

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

Date	3 May 2019
Security Level	Commercial: In Confidence
Priority	High
Case Number	201810121
Decision Required By	3 May 2019

Contact for Telephone Discussion

Name	Position	Telephone	Cellphone	First Contact
	Principal Advisor			
	Senior Solicitor			✓

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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) A freehold interest in approximately [REDACTED] hectares of residential land at [REDACTED] Waihi;
 - (b) A freehold interest in approximately [REDACTED] hectares of residential land at [REDACTED] Waihi;
 - (c) A freehold interest in approximately [REDACTED] hectares of residential land at [REDACTED] Waihi; and
 - (d) An interest in in [REDACTED] hectares of residential land at [REDACTED] Waihi.

Incidental residential use/non-residential use outcomes

4. We are satisfied that the appropriate residential land outcomes are the incidental residential use outcome and the non-residential use outcome and that the overseas investment satisfies the requirements of those outcomes.

Benefit to New Zealand - s16A(1)(a)

5. The Applicant has plans to undertake a significant expansion of its existing mines. "Project Martha" and "Project Quattro" are intended to add a further 16 years to the mine life and yield approximately [REDACTED] 000 ounces of gold per year (approximately [REDACTED] million ounces of gold, in total).
6. The Applicant claims that without an expansion of the mine, Project Martha and Project Quattro would have to be abandoned. The Applicant estimates that without the Project Martha expansion, the Waihi mine will run out of ore to mine before 31 December 2019.
7. We accept that any continuation of mining activities is likely to be inhibited if the mine does not expand.
8. However, Project Quattro relies on the Applicant acquiring other land, for which it requires consent under the Act. As no decision has yet been made, we cannot presume that Project Quattro will proceed. Accordingly, this recommendation proceeds on the basis of the Project Martha benefits only.
9. 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 (over \$189m per annum over 9 years) (**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.
10. Having regard to the above, we are satisfied that the overseas investment is likely to benefit New Zealand.

Instructions

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

Decision:

12. I have determined that:

- (a) the '**relevant overseas person**' is (collectively):

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

- (b) 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
Craig Nelson	Director of Parent
Michael Francis Wilkes	Director of Parent and Applicant
Michael Harvy Lou Holmes	Director of Applicant
Mark David Cadzow	Director of Applicant

13. I am satisfied that the incidental residential use test and non-residential use test set out in Schedule 2, clauses 13 and 14 of the Act have been met:
- (a) the residential land will be, or is likely to be used for residential purposes but only in support of the relevant business where the relevant business is not (or is only exceptionally) in the business of using land for residential purposes;
- (b) the residential land will be, or is likely to be used for non-residential purposes; and
- (c) having regard to that use of the residential land, the relevant interest in the residential land will be, or is likely to be, acquired in the ordinary course of the business of the relevant overseas person.
14. I am satisfied that the criteria for consent in sections 16, 16A and 16B have been met:
- (a) the individuals with control of the relevant overseas person collectively have business experience and acumen relevant to the overseas investment;

- (b) the relevant overseas person has demonstrated financial commitment to the overseas investment;
 - (c) all the individuals with control of the relevant overseas person are of good character;
 - (d) 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;
 - (e) a residential land outcome listed in the table in clause 19 of Schedule 2 applies; and
 - (f) the conditions to be imposed on the consent in accordance with section 16B will be or are likely to be met; and
 - (g) the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders).
15. 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.

	Principal Advisor
Date	3/5/19

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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] [REDACTED] (New Zealand, 100%) - [REDACTED] [REDACTED] (New Zealand, 100%) - [REDACTED] [REDACTED] (New Zealand, 100%) - [REDACTED]
Consideration	[REDACTED]
Recommendation	Grant Consent

Description of the Investment

- Oceana Gold (New Zealand) Limited (**Applicant**) seeks consent to acquire the following interests (collectively referred to as the "**Land**"):
 - A freehold interest in approximately [REDACTED] hectares of residential land at [REDACTED] Waihi;
 - A freehold interest in approximately [REDACTED] hectares of residential land at [REDACTED] Waihi;
 - A freehold interest in approximately [REDACTED] hectares of residential land at [REDACTED] Waihi; and
 - An interest in in [REDACTED] hectares of residential land at [REDACTED] Waihi;
 (these transactions are collectively referred to as the "**Investment**").
- The Applicant owns and operates the Martha mine (open pit) and Moonlight, Favona, Trio, Correnso and Slevin (underground) mines at Waihi.
- As part of large-scale expansion plans, the Applicant intends to carry out new underground mining activities in two stages (**Project Martha** (stage 1) and **Project Quattro** (stage 2)). As part of Project Martha there will be extensive excavation of new mines.
- The Applicant expects that acquiring the Land (if the vendors wish to sell) will be a condition of the resource consents needed to allow the underground mining to proceed, as it has been with previous consents. Such a condition would give relief to owners whose quiet enjoyment is disturbed by vibrations caused by underground blasting. Without the ability to acquire the land, [REDACTED]
- The Applicant also proposes to [REDACTED] to [REDACTED] to allow an [REDACTED]
- This Application is one of a series of applications relating to Project Martha and Project Quattro. We note that some of the Applicant's benefit claims relate to Project Martha and Project Quattro as a whole, and flow from the successful completion of the project.

Vendors

7. The owners of [REDACTED] are New Zealand citizens. The owner of [REDACTED] The owner of [REDACTED] is [REDACTED]
8. The Applicant has entered into a sale and purchase agreement with the owner of [REDACTED]
9. The sales were negotiated at arms length. There is no relevant previous relationship between the Vendors and the Applicant.

Why is the land sensitive?

10. The Land is 'residential land' as defined in section 6 of the Act.
11. The Land (outlined in purple below) is sensitive in that it [REDACTED]

12. See **Appendix 3** for specific details about these titles.

Who is making the Investment

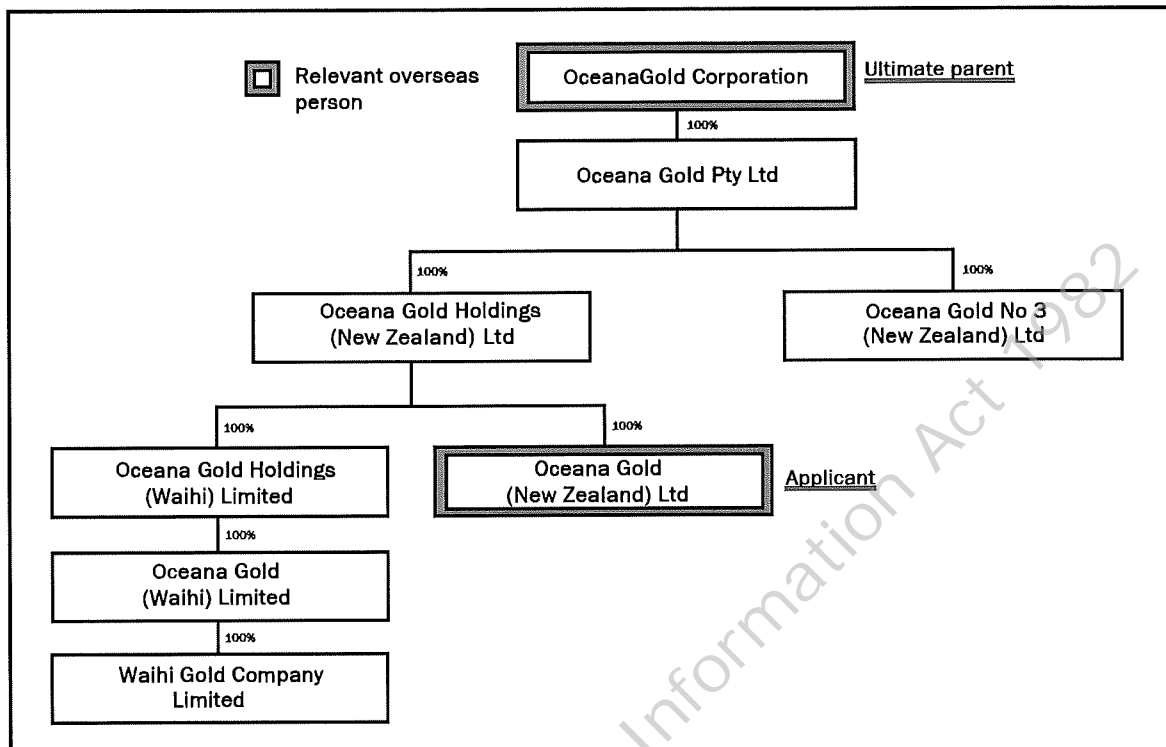
Applicant

Who the Applicant is

13. 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.
14. 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.
15. 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

16. OceanaGold's corporate structure is set out below.



17. OceanaGold is widely held, with no shareholders holding a 25% or more interest.² Its shareholders are primarily (46%) based in the United States, the United Kingdom (23%), Australia (10%), and Canada (9%).

Who controls the Applicant

18. 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.
19. For this Investment, the board of directors of OceanaGold endorsed the Applicant's recommendation to acquire the properties.
20. The Applicant's directors are:
- Mark David Cadzow;
 - Michael Harvey Lou Holmes; and
 - Michael Francis Wilkes.
21. OceanaGold Corporation's board of directors are:
- Craig Nelson;
 - Michael Francis Wilkes;
 - Dr Geoff Raby;
 - Paul B. Sweeney;
 - Nora L. Scheinkestel; and
 - Ian Macnevin Reid.

Relevant Overseas Person

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

² Only two shareholders have more than 5% ownership interest. These are both well-known investment companies.

Individuals with Control

23. We have determined that the 'individuals with control of the relevant overseas person' are:
- (a) Ian Macnevin Reid;
 - (b) Nora Lia Scheinkestel;
 - (c) Paul Bristol Sweeney;
 - (d) Geoffrey William Raby;
 - (e) Craig Nelson;
 - (f) Michael Francis Wilkes;
 - (g) Michael Harvy Lou Holmes; and
 - (h) Mark David Cadzow.

Investment Plan

Project Martha and Project Quattro

24. The Applicant relies on the benefits from Project Martha and Project Quattro in this and future applications, on the basis that all the component parts of Project Martha and Project Quattro contribute towards the benefits of the project as a whole.
25. **Project Martha** 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.
26. In February 2019 OceanaGold obtained resource consent for Project Martha. Martha ore resources are estimated to be sufficient for continuous mining for 11 years (until 2030). However, unless a new tailings pond is developed as part of Project Quattro, mining will end in 2028 when the existing tailings storage capacity is met.
27. In **Project Quattro** the Applicant will (concurrently):
- (a) [REDACTED]
 - (b) [REDACTED] and [REDACTED]
 - (c) establish a new tailings pond to deal with the tailings that will be generated [REDACTED]
28. The Applicant intends to lodge resource consents applications for Project Quattro 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.
29. Together Project Martha and Project Quattro are intended to add a further 16 years to the mine life and yield approximately [REDACTED] million ounces of gold, in total. Project Quattro will require NZ\$ [REDACTED] Million in capital expenditure. 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. Project Quattro alone will add six years to the life of the mine.
30. The Applicant expects (based on current estimates) that Project Quattro will generate an average of [REDACTED] 000 ounces of gold per year (over the equivalent of 5 years) equating to NZ\$ [REDACTED] M per year of revenue assuming a gold price of US\$ [REDACTED] per ounce.
31. However, Project Quattro relies on the Applicant acquiring land, for which it requires consent under the Act. As no decision has yet been made, we cannot presume that Project Quattro will proceed. Accordingly, this recommendation proceeds on the basis of the Project Martha benefits only.

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).

32. 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

33. The Land is 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

34. The Land will continue to be used for residential use. In the case of [REDACTED] the property will continue to be used as [REDACTED]

What will happen to the mine?

35. The Applicant claims 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.

Conclusion

36. Because of the location of the Land, it will inevitably be affected by the mine expansion. [REDACTED]

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.

37. The Investment is the acquisition of sensitive residential land for incidental residential and non-residential purposes.
38. 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.
39. 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.

40. The 'financial commitment' criterion requires the relevant overseas person to have taken actions that demonstrate financial commitment to the Investment (intentions are not sufficient).
41. 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.

42. 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.
43. 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.
44. 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.

45. 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.
46. 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.

Is this a residential use?

Non-residential use Sch2 cl13

The decision maker must be satisfied that:

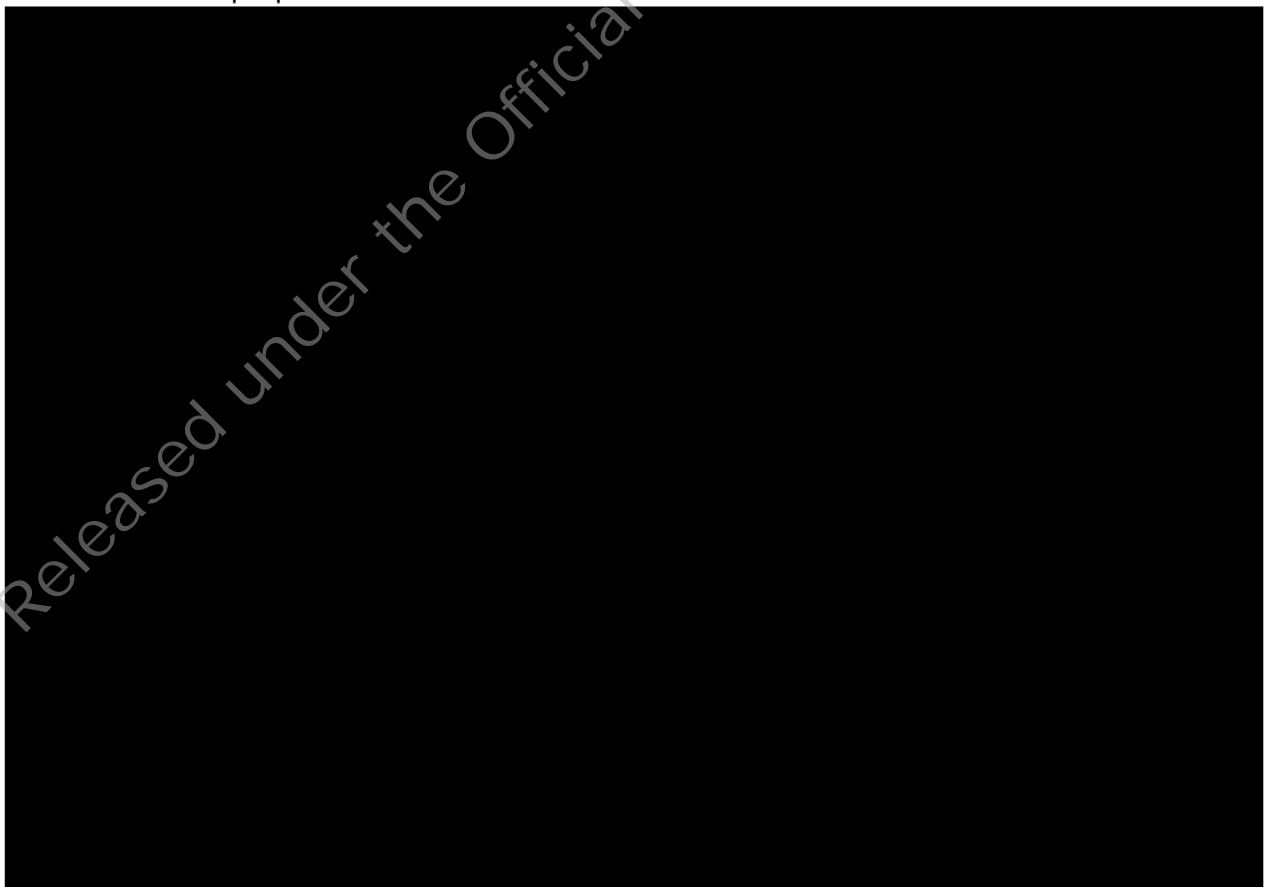
- (a) the residential land will be, or is likely to be (or will, or is likely to, continue to be) used for **non-residential purposes** in the ordinary course of the relevant business; and
- (b) not used, nor held for future use, for any residential purpose.

Incidental use Sch2 cl14

The decision maker must be satisfied that:

- (a) the residential land will be, or is likely to be (or will, or is likely to, continue to be) used for **residential purposes** but only in **support of the relevant business**, where the relevant business is not (or is only exceptionally) in the business of using land for residential purposes (the incidental residential use outcome); and
- (b) having regard to that use of the residential land, the relevant interest in the residential land will be, or is likely to be, **acquired in the ordinary course of the business** of the relevant overseas person.

- 47. The Applicant is already a large residential landowner in Waihi. The Applicant's mining activities are adjacent to and, in some instances, extend under residential areas. Surface and underground mining can cause disturbance, including vibrations, noise, and dust. Because of that disturbance, the Applicant (and its predecessor companies) have previously acquired large tracts of residential land adjacent to proposed and consented mining sites.
- 48. The following diagram shows the underground footprint of the existing modern Waihi mines and the proposed mine extensions:



- 49. As part of the current resource consenting practice by the Hauraki District Council and the Waikato Regional Council, any affected landowners may require the Applicant to purchase their property (**Residential Land Condition**). The Residential Land Condition has been agreed upon as a result of an Environmental Court assisted mediation process.

50. In relation to the Land, it is anticipated that repeated blast vibrations associated with the underground mining in the first stage means the conditions imposed on any resource consents (in order to avoid unreasonable effects on amenity) will require the Applicant to purchase these properties.
51. Therefore, in anticipation of the Residential Land Condition being imposed, the Applicant wishes to offer to acquire affected properties in advance of the resource consent process. This approach has the benefit of providing residents with certainty and avoids exposing them to any adverse effects.
52. The land will be used for residential purposes. The properties may be rented back to the original owners, tenanted or left unoccupied. Because owners of adjoining property can object to activities under the Resource Management Act, triggering the Residential Land Condition, there is no reasonable alternative to acquiring the land, which is immediately adjacent to the mine. Complaints under the Resource Management Act 1991 have the potential to frustrate the planned mine expansion.
53. OceanaGold is a mining company, not a commercial landlord. The land is acquired in the ordinary course of business for the purpose of creating a buffer zone to prevent complaints that might otherwise arise under the Resource Management Act 1991.
54. One property, [REDACTED] Waihi, may also be used for non-residential purposes, specifically, for [REDACTED]
55. Having regard to the above, we are satisfied that the appropriate residential land outcomes are the incidental residential use outcome and the non-residential use outcome and that the overseas investment satisfies the requirements of that outcome.
56. The recommended conditions of consent include a condition that the Applicant only use the properties for incidental residential uses and non-residential uses, and dispose of the properties once that are no longer required for those uses.

Benefits that are likely to occur with the Investment

57. 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**.

58. The mines at Waihi employ 250 FTE staff. There was a cumulative payment of \$ [REDACTED] M in staff salaries and benefits (such as KiwiSaver) in the 2017 calendar year, and a further \$ [REDACTED] M for contractors.
59. On current projections provided by the Applicant, Project Martha will extend mine life by 9 years from 2019 to 2028, will retain the existing 250 FTE jobs for an additional 9 years, and add a further approximately 80 FTE jobs..
60. 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).
61. 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

62. As discussed in the counterfactual section above, we consider that the Land would continue to be used for residential purposes and mining would cease by 31 December 2019.

Conclusion

63. 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 Project Martha. 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**.

64. In 2016 the Waihi mine produced NZ\$189M of gold. The gold was exported in a semi-pure form for further processing in Perth. Project Martha is projected to generate export receipts at a similar or increased level for nine years.

Counterfactual

65. As discussed in counterfactual section above, we consider that the mine operations would cease by 31 December 2019 if the Land was not acquired.

Our assessment

66. It is likely that export returns generated by the mine under the counterfactual scenario would cease by 31 December 2019. 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

67. Project Martha 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).
68. The Counterfactual does not provide for any efficiency or productivity gains, as the Land will continue to be used as residential properties.

Our assessment

69. We are satisfied that the Investment will permit the Applicant to use existing infrastructure, resulting in gains in efficiency.
70. 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**.

71. The estimated indicative cost of the additional investment in new mines, construction and infrastructure which will be introduced to New Zealand from Project Martha is NZ\$ [REDACTED] M.
72. Under the counterfactual, this investment would not occur.
73. We are therefore satisfied that the Investment will result in the introduction of additional investment for development purposes, including investment in the development of a new mine 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**.

74. 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.
75. 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.
76. 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**.

77. As noted above, the Applicant claims that if Project Martha 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

78. 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

79. 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.

80. 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).

81. 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.

82. 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

83. 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).

84. 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

85. 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

86. 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

87. 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

- 88. In order for consent to be granted, the Applicant must demonstrate that the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders).
- 89. 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 [redacted] hectares of sensitive residential land located in Waihi, for purposes incidental to the Applicant’s mining operations. The Land is located near a well established gold mine that is a major local employer.
- 90. We note that many of the benefits claimed relate to Project Martha 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.

Benefits from this investment

- 91. 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 (over \$189m per annum over 9 years) – **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).

Benefits not likely to occur

- 92. 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.
- 93. The following factors were not relevant or showed insufficient benefit:

Factor	Reason not relevant / insufficient benefit
--------	--

Factor	Reason not relevant / insufficient benefit
New technology or business skills – 17(2)(a)(ii) - high relative importance	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	The Investment will not result in any additional processing. The bulk of the processing is conducted in Australia.
Indigenous vegetation/fauna – s17(2)(b)	The Applicant submits, and we agree that this factor is not relevant – This is an urban environment.
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 – s17(2)(d)	[REDACTED] is part of Project Quattro, and we cannot say that it will proceed if only Project Martha goes ahead.
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.
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)	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)	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)	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)	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	New Zealanders do not have any controlling stake in the relevant overseas person.

Consent criteria

94. As detailed above, we are satisfied that the criteria in sections 16, 16A and 16B are met, and therefore consent should be granted to the Investment.

Third Party Submissions

95. No third party submissions were received.

Appendices

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Appendix 1 - Proposed Decision

Consent for Overseas Person to Acquire Residential Land in New Zealand- Incidental Residential Use/non-residential use

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

In the consent and the conditions **us, we or OIO** means the Overseas Investment Office.

CONSENT

Here are the details of your **consent**:

Case number	201810121
Decision date	3 May 2019
Consent	Oceana Gold (New Zealand) Limited may acquire the Residential land. See the conditions that apply below.
Consent holder	Oceana Gold (New Zealand) Limited We will also refer to Oceana Gold (New Zealand) Limited individually and together, as you .
Residential land (Land)	[REDACTED] South Auckland) [REDACTED] South Auckland) [REDACTED] (South Auckland) [REDACTED] (South Auckland)
Approved incidental residential use	Use as a buffer zone from mine operations with incidental residential tenancies.
Relevant business	Gold mining
Expiry date	You have until 31 December 2028 to acquire the land.

CONDITIONS

You must comply with the special conditions, standard conditions, and reporting conditions (**Conditions**) set out below. Be aware that if you do not comply with the Conditions you may receive fines or other penalties, and you may also have to dispose of the Land.

SPECIAL CONDITIONS

You must comply with the following **special conditions**. These apply specifically to consents for incidental residential use.

Details	Required date
Special condition 1: Do not give effect to the transaction without providing statutory declarations	
<p>You must provide us with a statutory declaration meeting the requirements of s 23(1)(d) of the Act.</p> <p>If you do not, standard condition 6 will apply and we may require you to dispose of the Land.</p>	<p>The earlier of:</p> <ul style="list-style-type: none"> • giving effect to a transaction to acquire the residential land; • entering into an agreement acquire any of the residential land; or • 31 May 2019.
Special condition 2: use the Land for an incidental residential purpose	
<p>You must use CT [REDACTED] (South Auckland), [REDACTED] (South Auckland) and CT [REDACTED] (South Auckland) for the approved incidental residential use.</p> <p>If you do not, standard condition 6 will apply and we may require you to dispose of the Land.</p>	<p>On-going commencing on the date of consent.</p>
Special condition 3: use the Land for an incidental residential purpose or a non-residential purpose	
<p>You must use CT [REDACTED] (South Auckland) for either or both:</p> <ul style="list-style-type: none"> • the approved incidental residential use; and/or • a non-residential use, being [REDACTED] <p>If you do not, standard condition 6 will apply and we may require you to dispose of the Land.</p>	<p>On-going commencing on the date of consent.</p>

Special condition 4: restrictions on occupation of the land	
<p>The individuals who control you (as defined in standard condition 4) may not occupy the Land for residential purposes.</p> <p>For the purposes of this condition, a person occupies the land for residential purposes if they use the land for accommodation, regardless of whether:</p> <p>(a) the period of accommodation is short or long term</p> <p>(b) the accommodation is or temporary or permanent.</p> <p>If any of the people named above occupy the land for residential purposes, standard condition 6 will apply and we may require you to dispose of the Land.</p>	At all times.
Special condition 5: obtain the relevant consents	
You must:	
1. Lodge all applications for consent under the Resource Management Act 1991 (RMA) in respect of Project Martha with the appropriate consent authority.	By 31 June 2020, unless otherwise agreed in writing with us.
2. Obtain all necessary consents under the Resource Management Act 1991 (RMA) in respect of Project Martha	By 31 December 2025, unless otherwise agreed in writing with us.
If you do not, standard condition 6 will apply and we may require you to dispose of the Land.	

STANDARD CONDITIONS

You must also comply with the **standard conditions** set out below.

Details	Required date
Standard condition 1: acquire the Land	
<p>You must acquire the Land:</p> <p>1. by the date stated in the Consent.</p> <p>(a) If you do not, your Consent will lapse or become invalid and you must not acquire the Land.</p> <p>2. using the acquisition, ownership and control structure you described in your application.</p> <p>(a) Note, only you – the named Consent holder(s) - may acquire the Land, not your subsidiary, trust or other entity.</p>	As stated in the Consent.

Standard condition 2: tell us when you acquire the Land	
<p>You must tell us in writing when you have acquired the Land. Include details of:</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 4. copies of the sale and purchase agreement, any transfer documents and settlement statement 5. information about how the Land will be developed in accordance with special condition 2. 	<p>Within one month after you have acquired the Land.</p>
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. We will give you at least two weeks' written notice if we want to do this. 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 (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 	<p>At all times</p>

<p>documents</p> <p>(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.</p>	
Standard condition 4: be of good character	
<p>You, or if you have been given the Consent as trustees of a trust or a company or other entity:</p> <ol style="list-style-type: none"> 1. must be of good character 2. must not become an individual of the kind referred to in <u>section 15</u> or <u>section 16</u> 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> <ol style="list-style-type: none"> 3. The Individuals Who Control You are individuals who: <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 (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. 3. You cease to be an overseas person or dispose of all or 	<p>Within 20 working days after the change</p>

<p>any part of the Land.</p> <p>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:</p> <p>(a) becomes bankrupt or insolvent</p> <p>(b) has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed</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 special conditions</p>	
<p>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>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>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: if you have not disposed of the Land by the date required in paragraph 3 of this standard condition 6, offer the Land for sale by auction or tender without a reserve price or minimum bid and dispose of</p>	<p>Within nine months of our notice.</p>

the Land.	
5. Report to us about marketing: tell us in writing about marketing activities undertaken and offers received for the Land.	By the last day of every March, June, September and December after our notice or at any other time we require.
6. Report disposal to us: send us, in writing, evidence: <ul style="list-style-type: none"> (a) that you have disposed of the Land (b) of disposal (including copies of sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor) (c) the purchaser is not your associate. 	Within one month after the Land has been disposed of.

REPORTING CONDITIONS

We need information from you so we can monitor your progress against the Conditions.

You must send us the reports set out below. Your reports must:

1. be sent 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; and
 - (e) any other information relevant to the implementation of the special conditions.
3. follow the format of the template annual report published on our website [here](#).
4. be submitted electronically by link to a secure download site (preferred) or encrypted USB or CD/DVD³. If necessary, your report may be emailed to OIOMonitoring@linz.govt.nz (maximum 10MB per email).

³ Electronic media will be securely destroyed after use.

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 regulator⁴. 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 suggested⁵ 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.

⁴ 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.

⁵ *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.⁶

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.

Tests to apply

11. All properties are residential properties in Waihi and are sensitive land (due to either adjoining reserve land or adjoining a historic place).
12. The tests to apply (under s 16(1)(d)(i)) in this application are as follows:
- (a) **Benefit to New Zealand** -s16A(1)(a): the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders),
 - (b) **Residential land outcome** - s16B(3)- the ministers must determine a residential land outcome listed in clause 19 of schedule 2 of the Act and make the consent subject to the set of conditions for that residential outcome; and
 - (c) **Incidental residential use test**- Sch2 cl14 – requires a finding that:
 - (i) the residential land will be, or is likely to be [...] used for residential purposes but only in support of the relevant business where the relevant business is not (or is only exceptionally) in the business of using land for residential purposes (the **incidental residential use outcome**); and
 - (ii) having regard to that use of the residential land, the relevant interest in the residential land will be, or is likely to be, acquired in the ordinary course of the business of the relevant overseas person; and
 - (d) **Conditions test** – s16A(1)(c) – the conditions the Ministers will impose on the consent in accordance with s16B will be or are likely to be met.

Decision

13. 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.

⁶ *Tiroa E* at [36].

Appendix 3 - Sensitive Land

1.

	[REDACTED]
Land Interest	Freehold Interest (approximately [REDACTED] hectares)
CTs	CT [REDACTED] (South Auckland) - [REDACTED]
Sensitivity	[REDACTED]

[REDACTED]

2.

	[REDACTED]
Land Interest	Freehold Interest (approximately [REDACTED] hectares)
CTs	CT [REDACTED] (South Auckland) - [REDACTED]
Sensitivity	[REDACTED]

[REDACTED]

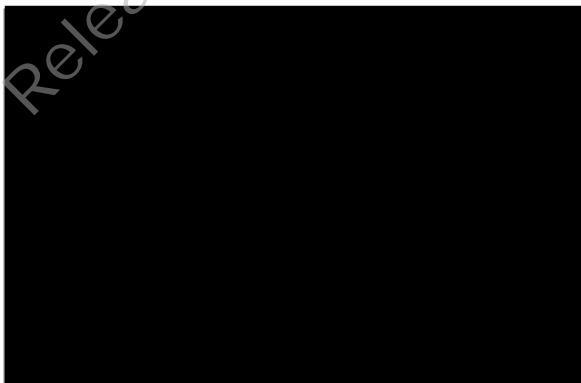
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3.

	Waihi
Land Interest	Freehold Interest (approximately [redacted] hectares)
CTs	CT [redacted] (South Auckland) - [redacted]
Sensitivity	[redacted]

4.

Land Interest	Freehold Interest (approximately [redacted] hectares)
CTs	CT [redacted] (South Auckland) - [redacted]
Sensitivity	[redacted]



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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).
3. 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

4. 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.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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.
10. 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.

11. 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.
12. 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.
13. The onus is on the applicants to satisfy the decision maker that all the individuals with control are of good character.
14. 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

15. 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.
16. 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

17. 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.
18. 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
19. On appeal, the High Court decided in favour of Oceana Gold. While Oceana Gold did not contest *liability*, it did challenge the *penalty*. The \$728k was made up of a \$378k fine and \$350k in reparation. The High Court held that the amount of reparation was not correctly calculated and set it aside. The correct amount would have been about \$220k. As Oceana Gold had made payments exceeding that amount (\$200k directly, and \$450k through its insurance), no further order for reparation was made.
20. We do not consider that this materially affects the assessment of character. However, it would be proper to consider the incident in the light of a \$378k fine, not a \$728k fine, and consider that Oceana Gold made substantial voluntary payments to the deceased's family in advance of the prosecution.

21. 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;
 - (d) An employee falling from height at the Macraes mine in 2018, which did not result in a Worksafe investigation.
22. 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.
23. 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

24. We note that there is an on-going dispute between OceanaGold and Philippines government officials regarding the Didipio mine in the Northern Philippines.
25. 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.
26. 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 pose 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.
27. 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

28. 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) Tahoe Resources Incorporated, a company operating in Guatemala, had its mining licence suspended due to a breach of consultation obligations with indigenous people. There was no suggestion of wrongdoing on the part of the IWC, who was a board member of Tahoe Resources Inc.

- (c) 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

29. 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.
30. 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.

Released under the Official Information Act 1982