is discussed later in this decision.

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<sup>5</sup> See for instance the evidence of Dr Thorsen at paragraphs 18 and 19, and Table 1.

## 3.2 The Submitters

23. Two submitters appeared at the hearing. The first was Mr Phil Page, a solicitor representing Craig and Erin Howard. He advised me that he and the applicant were close to coming to agreement about a way forward that would enable night time use of the haul road to recommence.
24. The second submitter who appeared was Mr Neil Roy, a local resident with a long time interest in the applicant's activities, and particularly their effects on local access. His submission had been neutral, but he had two main concerns. The first was that Matheson Road, which has been extended over part of the Trimbells WRS, was to be to a 4WD standard only, and the second was that he said some conditions of previous consents had not been complied with, which was "disgusting". He asked that the present consents not be granted until previous consents are fully complied with,<sup>6</sup> and that the current consent conditions be time bound where appropriate.

## 3.3 The Reporting Officers

25. The original s42A officer reports, produced respectively by Mr Andrew Purves for the combined WDC and DCC consents, and Mr Charles Horrell, covering the consents sought from the ORC. Their reports, which I found immensely helpful, were taken as read. After going through a rigorous evaluation process, both officers recommended the consents be granted, subject to appropriate conditions.
26. Both Mr Purves and Mr Horrell were present, the latter albeit remotely (and somewhat intermittently) from Melbourne, at the hearing. Also present were two officers from the DCC who had written supporting material for Mr Purves: Mr Luke McKinlay, who is a landscape architect, and Mr Richard Ewans, a biodiversity adviser. In addition to their original reports, Mr Purves had provided an updated set of conditions dated 29 August, and Mr Horrell produced a supplementary report on the same date with some additional discussion, but with a focus on recommended conditions of consent.
27. Much of the discussion involving the officers was on proposed conditions of consent, with a particular focus on the contents of a Rehabilitation Management Plan covered by conditions numbered about 4.11 – 4.18 in its various iterations. I discuss these matters in Section 5 of this decision.

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<sup>6</sup> This is not a request that I can comply with as I am bound to make this decision within the 15 day statutory timeline from the closing of the hearing prescribed in the RMA.

## 4 STATUTORY ASSESSMENT

### 4.1 Activity Status

28. With one exception all the activities for which consent is sought are restricted discretionary or fully discretionary activities. The exception is when the haul trucks, which are noisy, cross a “boundary” between the Macraes Mining Zone and the Rural Scenic Zone as defined in the operative Waitaki District Plan. Strictly the noise the trucks make in the Rural Scenic Zone means they are in breach of the permitted activity standard in Rule 6.5.1, and so this becomes a non-complying activity. Precedents exist that the applications should therefore be “bundled” and all treated as non-complying activities.
29. The previous panel hearing the applications associated with the development of the Coronation North Pit decided that this was a “minor technical breach” of the plan and led to a potentially perverse outcome if all the applications were bundled and treated as non-complying. Mr Purves recommended I take the same approach as that panel. I agree with him, and so have treated all the applications before me as discretionary activities.

### 4.2 Decision Making Criteria

30. Decisions on resource consent applications for discretionary activities are made under the criteria listed in Section 104(1) of the RMA. Subject to Part 2 of the Act, I must have regard to the following matters:
- a) any actual and potential effects on the environment of allowing the activity; and
  - ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and
  - b) any relevant provisions of
    - i. a national environmental standard;
    - ii. other regulations;
    - iii. a national policy statement;
    - iv. a New Zealand coastal policy statement;
    - v. a regional policy statement or proposed regional policy statement;
    - vi. a plan or proposed plan; and
  - c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.



31. In relation to these matters and the present applications:

- I discuss Part 2 RMA matters in Section 4.3 below.
- Actual and potential effects of the CNE proposal are discussed, together with consideration of s104(1)(ab), in Section 4.4 below.
- The only potentially relevant national environmental standard is that for assessing and managing contaminants in soil for protecting human health. No activities have occurred on the site are included in the Hazardous Activities or Industries List, so it is very unlikely that there are significant concentrations of any contaminants in the land to be excavated under the proposal.
- There are no relevant regulations.
- The relevant national policy statement is the National Policy Statement for Freshwater Management 2017. As any effects on freshwater quality, quantity and ecology are assessed to be less than the consented baseline (see Section 4.4), I do not need to discuss its provisions in detail here.
- A new proposed Regional Policy Statement (RPS) was notified in May 2015, with decisions released and appeals closing on 9 December 2016. A partially operative RPS was released early in 2019; I discuss this in Section 4.5 below<sup>7</sup>.
- The potentially relevant regional plans are the operative Regional Plans: Water for Otago; Waste for Otago and Air for Otago, which I also discuss in Section 4.5 below.
- The relevant district plans are the operative and proposed Dunedin City plans, and the operative Waitaki District Plan, which I discuss in Sections 4.6 and 4.7 below.

32. The wording of Section 104(1)(c) always invites debate as it is open ended. I consider that the only other relevant matter in this instance is the Kai Tahu ki Otago Natural Resource Management Plan 2005. Through Aukaha, Nga Rūnanga submitted on the consent applications to each of the ORC and the Territorial Authorities, but did not appear at the hearing as their concerns had been addressed in draft conditions of consent. For this reason I do not consider it necessary to address further the present Kai Tahu ki Otago management plan.

33. I do not need to discuss whether the variations sought to discharge permits granted by the ORC meet the criteria in s105 and s107 of the Act. This is because I agree with Mr Horrell that all effects of the variations to those permits are within the consented baseline.

34. As the proposal as a whole is classified as a Discretionary Activity, section 104B of the Act is also relevant. I can either grant or refuse one or more of the consents sought. If granted, I may impose conditions under s108 of the Act. In this case I have granted all the consents sought with conditions that I consider avoid or mitigate the effects of the proposal.

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<sup>7</sup> Noting there is also an operative RPS that dates back to 1998, but as its provisions are general and not very directive, it adds nothing relevant to my evaluation.

## 4.3 Part 2 of the Act

### Section 5 – The Purpose of the Act

35. Section 5 of the RMA states its purpose and defines the sustainable management of natural and physical resources. I consider that the CNE proposal is consistent with s5, and note particularly:
- a) The granting of the present applications confers strong social and economic benefits for the applicant, and about 600 employees and contractors.
  - b) The expert assessments of Dr Thorsen and Mr Ewans agree that with the “give up” area of the consented WRS within the Trimbells Gully RAP, there is net ecological benefit from the proposed CNE Project.
  - c) Conditions of consent focus in part on avoiding or remedying adverse effects.

### Section 6 – Matters of National Importance

36. Section 6 of the Act lists seven matters of national importance that decision makers have to recognise and provide for. In my view only two of these are potentially relevant to the proposed CNE project.
37. The first is Section 6(c), which states that the protection of areas of significant indigenous vegetation and the habitats of significant indigenous fauna is a matter of national importance. While there have been no threatened species recorded on the land that will be taken for the Coronation North Pit extension or the Trimbells Gully WRS, there are in the “give up” area that was part of the previous footprint of the Coronation North WRS. Overall, the CNE proposal has net benefits for the protection of significant areas and habitats. I note also that DoC submitted on both sets of applications, and did not appear at the hearing as they were satisfied with the draft conditions of consent.
38. The second is Section 6(e), which states that the relationship of Maori and their culture and conditions with their ancestral lands, waters, sites waihi tapu and other taonga is a matter of national importance. On behalf of Nga Rūnanga, Aukaha submitted on both sets of land use consent applications. My understanding is that they were satisfied with the draft conditions of consent, and did not appear at the hearing.

## Section 7 – Other Matters

39. Section 7 of the Act lists other matters that I must have particular regard to in this decision. I do not consider any need be given much weight at this time, but make the following observations:

- a) Kaitiakitanga has been provided for insofar that Aukaha has submitted on the consent applications, and provided input to conditions, on behalf of Nga Rūnanga.
- b) The CNE proposal should help enable the efficient use and development of local natural resources, namely rock containing gold of alluvial origin.
- c) The amenity values of the Macraes mining area are quite low due to previous and existing open cast mining. Similarly, while the quality of the environment in the mine pit extensions will effectively be destroyed, the values of the “give up” area outweigh this substantially, so overall there is a net benefit to environmental quality.
- d) Clearly the gold resource at Macraes is a finite physical resource, but without consents for the proposal being granted the employment of large numbers of staff would be jeopardised.
- e) Finally, I note that extraction of relatively small amounts of gold from huge volumes of ore bearing rock uses large volumes of fossil fuels, not least in the massive trucks which carry rock to the processing plant and which each use about 300 litres of diesel an hour. As the effects of climate change become more daunting and challenging, it seems possible that open cast mining of the type carried out by OceanaGold at Macraes will someday no longer be considered “sustainable”, at least in New Zealand. At this time however given the low weighting given to consideration of climate change in the RMA, this is not a matter that I have given any significant weight to.

## Section 8 – The Principles of the Treaty of Waitangi

40. There was no evidence that any part of the proposal is contrary to the Principles of the Treaty.

### 4.4 Actual and Potential Effects

41. In considering actual and potential effects it is necessary to first ask the question – against what baseline is the CNE proposal being assessed. The 2017 consents have only been partly implemented in that the full consented footprint of the Coronation North WRS has not been developed. The applicant proposes to “give up” some 52.5ha in the presently consented footprint. Case law<sup>8</sup> is that unimplemented resource consents may be considered part of the permitted baseline, and I consider this to be the proper approach here. Accordingly elements of the below assessment – notably on terrestrial ecological values, landscape, and on water quality

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<sup>8</sup> For example *Arrigato Investments Limited v Auckland Regional Council* (2002) 1 NZLR 323

– are made on the basis of comparing what is going to be lost versus what is to be gained by not fully developing the Coronation North WRS.

42. The below assessment addresses only those actual and potential effects that I had any significant concern about. There are other potential effects, including:

- a) On amenity – in which regard I adopt the evaluation of Mr Purves at his paragraph 98, where he concludes the CNE proposal is unlikely to cause measurable changes from what has occurred for the existing Coronation North pit.
- b) On heritage and archaeology – I agree with Mr Purves’ conclusion at his paragraph 104 that there are unlikely to be any additional adverse effects from the CNE extension.
- c) On the stability of the WRS – where the ORC commissioned a peer review which concluded that, subject the applicant’s methodology being implemented, the WRS is unlikely to become a hazard.
- d) Effects on cultural values have been mitigated in conditions of consent to both ORC and the Territorial Authority consents agreed between the applicant and Aukaha representing Nga Rūnanga.
- e) While there are some effects on local roading, I note that the realignment of Mathesons Road over part of the Trimbells Gully WRS does provide some closure on this particular matter, and that access is available to parts of the haul road, albeit via a manned gate that needs to be unlocked.

### Effects on Terrestrial Ecological Values

43. As part of the work carried for the applicant’s AAE, Dr Thorsen carried out an ecological assessment in three locations: the additional land proposed to be included in the extended Coronation Pit; the 17.5ha of additional land proposed to be included in the Trimbells Gully WRS; and the “give up” area in the presently consented footprint of the Coronation North WRS. His work was peer reviewed by Mr Ewans of the DCC.

44. Dr Thorsen assessed the effects of the proposed pit extension as having an adverse, direct, permanent and irreversible local effect, but found no biota present with a high conservation status, and overall effects were assessed as moderate. On his recommendation the area of the proposed pit wall layback was reduced by 6.5ha to protect a basalt contact wetland. Land that will be under proposed Trimbells Gully WRS extension had little conservation value. The area with the highest conservation value was the “give up” area of 52.5ha in the consented footprint of the Coronation North WRS. It was comprised almost entirely of narrow-leaved tussock grassland, with three “threatened” and 15 “at risk” plant species recorded (compared with seven “at risk” species in the pit extensions. It is also part of the RAP identified in the Macraes Ecological District Protected Natural Areas Programme. The review by Mr Ewans supported the findings of Dr

Thorsen.<sup>9</sup> Accordingly and as already discussed, the CNE proposal has a net benefit for terrestrial ecological values over the area of the proposal.

45. This same finding satisfies the provisions of s104(1)(ab), in that it provides positive effects on the environment that will help offset or compensate for any adverse effects on the environment that will or may result from allowing the activity.
46. One concern raised, notably by DoC, was that the pit extension could affect local groundwater levels in the basalt contact wetland. This was reviewed independently by two companies with expertise in geohydrology, and both concluded that this was improbable. For this reason Mr Horrell concluded that effects on groundwater levels near the wetland remain within the consented baseline, and I satisfied that this is the case. Although Mr Purves raised the issue of whether water levels in the wetland should be monitored, I do not consider this necessary given that the weight of evidence is that there is only a low likelihood of any adverse effect occurring.

### Effects on Landscape

47. These effects were assessed by WSP Opus for the applicant, and peer reviewed by Mr McKinlay of the DCC. In essence there was agreement that the overall landscape effects of the CNE proposal are more or less neutral, with the backfilling of the Coronation Pit “balancing” the extensions of the Coronation North Pit, and the modified layout of the waste rock stacks having both slightly positive and slightly negative visual effects, provided they are appropriately shaped within the broader landscape.

### Effects of Noise on Local Residents

48. In our decision that enabled the development of the Coronation North pit the three commissioners (self included) accepted expert evidence that the effects of noise generated by the massive trucks that use the haul road on local residents, most notably the Howards at 406 Horse Flat Road, would be less than minor. Clearly this expert evidence was incorrect as in calm conditions with a temperature inversion noise monitoring has shown that the District Plan limit of 40 dB LAeq is often exceeded substantially at the Howard residence. This led to OceanaGold initiating a “no haul at night” policy in October 2018.
49. Subsequent to the hearing an agreement has been reached between the Howards and the applicant. Condition 8.2 continues the “no haul at night” agreement, but provision is made that with the written agreement of the Howards, night use of the haul road could recommence, and this would be associated with an increased night time noise limit from 40 to 51 dB LAeq.<sup>10</sup> This

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<sup>9</sup> See for instance the review at Paragraphs 73-89 of Mr Purves’ report.

<sup>10</sup> My understanding is that major modifications to much better noise proof the Howard’s house will be paid for by OceanaGold, so enabling the night time noise limit to be increased without disturbing their sleep.

condition has been agreed by Mr Page representing the Howards. My understanding is that the agreement is based on major modifications first being made to the Howard residence to much better soundproof it.

### Effects on Water Quality

50. Mr Horrell, the reporting officer for the ORC, carried out a thorough evaluation on the effects of the CNE proposal on water quality in the receiving environment in his s42A report.<sup>11</sup> I agree with his assessment, noting particularly:

- a) There are no proposed changes to sediment management and so no changes are necessary to the conditions of Discharge Permit RM16.138.04.
- b) Although the design of the WRS is changed, the quality of the discharge of leachate to surface water bodies, which is authorised by Discharge Permit RM16.138.05, is not expected to change, nor are any changes necessary to present monitoring sites.
- c) The proposed new application RM19.985.03, which relates primarily to any discharge from the WRS to groundwater, replaces RM16.138.09. Effects were previously assessed as no more than minor. As the changes to the WRS will not result in any greater footprint, it is unlikely that any greater volume of leachate will be generated, and so the discharge will remain within the consented baseline.

### Effects on Water Quantity

51. Mr Horrell also carried out an evaluation on the effects of the CNE proposal on water quantity in the receiving environment in his s42A report.<sup>12</sup> The proposed new WRS is located further up Trimbells Gully than previously authorised and will result in an additional 630m of watercourse being lost. On the other hand however, about 2km of Trimbells Gully will now not be lost to a WRS, and this is likely to have positive effects on water yield, and remain within the consented baseline. Flow monitoring is still required under conditions on RM16.138.11 and RM16.138.13; no changes are necessary to these.

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<sup>11</sup> See pp 15 and 16

<sup>12</sup> See pp 16 and 17

## Effects on Aquatic Ecology

52. Effects on the ecology of local watercourses of the CNE proposal were evaluated by Mr Horrell in his s42A report.<sup>13</sup> In simple terms the effects on water quality – which are beneficial overall – lead to some similar beneficial effects on aquatic ecological values. Of particular note is that while an additional 630m of the Trimbells Gully watercourse will be lost to a new WRS, the 52.5ha “give up” in the consented footprint of the Coronation North WRS leads to a net gain of 1.4km of unmodified watercourse in Trimbells Gully, and this has benefits to the biota in this small stream, most notably the Taieri Flathead Galaxias.

## Positive Effects

53. As already discussed in Section 4.3 above, there are strong positive effects from granting the CNE proposal. Perhaps most significantly granting the applications will provide ongoing employment for nearly 600 people, with all the flow on benefits that provides for the community in towns such as Palmerston and Waikouiti, and cities like Dunedin.

## Cumulative Effects

54. For activities such as those carried out by OceanaGold – essentially ongoing development of new mine pits over a large area of land – how cumulative effects are dealt with may appear a vexed issue. In this particular instance however there is a net ecological gain from the CNE proposal, including benefits to both terrestrial and aquatic habitats. There is also no need to extend existing infrastructure. For these reasons I agree with each of Ms St John, Mr Purves and Mr Horrell that cumulative effects are not a significant consideration for the present proposal.

55. I note also that much of the previous development within the open cast mining complex managed by OceanaGold has been explicitly offset or compensated for in previous decisions; for instance by protective covenants over land with high conservation values. In the example I am familiar with, namely the development of the Coronation North Pit, substantial offsets were provided to mitigate the adverse effects of the loss of land with significant conservation values to the mine pit. This is now more explicitly recognised by the provisions of s104(1)(ba) of the Act, which was not in effect when previous decisions were made.

56. I do however have one concern about the present proposal, which is that no formal protection of any kind is offered for the “give up” area. I have contemplated whether such protection should be compelled in conditions of consent, but no party has advocated that to me. It would be very disappointing however if at some future stage OceanaGold seek new consents to construct a WRS in the “give up” area.

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<sup>13</sup> See pp 17 and 18

## 4.5 Regional Council Statutory Policies and Plans

57. The proposed RPS is a high level regional document which became partly operative on 14 January 2019. Most of its provisions are not relevant to my decision. The most relevant provision is Policy 5.4.8, which deals with adverse effects from mineral and petroleum exploration, extraction and processing and links offsetting and compensation policies when significant habitats of indigenous vegetation and fauna are threatened by development. However elements of that Policy are under appeal by OceanaGold, and although the matters being appealed are not directly relevant to this decision, that policy is not included in the partially operative RPS.
58. In a more general sense I agree with Mr Horrell that the applications are largely consistent with other provisions in the RPS.
59. The ORC s42A report also details and discusses the relevant provisions of the three regional plans (Water, Waste and Air), and generally concludes that effects are within the consented baseline, and that the CNE proposal is consistent with those relevant provisions. I agree with this conclusion. Or to put it another way, there is nothing in those three plans to suggest that any of the consents or variations sought should not be granted.

## 4.6 Dunedin City Council (DC) District Plans

60. There are two Dunedin City District Plans relevant to my decision. These are the operative DC District Plan, which dates back to 2006, and their proposed second generation plan (p2GP). The 2GP Plan was notified on 7 November 2018, but 83 appeals were received, so apart from minor corrections much of this Plan is presently a “red line” version showing the provisions under appeal.
61. Mr Purves described the overall structure of the two plans as similar<sup>14</sup>, comprising chapters with over-arching objectives and policies, chapters with zone based policies, and chapters dealing with specific resources or values, including landscapes and biodiversity.
62. The Macraes mining area is in the rural zone. My understanding of Mr Purves’ paragraphs 117 - 119 is that the operative DC plan focuses on farming in the rural zone, and other activities, including mining, are provided for if effects can be avoided, remedied or mitigated.
63. The 2GP Plan includes policies that only allow mining where adverse effects on the amenity of residential activities will be avoided or mitigated, and where there are no significant adverse effects from land scale development on rural character and visual amenity. Both these policies are however subject to appeal.

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<sup>14</sup> Paragraph 114



64. Mr Purves opines that the effects of the CNE proposal on rural character is “insignificant” because of the scale of the extension versus the existing mine site and because of the “give up” area.<sup>15</sup> While I think his conclusion may be a little dismissive, I broadly agree with him.
65. In relation to landscape values the CNE proposal lies within a High Country Outstanding Landscape Area, as well as being a Visually Prominent Area, in the operative plan. These overlays have however been removed in the 2GP plan, and there are no appeals seeking their reinstatement.
66. Mr McKinlay’s assessment was that the landscape and visual effects of the proposal should not be significant provided the waste rock stacks are appropriately shaped and disturbed areas are re-vegetated with tussock grassland. I agree with this assessment, and have provided for these matters in the conditions of consent.
67. Mr Purves discussed the provisions relating to biodiversity in each of the operative and 2GP DCC District Plans. Both plans contain provisions to maintain or enhance biodiversity, and both reflect the provisions of s6(c) of the Act – namely by protecting areas of significant indigenous vegetation and habitats of indigenous fauna. The 2GP Plan includes directive policies that only allow the clearance of indigenous vegetation involving threatened plant or animal species if there is no net loss, and preferably a net gain, in biodiversity values.<sup>16</sup> The swap of the “give up” area with the proposed newly consented areas clearly achieves this policy.
68. Mr Purves also listed provisions relating to Manawhenua in the DCC plans; these focus particularly on early consultation.

#### 4.6 The Operative Waitaki District Plan (WDP)

69. The Coronation mining pits are located in both the Macraes Mining Zone and the Rural Scenic Zone in the WDP. As might be expected, the policy framework for these two zones is somewhat disjunctive. Despite this, mineral extraction is generally anticipated in both zones, provided adverse effects are avoided, remedied or mitigated, and land is rehabilitated sufficiently to enable establishment of activities appropriate to the area – which at Macraes would only realistically be extensive farming,
70. In the mining zone a policy recognises the scale and intensity of the operations, while ensuring adverse effects are avoided, remedied or mitigated. In the rural scenic zone there is more

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<sup>15</sup> Paragraph 122

<sup>16</sup> Noting this policy is subject to appeal.

emphasis on maintaining amenity and overall landscape character, and there are more directive policies on how earthworks and vegetation clearance are to be managed.

71. The policy framework on biodiversity in the WDP has one objective that reflects the provisions of s6(c) of the RMA. Another objective focuses on the maintenance or enhancement of the quality of water, wetlands and rivers, and protection of their margins from inappropriate development. Another policy that seeks to manage landuse effects for other areas with conservation values by maintaining connectivity and providing habitat for fauna (such as some species of lizards and birds) that can rely on “patchworks” of indigenous vegetation.

#### 4.7 Conclusions of the Statutory Evaluation

72. In the proceeding sections 4.2 – 4.7 of this decision I have worked systematically through the criteria listed in s104(1) of the Act that are relevant to my decision here. Nothing in any of those statutory considerations weighs strongly against my declining consent for any aspect of the CNE proposal; rather each of Part 2 of the Act and the plan and policy framework lend weight to the applications being granted.
73. Only two matters give me any disquiet – the lack of formal protection for the “give up” area, and the questionable future of hard rock mining at Macraes as the effects of climate change become a more dominant consideration in decision making. No party asked for the former, and the latter is presently only a s7 matter “for which particular regard must be had”.
74. For these reasons the consents for the Coronation North Extension proposal have been granted in full.

## 5 Conditions of Consent

75. This decision embraces a new consent to be granted by the DCC and WDC in combination, two replacement consents and one new consent to be granted by the ORC, and a series of minor variations and updates to a number of existing ORC consents.
76. The consent to be issued by the Territorial Authorities is the most significant and prescriptive of these. By the time the right of reply was received differences existed between the sets of conditions put forward by Mr Purves and the applicant, but most of these related to how the conditions were expressed rather than any strong philosophical differences in approach. I have made a number of changes to the conditions of consent that in part reflect those put forward by Mr Purves, in part those sought by the applicant, and in part my preference for how conditions relating to the certification of management plans be expressed.

77. In the definitions these include:

- a) Definitions of “heavy vehicle” and “service truck” put forward by the applicant have been included.
- b) No definition of “certification” is necessary given my amendments to conditions (from 4.13 on).
- c) No definition is provided for “Council Managers”, as I have taken out reference to this in the applicant’s proposed Condition 4.13.

78. The matter that was most in contention in the draft conditions put before me related to the contents of the RMP in proposed conditions 4.11 to 4.15 in the applicant’s marked up version. I have accepted the general direction of the amendments that they proposed.

79. I believe however that there are better ways of expressing the draft conditions presented to me, and there are some matters that were omitted. In particular:

- a) There is no explicit link between the outcomes for the RMP and the requirement it be certified.
- b) There is no clear process for the RMP to be “certified” by the Councils, or sent back for re-work if it does not meet their expectations.
- c) There is no default process if the Councils fail to certify the RMP in a reasonable time frame.

80. These matters are covered in Conditions 4.13 to 4.17 of the consent granted on behalf of the two Territorial Authorities.

81. Condition 8.2 continues the “no haul at night” agreement made between the applicant and the Howards of 406 Horse Flat Road. However provision is made that if the written agreement of the Howards is provided, night use of the haul road could recommence, and this would be associated with an increased night time noise limit from 40 to 51 dB LAeq.<sup>17</sup> This condition has been agreed by Mr Page representing the Howards. On a similar theme the applicant volunteered another condition, included as Condition 9.6, to undertake noise monitoring to assess compliance with the new 51 dB LAeq noise limit, which I support.

82. I found the applicant’s terminology regarding maps and figures confusing, with Map 1, Figure 1 and Figure 2. All are what I would call maps. I have retained the applicant’s terminology; in doing so it is my hope that Council compliance staff are not as confused by this as I initially was.

83. With respect to the ORC consents, the applicant and Mr Horrell had agreed a set of conditions that were put forward in his supplementary Officers' Report dated 29 August 2019. I have reviewed those draft conditions of consent, along with some minor updates to other conditions, and I have adopted those changes.

## 6 Decisions

84. My decisions are:

**To grant attached land use consents WDC 201.2019.1241 and DCC LUC-2019-42 on behalf of the Waitaki District Council and the Dunedin City Council.**

**To grant attached land use consents RM 19.085.01 and 19.085.02, and discharge permit RM 19.085.03 on behalf of the Otago Regional Council; and**

**To grant minor variations or updates to RM16.138.01, RM16.138.04-06, RM16.13810-15, RM16.138.17 and RM16.138.19-20.**



Dr Brent Cowie

**Hearing Commissioner**

16 October 2019