



Decision required under the Overseas Investment Act 2005: Oceana Gold (New Zealand) Limited

Date	23 November 2018
Security Level	Commercial: In Confidence
Priority	High
Case Numbers	1437 / 201710162 1438 / 201810122
Decision Required By	19 December 2018

Instructions

	Action Sought	Suggested Deadline
Minister for Land Information	<ol style="list-style-type: none"> 1. Sign the attached memorandum 2. Forward the memorandum and annexure to the Associate Minister of Finance 	19 December 2018
Associate Minister of Finance	<ol style="list-style-type: none"> 1. Sign the attached memorandum 2. Forward the memorandum and annexure to the Overseas Investment Office 	19 December 2018

Contact for Telephone Discussion

Name	Position	Telephone (wk)	Cellphone	First Contact
	Principal Advisor			
	Senior Solicitor			✓

Executive Summary:

1. The Applicant is Oceana Gold (New Zealand) Limited, a New Zealand incorporated company ultimately owned by OceanaGold Corporation. OceanaGold Corporation is a Canadian gold mining company headquartered in Melbourne and is listed on both the Toronto and the Australian stock exchanges.
2. The Applicant owns and operates the Martha mine (open pit) and Moonlight, Favona, Trio, Correnso and Slevin (underground) mines at Waihi.

Investment

3. The Applicant seeks consent to acquire a freehold interest in sensitive land, being:
 - (a) The [redacted] approximately [redacted] hectares of land at [redacted] Waihi;
 - (b) The [redacted] approximately [redacted] hectares of land at [redacted] Waihi; and
 - (c) Approximately [redacted] hectares of land [redacted] at [redacted] Waihi.
4. All properties are sensitive land, being 'rural land' as defined in the Ministerial Directive Letter. The [redacted] and the [redacted] are currently dairy farms.
5. The Applicant has also sought consent to acquire several residential properties in Waihi. The Overseas Investment Office has a delegation to decide this application and expects to do so late in 2018.
6. The Applicant has plans to undertake a significant expansion of its existing mines. "Project Quattro" is intended to add a further 17 years to the mine life and yield approximately [redacted] 000 ounces of gold per year (approximately [redacted] million ounces of gold, in total).
7. The Applicant intends to carry out new underground mining activities in two stages. As part of the second stage, the Applicant intends to partially construct a new tailings storage facility (a storage pond) on the land. Tailings generated by mining activity consist of liquid, silt and sediment and may contain traces of chemicals used to extract gold from ore deposits. Because of this it must be kept in secure ponds.

Benefits

8. The Applicant claims that without a new tailings storage pond to safely store the additional tailings generated by new mining, Project Quattro would have to be abandoned. The Applicant estimates that without the Project Quattro expansion, the Waihi mine will run out of ore to mine before 31 December 2019.
9. We accept that any continuation or expansion of mining activities is likely to be inhibited by tailings storage capacity.
10. We are satisfied that the Investment is likely to result in the following benefits:
 - (a) Retention of 250 FTE jobs and the addition of approximately 80 FTE jobs (**high weighting**);
 - (b) Increased export receipts of approximately NZ\$ [redacted] billion (**high weighting**);
 - (c) Enhanced viability of existing investments, through extending the life of the Applicant's gold mining operations;
 - (d) Promotion of New Zealand's economic interests, by contributing approximately NZ\$ [redacted] million total expenditure to the New Zealand national economy;
 - (e) The investment of additional development capital including NZ\$ [redacted] million in new mines, construction and infrastructure (**high weighting**);
 - (f) Increased efficiency and productivity through use of existing infrastructure; and

(g) Previous investments that have been or are of benefit to New Zealand at gold mines at Waihi and Otago.

11. Having regard to the above, we are satisfied that the overseas investment is likely to benefit New Zealand and that benefit is likely to be substantial and identifiable.

Good character

12. The Applicant has disclosed some matters relating to the good character criterion. We have also undertaken open source searches. These matters relate to certain breaches of the Health and Safety in Employment Act 1992 and OceanaGold Corporation's operations in the northern Philippines.

13. We have considered these matters and have formed the view that the individuals with control are of good character. Our analysis is set out in **Appendix 4**.

Instructions

14. Please see **Appendix 2** for instructions on how to make a decision and guidance on the relevant factors and criteria for consent.

Recommendations

15. I recommend that you:

(a) determine that:

(i) the '**relevant overseas person**' is (collectively):

Entity	Relationship
Oceana Gold Corporation	Parent company of Applicant (Parent)
Oceana Gold (New Zealand) Ltd	Applicant

(ii) the '**individuals with control of the relevant overseas person**' are:

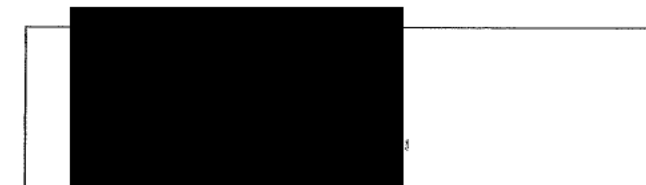
Individual	Role
Ian Macnevin Reid	Director of Parent
Nora Lia Scheinkestel	Director of Parent
Paul Bristol Sweeney	Director of Parent
Geoffrey William Raby	Director of Parent
James Edward Askew	Director of Parent
Michael Francis Wilkes	Director of Applicant and Parent
Michael Harvy Lou Holmes	Director of Applicant
Mark David Cadzow	Director of Applicant

(iii) the individuals with control of the relevant overseas person collectively have, business experience and acumen relevant to the overseas investment; and

(iv) the relevant overseas person has demonstrated financial commitment to the overseas investment; and

(v) all the individuals with control of the relevant overseas person are, of good character; and

- (vi) each individual with control of the relevant overseas person is not, an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009; and
 - (vii) the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders); and
 - (viii) the benefit will be, or is likely to be, substantial and identifiable; and
 - (ix) agree to exempt the section 16(1)(f) criterion (the farm land or the securities to which the overseas investment relates have been offered for acquisition on the open market to persons who are not overseas persons in accordance with the procedure set out in regulations) on the basis that this criterion need not be met by reason of the circumstances relating to the particular overseas investment, as set out in the Report; and
- (b) determine that you are satisfied that the criteria for consent in section 16 have been met; and
- (c) grant consent to the overseas investment in the form of the Proposed Decision in Appendix 1 and subject to the conditions set out in the Proposed Decision.


 - Principal Advisor
 Date

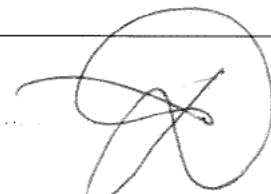
Decision:

16. I am satisfied that the criteria for consent in section 16 have been met; and

<u>Associate Minister of Finance:</u>	<u>Minister for Land Information:</u>
Satisfied <input checked="" type="checkbox"/>	Satisfied <input type="checkbox"/>
Not Satisfied <input type="checkbox"/>	Not Satisfied <input type="checkbox"/>

17. Consent is granted to the overseas investment in the form of the Proposed Decision in Appendix 1 and subject to the conditions set out in the Proposed Decision.

<u>Associate Minister of Finance:</u>	<u>Minister for Land Information:</u>
Consent Granted <input checked="" type="checkbox"/>	Consent Granted <input type="checkbox"/>
Consent Declined <input type="checkbox"/>	Consent Declined <input type="checkbox"/>



Associate Minister of Finance

Date



Minister for Land Information

Date

(g) Previous investments that have been or are of benefit to New Zealand at gold mines at Waihi and Otago.

11. Having regard to the above, we are satisfied that the overseas investment is likely to benefit New Zealand and that benefit is likely to be substantial and identifiable.

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13. We have considered these matters and have formed the view that the individuals with control are of good character. Our analysis is set out in **Appendix 4**.

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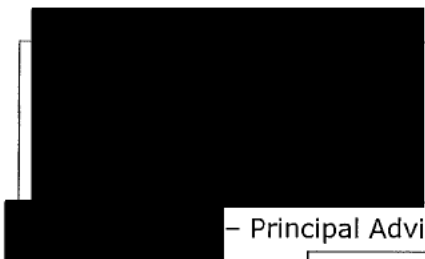
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Mark David Cadzow	Director of Applicant

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(iv) the relevant overseas person has demonstrated financial commitment to the overseas investment; and

(v) all the individuals with control of the relevant overseas person are, of good character; and

- (vi) each individual with control of the relevant overseas person is not, an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009; and
 - (vii) the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders); and
 - (viii) the benefit will be, or is likely to be, substantial and identifiable; and
 - (ix) agree to exempt the section 16(1)(f) criterion (the farm land or the securities to which the overseas investment relates have been offered for acquisition on the open market to persons who are not overseas persons in accordance with the procedure set out in regulations) on the basis that this criterion need not be met by reason of the circumstances relating to the particular overseas investment, as set out in the Report; and
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 - Principal Advisor
 Date

Decision:

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<u>Associate Minister of Finance:</u>	<u>Minister for Land Information:</u>
Satisfied <input type="checkbox"/>	Satisfied <input type="checkbox"/>
Not Satisfied <input type="checkbox"/>	Not Satisfied <input checked="" type="checkbox"/>

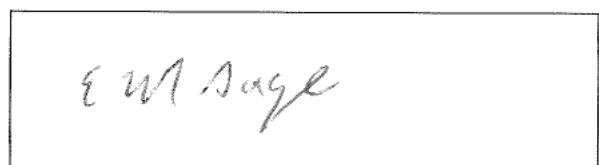
17. Consent is granted to the overseas investment in the form of the Proposed Decision in Appendix 1 and subject to the conditions set out in the Proposed Decision.

<u>Associate Minister of Finance:</u>	<u>Minister for Land Information:</u>
Consent Granted <input type="checkbox"/>	Consent Granted <input type="checkbox"/>
Consent Declined <input type="checkbox"/>	Consent Declined <input checked="" type="checkbox"/>



Associate Minister of Finance

Date



Minister for Land Information

Date

Report of the Overseas Investment Office
on the application for consent by
Oceana Gold (New Zealand) Limited
Case: 201810121

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What is the Investment?

Applicant	Oceana Gold (New Zealand) Limited (United States of America 49.0%, Canada 19.0%, United Kingdom 9.0%, Australia 9.0%, Various 8.6%, Germany 4.0%, Various overseas persons 1.4%)
Vendors	[REDACTED] (New Zealand 100%) [REDACTED] (New Zealand 100.0%) [REDACTED] (New Zealand 100%)
Consideration	\$ [REDACTED] \$ [REDACTED] and [REDACTED]
Recommendation	Grant Consent

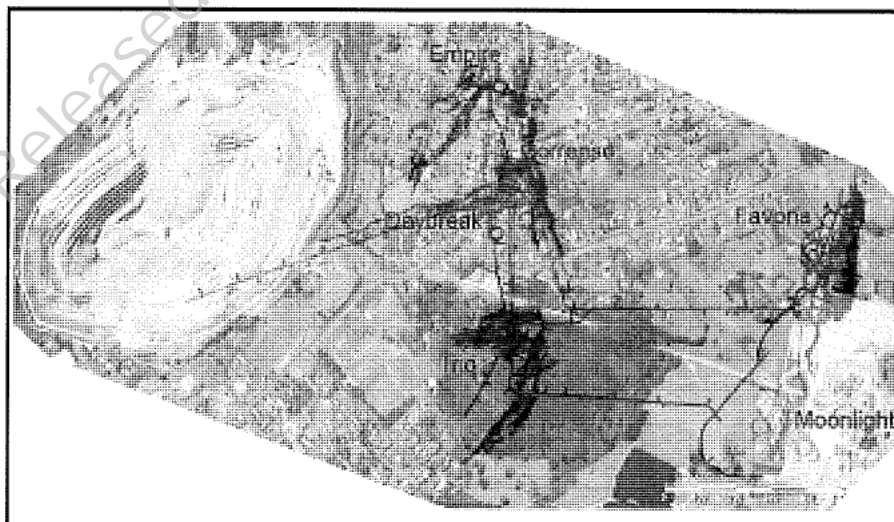
Description of the Investment

1. Oceana Gold (New Zealand) Limited (**Applicant**) seeks consent to acquire a freehold interest in the following three non-urban properties (collectively referred to as the "**Land**"):
 - (a) approximately [REDACTED] hectares of land at [REDACTED] Waihi ([REDACTED]);
 - (b) approximately [REDACTED] hectares of land at [REDACTED] Waihi ([REDACTED]); and
 - (c) approximately [REDACTED] hectares of land (subject to survey) at [REDACTED] Waihi ([REDACTED]).

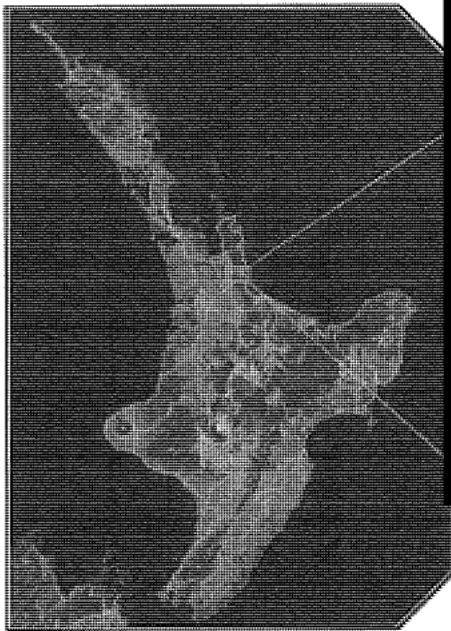
(these transactions are collectively referred to as the "**Investment**").

Waihi mine expansion plans – Project Quattro

2. The Applicant owns and operates the Martha mine (open pit) and Moonlight, Favona, Trio, Correnso and Slevin (underground) mines at Waihi.
3. The following aerial image shows the underground footprint of all existing modern Waihi mines:

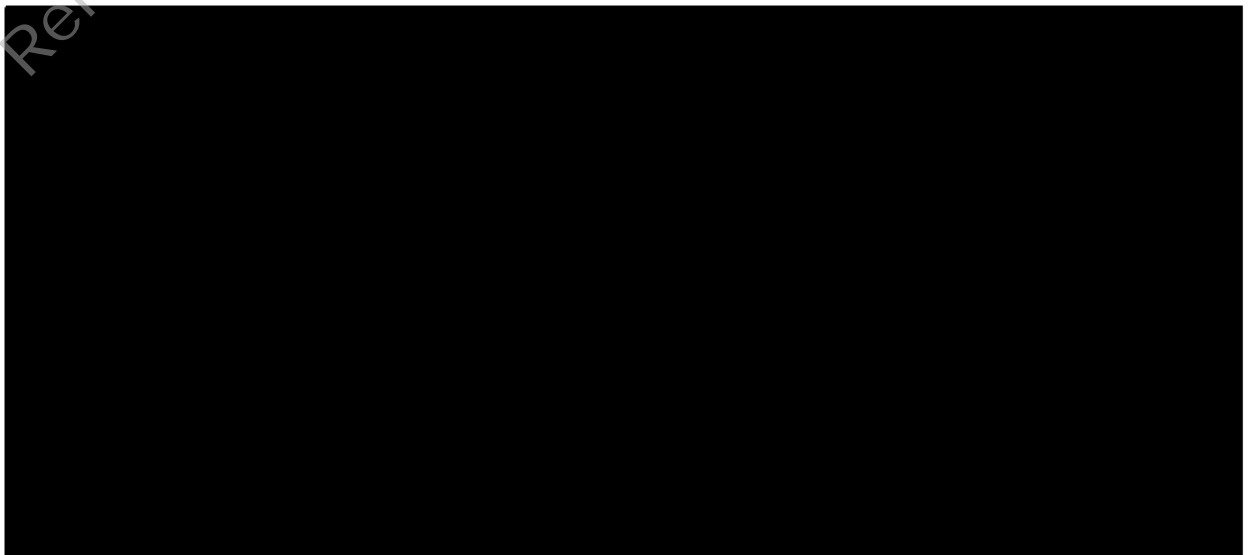


4. As part of large-scale expansion plans, the Applicant intends to carry out new underground mining activities in two stages (**Project Quattro**). As part of the second stage, the Applicant intends to partially construct a new tailings storage facility on the Land. This storage facility is necessary to store the tailings generated by the new mining activity.
5. The location of the Land is shown below in relation to the existing Martha open pit mine in Waihi, and the Applicant's proposed [REDACTED]



Sensitive land investments

6. As part of Project Quattro, the Applicant intends to acquire several parcels of sensitive land. The Applicant has submitted three applications for consent (so far) to acquire an interest in that land. These applications are for:
 - (a) The [REDACTED] (201810122), [REDACTED] and [REDACTED] (201710162) to construct tailings ponds.
 - (b) four residential properties (being approximately [REDACTED] hectares of residential and sensitive residential land) [REDACTED] (201810121) (we propose to decide this application under delegation, likely in late 2018);
7. The sites are shown below:



8. This Application is one of a series of applications relating to Project Quattro. In late 2018 or early 2019 the Applicant expects to apply for consent to acquire further residential property within Waihi and rural property at [REDACTED] Waihi. Therefore we have treated some of the Applicant's benefit claims with caution as they relate to Project Quattro as a whole, and flow from the successful completion of the project.

Vendors

9. The Vendor of the [REDACTED] is [REDACTED] [REDACTED] operate a dairy farm. [REDACTED] motive for selling is [REDACTED]
10. The Vendors of the [REDACTED] are [REDACTED] who are [REDACTED] New Zealanders. [REDACTED] operate a dairy farm. [REDACTED] for selling is that [REDACTED]
11. The Vendor of the [REDACTED] is [REDACTED] which is [REDACTED] which has [REDACTED]
12. All sales were negotiated at arms length. There is no previous relationship between any of the Vendors and the Applicant.

Sensitive assets

13. The Land is 'rural land' as defined in the Ministerial Directive Letter issued by the Minister of Finance on 28 November 2017 (**Ministerial Directive Letter**).
14. Therefore:
- (a) we have treated the 'jobs', 'new technology or business skills', 'increased export receipts', 'increased processing of primary products' and 'oversight and participation by New Zealanders' factors as being of high relative importance.
 - (b) to the extent that the 'consequential benefit' factor relates to the sponsorship of community projects and donations, we have treated this factor as being of low relative importance.
15. See **Appendix 3** for specific details about these titles.

Who is making the Investment

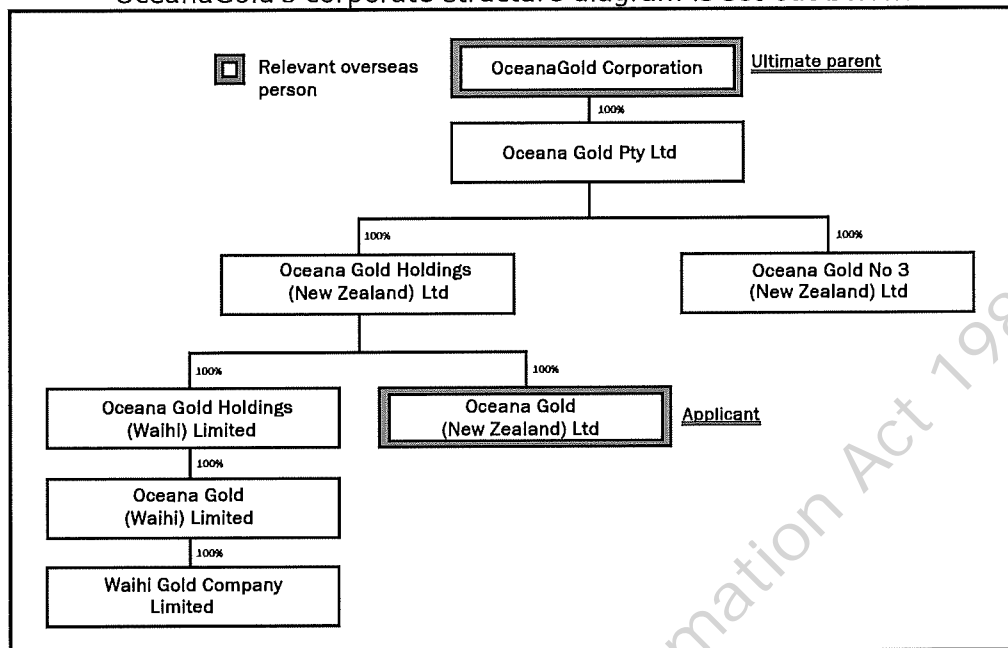
Applicant

Who the Applicant is

16. The Applicant is a gold mining company based in New Zealand. The Applicant has two New Zealand sites, being the Waihi and Macraes (Otago) mines.
17. OceanaGold Corporation (**OceanaGold**) owns the Applicant through a network of subsidiary companies, described below. OceanaGold is listed on the Toronto Stock Exchange (**TSX**) and the Australian Stock Exchange (**ASX**). OceanaGold is incorporated in British Columbia, Canada.
18. As well as the Applicant's New Zealand operations, OceanaGold's international portfolio an open pit gold mine in South Carolina (USA) and a gold and copper mine in the Philippines.

Who owns the Applicant

OceanaGold's corporate structure diagram is set out below.



19. OceanaGold is widely held, with no shareholders holding a 25% or more interest.¹ Its shareholders are primarily (46%) based in the United States, the United Kingdom (23%), Australia (10%), and Canada (9%).

Who controls the Applicant

20. The Applicant has the initial decision-making responsibility for this Investment. Those decisions are made under the guidance of, and subject to sign-off by, OceanaGold as the ultimate parent company.
21. For this Investment, the board of directors of OceanaGold endorsed the Applicant's recommendation to acquire the properties.
22. The Applicant's directors are:
- Mark David Cadzow;
 - Michael Harvey Lou Holmes; and
 - Michael Francis Wilkes.
23. OGC's board of directors are:
- James Askew;
 - Michael Francis Wilkes;
 - Dr Geoff Raby;
 - Paul B. Sweeney;
 - Nora L. Scheinkestel; and
 - Ian Reid.

Relevant Overseas Person

24. We have determined that the '**relevant overseas person**' is (collectively) Oceana Gold Corporation and Oceana Gold (New Zealand) Limited.

Individuals with Control

25. We have determined that the '**individuals with control of the relevant overseas person**' are:
- Ian Macnevin Reid;
 - Nora Lia Scheinkestel;

¹ Only two shareholders have more than 5% ownership interest. These are both well-known investment companies.

- (c) Paul Bristol Sweeney;
- (d) Geoffrey William Raby;
- (e) James Edward Askew;
- (f) Michael Francis Wilkes;
- (g) Michael Harvy Lou Holmes; and
- (h) Mark David Cadzow.

Investment Plan

Project Quattro

- 26. Project Quattro is scheduled to occur in two stages. The benefits from both stages of Project Quattro will be relied upon in this and future applications, on the basis that all the component parts of Project Quattro contribute towards the benefits of the project as a whole.
- 27. **Stage one** involves underground mining and some pit extension activities on the south-east wall of the open cast Martha mine. The Applicant proposes to undertake significant expansion of existing Martha underground mine and to target an unexplored gold seam - the Rex Vein – located to the south of the Martha open pit.
- 28. The timeline for stage one depends on obtaining resource consents. The Applicant lodged these applications on 25 May 2018. Due to their size and complexity, it is difficult to estimate the timelines for a decision, but the Applicant hopes to begin this work in 2020.
- 29. In **stage two** the Applicant will (concurrently):
 - (a) [REDACTED]
 - (b) [REDACTED]
 - (c) establish a new tailings pond on the Land to deal with the tailings that will be [REDACTED]

Why tailings ponds are important

- 30. Extracting minerals from ore leaves behind unused rock in the form of slurry. These are called tailings and approximately 70:30 liquid-to-solid, being primarily silt sized material but which may be as granular as sand particles. Tailings storage ponds allow the sedimentation (separation) of the silt in the tailings from the surrounding water particles. Tailings generated by mining activity may contain traces of chemicals used to extract gold from ore deposits. Because of this, tailings must be kept in secure ponds in a geologically stable area, so as to not contaminate groundwater.
- 31. Because any mine must safely dispose of tailings in order to protect the surrounding environment, the acquisition and placement of tailing storage ponds is an important consideration in any expansion. Ideally, the ponds should be close to the mine so that transportation costs can be reduced and existing infrastructure (such as roads, underground rail and pipes) can be utilised. [REDACTED]
- 32. In any mine expansion the safe disposal of tailings is an issue that needs to be addressed at the outset of the project. If there is not a workable solution to this issue, then the viability of all stages of the expansion would be put in doubt. The Applicant does not own any alternative sites upon which a tailings pond could be located.

33. The locations of the existing and proposed tailings ponds are shown below. The Land is outlined in yellow [redacted] green [redacted] and orange [redacted]



34. Because of the contours of the land, part of the proposed tailings pond will submerge a portion of the [redacted] Because OceanaGold does not propose using the [redacted] [redacted] for dairy farming, [redacted] is proposed whereby the Applicant acquires the [redacted] Land (approximately [redacted] hectares of steep non-native scrubland (marked in red below)) [redacted]



35. Most of the above ground infrastructure investment will take place in stage two, as the [redacted] are excavated and supporting infrastructure is constructed. The construction of the storage ponds on the Land will take place early in stage two, so that the ponds are ready to receive [redacted]

36. The Applicant intends to lodge resource consents applications for stage two in late 2019 and begin excavation and construction once the consents are granted. Due to the size and complexity of the resource consents, it is difficult to estimate the timelines for a decision, but the Applicant hopes to begin some of the construction work in 2021.

37. Project Quattro is intended to add a further 17 years to the mine life and yield approximately [REDACTED] million ounces of gold, in total. Stage two will require NZ\$ [REDACTED] Million in capital expenditure, with NZ\$ [REDACTED] million being spent on the [REDACTED] and NZ\$ [REDACTED] million being spent on the tailings storage facility and [REDACTED]. Extending the life of the mines will allow the Applicant to retain its existing 250 full-time equivalent (FTE) mining jobs and create 80 new FTE positions. Stage two alone will add six years to the life of the mine.
38. The Applicant expects (based on current estimates) that Stage 2 will generate an average of [REDACTED],000 ounces of gold per year (over the equivalent of 6 years) equating to NZ\$ [REDACTED] M per year of revenue assuming a gold price of US\$ [REDACTED] per ounce.

What is likely to happen without the Investment

Counterfactual

As a result of *Tiroa E and Te Hape B Trusts v Chief Executive of Land Information* [2012] NZHC 147 ("*Tiroa E*"), the OIO and relevant Ministers must apply a "counterfactual test" when assessing whether an overseas investment will, or is likely to benefit New Zealand. This test, which was described by the Court as a "with and without" test, requires a comparison of what is likely to happen with the investment, and what is likely to happen without the investment (the counterfactual).

39. There are two key questions to determine what is likely to occur without the Investment:
- (a) Who is likely to own the Land?; and
 - (b) What is the likely use of the Land?

Who is likely to own the Land

40. The farms and the [REDACTED] are likely to continue to be held by the vendors or sold to an alternative New Zealand purchaser.

What is the likely use of the Land

41. Both farms have extensive dairy farm related infrastructure on site. The [REDACTED] and [REDACTED] Farms would most likely continue to operate as dairy farms and produce export returns from milk products.
42. Each vendor operates their respective farm [REDACTED]. [REDACTED] is operated by [REDACTED]. Therefore, when operated as dairy farms, the properties support four FTE jobs.
43. The [REDACTED] is currently used as grazing land. Its small size, the presence of scrub and trees, and its steep contours mean that it is of marginal commercial significance. [REDACTED] does not support any FTE jobs.

What will happen to the mine?

44. The Applicant claims that without a new tailings storage to safely store the additional tailings generated by new mining, Project Quattro would have to be abandoned. The Applicant estimates that the Waihi mine will run out of ore to mine before 31 December 2019. If this was to happen, the Applicant claims that the Waihi mine would likely cease to operate or suspend operations for a period of months, or more likely, years which would have significant consequences for the Applicant, Waihi, the Hauraki District and the wider Waikato regional economy.
45. We are not convinced that the worst-case scenario outlined by the Applicant will necessarily come to pass. Given that the proposed tailings ponds would not have been constructed until 2021 at the earliest, the existing tailings ponds must have at least some remaining storage capacity. This would allow the Applicant to pursue new potential sources of gold ore after 31 December 2019. The Applicant has exploration permits in the Waihi area and is likely to continue to develop its existing mines as long as it is economic to do so.

46. We do however accept that any continuation or expansion of mining activities is likely to be inhibited by tailings storage capacity. Without additional storage options, mine operations would wind down from their current levels, and eventually cease, with consequent job and production losses.

Conclusion

47. Our view is that the most likely counterfactual is that the Land would continue to be operated as a dairy farm (or grazing land) under either the vendors or an alternative New Zealand purchaser.
48. The most likely counterfactual regarding the mine is that there would be a reduction of mining activities once the known reserves of ore are exhausted in December 2019 resulting in some job losses and a reduction in mine productivity. Further exploration and exploitation of new mines would be inhibited by tailings storage concerns, and once tailings storage capacity was reached (which appears likely to occur in the short to medium term) the mine would have to close.

Does the Applicant meet the Investor Test criteria?

Business Experience s16(1)(a)

The relevant overseas person, or the individuals with control of the relevant overseas person, must have business experience and acumen relevant to the overseas investment. There is considerable flexibility in determining what is relevant and more or less specific expertise may be required depending on the nature of the investment. Business experience and acumen that contributes to an investment's success may be treated as relevant even though the investor may have to supplement its experience and acumen by utilising the experience and acumen of others to ensure the investment succeeds.

49. The Investment is the acquisition of sensitive rural land for ancillary mining purposes.
50. We have reviewed the biographical information provided by the Applicant for each of the individuals with control and note:
- (a) OceanaGold already operates two large scale gold mining operations in New Zealand; and
 - (b) The individuals with control collectively have extensive experience in the mining industry.
51. Having regard to the above, we are satisfied that the individuals with control of the relevant overseas persons collectively have business experience and acumen relevant to the overseas investment.

Financial Commitment s16(1)(b)

The financial commitment criterion requires the relevant overseas person to have taken actions that demonstrate financial commitment to the overseas investment.

52. The 'financial commitment' criterion requires the relevant overseas person to have taken actions that demonstrate financial commitment to the Investment (intentions are not sufficient).
53. In this case we are satisfied that the relevant overseas person has demonstrated financial commitment by:
- a) entering into an agreement for sale and purchase of the Land;
 - b) paying the deposit required by the agreement for sale and purchase; and
 - c) engaging professional advisers

Good Character s16(1)(c)

The decision maker must be satisfied that the individuals with control are of good character. Section 19 of the Act specifies that the decision maker must take the following factors into account (without limitation):

- (a) offences or contraventions of the law by A, or by any person in which A has, or had at the time of the offence or contravention, a 25% or more ownership or control interest (whether convicted or not);
- (b) any other matter that reflects adversely on the person's fitness to have the particular overseas investment.

54. The Applicant has provided a statutory declaration stating that the individuals with control are of good character, have not committed an offence or contravened the law as described above and know of no other matter that reflects adversely on their fitness to have the Investment. We are satisfied that the statutory declaration can be relied on as it complies with the requirements of the Oaths and Declarations Act 1957.
55. The Applicant has made disclosures and submissions regarding certain matters which relate to the good character of certain IWCs. We have also conducted open source background checks on the individuals with control. These disclosures, the Applicant's responses and our analysis are set out as Appendix 4.
56. As a result of our analysis of the disclosures and background checks (details of which are set out in Appendix 4), we are satisfied that the individuals with control are of good character.

Immigration Act s16(1)(d)

Section 15 of the Immigration Act specifies that certain convicted or deported persons are not eligible for a visa or permission to enter or be in New Zealand. Section 16 provides a power to deny a visa or permission to enter New Zealand for other specified reasons, such as if the individual is likely to be a threat or risk to security or public order.

57. The Applicant has provided a statutory declaration stating that none of the individuals with control of the relevant overseas person are individuals of the kind referred to in section 15 or 16 of the Immigration Act 2009. We are satisfied that the statutory declaration can be relied on as it complies with the requirements of the Oaths and Declarations Act 1957. We have also conducted open source background checks on those individuals and found nothing relevant to this criterion.
58. Therefore, we are satisfied that none of the individuals with control of the relevant overseas person are individuals of the kind referred to in section 15 or 16 of the Immigration Act 2009.

Benefits that are likely to occur with the Investment

59. We **are satisfied** that the Investment is likely to benefit New Zealand in regard to the **following factors:**

Jobs – s17(2)(a)(i) - high relative importance

There are three key elements to this factor:

- The "new job opportunities" must be **new**, or if existing jobs are being "retained", the existing jobs **would or might** otherwise be lost if the investment does not proceed;
- The new job opportunities or retained jobs must be **in New Zealand**;
- The new job opportunities or retained jobs that are **likely to result** from the overseas investment must be **additional** to those which are likely to occur **without the overseas investment**.

60. The mines at Waihi employ 250 FTE staff. There was a cumulative payment of \$■■■M in staff salaries and benefits (such as KiwiSaver) in the 2017 calendar year, and a further \$■■■M for contractors.

61. On current projections provided by the Applicant, Stage one will extend mine life by 11 years from 2019 to 2030, will retain existing 250 FTE jobs for an additional 11 years, and add a further approximately 80 FTE jobs. Stage two of the Project will extend the employment of the retained 250 FTE jobs for an additional 6 years. It is likely that components of stages one and two will run concurrently.
62. Because the feasibility of the investment (in both stages) depends on there being a solution to the issue of the safe disposal of future tailings, we consider it fair to include the jobs from both stages in our benefit calculations, even though the ponds will only be constructed in stage two.
63. The average annual salary paid was around \$120,000 in 2017, compared to a median personal income of \$23,100 in the Hauraki District and \$28,500 nationwide in the 2013 Census (last available data).
64. The mine creates high value jobs for New Zealand, with particular benefit for the district, which otherwise has relatively low paid jobs. Just 18.3% of the population of the Hauraki District earns more than \$50,000, compared with 26.6% nationwide.

Counterfactual

65. As discussed in the counterfactual section above, we consider that the [REDACTED] and [REDACTED] farms would continue to [REDACTED]. We consider that the mine operations would be wound down in the short to medium term, with consequent job losses. Mining operations would have to cease once the current tailings ponds reached their storage capacity.

Conclusion

66. We are therefore satisfied that the Investment will result in 250 jobs being retained that would otherwise be lost, and the gain of an additional approximately 80 FTE positions in stage one. We consider this factor to be of **high** weighting due to: the number of jobs retained (and gained); the likely duration of those jobs; the high average annual salary; and the importance of the mine as an employer in the local community.

Increased export receipts – s17(2)(a)(iii) - high relative importance

There are two key elements to this factor:

- **Export receipts** must be likely to be **increased**.
- The increased export receipts that are **likely to result** from the overseas investment must be **additional** to those which are likely to occur **without the overseas investment**.

67. In 2016 the Waihi mine produced NZ\$189M of gold. The gold was exported in a semi-pure form for further processing in Perth.
68. The Applicant estimates that Stage 2 will generate an average of [REDACTED] 000 ounces of gold per year (over 6 years) equating to NZ\$ [REDACTED] M per year of revenue (assuming a gold price of US\$ [REDACTED] per ounce).

Counterfactual

69. Supplies of milk to [REDACTED] from the [REDACTED] produced [REDACTED] 000 kgms, [REDACTED] 000 kgms and [REDACTED] 000 kgms over the last three dairy seasons to end of June 2017. Estimated production for the 2017/2018 dairy season is likely to be around the same as the average from the last three seasons. The export value of this production is around \$ [REDACTED] M at a pay-out rate of \$ [REDACTED] per kgms ([REDACTED] forecast in May 2018).
70. The [REDACTED] has an average efficient production of [REDACTED] 000 kilograms. Assuming that the 2017/2018 dairy season remains the same the export value of this production is around \$ [REDACTED] M at a pay-out rate of \$ [REDACTED] per kgms ([REDACTED] forecast in May 2018).
71. The export returns from the [REDACTED] are negligible.

72. As discussed in counterfactual section above, we consider that the mine operations would be 'wound down' in the short to medium term, with consequent reductions in export returns. There are too many unknown variables to allow us to predict with any accuracy what the reduced export returns might be, but they are likely to be reduced. Mining operations would have to cease once the current tailings ponds reached their storage capacity.

Our assessment

73. The cumulative gold export value over the six years of Stage 2 is approximately NZ\$ [redacted] billion, compared to NZ\$ [redacted] million as a dairy farm. The cumulative gold export value from the Land is equivalent to 1,610 years of the Land operating as a dairy farm, assuming no inflation effects. It is likely that export returns generated by the mine under the counterfactual scenario would also be reduced, and would cease at an earlier date. We are therefore satisfied that export receipts will be increased by the Investment. We consider, given the difference in export receipts between the projected returns from the Investment as compared to the counterfactual that the benefit arising under this factor should be given a **high** weighting.

Added market competition, greater efficiency or productivity, enhanced domestic services – s17(2)(a)(iv)

There are three key elements to this factor:

- The overseas investment must be likely to result in one or more of:
 - (i) **added market competition;**
 - (ii) **greater efficiency or productivity;** or
 - (iii) **enhanced domestic services.**
- The added market competition, greater efficiency or productivity, or enhanced domestic services must occur **in New Zealand.**
- The added market competition, greater efficiency or productivity, or enhanced domestic services that is **likely to result** from the overseas investment must be **additional** to that which is likely to occur without the overseas investment.

Greater efficiency and productivity

74. Stage 2 of the Project will allow further mining to occur without the need for a new processing plant to be built and will allow mining to continue for a significantly longer period while still using much of the Waihi Mines' existing infrastructure (including the current two storage facilities, the existing underground mine roads, mining equipment, workshops, store, offices, electricity/compressed air/pumping infrastructure, and the Martha crusher, conveyor and reclaim system).
75. The Counterfactual does not provide for any efficiency or productivity gains, as the Land will continue to be farmed in a similar manner to the way it is farmed currently.

Our assessment

76. We are satisfied that the Investment will permit the Applicant to use existing infrastructure, resulting in gains in efficiency.
77. For completeness we note that the Investment will not result in added market competition or enhanced domestic services.

Additional investment for development purposes – s17(2)(a)(v)

There are four key elements to this factor.

- The investment must be **additional investment**.
- The additional investment must be **introduced into New Zealand**.
- The additional investment must be **for development purposes**.
- The additional investment that is **likely to result** from the overseas investment must be **additional** to that which is likely to occur **without the overseas investment**.

78. Stage 2 of the Project includes development of the [REDACTED] and a new tailings storage facility. The estimated indicative cost of the additional investment introduced to New Zealand from Stage 2 of the Project (which requires the purchase of the [REDACTED] and [REDACTED] properties) is NZ\$ [REDACTED] M.
79. NZ\$ [REDACTED] million will be spent on the [REDACTED], NZ\$ [REDACTED] million on a [REDACTED] and NZ\$ [REDACTED] million will be spent on the tailings storage facility (which will be on the Land).
80. Under the counterfactual, these facilities would not be constructed, as the proposed location of the tailings storage pond would no longer be available.
81. We are therefore satisfied that the Investment will result in the introduction of additional investment for development purposes, including investment in the development of [REDACTED] and associated infrastructure. We consider that this factor should be given a **high** weighting.

Previous investments – r28(e)

There are two key elements to this factor:

- The **relevant overseas person** must have **previously undertaken investments**;
- The previous investments must have been, or are, of **benefit to New Zealand**.

82. OceanaGold has undertaken previous investments in New Zealand. These investments relate to the Waihi mines and Macraes Mine in East Otago and consist of:
- (a) Application **200910032** for consent for the Applicant to purchase 575.4029ha at Hartfield Road, Otago.
 - (b) Application **201110037** for consent for the Applicant to purchase 2635.7102ha at Deepdell Station, Otago.
 - (c) Application **201220081** for consent for the Applicant to purchase 1,624.0521ha at Matheson Road, Otago.
 - (d) Application **201020129** for consent for the Applicant to purchase 999.4218ha at Hyde/Macraes Road, Otago.
 - (e) Application **201510062** for consent to acquire the Waihi Mining operations.
83. In 2016 the OceanaGold Group employed 721 employees and 173 permanent contractors across its New Zealand operations. According to figures supplied by the Otago Daily Times, in 2015, 12.6 tonnes of gold was mined across New Zealand, with OceanaGold accounting for nearly 98% of that production, at the time valued at NZ\$639.4 million. Gold mined by OceanaGold in 2016 was New Zealand's second largest export to Australia and accounted for 1.1% of the country's total commodity exports. In 2016 OceanaGold's regional contribution to Otago's GDP was \$84 million and in the Waikato it was \$86 million.
84. We are therefore satisfied that OceanaGold has previously undertaken investments that have been and continue to be of benefit to New Zealand.

Enhance the viability of other investments – r28(g)

There are three key elements to this factor:

- The relevant overseas person must have undertaken **other overseas investments**.
- The overseas investment must **enhance the ongoing viability** of the other overseas investments.
- The enhancement in viability that is **likely to result** from the overseas investment must be **additional** to that which is likely to occur **without the overseas investment**.

85. As noted above, the Applicant claims that if Project Quattro had to be abandoned the Waihi mine will run out of ore to mine before 31 December 2019. If this was the case, the Waihi mine would likely cease to operate or suspend operations

86. Without on-going mining, the Applicant's existing investment in the infrastructure, including the process plant and water treatment facilities, is no longer viable.

Our assessment

87. While we do not agree that the Applicant would necessarily cease mining operations entirely, the Applicant's investment in infrastructure would be wholly or partially redundant if mining operations lessened or ceased. We are therefore satisfied that the Investment will enhance the viability of its existing investments in mining infrastructure at Waihi by extending the life of the mine.

Economic interests – r28(i)

There are two key elements to this factor:

- The overseas investment must **adequately promote New Zealand's economic interests**.
- The promotion of New Zealand's economic interests that will **result** from the overseas investment must be **additional** to that which is likely to occur **without the overseas investment**.

This factor is relevant to all overseas investments in sensitive land and has a higher threshold of 'will' rather than 'is likely to' result from the overseas investment.

88. The Applicant submits that it contributes approximately 84% of its total expenditure to the New Zealand national economy, and this in-country spend was estimated at NZ\$ [REDACTED] M in 2016. This included:

- (a) Employee pay and benefits of NZ\$ [REDACTED] M; and
- (b) NZ\$ [REDACTED] M paid to central and local government (including royalties of NZ\$ [REDACTED] M).

89. At June 2016, gold was NZ's second largest export to Australia behind crude oil. The continued export of gold is an important component of New Zealand's trade with Australia.

90. We are therefore satisfied that the continued operation of the Waihi mine at or above current levels of production will promote New Zealand's economic interests and will result from the Investment.

Whether New Zealand will become a more reliable supplier of primary products in the future

91. The Applicant submits that it is committed to developing a long term sustainable business that will ensure New Zealand is a more reliable supplier of primary products (being gold).

92. The Waihi mine is one of the two largest operational gold mines in New Zealand. We therefore agree that keeping the Waihi mine in production will ensure New Zealand remains a reliable supplier of gold.

Whether New Zealand's ability to supply the global economy with a product that forms an important part of New Zealand's export earnings will be less likely to be controlled by a single overseas person or its associates

93. The Applicant, submits, and we agree that this is not relevant to this application. The gold mining industry will not diversify as a result of the Investment.

Whether New Zealand's strategic and security interests are or will be enhanced

94. The Applicant submits, and we agree that this is not relevant to this application as there is no strategically important infrastructure located on the Sensitive Land.

Whether New Zealand's key economic capacity is or will be improved

95. The Investment is unlikely to have a material impact on New Zealand's key economic capacity.

Benefit to New Zealand Test - s16(1)(e)(ii) and (iii)

Benefit test

96. In order for consent to be granted, the Applicant must demonstrate that the:
- (a) the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders); and
 - (b) that benefit will be, or is likely to be, substantial and identifiable.
97. We have assessed the benefit likely to result from this investment in accordance with the rural land directive contained in the directive letter dated 28 November 2017.
98. We have undertaken our assessment having regard to the characteristics of the Land and the nature of the interest being acquired (reflecting the proportional nature of the benefit assessment). In this case, the Applicant is seeking consent to acquire a freehold interest in approximately 177.8 hectares of land located in Waihi, for use (primarily) as tailings storage ponds and related infrastructure. The Land is located near a well established gold mine that is a major local employer and [REDACTED] to existing tailings storage pools operated by the Applicant.
99. We note that many of the benefits claimed relate to Project Quattro as a whole and that benefits arising directly from the acquisition of the Land are only one component of this. However it would, in our view, be inappropriate to discount what are clear benefits merely because they arise from the combined result of several closely linked applications rather than one 'stand alone' application.

Rural land directive

100. The rural land directive provides that the following factors will generally be of high relative importance:
- (a) The 'jobs' factor;
 - (b) The 'new technology or business skills' factor;
 - (c) The 'increased exports receipts' factor;
 - (d) The 'increased processing of primary products' factor; and
 - (e) The 'oversight and participation by New Zealanders' factor.
101. We do not consider that any other factor should be given high relative importance in the context of this investment.

Benefits from this investment

102. After careful consideration of the application, we are satisfied that the Investment is likely to result in the following benefits:
- (a) Jobs (the creation of approximately 80 new FTE jobs and the retention of 250 existing FTE jobs through the extension of the working life of the Waihi mine - **high weighting**);
 - (b) Increased export receipts (estimated by the Applicant at amounting to [REDACTED] 000 ounces of gold per year (over 6 years) for total export receipts of NZ\$ [REDACTED] billion - **high weighting**);
 - (c) Efficiency gains at the Waihi mine (through the ability to use existing infrastructure);

- (d) Additional investment for development purposes (amounting to NZ\$ [REDACTED] million in additional infrastructure investment – **high weighting**);
 - (e) Previous investments that have been or are of benefit to New Zealand (at Waihi and in the OceanaGold mines in Otago);
 - (f) Enhanced viability of existing investments (in infrastructure such as processing facilities); and
 - (g) Promotion of New Zealand's economic interests (through with a contribution of approximately NZ\$ [REDACTED] million total expenditure to the Otago and Waikato local economies).
103. The Applicant has demonstrated benefits for two of five factors with high relative importance (jobs and increased exports). We consider that the benefit likely to arise under those factors is of high weight in the context of the Investment. We also consider that further benefits are likely to occur as set out above.
104. When examined together, we consider that these benefits are **substantial and identifiable**, as assessed under the rural land directive.

Benefits not likely to occur

105. We considered that the factors below were either not relevant to the Investment or a benefit to New Zealand was unlikely to arise with regard to those factors. The Applicant made submissions in relation to some of these factors. However, we were **not** satisfied that the evidence provided showed that these benefits were likely to result from the Investment.

Indigenous vegetation/fauna – s17(2)(b)

There are three key elements to this factor:

- The relevant land must contain **significant existing**:
 - (i) **areas of indigenous vegetation**; or
 - (ii) **habitats of indigenous fauna**.
- There must be **adequate mechanisms** in place or proposed to **protect or enhance** the significant area or habitat.
- The protection or enhancement of the significant area or habitat that is **likely to result** from the overseas investment must be **additional** to that which is likely to occur **without the overseas investment**.

106. There is an area, of approximately [REDACTED] ha, on the [REDACTED] containing native vegetation. It does not have any separate covenant or protection. This forms part of a Significant Natural Area (**SNA**) under the Hauraki District Plan. The SNA is listed in the Hauraki District Plan as [REDACTED]. The SNA extends over property adjacent to the [REDACTED] property and totals around [REDACTED] ha.
107. The Applicant has provided a report from Bioresearches, consulting biologists (the "Bioresearches Report"), which notes that there is a relatively small area, approximately 5 hectares, of the part of the SNA within the [REDACTED] Property that would be removed by the proposed tailings pond construction works.
108. The Bioresearches Report states that: the vegetation cover "is mainly of a young and rather weedy scrub"; there is no threatened or at risk avifauna; there were no bats recorded and their presence is unlikely; no reptiles were located but there is potential presence of moko skinks.
109. The Bioresearches Report concludes that removal of about 5ha of SNA would not reduce the biodiversity, ecological significance or functional integrity of the balance SNA area. It recommends that the Applicant volunteer to mitigate any environmental effects by including the following resource consent conditions:
- (a) reptile salvage and

(b) vegetation replacement contiguous with the SNA.

110. The Applicant has volunteered to undertake that work and to undertake enhancement work on the remaining land to offset the SNA area being removed. It submits that it will increase ecological values beyond what would occur should the land remain in its current farming land use with no form of legal or physical protection or active management.
111. The Applicant also submits that it has historically undertaken voluntary ecological enhancement, including riparian, swamp, gully and hillside enhancement planting at Waihi which has created habitat of value. The Applicant submitted that it had also protected and enhanced, through covenants and pest/predator control, extensive ecological (and heritage) areas at its Macraes operation. The Applicant considers that it can demonstrate benefit to New Zealand arising from the proposed purchase beyond that which would occur if the land remained in its present ownership.

Our analysis

112. The Applicant still has to apply for Resource Management Act 1991 (**RMA**) consent for these activities. As part of the RMA consent process the management of environmental effects will properly be addressed by the consent authorities in accordance with their functions, duties and powers under the RMA.
113. Given there is to be an RMA consent process in the near future, and that this process will (in part) test the adequacy of the proposed mitigation features, we are of the view that it is premature to accept the Applicant's benefit claims at this stage. We note that one of the recommended special conditions of consent is that there be a requirement that the Applicant obtain resource management consent. Failing that, there is insufficient information available at present to properly reach a view. We therefore find that this benefit factor is **not met**.

Other benefit factors not met.

114. The following other factors were not met:

Factor	Reason not met / not relevant
New technology or business skills – 17(2)(a)(ii) - high relative importance	Not met. Any new technology (including robotic and semi-autonomous mining equipment) is still being "evaluated" to determine if it is suitable. It does not appear likely that the technology will be introduced in the near future.
Increased processing of primary products – 17(2)(a)(vi) - high relative importance	Not met – The Investment will not result in any additional processing. The bulk of the processing is conducted in Australia.
Trout, salmon, wildlife and game – 17(2)(c)	The Applicant submits, and we agree that this factor is not relevant - There are no existing areas of significant habitats of trout, salmon, wildlife protected under section 3 of the Wildlife Act 1953.
Historic heritage – 17(2)(d)	The Applicant submits, and we agree that this factor is not relevant - An archaeological assessment has been undertaken by [REDACTED] [REDACTED] No existing historic heritage has been identified on the property
Walking access – 17(2)(e)	The Applicant submits, and we agree that this factor is not relevant . Walking access cannot be granted due to health and safety considerations for a working mine facility.

Factor	Reason not met / not relevant
Offer to sell seabed/foreshore/riverbed to the Crown – 17(2)(f)	The Applicant submits, and we agree that this factor is not relevant . There is no foreshore, seabed or river bed to sell.
Consequential benefits – 28(a)	Not met – The benefits identified by the Applicant relate to existing community sponsorships in the Waihi area. The Ministerial directive letter directs that such benefits be given low relative importance. In this context the suggestion that existing sponsorships will be discontinued if the project does not proceed does not seem to be a 'consequential benefit'.
Key person in a key industry – 28(b)	Not met – The Applicant's claim that its mining operations in the Philippines make it a conduit to trade and improved relations with that nation are not supported by the available evidence.
Affect image, trade or international relations – 28(c)	Not met - We consider a well reasoned decision to decline would be unlikely to affect New Zealand's image, trade or international relations.
Owner to undertake other significant investment – 28 (d)	The Applicant submits, and we agree that this factor is not relevant . The Vendors have not disclosed what they intend to do with the proceeds.
Advance significant Government policy or strategy – 28(f)	Not met - There is no specific policy being advanced other than to utilise resources in a sensible and sustainable way.
Strategically important infrastructure – 28(h)	The Applicant submits, and we agree that this factor is not relevant .
Oversight and participation by New Zealanders – 28(j) - high relative importance	Not met - New Zealanders do not have any controlling stake in the relevant overseas person.

Has the farm land been offered on the open market?

Farm land advertising - s16(1)(f)

The Regulations require farm land or farm land securities to be offered for acquisition on the open market to non-overseas persons for at least 20 working days (or longer if the advertisement states or implies that offers will be accepted for that longer period). The purpose of such advertising is to ensure non-overseas persons have reasonable notice that they are available for acquisition. The Regulations do not require that the vendor accept any alternative offer made by a non-overseas person.

115. The [REDACTED] was listed for sale on internet site [REDACTED] and in: the [REDACTED] [REDACTED] over the [REDACTED] period. We have reviewed the advertising and are satisfied that the form and duration of the advertisements and offer period comply with the requirements of the Overseas Investment Regulations 2005.

116. The [REDACTED] was listed for sale on internet site [REDACTED] and in: the [REDACTED] [REDACTED] over the [REDACTED] to [REDACTED] period. We have reviewed the advertising and are satisfied that the form and duration of the advertisements and offer period comply with the requirements of the Overseas Investment Regulations 2005.

117. Section 20(a) of the Act permits Ministers to exempt investments from the need to meet the farm land advertising criterion if there are circumstances warranting an exemption. It is appropriate to exempt the [REDACTED] from the farm land advertising requirements because it is not an economic unit in its own right and is unlikely to attract any interest from buyers. The [REDACTED] and consists of [REDACTED] hectares of non-native scrub on steeply contoured land. The property was not otherwise being offered for sale and only came onto the market due to the [REDACTED]. **We therefore recommend that an exemption from the section 16(1)(f) criterion be granted in respect of the [REDACTED]**

Consent criteria

118. As detailed above, we are satisfied that the criteria in section 16 are met, and therefore consent should be granted to the Investment.

Third Party Submissions

119. No third party submissions were received.

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Released under the Official Information Act 1982

Appendix 1 - Proposed Decision

Consent for Overseas Person to Acquire Sensitive New Zealand Land

Read this consent carefully - you must comply with all the conditions. If you do not, you may be required to dispose of the land and/or be subject to fines or other penalties.

Consent

Decision date: [date]

The following people have been given the following **consent**:

Case	201710162, 201810122
Consent	Oceana Gold (New Zealand) Limited may acquire the Land subject to the Conditions set out below.
Consent holder/s	Oceana Gold (New Zealand) Limited We will also refer to each Consent holder and the Consent holders together as you .
Land	Approximately [redacted] hectares of land at [redacted] Waihi [redacted] and [redacted] Approximately [redacted] hectares of land at [redacted] Waihi ([redacted]) Approximately [redacted] hectares of land at [redacted] Waihi ([redacted])
[redacted]	The [redacted] of approximately [redacted] hectares of [redacted] for [redacted]
Timeframe	You have until 31 December 2019 to acquire the [redacted] and the [redacted] and until 31 December 2021 to complete the [redacted]

Conditions

Your Consent is subject to the Special conditions, Standard Conditions and Reporting conditions (**Conditions**) set out below. You must comply with them all. Be aware that if you do not comply with the Conditions you may be subject to fines or other penalties, and you may also be required to dispose of the Land.

In the Consent and the conditions, we refer to the Overseas Investment Office as **OIO, us or we**.

Special conditions

You must comply with the following **special conditions**. These apply specifically to this Consent and were considerations that particularly influenced us to give consent:

Details	Required date
Special condition 1: Apply for resource management consent	
<p>You must lodge all applications for consent under the Resource Management Act 1991 (RMA) affecting the construction of the tailings pond on the Land with the appropriate consent authority.</p> <p>If you do not, Standard condition 6 will apply and we may require you to dispose of the Land.</p>	By 31 June 2020
Special condition 2: Complete the [REDACTED]	
<p>You must survey and subdivide the [REDACTED] (approximately [REDACTED] hectares) and the portions of the [REDACTED] (approximately [REDACTED] hectares) that are to be the subject of [REDACTED] and complete [REDACTED]</p> <p>If you do not, Standard condition 6 will apply and we may require you to dispose of the Land.</p>	By 31 December 2021
Special condition 3: Obtain resource management consent	
<p>You must obtain consent under the RMA to carry out the construction of the tailings pond on the Land.</p> <p>If you do not, Standard condition 6 will apply and we may require you to dispose of the Land.</p>	By 31 December 2025
Special condition 4: Undertake financial feasibility study	
<p>You must undertake a financial feasibility study in respect of constructing the tailings pond on the Land in accordance with the RMA consent conditions and send us a copy of that study.</p> <p>If you do not, Standard condition 6 will apply and we may require you to dispose of the Land.</p>	Within 12 months of satisfying special condition 3
Special condition 5: Accept or reject financial feasibility of construction	
<p>You must provide us with notice in writing advising whether or not you consider the construction of the tailings pond to be financially feasible.</p> <p>If you do not send us notice, or if you advise us that the construction of the tailings pool is not financially feasible, Standard condition 6 will apply and we may require you to dispose of the Land.</p>	Within 6 weeks of satisfying special condition 4

Special condition 6: Complete the construction of the tailings pond	
<p>You must complete the construction of the tailings pond to the point where it is fully operational and fit for purpose.</p> <p>For the avoidance of doubt, we note that the size of tailings ponds increases as more material is placed in them. For this reason, satisfaction of this condition does not require that the tailings pond reaches its maximum extent or area.</p> <p>If you do not, Standard condition 6 will apply and we may require you to dispose of the Land.</p>	<p>Within 6 years of satisfying special condition 5</p>
Special condition 7: Offset damage to a Significant Natural Area	
<p>You must offer to accept resource consent conditions which mitigate the environmental effects of the removal of any part of the significant natural area on [REDACTED]</p>	<p>Upon applying for resource consent</p>
<p>If such conditions are not imposed, then you must comply with the conditions of the Bioreserches report (as they relate to the significant natural area), including:</p> <p>(a) reptile salvage; and</p> <p>(b) vegetation replacement (contiguous with the significant natural area).</p>	<p>Within 2 years of removal of any part of the Significant Natural Area</p>

Standard conditions

You must also comply with the **standard conditions** set out below. These apply to all overseas people who are given consent to acquire sensitive New Zealand land, including you:

Details	Required date
Standard condition 1: acquire the Land	
<p>You must acquire the Land:</p> <ol style="list-style-type: none"> by the date stated in the Consent. <p>If you do not, your Consent will lapse or become invalid and you must not acquire the Land, and</p> <ol style="list-style-type: none"> using the acquisition, ownership and control structure you described in your application. <p>Note, only you – the named Consent holder - may acquire the Land, not your subsidiary, trust or other entity.</p>	<p>As stated in the Consent</p>
Standard condition 2: tell us when you acquire the Land	
<p>You must tell us in writing when you have acquired the Land.</p> <p>Include details of:</p>	<p>As soon as you can, and no later than two months</p>

<ol style="list-style-type: none"> 1. the date you acquired the Land (Settlement), 2. consideration paid (plus GST if any), 3. the structure by which the acquisition was made and who acquired the Land, and 4. copies of any transfer documents and Settlement statements. 	after Settlement
Standard condition 3: allow us to inspect the Land	
<p>Sometimes it will be helpful for us to visit the Land so we can monitor your compliance with the Conditions.</p> <p>We will give you at least two weeks' written notice if we want to do this.</p> <p>You must then:</p> <ol style="list-style-type: none"> 1. Allow a person we appoint (Inspector) to: <ol style="list-style-type: none"> (a) enter onto the Land, including any building on it, other than a dwelling, for the purpose of monitoring your compliance with the Conditions (Inspection), (b) remain there as long as is reasonably required to conduct the inspection, (c) gather information, (d) conduct surveys, inquiries, tests and measurements, (e) take photographs and video records, and (f) do all other things reasonably necessary to carry out the Inspection. 2. Take all reasonable steps to facilitate an Inspection including: <ol style="list-style-type: none"> (a) directing your employees, agents, tenants or other occupiers to permit an Inspector to conduct an Inspection, (b) being available, or requiring your employees, agents, tenants or other occupiers to be available, at all reasonable times during an Inspection to facilitate access onto and across the Land. This includes providing transport across the Land if reasonably required. <p>During an Inspection:</p> <ol style="list-style-type: none"> (a) we will not compel you and your employees, agents, tenants or other occupiers to answer our questions or to let us look at, copy or take away documents, (b) our Inspector will comply with any reasonable instruction and co-operate with any reasonable health and safety policy or procedure you notify to us before the Inspection. 	At all times

Standard condition 4: remain of good character	
<p>You and the Individuals Who Control You:</p> <ol style="list-style-type: none"> 1. must continue to be of good character, and 2. must not become an individual of the kind referred to in section 15 or section 16 of the Immigration Act 2009. <p>In summary, these sections describe convicted or deported people who are not eligible for visa or entry permission to enter or be in New Zealand and people who are considered likely to commit an offence or to prevent a threat or risk to security, public order or the public interest.</p> <p>The Individuals Who Control You are individuals who:</p> <ol style="list-style-type: none"> (a) are members of your governing body, (b) directly or indirectly, own or control 25% or more of you or of a person who itself owns or controls 25% or more of you, and (c) are members of the governing body of the people referred to in paragraph (b) above. 	<p>At all times</p>
Standard condition 5: tell us about changes that affect you, the people who control you, or people you control	
<p>You must tell us in writing if any of the following events happens to any of the Consent holders:</p> <ol style="list-style-type: none"> 1. You, any Individual Who Controls You, or any person in which you or any individual who controls you hold (or at the time of the offence held) a 25% or more ownership or control interest commits an offence or contravenes the law anywhere in the world. This applies whether or not you or they were convicted of the offence. In particular, please tell us about any offences or contraventions that you are charged with or sued over and any investigation by enforcement or regulatory agencies or professional standard bodies. 2. An Individual Who Controls You ceases to be of good character; commits an offence or contravenes the law (whether they were convicted or not); becomes aware of any other matter that reflects adversely on their fitness to have the Land; or becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009 (see standard condition 4). 3. You cease to be an overseas person or dispose of all or any part of the Land. 4. You, any Individual Who Controls You, or any person in which you or any Individual Who Controls You hold (or at the time of the event held) a 25% or more ownership or control interest: <ol style="list-style-type: none"> (a) becomes bankrupt or insolvent (b) has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent 	<p>Within 20 working days after the change</p>

<p>appointed, or</p> <p>(c) becomes subject to any form of external administration.</p>	
<p>Standard condition 6: dispose of the Land if you do not comply with key Special conditions</p>	
<p>Some of the special conditions were key to the decision to give consent. If we consider you have failed to comply with one of those Special conditions in a material way we may require you to dispose of the Land.</p> <p>We may also require you to execute a security deed before you may acquire the Land. The security deed:</p> <ol style="list-style-type: none"> 1. must be in the form we require, 2. must be executed and delivered to us before you acquire the Land, 3. gives us power to appoint a receiver to dispose of the Land if you do not do that as required by this Standard condition 6, 4. will provide, among other things, that if we appoint a receiver, the receiver may dispose of the Land, deduct his or her costs from the proceeds of sale, and pay the remainder to you. <p>If all or part of this Standard condition 6 applies to a Special condition, we have said so in that condition.</p> <p>We will give you written notice if we require you to dispose of the Land. After we have given you notice, you must:</p>	<p style="text-align: right; opacity: 0.5; font-size: 2em; transform: rotate(-30deg);">Released under the Official Information Act 1982</p>
<p>1. Value the Land: obtain and send us a copy of a market valuation of the Land from a New Zealand registered valuer.</p>	<p>Within six weeks of the date of our notice.</p>
<p>2. Market the Land: instruct a licensed real estate agent to actively market the Land for sale on the open market.</p>	<p>Within six weeks of the date of our notice.</p>
<p>3. Dispose of the Land: dispose of the Land to a third party who is not your associate.</p>	<p>Within six months of our notice.</p>
<p>4. Offer without reserve: offer the Land for sale by auction or tender without a reserve price or minimum bid and dispose of the Land.</p>	<p>Within nine months of our notice.</p>
<p>5. Report to us about marketing: tell us in writing about marketing activities undertaken and offers received for the Land.</p>	<p>By the last day of every March, June, September and December after our notice or at any other time we require.</p>
<p>6. Report disposal to us: send us, in writing, evidence:</p> <p>(a) that you have disposed of the Land,</p>	<p>Within one month after the Land has been</p>

<p>(a) of disposal (including copies of sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor),</p> <p>(b) the purchaser is not your associate.</p>	<p>disposed of.</p>
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Reporting conditions

We need information from you about how your Investment Plan is tracking so we can monitor your progress against the Conditions and so we can measure the benefits you have brought to New Zealand through your investment.

Every year, you must lodge an **annual report**. It must:

1. be sent to **oiomonitoring@linz.govt.nz** by these dates:
 - (a) Year one: 31 January 2020
 - (b) Year two: 31 January 2021
 - (c) Year three: 31 January 2022
 - (d) Year four: 31 January 2023
 - (e) Year five: 31 January 2024
 - (f) Year six: 31 January 2025
 - (g) Year seven: 31 January 2026
2. contain information about:
 - (a) your progress in implementing the special conditions;
 - (b) your progress in implementing the mine development, including the process of obtaining resource consents;
 - (c) the number of FTE employees and contractors currently employed by the Applicant engaged in mining activities at Waihi;
 - (d) the amount invested for development purposes, broken down by area of investment;
 - (e) your progress in enhancing the land to offset the Significant Natural Area being removed from the [REDACTED] and
 - (f) any other information relevant to the implementation of the special conditions.
3. follow the format of the template annual report published on our website.

Appendix 2 - Instructions

1. The regulator must grant consent to this overseas investment if it is satisfied that all of the criteria in section 16 of the Overseas Investment Act 2005 (“the Act”) are met. It must decline to grant consent if it is not satisfied that all of the criteria in section 16 are met. The regulator must not take into account any criteria or factors other than those identified in sections 16 and 17, and regulation 28 of the Overseas Investment Regulations 2005 (“the Regulations”).
2. In the attached Report the Overseas Investment Office identifies each of the criteria and factors under sections 16 and 17, and regulation 28 that the regulator is required to consider in this case.

“Benefit to New Zealand criteria”

3. In this case, section 16 requires the regulator to decide, among other things, whether it is satisfied that the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders), as determined under section 17 (section 16(1)(e)(ii)).
4. The application of the benefit to New Zealand criteria involves the exercise of judgement and is a high-level decision with significant policy content. This is apparent from the language and content of the factors that must be considered, many of which require a high degree of evaluative judgement, and are not capable of quantification or calculation.
5. In applying the benefit to New Zealand criteria, the regulator is required to consider each of the factors in section 17(2), determine which of the factors are relevant to the investment, and have regard to the relevant section 17(2) factors. The relative importance to be given to each factor is a matter to be determined by the regulator². In particular, the Act does not require economic factors to be given more weight than non-economic factors, or vice versa. It is a matter for the regulator, in carrying out its overall evaluation, to decide what weight to give to each factor.

Justice Miller’s “with and without test”

Economic factors

6. The High Court in *Tiroa E and Te Hape B Trusts v Chief Executive of Land Information* [2012] NZHC 147 (“*Tiroa E*”) requires the “economic benefit” factors in section 17(2)(a) to be assessed on the basis of a “counterfactual test”. That is, the regulator must consider with respect to each section 17(2)(a) factor whether the overseas investment is likely to result in a benefit to New Zealand over and above any benefit that will or is likely to result even if the investment does not proceed. It is only the additional benefit from the overseas investment that is relevant when applying the “benefit to New Zealand” criteria.

Non-economic factors

7. Although the position is not free from doubt, the better view is that the same question – will this benefit be achieved even if the overseas investment does not occur – should be asked in relation to the other “non-economic” factors listed in section 17(2)(b)-(e). The High Court judgment suggested³ that there could be a benefit in respect of the non-economic factors even if the same benefit would be achieved in the absence of the investment. However, we consider that the regulator should not give weight to benefits that are likely to result in any event.

² In this case, the Regulator is not required to treat the factors identified in paragraphs 16 and 19 of the 28 November 2017 Directive Letter as being of high relative importance, as the overseas investment does not involve the acquisition of non-urban land that is over 5 hectares in size.

³ *Tiroa E* at [36].

Regulation 28 factors

8. With regard to the factors in regulation 28 of the Overseas Investment Regulations 2005, Miller J noted that:

The criteria listed in reg 28 deal, for the most part, with benefits that only an overseas buyer could provide or what may be loosely described as strategic considerations, so they do not require a counterfactual analysis.⁴

9. Many of the factors in regulation 28 are incapable of having a counterfactual analysis applied to them. However, as recognised by Miller J, there are some factors that may require a counterfactual analysis. The Overseas Investment Office has applied a counterfactual analysis where appropriate.

Conditions

10. Conditions may be imposed on any consent that is granted, under section 25. The attached Report recommends some conditions that you may wish to consider imposing in this case.

Decision

11. The decision that you are required to make should be based on information available to you that you consider is sufficiently reliable for that purpose. The information that the Overseas Investment Office has taken into account in making its recommendation is summarised in the attached Report.

⁴ *Tiroa E* at [36].

Appendix 3 - Sensitive Land

1. [REDACTED] Waihi

Land Interest	Freehold Interest (approximately [REDACTED] hectares)
CTs	[REDACTED] (South Auckland)
Sensitivity	Is more than 5 hectares of non-urban land

2. [REDACTED] Waihi

Land Interest	Freehold Interest (approximately [REDACTED] hectares (although the Applicant is only acquiring [REDACTED] hectares))
CTs	[REDACTED] (South Auckland)
Sensitivity	Is more than 5 hectares of non-urban land

3. [REDACTED] Waihi

Land Interest	Freehold Interest (approximately [REDACTED] hectares)
CTs	[REDACTED] (South Auckland)
Sensitivity	Is more than 5 hectares of non-urban land

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Appendix 4 - Good Character

Introduction

1. As part of the application (**Application**), several matters were disclosed about the Applicant and several of the individuals with control in their capacity as directors of OceanaGold. We also carried out standard open-source checks, which revealed some additional matters. We have made enquiries about the relevant matters and sought and received comment from the Applicant.
2. The purpose of this Appendix is to outline the relevant matters, the Applicant's comments on these and our assessment of the good character criterion as it applies to the Application (section 16(1)(c) of the Act).
4. For the purpose of this Application, the individuals with control of the relevant overseas person are set out in the report. We have assessed each of the allegations and consider that, for the reasons set out below, the allegations do not prevent a finding that the individuals with control of the relevant overseas person (**IWCs**) are of good character.

Good character criterion

5. Section section 16(1)(c) of the Act requires that Ministers, be satisfied that the relevant overseas person or, (if that person is not an individual) all the individuals with control of the relevant overseas persons are of good character.
6. The term "good character" is not defined in the Act. The majority of the Select Committee reporting back on the Bill in 2005 confirmed that the "good character" test was needed as it is important to ensure that all persons investing in New Zealand are people unlikely to act inappropriately and bring New Zealand into disrepute.
7. When undertaking the good character assessment, the Regulator must be satisfied that the character of all the individuals with control of the relevant overseas person is sufficient so that they should be granted the privilege of owning or controlling sensitive New Zealand assets.
8. Section 19(1) of the Act states that the following factors must be taken into account (without limitation) in assessing whether or not a person is of good character:
 - (a) offences or contraventions of the law by the person, or by any person in which the individual has, or had at the time of the offence or contravention, a 25% or more ownership or control interest (whether convicted or not);
 - (b) any other matter that reflects adversely on the person's fitness to have the particular overseas investment.
9. All relevant matters must be weighted up before making a decision that an individual is of good character. If the decision-maker wishes to rely on a matter to which the applicant has not had an opportunity to respond, then such an opportunity to respond needs to be given to the applicant.
10. How much weight should be given to a particular matter depends on a number of factors, including how closely linked the particular matter is with the investment being made. While submissions on weighting given by the relevant overseas person or individual with control may be considered, the ultimate decision as to the weighting to be given to relevant matters is for the decision-makers.
11. Matters which might be relevant include:
 - (a) Credible allegations of offending or contraventions of the law (assessing whether the allegation is sufficiently linked to an individual with control or relevant overseas person);
 - (b) Investigations, prosecutions or other enforcement action by regulatory or professional bodies;

(c) Track record in New Zealand.

12. Matters which are unlikely to be relevant include:

- (a) Adverse information that does not relate to an individual with control (for example, offences or contraventions by a relevant overseas person which occurred before the particular individual became involved with the relevant overseas person);
- (b) Where the decision maker is satisfied that allegations about a relevant overseas person or individual with control have been fully investigated by the relevant regulatory or other authority and the person or individual has been cleared of any wrongdoing;
- (c) Adverse information that does not impact on the character of a relevant overseas person or individual with control.

13. The good character test is applicable to individuals, not entities such as body corporates. However, where the investment is to be carried out by a body corporate, the character of the relevant individuals who control the body corporate will need to be considered. Where an offence or contravention is committed by a person to which an individual had a 25% or more ownership or control interest, this is a mandatory consideration. Where the individual's interest in the person is less than this, there generally must be other grounds to reasonably infer participation by the individual in the alleged wrongdoing.

14. The onus is on the applicants to satisfy the decision maker that all the individuals with control are of good character.

15. If the decision maker has doubts about the character of an individual with control which result in it not being satisfied that the test for good character has been met, then the application for consent must be declined.

Good character allegations

16. The Applicants disclosed a number of allegations and compliance matters to the OIO. We also carried out standard open-source checks, which revealed some additional matters. Where appropriate, we have sought further comment from the Applicant on these matters.

17. While there are a number of matters summarised below, we consider that only those relating to health and safety are potentially relevant to the character of the IWCs in terms of section 19. The other matters are included for completeness.

Health and safety incidents

18. On 28 July 2016, an employee of the Applicant was killed following an incident at the Applicant's Waihi Underground Mine, where the employee was driving a vehicle which went over the edge of a slope face. There were no witnesses and the exact cause of the incident is unknown.

19. While the Applicant was convicted and fined \$728,000 under the Health and Safety at Work Act 2015, the judge concluded that the Applicant was only moderately culpable and commended the Applicant for its actions after the incident, both in terms of providing assistance to the deceased's family and in terms of working helpfully and constructively with the investigators. It was the first death in the New Zealand company's 25 year history.

20. Other health and safety incidents included:

- (a) An employee dislocating his ankle and pelvis when a boom he was working on rolled on to him in 2009;
- (b) An injury to an employee's finger in 2013 resulting in a fine of \$40,000;
- (c) An employee breaking his leg in 2014 resulting in a fine of \$60,000;

21. In each instance the Applicant identified changes to be made to improve safety management including: introducing new Standard Operating Procedure; task observations and quality checks; requiring completion of a Job Safety Assessment before commencement of work and associated training; and updating contractual arrangements. The identified changes were then implemented.
22. We note that in each instance the health and safety matters have been fully investigated with the co-operation of the Applicant and appropriate remedial measures have been introduced to prevent recurrence. We therefore consider that these matters do not affect our assessment of the good character of the IWCs.

Suspension order at Didipio mine

23. We note that there is an on-going dispute between OceanaGold and Phillipines government officials regarding the Didipio mine in the Northern Phillipines.
24. In February 2017 OceanaGold received an order from the Department of Environment and Natural Resources in the Philippines calling for the suspension of the operations at the Didipio mine. The Didipio mine was one of 6 mining operations listed for proposed suspension, with another 23 mining operations listed for closure. The affected mines were owned and operated by a variety of international mining companies. The Department of Environment and Natural Resources cited declining agricultural production as the reason for the suspension orders.
25. OceanaGold denied any wrongdoing. It claimed that the Didipio operation was not in violation of any laws, rules or regulations, and the operation did not posing any threat to public, security, health, safety or otherwise. It claimed that there was no legal basis for the suspension order. The mine continues to operate while the order is appealed.
26. Because it is unclear whether any wrongdoing is alleged and because the dispute is not connected with the New Zealand operations of the Applicant, we consider that this matter should not affect our assessment of good character of the IWCs.

Other matters

27. The remaining matters relate to entities of which IWCs are directors, but: where the IWC are not directly involved in the alleged misconduct; or where the matters have been resolved and do not affect the IWC's character. These matters have been included for completeness only.
 - (a) The Applicant was fined \$23,000 under section 15(1)(b) of the Resource Management Act for discharging sediment into Devils Creek from a silt settling pond at the mine on 2 September 2009, in breach of its resource consent. The breach was a consequence of unseasonal rainfall and a plant and pipeline were constructed to remedy the problem. There was no suggestion of wrongdoing on the part of any IWC.
 - (b) Matters which relate to an entity of which IWCs are directors, but which do not relate to the IWCs themselves, or which were settled without any admission of liability:
 - (i) legal proceedings relating to contract variation provisions with a Waihi contractor;
 - (ii) a dispute with the Otago Regional Council regarding the duration of bond payments;
 - (iii) a claim for unjustified dismissal at the Employment Relations Authority over dispute as to whether an employee was a casual or permanent employee;

Conclusion

28. Having regard for the matters above, and the statutory declaration received regarding the character of the IWCs, we are satisfied that all of the IWCs are of good character.

29. We note that the conditions proposed in **Appendix 1** include a requirement that the Individuals with Control (as defined in the conditions) continue to be of good character.

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