

Our Ref: DOIA 21-246

21 June 2021

[s 9(2)(a)]

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Dear [s 9(2)(a)]

Response to your official information request

Thank you for your official information request received on 24 May 2021 requesting information about the standing consent granted to Oceana Gold (New Zealand) Limited (case 201900680).

Your original email asked a number of specific questions regarding the standing consent, which were answered by the OIO on the same day. In your following email, also on 24 May, you requested the application and full decision. You also asked a further question:

The explanation below: "Oceana Gold expects the majority of properties acquired under the standing consent will be purchased because it is required to under resource consent conditions". Does this refer to current or future consents?

We have treated your request to be for the OIO's assessment report, because this includes a summary of the Applicant's submissions against the statutory criteria for granting a residential standing consent, as well as our assessment of the application and reasoning for granting the standing consent. Once you have had a chance to consider this information you are welcome to request any additional documents.

Please find attached a copy of the OIO's assessment report, which is released in part. Some information relating to aspects of Oceana Gold's business (including mining plans, levels of expenditure, and estimates of future gold production) has been withheld in reliance on section 9(2)(b)(ii) of the Official Information Act 1982. The grounds for withholding this information are that providing it is likely to unreasonably prejudice the commercial position of a person who supplied or is the subject of the information. We are of the view that withholding this information is not outweighed by other considerations which render it desirable in the public interest to make that information available.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Additionally, in answer to your question regarding resource consents, this would include resource consents granted and to be granted. For context, I would like to draw your attention to conditions of the standing consent, which are included as Attachment 2 to the OIO assessment report. (The standing consent granted was in this form, with a 'use-by date' of 31 October 2023 inserted).

The standing consent allows Oceana Gold to purchase residential (but not otherwise sensitive) land for "approved incidental residential use" in support of its mining business, and "approved non-residential use" in the ordinary course of its mining business. (Those terms are defined at Special conditions 2 and 3 respectively).

The standing consent allows Oceana Gold to acquire residential land for these purposes, which includes when it has an obligation under a "Waihi Mines Resource Consent". Please note that term is defined (see the 'Definitions' part at the front of the standing consent) to mean "any resource consents granted, and to be granted, in respect of the Waihi Mines".

If you wish to discuss this decision with us, please feel free to contact me on mappleyard@linz.govt.nz.

Yours sincerely,



Michael Appleyard
Manager – Applications, Overseas Investment Office
Land Information New Zealand

ASSESSMENT REPORT: Oceana Gold (New Zealand) Limited

Non-residential use / Incidental residential use test (standing consent)

Date	5 October 2020	Classification	IN CONFIDENCE: Commercially sensitive
OIO reference	201900680	Priority	High

Action Sought

Decision-maker	Action	Suggested deadline
Michael Appleyard , Manager Applications (Residential & Forestry), Overseas Investment Office	<ol style="list-style-type: none"> Review the attached report and decide whether to grant consent to the application Forward the report and attachments to the Primary Assessor 	As soon as possible

Contact for the Application

Name	Position	Telephone number
Michael Appleyard	Manager Applications (Residential & Forestry), Overseas Investment Office	04 830 3880

ASSESSMENT REPORT: Oceana Gold (New Zealand) Limited

Non-residential use / Incidental residential use test (standing consent)

Overview

Purpose

1. We seek your decision on an application by Oceana Gold (New Zealand) Limited (**Applicant**) for a standing consent (residential land) under the Overseas Investment Act 2005 (the **Act**).

Key information

Applicant	Oceana Gold (New Zealand) Limited United States of America 42.0%, United Kingdom 25.0%, Australia 8.0%, Canada 11.0%, Various 14%)
Application type	Standing Consent (residential land) for overseas investments in sensitive land.
Proposed standing consent	For the Applicant to settle a maximum of 15 overseas investment transactions, to acquire interests in no more than: <ul style="list-style-type: none"> • 75 hectares of sensitive land (in total); • Up to 5 hectares per transaction; • To acquire land within the territory of the Hauraki District Council; and • Use-by date: 30 September 2023 (3-year duration) – though note Applicant has requested 10 years.
Relevant tests	<ol style="list-style-type: none"> 1. Investor test 2. Conditions Criterion

2. We do not consider that this is a transaction of national interest under either sections 20A or 20B of the Act. The OIO has not referred this transaction to the Minister of Finance for him to call it in for a national interest assessment on a discretionary basis under section 20B of the Act.
3. The Applicant intends to acquire residential under this Standing consent in order to carry out physical mining related operations (pit expansion, relocating roads), as well as for buffer land from mining operations.
4. Under the Designation and Delegation Letter dated 17 October 2018, the decision may be made under delegation.
5. Guidance for applying the Act is set out in **Attachment 1**.

Recommendation



6. We recommend you **grant consent**.
7. If you agree to grant consent, please make the determinations set out below.

Released under the Official Information Act 1982

Decision

Relevant overseas person, individuals with control

8. I determine that:

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

ROP	Role
Oceana Gold (New Zealand) Limited	Applicant, and acquiring entity
Oceana Gold Corporation	Ultimate parent company of Applicant (OGC)

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

IWC	Role
Matthew Saul Hine	Director of Applicant
Mark David Cadzow	Director of Applicant
Michael Harvy Lou Holmes	Director of Applicant and OGC
Craig Joseph Nelsen	Director of OGC
Geoffrey William Raby	Director of OGC
Paul Bristol Sweeney	Director of OGC
Ian Macnevin Reid	Director of OGC
Catherine Anne Gignac	Director of OGC

Investor test

9. I am satisfied that:

- the individuals that are an ROP or IWC collectively have business experience and acumen relevant to the Investment;
- the ROP has demonstrated financial commitment to the Investment;
- each individual that is an ROP or IWC is of good character; and
- each individual that is an ROP or IWC is not an individual of the kind referred to in sections 15 or 16 of the Immigration Act 2009 (which sections list certain persons not eligible for visas or entry permission under the Immigration Act).

Conditions Criterion

10. I am satisfied the following conditions will be, or are likely to be, met (the **Conditions Criterion**):

- (a) Conditions that must be imposed for the purpose of ensuring that the relevant residential land test(s) are met for each overseas investment under the standing consent (in this case the non-residential use test and incidental residential use test);
- (b) Conditions that must be imposed on consents that are granted on the basis of the relevant residential land tests (that is, conditions requiring certain residential land outcomes);
- (c) Conditions that must be imposed requiring that the OIO be notified of each transaction settled under the standing consent; and
- (d) Additional conditions that may be imposed including conditions limiting the scope of the standing consent (e.g. limiting the amount of land that can be acquired).

National interest assessment

- 11. The OIO does not consider that this is a transaction of national interest under either sections 20A or 20B of the Act. The OIO has not referred this transaction to the Minister of Finance for him to call it in for a national interest assessment on a discretionary basis under section 20B of the Act (in accordance with the direction in the Supplementary Ministerial Directive Letter, 8 June 2020).
- 12. I am satisfied that the investment does not involve a transaction of national interest under section 20A or section 20B.

Decision

- 13. As I am satisfied that the criteria for consent (set out above) have been met, I grant the standing consent in the form of the Proposed Decision in **Attachment 2**.

Grant consent subject to the conditions
in the Proposed Decision:



Consent declined:



Michael Appleyard

Manager, Applications (Residential & Forestry) Overseas
Investment Office

Date: 06 / 10 / 2020

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Released under the Official Information Act 1982

Applicant and investor test

1. This section describes the Applicant and addresses whether the investor test criteria in the Act is met.

Applicant details

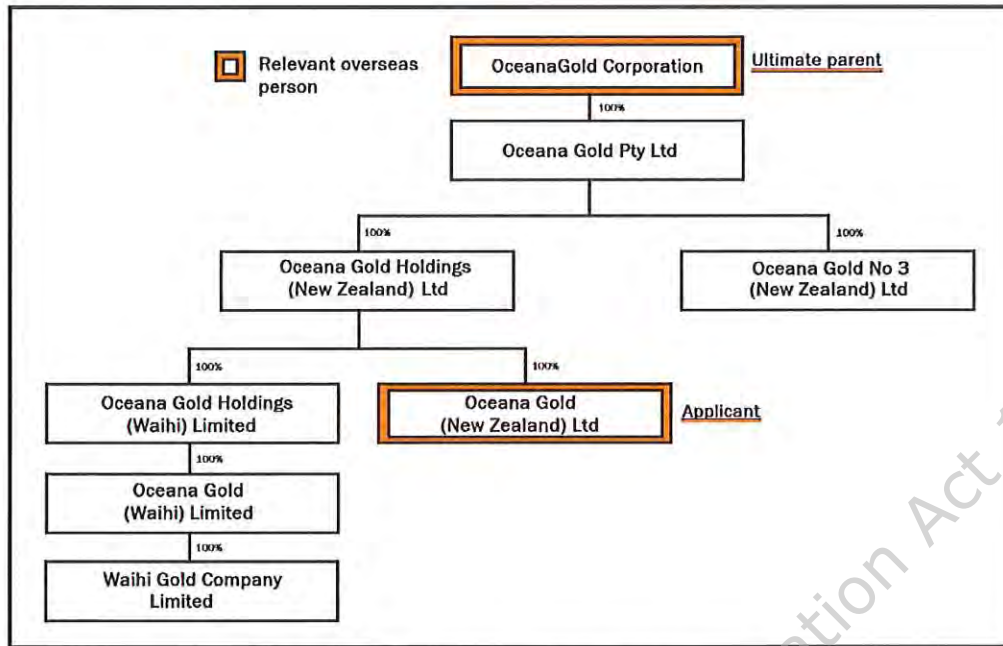
Description of the Applicant

2. The Applicant is Oceana Gold (New Zealand) Limited (company number 927153), a gold mining company based in New Zealand (**Applicant / OGNZ**). It is engaged in the discovery, extraction and processing of predominantly gold ore (but also silver and copper) and is the largest gold producer in the country. It operates the Macraes open pit and underground mine in Otago, which has been in operation since 1990, as well as mines in Waihi, in the Hauraki District, Waikato.
3. Previously OGNZ operated the Globe Progress mine in Reefton, although this closed in 2016 and is now being remediated before it can be returned to the Department of Conservation.
4. In Waihi the Applicant owns and operates the Martha Mine (open pit and underground), and Moonlight, Favona, Trio, Correnso and Slevin (underground) mines, and intends to open the [s 9(2)(b)(ii)] (collectively the **Waihi Mines**). It also holds a portfolio of exploration permits. At the Waihi Mines alone, the Applicant employs 262 permanent employees (at March 2019).

Who owns and controls the Applicant

5. The Applicant is ultimately owned by Oceana Gold Corporation (**OGC**), described by the Applicant as "mid-tier, low-cost, multinational gold producer". OGC is incorporated in British Columbia, Canada, with its headquarters in Melbourne, Australia.
6. As well as mines in New Zealand, the OGC Group has a portfolio of assets in northern Philippines, the United States of America, and El Salvador.
7. OGC owns the Applicant through a network of subsidiary parent companies. The Applicant is wholly owned by Oceana Gold Holdings (New Zealand) Limited (**Oceana Gold Holdings NZ**).
8. Oceana Gold Holdings NZ is, in turn, wholly owned by Oceana Gold Pty Limited, an Australian registered limited liability company. Oceana Gold Pty Limited is wholly owned by OGC.
9. The corporate structure diagram for the OGC Group is set out below¹.

¹ Oceana Gold (Waihi) Limited was removed from the Companies Register in December 2018, when it was amalgamated into Waihi Gold Company Limited, however the diagram is otherwise up to date.



10. OGC is listed on the Toronto Stock Exchange (**TSX**) and the Australian Stock Exchange (**ASX**). It was listed on the New Zealand Stock Exchange from 2004 but delisted in 2016 to simplify its listing structure and reduce compliance costs.
11. As OGC is publicly listed its shares are widely held. Its largest shareholders are financial institutional holders. The top 20 shareholders hold approximately 68.56% of the issued shares in OGC. The Applicant advises that only two shareholders hold more than a 5% interest. These are:
 - (a) BlackRock Inc is the largest shareholder with approximately 17.54%. This is a New York headquartered company reported as the largest global asset manager (with in excess of USD 6 trillion in managed assets); and
 - (b) With approximately 10.38%, Van Eck Associates Corporation is the second largest shareholder. This is also a United States-based investment firm, orientated towards property, energy, precious metals, amongst other specialities.
12. OGC's shareholders are predominantly based in the United states (42%), the United Kingdom (25%), Australia (8%), and Canada (11%).
13. The persons who exercise control over the Applicant are its directors, who control that company in accordance with its constitution. The persons who exercise control over OGC are its directors.

Decision-making on the investment

14. The Applicant has the initial decision-making responsibility for acquisitions of residential properties under the requested standing consent. Those decisions are made under the guidance of, and subject to sign-off by, OGC as the ultimate parent company. The intermediary and holding companies do not have decision-making roles.
15. The Board of OGC could also approve any future proposal for divestment of a property, and ordinarily this would be based on a recommendation from the Applicant and a pre-approval process.
16. The General Manager of Waihi Operations (**GM-Waihi**) will be responsible for the day to day management of the investment. Before a property is purchased an 'Approval For Expenditure' form will be submitted directly to OGC's Board of Directors by the GM-

Waihi on behalf of the Applicant. Following the retirement on 9 September 2020 of Bernard O’Leary as GM-Waihi, an acting GM-Waihi is performing this role until Matthew Hine is appointed to the role on a permanent basis. Matthew Hine is currently the General Manager of Macraes Operations and will be GM-Waihi effective from 11 January 2021.

17. OGC operates a ‘Corporate Responsibility and Financial Authority Framework’ which sets parameters for authorising or incurring special operating and capital expenditure. The GM-Waihi has delegated authority to make decisions relating to capital expenditure for operations up to a pre-approved level of [s 9(2)(b)(ii)] for budgeted expenditure (and [s 9(2)(b)(ii)] for unbudgeted expenditure)². Beyond those levels, authorisation must be obtained from the Chief Operating Officer, Chief Development Officer, or Chief Financial Officer of OGC.
18. The GM-Waihi will hold a power of attorney specific to the property purchases required for Project Martha³. This has been authorised by OGC’s Board and is exercised under the guidance of the General Manager Corporate and Legal Affairs in New Zealand, Alison Paul. The power of attorney will enable the GM-Waihi to approve property purchase agreements for Project Martha that have already been approved by the Board of OGC.
19. The Applicant’s board of directors, and OGC’s board of directors, are as listed below in the table at paragraph 21:

Relevant Overseas Person and Individuals with Control

The ROP and IWC are concepts used in the Act to focus the required assessment, including the investor test, on the entities and individuals behind the relevant investment(s). Section 15 of the Act provides the decision-maker with a broad discretion to select the ROP and IWC and allows the decision-maker to focus on the substance rather than form of the applicant’s ownership and control structure.

20. Having regard to the above and the nature of the transaction, we consider the ROP to be (collectively):

ROP	Role
Oceana Gold (New Zealand) Limited	Applicant, and acquiring entity
Oceana Gold Corporation	Ultimate parent company of Applicant (OGC)

21. Having regard to the above and the nature of the transaction, we consider the IWC to be:

IWC	Role
Matthew Saul Hine	Director of Applicant
Mark David Cadzow	Director of Applicant

² The acting GM-Waihi will not be responsible for day to day management. This is to be managed by the General Manager Corporate and Legal Affairs in New Zealand, Alison Paul, until Matthew Hine takes up the permanent role.

³ The acting GM-Waihi does not hold this power of attorney, and Alison Paul will be responsible for all property purchase matters for Project Martha during this period.

Michael Harvy Lou Holmes	Director of Applicant and OGC
Craig Joseph Nelsen	Director of OGC
Geoffrey William Raby	Director of OGC
Paul Bristol Sweeney	Director of OGC
Ian Macnevin Reid	Director of OGC
Catherine Anne Gignac	Director of OGC

Business Experience and Acumen

The individuals that are ROPs or IWC must collectively have business experience and acumen relevant to the overseas investments proposed. There is considerable flexibility in determining what is relevant and more or less specific expertise may be required depending on the nature of those investments. 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.

22. In this case, the overseas investment can be described as the acquisition of residential (but not otherwise sensitive) land for non-residential purposes in the ordinary course of the Applicant's business, or incidental residential purposes in support of its business.
23. We have reviewed the biographical information provided by the Applicant for each of the individuals with control and note the following:
 - (a) the Applicant already operates two large scale gold mining operations in New Zealand;
 - (b) the individuals with control collectively have extensive experience in the mining industry; and
 - (c) the Applicant owns over 100 residential properties in Waihi, including 36 properties that it has acquired since it began operating the Waihi Mines in 2015.
24. We also note this criterion has been satisfied by the Applicant in previous consents granted recently.
25. Having regard to the above, we are satisfied that the individuals with control collectively have business experience and acumen relevant to the investments proposed under the standing consent.

Financial Commitment

The financial commitment criterion requires the ROP to have taken actions that demonstrate financial commitment to the proposed overseas investments. The 'financial commitment' criterion requires the ROP to have taken actions that demonstrate financial commitment (intentions are not sufficient).

26. It is noted that standing consents prohibit transactions being entered into at the time an application is made.
27. The Applicant has identified however that it has already incurred significant costs towards Project Martha including undertaking exploratory work, engaging consultants to prepare technical reports and to determine what land acquisitions are required. The

Applicant has spent [s 9(2)(b)(ii)] so far on Project Martha consenting. These costs include:

- (a) over [s 9(2)(b)] with its lawyers Anderson Lloyd alone in preparing and submitting this and other OIO applications, and property due diligence; and
- (b) the OIO fee of \$34,100 in respect of the application (excluding the individual transaction fee of \$13,000 per transaction).

28. Having regard to the above, we are satisfied the ROP has demonstrated financial commitment.

Good Character

The Applicant must satisfy the decision-maker that individuals that are a ROP or IWC are of good character. Section 19 of the Act specifies that the decision-maker must take the following factors into account (without limitation) when assessing character:

- (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.

29. The Applicant has provided a statutory declaration stating that each individual that is an IWC is of good character, has not committed an offence or contravened the law, and knows 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.

30. Most of the IWC listed at paragraph 21 have also been subject to recent and ongoing good character checks. In particular, the most recent consent granted by the OIO (case 201810240) in January 2020 included seven IWC for this current application. Further, Ministers recently assessed the character of the IWC in applications 201900432 and 201900444.

31. In previous applications we had considered various matters (including an accidental employee death, other workplace accidents, and on ongoing dispute with local government in the Philippines) but did not consider them to prevent a finding of good character on behalf of any of the IWC.

32. We have also conducted open source background checks on the IWC and have found no new substantive matters that raise concerns about the character of the IWC.

33. Overall, we remain satisfied that the IWC of the relevant overseas person are of good character.

Immigration Act

The Applicant must satisfy the decision-maker that each individual that is an ROP or IWC is not an individual of the kind referred to in sections 15 or 16 of the Immigration Act 2009.

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.

34. The Applicant has provided a statutory declaration stating that none of the individuals who are IWC 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.



35. We have also conducted open source background checks on those individuals and found nothing relevant to this criterion.
36. Therefore, we are satisfied the individuals who are an ROP or IWC are not individuals of the kind referred to in section 15 or 16 of the Immigration Act 2009.

Investment plan

37. This section describes the Applicant's investment plans and the reasons for requesting a standing consent.
38. The Applicant requests a standing consent to purchase residential (but not otherwise sensitive) land under the non-residential use and the incidental residential use pathways.
39. A standing consent is sought for 10 years, 75 hectares (aggregate), for a maximum of 15 transactions. If granted, it would be appropriate to include a geographic limit within the area of the Hauraki District Council.

Impact of Covid-19

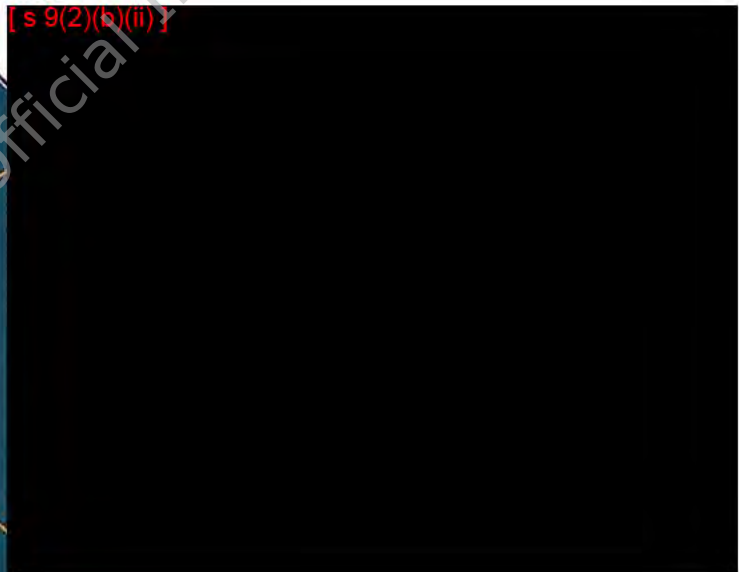
40. The Covid-19 pandemic and efforts to control it have had a significant impact on both the domestic and global economy. There has been disruption to supply chains and business operations across many sectors.
41. We have undertaken our assessment against the criteria in the Act and based on the information available. We have considered the impact of the Covid-19 situation where relevant, noting if it affects our assessment of a particular criterion or the nature of the condition we recommend imposing.
42. We have sought comment from the Applicant regarding the impact of Covid-19 on their business, the proposed investment and whether the information in the application remains accurate. The Applicant has advised that the investment as outlined in its application for a standing consent will proceed.

Waihi Mines and expansion plans

43. The Applicant owns and operates the Martha mine (open pit and underground) and Moonlight, Favona, Trio, Correnso and Slevin (underground) mines at Waihi. It also proposes the [s 9(2)(b)(ii)] for which mining activities will occur as part of Project Quattro, as further detailed below. Together these mines are referred to as the **Waihi Mines**).
44. The Applicant (via a related entity) acquired the Waihi Mines from then owner, Newmont Waihi Gold Limited, pursuant to consent granted by Ministers⁴ in 2015 (the **Original Waihi Consent**). The previous owner had a business plan that would have seen mining at the Waihi Mines ending in 2018. In the course of obtaining the Original Waihi Consent, the Applicant committed to steps to extend the operating life of the Waihi Mines. This included carrying out an Optimisation Study looking at potential for re-entering the Martha Pit and identifying previously untargeted underground resources.
45. The completed Optimisation Study identifies the economic viability of a number of developments. The Applicant's next phase of development, to extend the life of the Waihi Mines beyond 2020, is divided into two stages called "Project Martha" and "Project Quattro".

⁴ Ministers granted consent, on 12 October 2015 under case number 201510062, for Oceana Gold Holdings Waihi Limited to acquire 100% of the shares in Newmont Waihi Gold Limited.

46. These two projects will extend mining activities at the Waihi Mines to 2036. The expansion has been divided into two stages to ensure that Project Martha can commence in 2020. The two stages can be summarised as:
- (a) **Project Martha** comprises Martha underground mine and a Phase 4 extension of the Martha Pit. Project Martha is expected to extend the mine life by 11 years and add an estimated 60,000 ounces of gold production per year. All resource consents for Project Martha (for underground mining and the Phase 4 pit extension) were granted in February 2019. The OIO granted consent⁵ for residential properties required as part of this development.
 - (b) **Project Quattro** will extend the existing mining operations at Waihi for an anticipated further 6 years and add an estimated [s 9(2)(b)] ounces of gold production per year. This includes a further extension to the existing Martha Pit (Phase 5), the relocation of the historic Cornish Pumphouse, [s 9(2)(b)(ii)] [s 9(2)(b)(ii)] A new tailings storage facility will also be required, and Ministers granted consent⁶ for the acquisition of land for this in October 2019. Project Quattro will require a plan change to the Hauraki District Plan. The Applicant will also have to apply for a suite of consents from the Hauraki District Council and the Waikato Regional Council.
47. The Martha open pit mine is a large open cast mine in the centre of the Waihi township, and borders residential properties. The location of the current Martha mine [s 9(2)(b)(ii)] [s 9(2)(b)(ii)] is shown below:



48. A further image, to illustrate the scale of the Martha open pit mine and its close proximity with residential properties, is shown below:

⁵ The OIO granted consent on 3 May 2019 under case number 201810121.

⁶ Ministers granted consent on 7 October 2019 for the Applicant to purchase land at Trig Road under case numbers 201900432 and 201900444.



49. The underground footprint of the existing modern Waihi Mines [s 9(2)(b)(ii)]

[s 9(2)(b)(ii)] is shown in the following aerial image:

- Phase one (Martha phase 4 pit extension and Rox Vain)
- Phase two (Martha phase 5 pit extension and pump house relocation)

[s 9(2)(b)(ii)]

[s 9(2)(b)(ii)]

Released under the Official Information Act

Reasons for seeking a standing consent

50. The Applicant submits that the ongoing ability to purchase residential properties under a standing consent is vital to securing the viability of the Waihi Mines⁷.
51. The Applicant is already a large residential landowner in Waihi. Its mining activities are adjacent or near to, and in some case, extend under residential areas. Surface and underground mining can cause disturbance, including vibrations, noise, and dust. Because of that disturbance, the Applicant (and predecessor companies) have previously acquired large tracts of residential land adjacent to consented and proposed mining sites.
52. The Applicant already owns 128 residential properties in Waihi – including 36 residential properties acquired since it took over operation of the Waihi Mines in 2015.
53. The purpose for residential land to be acquired under the proposed standing consent falls into three categories:
 - (a) when required to do so by “property programme” conditions under the Project Martha resource consent
 - (b) for the development and operation of physical mining works (for instance pit expansion or relocating roads)
 - (c) for use as a buffer from the effects (such as noise, vibration, dust) of physical mining works on adjacent land
54. The Applicant expects that the majority of properties it will purchase under a standing consent will be pursuant to property programme conditions under the Project Martha resource consent.
55. The Applicant has explained that when land is acquired for (b) above, this will ultimately be a non-residential use once the relevant development is complete and becomes operational. When land is acquired for the purposes described in (a) and (c), land could be either an incidental residential use or a non-residential use, depending on whether it is possible for residential use to continue in the specific circumstances.
56. Purchasing residential properties under a “property programme” authorised by resource consents has been an integral part of the Applicant’s operations since the Correnso underground mine commenced. The Applicant states that the ability to purchase residential properties is necessary to ameliorate any amenity concerns of affected owners, as well as preserving the Applicant’s ‘social licence’ to operate in the Waihi community.
57. The Applicant notes that the Act, as amended in 2018, includes an exemption⁸ for the acquisition of residential land when required pursuant to a resource consent condition. However, this exemption only applies to resource consents granted before commencement of that clause, and therefore does not apply to the Project Martha resource consents granted in February 2019.
58. The Applicant cannot specify the location of the land, or the timing of acquisitions, for all properties to be purchased under a standing consent. However, when a property is acquired under the Project Martha resource consent, the Applicant estimates there will be an initial tranche of purchases generated by the commencement of the Martha

⁷ Ministers recognised the extension of the life of the mines as being of substantial and identifiable benefit to New Zealand when granting the Original Waihi Consent.

⁸ Clause 5, Schedule 1AA, as introduced by the Overseas Investment Amendment Act 2018.

Underground project. The Applicant began work on the project in July 2019. It anticipates it will commence mining activities in October 2020 beneath two properties which it already has OIO consent to purchase.

59. Should a standing consent be granted it will allow the Applicant to commence the offer process for other affected residential properties with confidence it can complete the purchase should the owner elect to sell. The Applicant is under an obligation to offer to purchase overlying properties at least three months before mining activity affecting the property commences. The key wording from the Project Martha resource consent regarding this timing is at condition 84, which reads:

“84. At least three months prior to the placement of the first explosives for any blasts immediately beneath any part of the legal title to a residential property overlying stopes or a spiral decline for any mining of the Rex Orebody provided for under this consent, the consent holder shall offer to:

(a) Purchase that property from the registered proprietor at market value (etc)”

60. The offers will need to be made unconditionally so that property owners have certainty. Therefore, offers cannot be made for any acquisitions to be covered by a standing consent until a standing consent has been granted⁹.
61. The Martha underground mines as at the end of 2020 are shown in the image below:



62. There are about 20 residential properties overlying the Rex ore body. The approximate location of residential properties above the Rex ore body is shown (with the location of the pit wall in the background for context) in the image below:

⁹ Section 23A of the Act.

[s 9(2)(b)(ii)]

63. The Applicant has submitted (and we agree) that for the purpose of the proposed investment the relevant business of the Applicant is the discovery, extraction, and processing of gold ore.

Incidental residential use

64. When properties are purchased due to property programme conditions, in most cases a property will remain suitable for residential use. The vendor will be able to elect to remain in the home as a tenant until mining commences – and/or while mining occurs and receive either a reduced rental rate or an 'amenity effects payment' from the Applicant. Otherwise, the vendor may provide vacant possession and the property would be leased by the Applicant to other local people, or the Applicant's staff / contractors working at the Waihi Mines.
65. The Applicant states it is also occasionally required, in the ordinary course of its mining business, to purchase land to use as a "buffer zone" from its mining operations. Such buffer zones prevent, or resolve, resource management disputes. When land is acquired for buffer land, in most cases residential use can continue.
66. As owners of affected properties are able to trigger a property programme condition requiring the purchase their land, there is no reasonable alternative to the Applicant acquiring the land.
67. In 2019 the OIO recognised use of residential land for a buffer zone (with approved residential tenancies) as an incidental residential use when it granted consent to the Applicant to purchase specific properties¹⁰.

Non-residential use

¹⁰ Case number 201810121 for the purchase of properties at 1 and 1B Gilmour Street and 144 Seddon Street, Waihi.

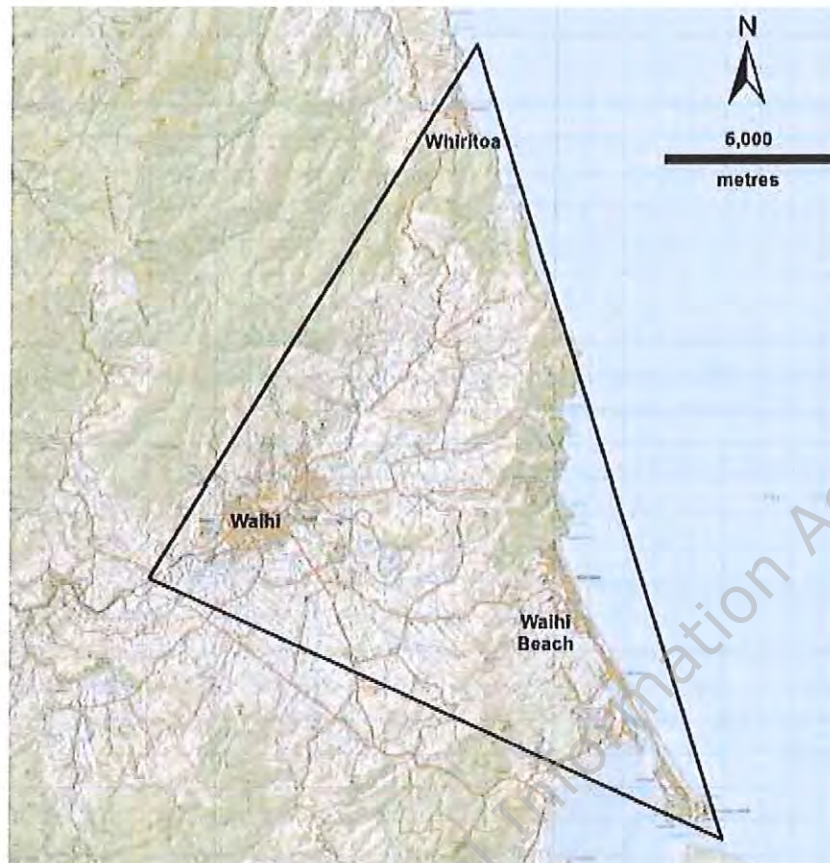
68. When land is acquired for the development of physical mining works (i.e. pit expansion, or road relocation), there will always ultimately be a non-residential use once the relevant development becomes operational. The Applicant has stated though that there may occasionally be a short period of time between when the property is acquired and when the residential use will cease. The Applicant submits that in all such situations this period would be a maximum of two years, and the incidental residential use test would be met in this interim period.
69. The Applicant expects there may also be instances when a property is purchased under a property programme condition, or as buffer land, where residential use will cease and there will be a non-residential use. In these situations, the vendor will provide vacant possession, the Applicant may obtain a building consent to demolish the building, and the land will be used for mining related purposes.

Consent term requested and development timeframes

70. The Applicant has requested that a standing consent is granted for a duration of 10 years, as this is the expected duration for Project Martha.
71. As a landowner has the right to require the Applicant to purchase their property at any time while mining operations are taking place beneath them, the purchase of a property may occur at any time during mine development. The current schedule for Project Martha will, for example, see the Rex ore body developed and mined during a 10-year underground development project.
72. The Applicant has stated that the Project Martha Consents have expiry dates ranging from 25 to 35 years (and the main land use consent does not expire) so it accepts that alignment with the duration of the resource consents is unlikely. However, the Applicant says it requires a standing consent to be valid until the end of Project Martha, so it can comply with its resource consent obligations.

Location

73. The Applicant has requested that, if the OIO imposes a geographic limit, the standing consent permits it to purchase land within the area shown on the plan below (the **Property Target Area**).



74. The Applicant submits that the Property Target Area only contains land that is within 12 kilometres of its current mining operations within the Hauraki District, which it considers is the minimum area that it requires.

View

75. We consider that rather than using the map of the Property Target Area provided by the Applicant, it is appropriate to limit the area of the standing consent to the area of the Hauraki District Council. All land required by the Applicant for the Waihi Mines will be located within this area. The Proposed Decision provides that all land acquired, whether for an incidental residential purpose or a non-residential purpose, will be used in connection with the Waihi Mines.

Land size and number of transactions requested

76. The Applicant has requested a maximum area of 5 hectares per transaction, and 75 hectares aggregate, for the standing consent.
77. Although the Applicant expects the size of each property to be less than 5 hectares, it has explained that the exact location and characteristics of the residential land it will need to purchase in the future cannot be identified at this stage, and there are larger properties in the Property Target Area. As an example, the Applicant has cited that it may need to buy a larger property of just under 5 hectares (that is residential but not otherwise sensitive). Also, it may need to purchase a cross-lease property – where generally the fee simple interest is a larger area. The Applicant has therefore requested these size limits to provide the flexibility it requires.
78. The Applicant has submitted that it is likely to need to acquire 15 individually territorial authority rated freehold and/or leasehold residential (but not otherwise sensitive) land parcels within the above size limits.

79. As stated above, there are 20 residential properties overlying the Rex ore body, and any one of those owners may request that the Applicant purchases their property, once Project Martha development commences (or at any time while that mining is taking place). The Applicant expects that there may be an initial tranche of purchases generated when the Martha underground project commences. The Applicant has told us that it may apply for a further standing consent if it requires additional land – for example if more than 15 property owners above the Rex ore body request purchase by the Applicant.
80. The Applicant has also told us that it has had regard to the individual transaction fee of \$13,000 it is required to pay, before grant of a standing consent, which is not refundable regardless of how many transactions would be settled.
81. Analysis of the Applicant's requested scope, in terms of location, size limits and number of transactions, is contained below in this Report under the 'Scope of Standing Consent' section.

National interest assessment

82. The investment does not involve a transaction of national interest under the mandatory criteria of s20A of the Act. This is because the investment does not involve a non-NZ government investor, or an investment in a strategically important business (as defined in section 20A).
83. We do not consider that the transaction is of a type to be called in by the Minister of Finance under section 20B as a transaction of national interest. The Supplementary Ministerial Directive Letter (8 June 2020) states that the starting point is the assumption that overseas investment is in New Zealand's national interest. That Letter directs the regulator to only seek the Minister of Finance to exercise his discretion for a national interest assessment under s20B if the proposed investment:
- could pose risks to New Zealand's national security or public order
 - would grant an investor significant market power within an industry or result in vertical integration of a supply chain
 - has foreign government or associated involvement that was below the 10 per cent threshold for automatic application of the national interest test, but granted that government (and/or its associates) disproportionate levels of access to or control of sensitive New Zealand assets
 - would have outcomes that were significantly inconsistent with or would hinder the delivery of other Government objectives
84. We do not consider that this investment engages any of these risk factors.

Financial strength, track record and other relevant matters

Clause 2(2)(b) in Schedule 4 of the Act sets out a non-exhaustive list of factors that are relevant to the decision-makers assessment of the Conditions Criterion. Three factors are listed:

- (a) the applicant's financial strength; and
- (b) the previous activity of the applicant (or associates or individuals with control of the relevant overseas person) regarding use of residential land; and
- (c) the previous record of the applicant (or associates or individuals with control of the relevant overseas person) in complying with consent conditions or applying for consent conditions to be varied.

Financial strength

85. The Applicant confirms that it has:
- (a) assets greater than the value of its liabilities; and
 - (b) cash from trading, cash reserves or access to credit facilities that are in place, sufficient to cover its debts as they become due in the normal course of business over the duration of the standing consent including if the transactions requested to be covered by the standing consent are undertaken.
86. The Applicant is an established investor in New Zealand, and as noted above has previously obtained OIO consents for numerous transactions, including the Original Waihi Consent.
87. The Applicant has provided a summary of the financial results, for the year ending 31 December 2019, for its ultimate parent company OGC. The Applicant has confirmed that OGC had full year revenue of [s 9(2)(b)(ii)], with net profit of [s 9(2)(b)(ii)] and a year-to-date operating cash flow of [s 9(2)(b)(ii)]. It has immediately available liquidity of US\$99 million.
88. As further context, during the course of its 2019 application to acquire various properties at Trig Road, Waihi (for a new storage pond for 'tailings' by-product) the Applicant provided information regarding the capital expenditure for expansion of the Waihi Mines. It confirmed that Project Martha and Project Quattro would require an estimated [s 9(2)(b)(ii)] in capital expenditure and would be expected to yield approximately [s 9(2)(b)(ii)] ounces of gold in total. Project Quattro was expected to generate approximately [s 9(2)(b)(ii)] ounces of gold per year, which equated to approximately [s 9(2)(b)(ii)] per year of revenue assuming a gold price of US\$1,300 per ounce.
89. As well as the Waihi Mines the Applicant also owns the Macraes mine north of Dunedin, which is New Zealand's largest gold mine. It commenced modern-day mining operations at Macraes in 1990 (then called "GRD Macraes") and has since produced over 5 million ounces of gold.
90. The acquisition of residential properties under the proposed standing consent would represent a comparatively very minor cost to the Applicant in the overall context of the total expenditure it will have to make for the expansion of the Waihi Mines.

View

91. We consider the Applicant has demonstrated it has sufficient financial strength to carry out the proposed investment plans to justify the scope of the term, geographic location, and transaction size requested for the standing consent.

Previous activity regarding use of residential land

92. The Applicant has been operating the Macraes gold mine in Otago since 1990, and therefore has 30-year history of successful mining operations in New Zealand.
93. The Applicant has been operating the Waihi Mines since 2015, and currently owns 128 residential properties in Waihi. It acquired most of these when it purchased the business operations of the former owner, although this number includes 36 residential properties it has purchased since then.
94. Of the 128 residential properties it owns in Waihi, 117 are rented out by the Applicant's professional property managers. The remainder of the properties are not currently tenanted permanently – either because they are utilised for short-term stays for the Applicant's personnel, contractors and consultants, or because they are temporarily vacant due to maintenance being carried out, or while tenants are screened.

95. As stated above, purchasing residential properties when required to under resource consents has been an integral part of the Applicant's operations since the Correnso underground mine commenced. That resource consent was granted in 2013, and the conditions were developed through an Environment Court assisted mediation process. The property programme conditions under the resource consent for Project Martha mirror those that were developed for Correnso underground.
96. The Applicant states that it will undertake the same activities on land to be purchased using the standing consent as it currently undertakes on residential land it already owns. It states that all residential properties purchased to date have been for either a non-residential use or an incidental residential use.
97. Until recently the Applicant would not have been required to seek OIO consent for the purchase of residential land (unless it was sensitive for another reason).¹¹
98. However, in May 2019 the OIO granted consent to the Applicant to purchase four residential properties in Waihi¹². This consent was granted for the Applicant to acquire residential land for incidental residential purposes as well as a non-residential purpose.
99. Three of these properties were purchased to create a buffer zone to prevent complaints that might otherwise arise under the Resource Management Act 1991. The properties were immediately adjacent to the mine, and it was expected these would be affected by repeated blast vibrations. The Applicant expected that acquiring them would be a condition of a resource consent for the underground mining (which at the time had not been granted). The Applicant therefore intended to buy the affected properties in order to either rent them back to the original owners or to other tenants. In granting consent the OIO recognised that an incidental residential use would likely occur for these properties.
100. As part of that same application the Applicant wished to purchase one of those properties in order to relocate the historic pumphouse there. This was accepted by the OIO as being a non-residential use of residential land.

View

101. We consider the Applicant has a long track record of successful mining operations in New Zealand, including the purchase of residential land when required to do so in the ordinary course of its business.

Record of compliance with consent conditions

102. The Applicant has received numerous consents under the Act since 2006. These previous consents are summarised as follows:

Date	Case number	Applicant	Investment
10 May 2006	200610054	OGNZ	0.0531 ha at 5 Main Street, Macraes, Otago
20 April 2009	200910032	OGNZ	575 ha at 2338 Hartfield Road, Otago

¹¹ The Act was amended to include residential land as sensitive land by the Overseas Investment Amendment Act 2018, with this change coming into force on 22 October 2018.

¹² OIO consent 201810121

20 April 2011	201110037	OGNZ	2,635.7 ha comprising Deepdell Station, Macraes Road, Otago
28 April 2011	201020129	OGNZ	999ha at 715 Hyde Road/Macraes Road, Otago
28 March 2013	201220081	OGNZ	1,624 ha at Matheson Road, Hyde, Otago
12 October 2015	201510062	Oceana Gold Holdings (Waihi) Limited	100% of the shares in Newmont Waihi Gold Limited (Original Waihi Consent)
7 October 2019	201900432 201900444	OGNZ	79 ha at 95 Trig Road, 9,595 ha at 145 Trig Road, and 2.9ha at 281 Trig Road, Waihi
3 May 2019	201810121	OGNZ	Freehold interests in four residential properties totalling 1.1431 ha in Waihi
31 January 2020	201810240	OGNZ	Freehold interest in 19.5012 ha (non-urban land) at 682 Golden Valley Road, Waihi

103. The Applicant has stated that it has “an excellent record of compliance under its previous OIO consents”.

104. We have reviewed our records and agree that there are no instances of non-compliance with conditions of previously granted OIO consents.

View

105. **We are satisfied** that the Applicant has a history of complying with consent conditions.

Additional factor(s)

106. The list of relevant factors set out in clause 2(2)(b) in Schedule 4 of the Act is non-exhaustive. Any additional factors we consider relevant to our assessment of the Conditions Criterion are listed below and set out in the assessment table(s) in the following section.

Applicant's processes for compliance with conditions of the requested standing consent

107. The Applicant has submitted that it is a very experienced purchaser and manager of land in New Zealand. It operates a procedure: ‘*Standard Operating Procedure – Property Programme*’ for property purchases and confirms that it will review this to incorporate reference to standing consent requirements and will update key staff on their obligations.

108. The Applicant has confirmed that it will use certain steps when purchasing land under the standing consent to ensure all requirements are met. In summary, these steps are as follows:

- **Step 1:** Identification of target land and submission of business case for land acquisition by Waihi’s External Affairs and Social Performance Manager and

Commercial Manager for commercial approval by the Applicant's General Manager of Waihi Operation.

- **Step 2:** Instructions issued by the General Manager of Waihi Operations or his authorised delegate (Business Administrator) to the Applicant's New Zealand based internal Senior Legal Counsel for legal consideration. This will now include checking the number of previous purchases under the standing consent, checking to ensure the target land is within the scope of the standing consent and all standing consent conditions can be complied with. The Applicant submits that the GM-Waihi¹³, the Business Administrator and Senior Legal Counsel are very experienced with OIO/Act matters.
- **Step 3:** Instructions issued to the Applicant's external counsel which is experienced in OIO/Act matters to:
 - a. consider the land status of the target land under the Act (this often includes instructing a LINZ accredited agent to prepare a land status certificate); and
 - b. prepare a sale and purchase agreement and complete settlement.
- **Step 4:** Applicant's external counsel provides notice to the OIO regarding the transaction and the number of remaining purchases that can be completed under the standing consent.
- **Step 5:** Completed settlements are recorded in a legal register kept by the Applicant's Legal Team. The Legal Team will monitor the number of remaining purchases that can be completed under the standing consent.
- **Step 6:** Applicant instructs a Property Management Company to manage the residential properties.

Complying with conditions

109. This section explains the non-residential use test and the incidental residential use test and addresses, by way of the assessment table(s) below, whether the Conditions Criterion is met (that is, whether the conditions to be imposed on the standing consent (including mandatory conditions) will, or are likely to be, met).

Non-residential use test and incidental residential use test

110. The Applicant's reasons for applying under both tests have been addressed above in the 'Investment Plan' section of this report, under the heading 'Reasons for seeking a Standing Consent'.

¹³ As previously noted, the previous GM-Waihi, Bernard O'Leary, retired in September and Matthew Hine (currently General Manager Macraes Operations) will fill this role from January 2021.

Complying with conditions

Clause 2 of Schedule 4 of the Act requires the following conditions to be imposed on standing consents (residential land): (1) conditions for the purpose of ensuring that the relevant residential test(s) are met for each investment that will be given effect under the standing consent; (2) conditions that must be imposed on consents that are granted on the basis of the relevant residential land test(s) (that is, conditions requiring certain residential land outcomes); and (3) conditions that must be imposed requiring that the OIO be notified of each transaction settled under the standing consent. Additional conditions may also be imposed on standing consents (discretionary conditions).

The table below details the requirements of the relevant test(s), outlines the proposed standing consent conditions (confirming all mandatory conditions are included), and addresses the Conditions Criterion.

Relevant business

Under clause 12 of Schedule 2, the decision-maker may, for the purposes of considering an application under the non-residential or incidental residential test, determine which 1 or more of the following is the 'relevant business': (1) a business of the ROP (A); (2) a business of a person (B) if A owns or controls the relevant interest in the residential land primarily for B to use the residential land in that business. However, in making that determination, the decision-maker must be satisfied that the business is likely to continue for a reasonable period of time, given the circumstances and nature of the business.

Given the nature of the proposed investments, we consider the relevant business is the discovery, extraction, and processing of (predominantly) gold ore by the Applicant.

The Applicant is New Zealand's largest gold producer. It is engaged in the discovery, extraction and processing of predominantly gold ore (but also silver and copper). It operates the Macraes open pit and underground mine in Otago, which has been in operation since 1990. It has also operated the Waihi Mines since acquiring these in 2015. The Applicant has large scale expansion plans for the Waihi Mines which will see mining activities extended to 2036.

Having regard to the above, we are satisfied the business is likely to continue for a reasonable period of time.

Non-residential use test

In summary, the requirements of the non-residential use test are that the two elements of the non-residential use outcome will, or are likely to, occur (refer (a) below). Conditions must be imposed on any consent granted that require the non-residential use outcome to occur. There are additional requirements and mandatory conditions if the non-residential use is unlikely to occur within a short period (refer (b) below).

Requirement	Proposed special condition	Condition likely to be met?	OIO Analysis
<p>Sch 4, cl 2(3)(a)-(b) and Sch 2, cl 13</p> <p>(a) Non-residential use outcome</p> <p>The residential land:</p> <ul style="list-style-type: none"> will, or is likely to, be used for non-residential purposes in the ordinary course of business for the relevant business; and will not, or is not likely to be, used or held for any residential purposes. 	<p>1, 3</p>	<p>Yes</p>	<p>We are satisfied that this condition is likely to be met having regard to:</p> <ul style="list-style-type: none"> the Applicant's track record of acquiring residential land in the ordinary course of its business in NZ since 1990, and in Waihi since 2015; the Applicant is a mining company, not a commercial landlord, and appears to have no commercial imperative to acquire residential land unless required to do so in the ordinary course of its business; the Applicant has demonstrated it has sufficient financial strength to carry out the proposed investment plans; the Applicant has provided examples (including where OIO consent has been granted) where residential land has been acquired for non-residential purposes; the Applicant has a history of complying with conditions, and has confirmed that it has a procedure in place (as noted at paragraph 108 above) to ensure all requirements of the standing consent are met; and to the extent that land acquired under the standing consent is used for residential purposes, we are satisfied that this is likely to fulfil the incidental residential use test, as outlined below. <p>Special conditions (backed by the reporting condition) will require that the non-residential use outcome occurs and that the Consent Holder provides the OIO with sufficient information to monitor progress towards this.</p> <p>Special condition 1 requires that land acquired is used either for incidental residential purposes or non-residential purposes.</p> <p>Special condition 3 requires that when land is acquired for non-residential use, the land must only be used for non-residential purposes in the ordinary course of business for the Relevant Business with such uses (Approved Non-Residential Use) including (a) the development / operation of physical mining works as part of</p>

		<p>the Waihi Mines (b) when required to under a Waihi Mines Resource Consent, or (c) as a buffer from the effects of physical mining activities (such as noise, vibration, dust or other amenity effects).</p>
<p>(b) Timeframe for non-residential use The non-residential use outcome will, or is likely to, occur within either:</p> <ul style="list-style-type: none"> • a short period after the overseas investment is given effect; or • a specified period and either: <ul style="list-style-type: none"> ○ the non-occupation outcome will, or is likely to, occur; or ○ the incidental residential use test is applied for and met. 	<p>5, 6, Reporting condition</p>	<p>The Applicant has confirmed that for acquisitions of land for a non-residential use (e.g. pit expansion or road relocation) there may occasionally be a period of time between when the land is acquired and when the residential use will cease. However, the Applicant confirms that in all such situations this period would be a maximum of two years, and the incidental residential use test would be met in this interim period.</p> <p>The Applicant did not comment on why the period of two years should be considered a “short period” for the purpose of this test. Rather the Applicant relied on the incidental residential use test being met, and that within a specified period the non-residential use outcome is likely to be met.</p> <p>Based on the Applicant’s submissions we are satisfied that the non-residential use outcome is likely to occur within a short period. We consider that in the overall context of the proposed investment, and the Relevant Business (Project Martha Consents have expiry dates ranging from 25 to 35 years) two years will constitute a “short period”. It is not therefore necessary to include a ‘specified period’ within which the non-residential use outcome will occur, and it is not mandatory to include a condition to secure the non-occupation outcome. However, we have exercised our discretion in this instance to include a condition requiring the non-occupation outcome.</p> <p>Special condition 4 allows land acquired for a non-residential use to be occupied under an Incidental Residential Tenancy prior to the Development becoming Operational. An Incidental Residential Tenancy is defined in the draft consent as “a lease or tenancy agreement under which the Land is occupied by the original owner (being the same person the Consent Holder acquired the Land from), employees of the Consent Holder, or third parties”).</p> <p>Special condition 5 secures that the non-occupation outcome will be met, by requiring that none of the classes of people specified at clause 17(3) of Schedule 2 may occupy the land.</p>

		<p>Special condition 6 requires (among other things) that the Consent Holder confirms whether any land acquired will be used for incidental residential purposes or non-residential purposes and provides a Development Plan with timeframes for important milestones and a description of planned incidental residential use and non-residential use.</p> <p>The reporting condition requires that each annual report must include (among other things) information about progress in implementing the Development Plan, whether any residential dwelling situated on land will be demolished / relocated and the timeframes for this, and a summary of Incidental Residential Tenancies entered into.</p>
<p>Incidental residential use test</p>		
<p>In summary, the requirements of the incidental residential use test are set out under (a) and (b) below. The decision-maker may have regard to all or any of the considerations set out below in considering whether the incidental residential use test is met. Conditions must be imposed on any consent granted that require the incidental residential use outcome to occur.</p>		
<p>Considerations <i>Sch 2, cl 14</i></p>	<p>OIO Analysis</p>	<p>The Applicant submits that when it is required to purchase residential land either for mining related purposes, where required to in order to satisfy a property programme condition under a resource consent, or to be used as buffer zone from its mining operations, there is no reasonable alternative to acquiring a fee simple interest in the relevant land.</p> <p>We agree that in each of these circumstances the Applicant has no reasonable alternative. In particular, under a property programme condition, the Applicant must offer to purchase the land overlying its mining operations, and at any stage while mining works are taking place the affected landowner may trigger this condition and require the Applicant to purchase the property.</p>
<p>Proximity The proximity of the residential land to the</p>	<p>Based on the Applicant's submissions, the land to be acquired will be in proximity to the "Waihi Mines", which are defined in the Proposed Decision as Martha mine (open pit), Moonlight 5600, Trio, Correnso, and Slevin (underground) mines. In each scenario identified by the Applicant where it would acquire land under</p>	



<p>premises or operations of the relevant business</p>	<p>the standing consent the land would either be overlying the mining operations, or adjacent to mining operations.</p>		
<p>Staff accommodation Whether the use of the residential land is (without limitation) for accommodation for staff engaged in the relevant business</p>	<p>Based on the Applicant's submissions, residential land will not be acquired under the standing consent with the objective of providing accommodation for the Applicant's staff engaged in its mining business. However, this is only one factor for consideration in determining whether the residential use is genuinely incidental in nature. We note though that when land is occupied under an Incidental Residential Tenancy, the tenant may be an employee of the Applicant.</p>		
<p>Any other factor Any other factors that seem relevant in the circumstances</p>	<p>As noted above in this Report, the Applicant submits that the ongoing ability to purchase residential properties under a standing consent is vital to securing the viability of the Waihi Mines. In granting the Original Waihi Consent, Ministers recognised the extension of the life of the mines as being of 'substantial and identifiable benefit to New Zealand'. We are satisfied that the ability to acquire residential land under the standing consent will assist in the creation of the benefits which justified the Original Waihi Consent.</p>		
<p>Requirement <i>Sch 4, cl 2(3)(a)-(b) and Sch 2, cl 14</i></p>	<p>Proposed special condition</p>	<p>Condition likely to be met?</p>	<p>OIO Analysis</p>
<p>(a) Incidental residential use outcome Having regard to the above considerations:</p> <ul style="list-style-type: none"> the residential land will be, or is likely to be, used for residential purposes but only in support of the relevant business; and 	<p>1, 2</p>	<p style="text-align: center;">Yes</p>	<p>We are satisfied that this condition is likely to be met having regard to:</p> <ul style="list-style-type: none"> the Applicant's track record of acquiring residential land in support of its business in NZ since 1990, and in Waihi since 2015; the Applicant is a mining company, not a commercial landlord, and appears to have no commercial imperative to acquire residential land unless required to do so in the ordinary course of its business; in Waihi the Applicant already owns 128 residential properties, of which 117 are rented out; the Applicant has demonstrated it has sufficient financial strength to carry out the proposed investment plans;

<ul style="list-style-type: none"> the relevant business is not (or is only exceptionally) in the business of using land for residential purposes. 		Yes	<ul style="list-style-type: none"> the Applicant has a history of complying with conditions, and has confirmed that it has a procedure in place (as noted at paragraph 108 above) to ensure all requirements of the standing consent are met; the Applicant has provided examples (including where OIO consent has been granted) where residential land has been acquired for incidental residential purposes; and when land is used for incidental purposes it will be occupied under an Incidental Residential Tenancy. <p>Special conditions and the reporting condition will require that the non-residential use outcome occurs and provide the OIO with sufficient information to monitor progress towards this.</p> <p>Special condition 1 requires that land acquired is used either for incidental residential purposes or non-residential purposes.</p> <p>Special condition 2 requires that when land is acquired for incidental residential use, the land must only be used for incidental residential purposes in support of the Relevant Business with such uses (Approved Incidental Residential Use) including (a) when required to under a Waihi Mines Resource Consent, or (b) as a buffer from the effects of adjacent physical mining activities (such as noise, vibration, dust or other amenity effects).</p>
<p>(b) Ordinary course of business</p> <p>Having regard to the above considerations and the proposed use of the residential land:</p> <ul style="list-style-type: none"> the land will be, or is likely to be, used for residential purposes but only in support of the relevant business of the ROP, where the 	2	Yes	<p>As stated above, Special condition 2 requires that land acquired for incidental residential use must only be used for incidental residential purposes in support of the Relevant Business. The term "Relevant Business" is defined in the Proposed Decision as "the business of the Consent Holder, being the discovery, mining, and processing predominantly of gold ore."</p>

<p>relevant business is not (or is only exceptionally) in the business of using land for residential purposes.</p>			
<p>Notification and other conditions</p>			
<p>Requirement <i>Sch 4, cl 2(3)(c) and 2(4)</i></p>	<p>Proposed special condition</p>	<p>Condition likely to be met?</p>	<p>OIO Analysis</p>
<p>Notification conditions The regulator must be notified of each transaction under the standing consent in accordance with the requirements of the consent.</p>	<p>6</p>	<p>Yes</p>	<p>We are satisfied that this condition is likely to be met. The Applicant has a history of complying with conditions and has confirmed that it has a procedure in place (as noted at paragraph 108 above) to ensure all requirements of the standing consent are met.</p> <p>Special condition 6 requires that the Consent Holder must notify the OIO of each transaction settled under the standing consent, and each notice must include details, summarised as follows:</p> <ul style="list-style-type: none"> • the date of settlement • consideration • who acquired the land • a copy of the agreement for sale and purchase • copies of transfer documents and settlement statements • records of title • a land status certificate • confirmation of whether the land will be used for an incidental residential purpose or a non-residential purpose

			<ul style="list-style-type: none"> • a Development Plan / updated Development Plan • the total number of transactions in relation to the standing consent • the total land size acquired in relation to the standing consent
<p>Other conditions Additional discretionary conditions, including conditions limiting the scope of the standing consent.</p>	<p>Various, refer to Proposed Decision</p>	<p>Yes</p>	<p>The Proposed Decision includes, in addition to the special conditions, specific limits under which the Consent Holder may give effect to overseas investments in residential land. These limits, which are defined on the first page of the Proposed Decision, are:</p> <ul style="list-style-type: none"> • a maximum of 15 transactions may be settled; • a maximum area of 5 hectares per transaction, and 75 hectares (in total); and • a geographic limit of the territory of the Hauraki District Council. <p>We are satisfied that these limits are likely to be met having regard to:</p> <ul style="list-style-type: none"> • the Applicant has a history of complying with conditions, and has confirmed that it has a procedure in place (as noted at paragraph 108 above) to ensure all requirements of the standing consent are met; and • as mentioned above, special condition 6 will require the Consent Holder to report to the OIO with details including the total number of transactions entered, and the total size of land acquired under the standing consent.

Scope of Standing Consent

111. This section describes the scope of the standing consent the Applicant has requested and our assessment of that request (the scope of a standing consent is determined by the limits imposed on it).

Limit	Requested	OIO comment
Duration	10 years	We consider three years to be an appropriate duration for a standing consent at this time. This is consistent with other residential standing consents granted to date. If there are unused transactions towards the end of the three-year duration, an application for a variation may be made to extend the duration of the standing consent.
Location	Property Target Area (see map at paragraph 73)	We consider that an appropriate limit for the location is the territory of the Hauraki District Council. All residential land the Applicant will need to purchase for its investment plans in connection with the Waihi Mines will be located within this territory.
Max land area	75 hectares	We consider 75 hectares to be an appropriate limit.
Max area per transaction	5 hectares	We consider 5 hectares to be an appropriate limit.
No. of transactions	15	We consider 15 transactions to be an appropriate limit. This is the maximum number of transactions that has been requested by the Applicant and can be justified by its investment plans.

Conclusion and recommendation

112. We recommend you grant consent to the Investment as we consider all of the relevant criteria have been met.

113. The conditions we recommend are set out in the Proposed Decision (**Attachment 2**). These conditions include all required mandatory conditions and additional discretionary conditions.

List of Attachments

Attachment 1	Guidance for applying the Act
Attachment 2	Proposed Decision

Attachment 1: Guidance for Applying the Act

Decision

1. The application you are considering is an application for a standing consent (residential land) under the non-residential use and incidental residential use tests.
2. A standing consent (residential land) may be granted if you are satisfied that the following criteria have been met (Schedule 4, clause (2) of the Act):
 - (a) the 'investor test' (refer section 16(2) of the Act); and
 - (b) conditions imposed on the standing consent (including mandatory conditions) will, or are likely to be, met.
3. Your decision should be based on information available to you that you consider is sufficiently reliable for that purpose. The information we have taken into account in making our recommendation is summarised in the attached Report.

Conditions

4. The Act requires that standing consents include:
 - (a) conditions for the purpose of ensuring that the relevant residential land test(s) are met for each overseas investment under the standing consent (in this case the non-residential use and incidental residential use tests);
 - (b) conditions that must be imposed on consents that are granted on the basis of the relevant residential land test(s) (that is, conditions requiring certain residential land outcomes); and
 - (c) conditions requiring that the OIO be notified of each transaction settled under the standing consent.
5. The Act also provides for additional conditions including conditions limiting the scope of the standing consent (discretionary conditions).
6. The conditions proposed in **Attachment 2** include all mandatory conditions.

Investor test - good character criterion

7. You must 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.
8. 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.
9. When undertaking the good character assessment, you must be satisfied that the character of each of 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.
10. 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 body corporate 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 body corporate is less than this, there generally must be other grounds to reasonably infer participation by the individual in the alleged wrongdoing.

11. 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.
12. All relevant matters must be weighed up before you make a decision that an individual is of good character. If you wish 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 in order to meet the requirements of natural justice.
13. 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 you.
14. 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.
15. 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.
16. Briefly, some of the things we consider when weighing up "good character" include:
 - (a) the seriousness of the matter, which may include considerations of:
 - (i) what the matter was and the level of actual or potential harm;
 - (ii) whether the matter was established by a relevant regulator or the Court and attributed to an individual with control (IWC) or relevant overseas person (ROP);
 - (iii) what the penalty or other sanction was (if any);

- (iv) whether the matter was a one-off event or repeated breaches, including a pattern of non-compliance across a range of regulatory regimes;
 - (v) whether what occurred was inadvertent, negligent, reckless or deliberate;
 - (vi) whether what occurred was legal in New Zealand but illegal in the jurisdiction in which it occurred, in which case we consider the culture and context of that country;
- (b) if a matter is an allegation, the credibility of the allegation including the reliability of the source and credibility of the information raised. Generally, if an allegation is reported in a number of sources and is not simply 'copy and pasted' it is likely to be regarded as having credibility;
- (c) connection to the IWCs or ROP: we assess the level of control between any of the IWCs of the ROP and the particular matter;
- (d) For example, a breach of safety rules by an employee of subsidiary company where the company was fined would likely have a low (or no) connection with an IWC who was an executive director of the parent company, whereas an executive decision by a company to illegally collude with a competitor would likely have a high connection with that IWC;
- (e) relevance to this investment: we assess how relevant the particular matter is to the nature of this particular investment. For example, a dangerous driving conviction by an IWC would have low relevance in connection with the acquisition of a dairy farm, whereas a conviction for discharging farm effluent into a waterway would have a high relevance to the acquisition of a dairy farm;
- (f) what actions, if any, were taken to remedy the situation and reduce the chances of it reoccurring.
17. The onus is on the applicants to satisfy the decision-maker that all the individuals that are ROPs and/or IWCs are of good character.
18. If you have doubts about the character of an individual that is an ROP/IWC which results in you not being satisfied that the test for good character has been met, then the application for consent must be declined.

National interest assessment

19. It is a criterion of consent under section 16(g) that if the overseas investment involves a transaction of national interest, then before consent can be granted the Minister of Finance must not have declined consent to the transaction on the grounds that it is contrary to New Zealand's national interests under section 20C.
20. Before making a decision, the decision-maker must establish whether the transaction is a transaction of national interest. A transaction is of national interest if it involves investment by non-New Zealand government investors or investments into strategically important businesses under section 20A. The Minister of Finance has discretion to apply the national interest assessment in other situations and may also notify the applicant that the transaction is a transaction of national interest under section 20B.
21. The Supplementary Ministerial Directive Letter (8 June 2020) sets out at paragraph 5 that the starting point is to begin with the assumption that an investment is in New Zealand's national interest. Paragraph 6 of the Supplementary Ministerial Directive Letter directs the regulator to only advise that a transaction should be escalated to a national interest assessment under s20B if the proposed investment:



- could pose risks to New Zealand's national security or public order,
 - would grant an investor significant market power within an industry or result in vertical integration of a supply chain,
 - has foreign government or associated involvement that was below the 10 per cent threshold for automatic application of the national interest test, but granted that government (and/or its associates) disproportionate levels of access to or control of sensitive New Zealand assets; or
 - would have outcomes that were significantly inconsistent with or would hinder the delivery of other Government objectives.
22. If the decision-maker is satisfied that the investment does not involve a transaction of national interest, then they may grant consent, provided they are satisfied that all other relevant criteria are met.
23. If the investment does involve a transaction of national interest, the decision-maker determines the investor test and the remaining criteria for a standing consent but may only grant consent **after** the Minister of Finance has considered the transaction under section 20C and has not declined consent to the transaction on the grounds that it is contrary to national interest.

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Attachment 2: Proposed Decision

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Standing Consent for Overseas Person to Acquire Residential (but not otherwise sensitive) New Zealand Land – Incidental Residential Use and Non-Residential Use

Read this Standing 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: [THIS APPLICATION HAS NOT BEEN DECIDED YET]

The following people have been given this **Standing Consent**:

Case	201900680
Consent type	Standing consent under section 23A and Schedule 4, clause 2 of the Act (incidental residential use and non-residential use).
Consent holder/s	Oceana Gold (New Zealand) Limited (company number 927153) (you or the Consent Holder).
Consent	You may give effect to overseas investments in residential (but not otherwise sensitive) land subject to the limits and conditions set out below.
Limits	<p>(a) You may settle no more than 15 overseas investment transactions.</p> <p>(b) You may acquire interests in no more than:</p> <ul style="list-style-type: none"> (i) 5 hectares of sensitive land per transaction; and (ii) 75 hectares of sensitive land (in total). <p>(c) You may acquire land within the territory of the Hauraki District Council as that authority is defined in the Local Government Act 2002.</p>
Relevant business	The business of the Consent Holder, being the discovery, extraction, and processing predominantly of gold ore.
Use-by Date	[day - October 2023]

Conditions

Your Standing 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 the Consent may be revoked, you may be subject to fines or other penalties, and you may also be required to dispose of land acquired under this Standing Consent.

In the Consent the Overseas Investment Office is referred to as **OIO, us or we**.

Definitions

Act means the Overseas Investment Act 2005.

Conditions means the special conditions, standard conditions, and reporting conditions.

Development means the development works or construction for the Waihi Mines as described in the Development Plan.

Development Plan means a plan describing the Development and identifying the relevant incidental residential uses and non-residential uses, and includes the following to the extent available or known:

1. A description of the Land required to undertake the Development;
2. Explanation and indicative timeframes for important milestones (with reference, but not limited to any plan change or resource consent applied for or granted);
3. Information visualising the relevant development (e.g. concept plans);
4. A description of any planned incidental residential use and non-residential use.

The Development Plan is a high-level document intended to communicate the nature of, and rationale for, the development and to assist us in monitoring the special conditions. It is acknowledged that the Development Plan may evolve over time.

Incidental Residential Tenancy means a lease or tenancy agreement under which the Land is occupied by the original owner (being the same person the Consent Holder acquires the Land from), employees of the Consent Holder, or third parties.

Land means residential (but not otherwise sensitive) land as defined in the Act.

Operational means the Development is complete and the Approved Non-Residential Use has commenced.

Regulations means the Overseas Investment Regulations 2005.

Settlement means the date you acquired the Land.

Waihi Mines means the Martha Mine (open pit and underground) [s 9(2)(b)(ii)] [s 9(2)(b)(i)] Moonlight, Favona, Trio, Correnso, and Slevin (underground) Mines.

Waihi Mines Resource Consent means any resource consents granted, and to be granted, in respect of the Waihi Mines.

Any term or expression that is defined in the Act or Regulations and used, but not defined in this consent, has the same meaning as in the Act or Regulations.

Special Conditions

You must comply with the following **special conditions**. These apply specifically to this Consent:

Details	Required date
Special Condition 1: Use the Land for incidental residential purposes / non-residential purposes	

<p>You must use any Land acquired under this Standing Consent:</p> <p>(a) for incidental residential purposes in accordance with Special Condition 2; or</p> <p>(a) for non-residential purposes in accordance with Special Condition 3.</p> <p>If this condition is not complied with, standard condition 5 will apply and we may require you to dispose of Land acquired under the Standing Consent.</p>	<p>At all times</p>
<p>Special Condition 2: Use the Land for an incidental residential purpose</p>	
<p>Land acquired under this condition must only be used for incidental residential purposes in support of the Relevant Business at the Waihi Mines unless otherwise permitted by these Conditions.</p> <p>Such incidental residential use (Approved Incidental Residential Use) includes:</p> <p>(a) when the Consent Holder has an obligation under a Waihi Mines Resource Consent to purchase Land with a residential dwelling constructed on it if called upon to do so by the owner, and the Land will be occupied under an Incidental Residential Tenancy; or</p> <p>(b) as a buffer from the effects of physical mining activities (such as noise, vibration, dust or other amenity effects), and the Land will be occupied under an Incidental Residential Tenancy.</p> <p>If this condition is not complied with, standard condition 5 will apply and we may require you to dispose of Land acquired under the Standing Consent.</p>	<p>At all times</p>
<p>Special Condition 3: Use the Land for a non-residential purpose</p>	
<p>Land acquired under this Standing consent must be used for non-residential purposes in the ordinary course of business for the Relevant Business at the Waihi Mines unless otherwise permitted by these Conditions.</p> <p>Such non-residential use (Approved Non-Residential Use) includes:</p> <p>(a) the development and operation of physical mining works (including pit expansion and relocating roads); or</p> <p>(b) when the Consent Holder has an obligation under a Waihi Mines Resource Consent to purchase Land with a residential dwelling constructed on it if called upon to do so by the owner; or</p> <p>(c) as a buffer from the effects of physical mining activities (such as noise, vibration, dust or other amenity effects)</p>	<p>At all times.</p>

<p>Land acquired under this Standing Consent must not be used, nor held for use, for any residential purposes unless otherwise permitted by these Conditions.</p>	
<p>If this condition is not complied with, standard condition 5 will apply and we may require you to dispose of Land acquired under the Standing Consent.</p>	
<p>Special Condition 4: Permitted residential use</p>	
<p>Land acquired under Special Condition 3 for non-residential use may be occupied under an Incidental Residential Tenancy prior to the Development becoming Operational.</p>	
<p>Special Condition 5: Non-occupation outcome</p>	
<p>None of the following people may occupy (for residential purposes) the Land acquired under the Standing Consent:</p> <ul style="list-style-type: none"> (a) You. (b) Any overseas person with a 25% or more ownership or control interest in any of the people in (a). (c) Any overseas person who occupies the Land other than on arm's length terms¹. (d) Any overseas person who has a beneficial interest in, or beneficial entitlement to, the relevant interest in the Land. (e) If (a) is a trust, any beneficiary (direct or indirect) who may benefit under the trust at the trustees' discretion. <p>If this condition is not complied with, standard condition 5 will apply and we may require you to dispose of Land acquired under the Standing Consent.</p>	<p>While you, or any of the people outlined in paragraphs (b) to (e), has any relevant interest in the Land.</p>
<p>Special Condition 6: Notification</p>	
<p>You must notify us of each transaction settled under this Standing Consent (Notice).</p> <p>Each Notice must include:</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; 	<p>As soon as you can, and no later than one month after Settlement</p>

¹ 'At arms length terms' has the meaning in clause 17, Part 5, Schedule 2 of the Overseas Act 2005. In summary it means terms, for example under a lease (or other contract), that are on a reasonable commercial basis.

<ol style="list-style-type: none"> 4. a copy of the relevant agreement for sale and purchase (clearly identifying the date the transaction was entered into); 5. copies of any transfer documents and settlement statements; 6. a current and historical copy of the record of title for each parcel of sensitive land acquired; 7. a land status certificate including a map of the location, cadastral map, and aerial photo identifying the Land; 8. confirmation of whether the Land will be used for incidental residential purposes or non-residential purposes; 9. a Development Plan, or an updated Development Plan if one has already been provided (unless the OIO agrees in writing that it may be provided at a later date); 10. the total number of transactions (per year and aggregated) in relation to this Standing Consent; 11. the total Land size acquired in relation to this Standing Consent. 	
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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 under this standing consent	
<p>You may acquire Land under this Standing Consent using the acquisition, ownership and control structure you described in your application.</p> <p>If you do not your Standing Consent will lapse and become invalid and you must not acquire any Land in reliance upon it.</p>	By the Use-by Date
Standard condition 2: allow us to inspect any land acquired under this Standing Consent	
<p>Sometimes it will be helpful for us to visit land acquired under this Standing Consent, 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>	At all times

<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. 3. During an Inspection: <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. 	
<p>Standard condition 3: remain of good character</p>	
<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>At all times</p>

<p>The Individuals Who Control You are individuals who:</p> <ul 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>Standard condition 4: tell us about changes that affect you, the people who control you, or people you control</p>	
<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 3). 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: <ul style="list-style-type: none"> (a) becomes bankrupt or insolvent (b) has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, or (c) becomes subject to any form of external administration. 	<p>Within 20 working days after the change</p>
<p>Standard condition 5: dispose of land if you do not comply with key Special Conditions</p>	
<p>If all or part of this Standard Condition 5 applies to a special condition, we have said so in that condition.</p>	

<p>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 will give you written notice if we require you to dispose of land. Acquired under this Standing Consent. Unless the notice provides otherwise, you must:</p>	
<p>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>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>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>Offer without reserve: if you have not disposed of the Land within six months of our notice, 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>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>Report disposal to us: send us, in writing, evidence:</p> <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. 	<p>Within one month after the land has been disposed of.</p>

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Reporting conditions

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

You must notify us of **each transaction** settled under this Standing Consent as set out in **Special Condition 6**.

In addition, you must lodge an **annual report** by **31 January** each year until the OIO confirms in writing that annual reporting is no longer required.

Each annual report must:

1. be sent to oiomonitoring@linz.govt.nz (or otherwise submitted using the OIO's [Webform](#));
2. contain information about your progress in implementing the Development Plans and special conditions, including whether any plan change / resource consent applications have been submitted to the relevant authority;
3. contain updated versions of existing Development Plan (as necessary);
4. contain information about what Land acquired under the Standing Consent will be used for, including whether any residential dwelling situated on the Land will be demolished or relocated and the relevant timeframes;
5. contain a summary of any Incidental Residential Tenancy entered into; and
6. follow the format of, and provide any additional information required by, the relevant annual report template published on our website.

If requested in writing by the OIO, the Consent Holder must provide a written report within 20 working days (or such other timeframe as specified) on any matter relating to its compliance with:

1. the representations and plans made or submitted in support of the application and notified by the regulator as having been taken into account when the Consent was granted; or
2. the Conditions.

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