Submission to MfE on

ACTION FOR HEALTHY WATERWAYS: A DISCUSSION DOCUMENT ON NATIONAL DIRECTION FOR OUR ESSENTIAL FRESHWATER

Submitted by:

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1 INTRODUCTION

OceanaGold Corporation (OceanaGold) is a mid-tier, high margin, multinational gold producer with assets located in the Philippines, New Zealand and the United States of America. OceanaGold’s New Zealand subsidiary, Oceana Gold (New Zealand) Limited (OGNZL), has producing gold mines at Waihi and Macraes and a closed mine under rehabilitation at Reefton. Although today OceanaGold has a global presence it was the company’s New Zealand assets that the company was founded on, almost 30 years ago. Our mines employ over 900 people directly across the two regions of East Otago and Waihi where we operate in New Zealand. OGNZL is New Zealand’s largest producer of gold. The combined royalties and taxes paid to the Crown from OGNZL’s New Zealand operations over the past three financial years were about $110 million and our total annual economic contribution measured as direct expenditure into the New Zealand economy in 2016 was $373 million. Our contributions to the national, regional and district economies are summarised in Appendix 1.

Freshwater management is a critical matter for of all of our mines throughout operations and closure phases. OGNZL holds, or will be required to apply for, resource consents under the Resource Management Act 1991 (RMA) for almost all activity it undertakes. Mining can only be consented late in the development process, based on known, engineered “foot prints”, meaning that the assessment of environmental effects for the purposes of continuing to operate under the RMA is continuous and ongoing. Since 2013, open pit operations at Macraes have been the outcome of three significant, fully public sets of resource consenting applications, each covering one or more years of process to obtain and several running to appeals. OGNZL’s operations interface with national, regional (currently Waikato, West Coast and Otago) and district (currently Thames-Coromandel, Hauraki, Buller, Waitaki, Dunedin) planning instruments, therefore if implemented the 2019 draft National Policy Statement for Freshwater Management (NPS) and the proposed National Environmental Standards for Freshwater (NES) will directly, and potentially immediately, impact our business and could curtail or close operations at Macraes, in particular, within a short time-frame.

Like all New Zealanders OGNZL values our freshwater. We also respect the mana of our freshwater – Te Mana o te Wai. We recognise that our water quality and associated habitats are being degraded as a result of human activity. OGNZL is already taking action to reduce the impacts that our activities have on freshwater and freshwater habitats.

Accordingly, we welcome the opportunity to comment on those aspects of the Government’s ‘Action For Healthy Waterways: A Discussion Document On National Direction For Our Essential Freshwater’ and the 2019 NPS and NES proposals that we consider will have significant, and potentially unintended, consequences for the extractives industry generally and for our operations more specifically. We do not believe that it is the Government’s intention to cause any single sector within New Zealand’s economy to falter as a result of these reforms, but that may be the far-reaching effect upon primary production, infrastructure providers, the extractives sector and more.

2 LOCATIONAL CONSTRAINTS OF MINING

Mineral resources are fixed in location and must be extracted from where they are located. Mineral resources often intersect with vegetation, ephemeral streams and wetlands and watercourses with ecological values.

Regional policy statements and plans are beginning to recognise that offsets and environmental compensation may be appropriate mechanisms in some circumstances (but not all) in order to achieve better overall environmental outcomes with respect to the protection and restriction of rivers / streams and wetlands. This is very important for locationally constrained activities that cannot always avoid these values.

The NPS and NES as currently drafted could effectively halt our mining activity. This is because of the non-complying activity status given in the NES to most of the activities that we in the extractives sector would normally undertake when mining, combined with the objectives and policies of the NPS that promote avoidance and do not effectively allow consideration of the kinds of offsetting and compensatory measures that may achieve no net loss or a gain of values. The combined effect of these instruments would make it extremely difficult, if not impossible, for projects to pass through the gateway test in section 104D of the RMA.
and present a full project proposal, including the full suite of mitigation measures, in order to gain resource consents.

As the supporting evidence of Mr. Lee and Ms. Mason shows, substantial benefits can, and have, been derived from mitigation, offsetting and compensatory measures undertaken as part of resource consent applications for OGNZL mining projects. Without the ability to use the full effects management hierarchy, as the NPS and NES effectively propose, these projects would have resulted in unaddressed residual adverse effects on wetland and river/stream values, which in turn may have resulted in the projects not securing resource consents. In such a case the wetland and river/stream enhancement benefits resulting from the projects would be foregone and the other social and economic benefits of the activity would not occur. It is difficult to see how such an outcome promotes the sustainable management purpose of the RMA. Is this really what the Government intends?

3 COMMENT ON DRAFT NPS, NES AND REGULATORY IMPACT ANALYSIS

Beginning with the Interim regulatory Impact Analysis (IRIA), it is manifestly clear that the IRIA analysis has given no consideration to the impact the proposals will have on mineral development. For example, when analysing the benefits and costs of the proposed measures in relation to wetlands the analysis is confined to benefits and costs on fertile lands, which uses a land classification system that takes no account of the presence of mineral resources. In relation to wetlands the IRIA makes assertions that are unsupportable when the likely future impacts on OGNZL’s operations are considered. It is asserted that wetlands make up a low percentage of the land most likely to be developed, therefore the costs of these regulations to landowners are likely to be minimal. That assertion is at odds with the reality, as discussed above, that a strict avoidance policy for wetlands is likely to prematurely end operations at Macraes and any remaining access at that point to over 4 million ounces of known resource.

An even more striking example is found in relation to the analysis of the costs of the proposed measures to prevent the further loss of streams. The analysis of costs is restricted to those associated with housing developments. There appears to be no understanding in the analysis that mineral development will at times require stream infilling, and that the effects of this may be capable of appropriate mitigation, offsetting and compensation.

In broaching the issues with the proposals as they stand, OGNZL’s legal submission and analysis has focussed on Clause 3.15 of the NPS and corresponding provisions within the proposed NES concerned with avoidance of impacts on wetlands and streams. Taken at face value the NPS appears to impose a clear and directive requirement which provides absolutely no flexibility or ability for councils to make decisions informed by the facts of a particular proposal. It requires, on its face, that any activity that has the effect of degrading even a small part of a minor wetland with low ecological value must not take place. Clause 3.15 is unreasonably restrictive and is unsupported on the evidence.

Mr Turner’s evidence forming part of this submission includes suggested changes to clause 3.15 and corresponding changes to the NES to refer to the avoidance of further net loss of inland wetland values, as a more reasonable proposition that does not, in our view, compromise the outcome of preventing further degradation and seeking to improve NZ’s wetland environment. The point of a properly designed and implemented offset is to achieve, at worst, a neutral outcome for the values being offset. On this basis offsets are to be encouraged, and the changes sought in OGNZL’s submission are designed to ensure that offsets are available to be considered in all situations where an activity has a functional need to be located in a place where it unavoidably impacts on wetland or stream values.

Suggested changes to the provisions dealing with streams equally seek to make the outcome of no net loss the guiding principle, in situations of locational constraints.

The suggested changes also address a current deficiency in the drafting that could see developments that delivered overall gains for wetland and stream values prevented from gaining consent because they unavoidably impacted on wetland and stream values, failing the gateway test in s104D of the RMA. In OGNZL’s submission this would be a perverse outcome and would represent the worst of all worlds whereby
the conservation benefits a proposal offers will not be realised and the other benefits that come from the development of the mineral resource will be foregone.

The policy and regulatory measures contained in the NPS and NES are significant and are intended to make a difference in the way that freshwater is managed. The intention is that New Zealand will as a result have better quality freshwater, and that the values associated with our remaining wetlands and streams will receive greater recognition and protection. OGNZL supports this outcome, and we consider that the changes promoted in OGNZL’s submission and in the evidence of Mr Turner do not detract from the intended result.

4 RECOMMENDED CHANGES

We commend to you the evidence of Mr Turner, and the changes he has suggested to the drafting of the NPS and NES. It is his opinion, as an expert planner, that substantial redrafting of the NPS and NES “is required in order to ensure that suitable national direction on freshwater management is provided to regional councils and resource users, and to avoid unintended consequences for valuable locationally constrained activities (such as mining) that often provide offsetting or compensatory measures in order to achieve overall improvements in freshwater management and the protection of indigenous biodiversity.”

5 TIMING

The Government intends to make final decisions on the NPS and NES in late 2019 / early 2020 and to implement the new requirements by June 2020. All Councils will be required to have plans that implement the NPS by 2025. This is remarkably fast given the limited consultation that is taking place on this significant matter. We are concerned that such a rapid process will not result in robust and well considered outcomes. We endorse the views of the Regional Sector Commentary on Essential Freshwater Proposals, September 2019, in that regards.

6 CONCLUSION

The amendments to the NPS and NES that OGNZL is seeking would:

- improve clarity for regional councils and resource users with respect to the management of wetlands and rivers / streams;
- provide greater flexibility for the appropriate use of offsetting or compensatory measures to be considered as part of the assessment of resource consent applications that provide significant social and economic wellbeing, but which are subject to functional or operational constraints – like our mining projects.

Should there be an opportunity to be heard on our submission we would welcome it.
APPENDIX 1 – OGNZL CONTRIBUTIONS TO NZ ECONOMY

OceanaGold’s New Zealand Operations make a significant contribution to New Zealand’s economy. The company’s two operating mines make up the majority of the gold mining industry in New Zealand, directly employ about 900 people and in 2016 contributed $373 million in expenditure into the national economy. Payments to government (mainly tax and royalties) totalled $42.5 million, with a further $25 million in payroll taxes.

Below is more detail on OceanaGold’s contributions taken from the report ‘OceanaGold’s contribution to New Zealand – a summary of key economic, social and environmental contributions of OceanaGold to New Zealand in 2016’, prepared by KPMG, October 2017:

The value of OceanaGold’s direct (i.e. before the application of any multipliers) economic contribution to NZ during 2016 is estimated at $373 million. That represents about 84% of the company’s direct expenditure on its NZ operations being retained within NZ. The direct economic expenditure consisted of:

- $91 million employee pay and benefits
- $945,000 community contribution (includes in-kind support)
- $239 million payments to local and national suppliers (of a total $305 million)
- $42.5 million payments to governments (royalties, income and corporate tax payments, land use and other payments).

$330 million, or 88% of OceanaGold’s direct expenditure on its NZ operations, reached people and businesses in NZ through wages and procurement.

Of a total estimate of 1012 jobs in the gold mining sector OceanaGold’s workforce consisted of 894 employees and contractors (721 employees and 173 permanent contractors) across three regions.

The average income of OceanaGold employees is double the NZ average, meaning the economic participation of employees within their local and regional communities also creates flow on impacts, raising household incomes and stimulating economic growth.

There is significant economic activity and increased employment in the regions and local districts where OceanaGold operates. In 2016:

- The Macraes mine had a workforce of 534 equivalent to about 4.5% of all employees in the Waitaki district and 1% of all employees in Dunedin metropolitan district. 81% of employees lived locally to the Macraes site, with $47 million spent locally (Waitaki and Dunedin) on wages and benefits alone;
- The Waihi mine had a workforce of 351 equivalent to around 4.4% of total employment in the Hauraki district, 3% of total employment in the Thames-Coromandel and 0.6% of total employment for Tauranga. 59% of employees lived locally to the Waihi site, with $17 million spent locally (Hauraki and Tauranga) on wages and benefits alone.

In terms of contribution to Gross Domestic Product (GDP) OceanaGold’s contribution is $174 million, about 0.08% of the total NZ GDP.

- In the Otago region OceanaGold contributed almost $84 million or 0.88% of the regional GDP (which was almost 1.5 times the grape growing and wine production industry, almost 90% of the forestry and logging industry, more than double the value of the wool industry and about 5 times the value of the fishing and aquaculture industry)
- In the Waikato region OceanaGold contributed $86 million or about 0.44% of the regional GDP (compared with 0.17% contributed by the fishing and aquaculture industry).