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1 Introduction

This is the decision of a Hearing Panel comprising Mr Jim Hopkins and Dr Brent Cowie (chair) appointed jointly by the Otago Regional Council (ORC) and Waitaki District Council (WDC) to hear and decide resource consent applications lodged with the two Councils by Oceana Gold (New Zealand) Limited (Oceana Gold, the Applicant) for what is known as the Deepdell North Stage III Project (the Proposal).

We undertook a site visit on the afternoon of Monday 17 August 2020. We went to a number of locations, including the proposed extension to the existing mine pit and the Waste Rock Stack (WRS). We accessed most of these locations from either the Haul Rood and/or Horse Flat Road. We saw watercourses such as the Highlay Stream and Deepdell Creek, the wetlands that would be affected by the proposed location of the WRS, and the proposed Red Bank ecological offset area. We did not visit the proposed offset ephemeral wetland site near Middlemarch, but did see a range of photographs of that wetland. We much appreciated the opportunity to understand the layout of the land its relevant salient features. We thank the Applicant, and particularly Ms Charlotte Boyt for showing us around.

The hearing took place at Dunedin Venues in Moray Place. It commenced at 0900h on Wednesday 19 August and proceedings finished at about 1730h that day. The next day the hearing also commenced at 0900h and was adjourned at about 16.15h, awaiting the Applicant's right of reply. That was received on Wednesday 26 August and we closed the hearing on Thursday 3 September.

After consulting with the parties we ran the hearing on a topic by topic basis. That worked very well, thanks largely to the experts in various disciplines, who worked hard to resolve their differences. We discuss this much more in the full decision; suffice to say here that we are very grateful to all those experts. In the end their co-operation made our task quite straightforward.

There is one other matter we need to cover here. The ORC was both a consent authority and a submitter through its Policy Group who opposed only the land use consent application lodged with the WDC. To differentiate the two distinct Regional Council functions we refer to them in this decision as ORC Consents, and ORC Policy.

2 Summary of our Decision

We provide here a summary of our decision. It is not part of the formal decision per se, rather it is a short overview.

Prior to the hearing we had received a great deal of expert evidence. Much of it expressed strongly held opinions and drew conclusions that were at odds with one another.

There was no strong opposition to the consent applications made to ORC consents. The differences related to what conditions should apply if those consents were to be granted. Most of those differences were resolved during the hearing. In the end a few decisions were ours.

At the commencement of the hearing we had doubts whether the land use application to the WDC could be granted. There were several reasons for this. They included the values assigned by some experts to the habitats that would be lost under the WRS, and concerns that the proposed

offsets/compensation packages were either not satisfactory, and/or how they would be managed. This matter was strongly disputed. Some submitters also saw the policy framework in the Regional Policy Statement being a high hurdle to overcome.

On 14 August we issued a minute prescribing that we would run the hearing on a topic by topic basis, and requesting that experts confer and attempt to come to agreements via Joint Witness Statements.

The response to that exceeded our expectations. Prior to the hearing commencing we had received Joint Witness Statements from the three expert herpetologists, and the two expert landscape architects. This meant these witnesses could be excused from attending the hearing.

This impressive co-operation among experts was continued at the hearing. To our delight seven experts in ecology and off-setting very largely agreed on the values of the sites being lost, and principles as to how the Red Bank off set area would be managed. The only (relatively minor) disagreement on the first day of the hearing was how appropriate the proposed Middlemarch off set wetland was to be managed. That was resolved on the second hearing day.

We are very appreciative of the co-operation between experts for the different parties. It made our decision on the WDC land use consent application much more straightforward and we concluded we could grant that consent with some confidence. Indeed a discussion involving first the ORC Policy team, and then a wider group, resulted in agreement about what conditions the WDC consent could be granted on. We have followed that almost exactly in our decision, with only a few grammatical tidy ups.

The Otago Regional Policy Statement contains some very prescriptive policy which potentially shapes any framework adopted for management of the effects of mining at Macraes.

The agreements largely reached between experts do not follow the framework established by the Regional Policy Statement precisely. It would not be practical to do so. The agreed offsets and the detail as to how they are managed involve a mix of offsetting and compensation, whereas the regional policy promotes the former. We also find that in relation to wetlands, the offset/compensation policy approach in the National Policy Statement for Freshwater 2020 is much more straightforward than its equivalent in the Regional Policy Statement.

For these reasons we have not followed the regional policy precisely. Our decision to grant the WDC consent application is driven by ecological outcomes and pragmatism, which we think is entirely appropriate. Our full decision follows.

3 The Proposal

3.1 Background

The area around Macraes Flat has been mined since the mid 1800's, but it is only since 1990 that large scale open cast mining has been carried out on the site by the Applicant and its predecessors. The veins of gold, which lie deep underground, run approximately north-south and are at an oblique angle to the ground.

Very large volumes of "waste rock" have to be excavated and disposed of in WRS's before the rocks bearing gold ore can be accessed. This rock is then carried by huge trucks using what are known as haul roads to take the ore to the processing plant. Once the gold is separated out, the fine tailings are then deposited into a network of dams

There are eight existing mine pits. The two most recent are the Coronation and Coronation North pits, which were consented from 2013 on. These pits are the furthest from the processing plant. Presently about 140-150,000 ounces of gold are produced annually from operations at Macraes.

The Macraes operation currently provides employment for about 595 FTE's and about an additional 140 FTE's for contractors. Additionally, there are some 25 staff in the applicant's Dunedin office. The company is one of the largest employers in the Waitaki District; importantly company staff are highly paid, averaging over $100,000 per employee.

Mr Michael Copeland, a witness for the Applicant whose evidence was not contested, discussed how both the Waitaki District and the Otago Region will benefit from the Proposal. Using what he considered to be conservative multipliers, he estimated the Proposal would add 352 and 1,094 jobs in the district and region respectively. Similarly. in the district he estimated that there were $34.7 million in retained wages and salaries, and retained other expenditure of $29.9 million. In the region the latter two numbers were estimated at $109.1 million and $97.8 million respectively. He also noted that at one local high school and five local primary schools the children of Macraes staff or permanent contractors typically made up about a third of the school roll. These are clearly significant benefits of the Proposal, particularly in the current environment with all the uncertainties for employment arising from the Covid-19 pandemic.

3.2 The Current Proposal

The current proposal is known as the Deepdell North Stage III Project, which is much closer to the processing plant than the Coronation Pits and reworks and extends an old mine pit. It is planned to access the ore body via this previously backfilled and rehabilitated pit. The pit will cover some 38ha, of which 18.4ha was mined and backfilled in about 2004, during what was known as the Deepdell North Stage I & 2 projects. An estimated 57 million tonnes of rock will be removed and placed within a proposed WRS to access some 3.5 million tonnes of ore bearing rock. The finished depth of the pit will be about 150 metres. The Proposal will add about an additional year's work for staff and contractors employed at Macraes.

The proposed WRS is to the east of the pit. It includes backfilling the existing Deepdell South pit. It will cover some 57.5ha and contain up to 59.5 million tonnes of waste rock. The finished WRS will be some 150m high. About two thirds of the proposed WRS is the Rural Scenic Zone in the WDC Plan, with the balance in the Macraes Mining Zone. Its northern tip will cover part of the existing alignment of Horse Flat Road, and some 900m of the road will need to be moved slightly to the north and reconstructed.

Noise bunds will be constructed along the western margin of the proposed development. The nearest residents to the site, Craig and Erin Howard who live at 436 Horse Flat Road which is to the east, gave written approval to the proposal, so any potential effects on them cannot be taken account of in this decision.

The area affected by the proposal is known as the Project Impact Area (PIA). It comprises the area to be developed as part of the Proposal, plus a 100m buffer around all of the WRS.

3.1 Notification and Submissions

The applications to both the ORC and the WDC were publicly notified, with six submissions being received, two of which only referred to the land use consent application to the WDC:

- Appin Farms Limited supported the applications made to each of the ORC and the WDC.
- Aukaha submitted on behalf of Kāti Huirapa ki Puketeraki, Te Rūnanga o Otakou, and Te Rūnanga o Moeraki. They were neutral about both sets of applications, but sought four particular outcomes. These were that they are involved in the drafting of the Ecological Management Plan and Ecological Enhancement Plans, that the Applicant is required to comply with such plans, an Accidental Discovery Protocol is included in consent conditions and the term of the consents be no longer than 25 years.
- Neil Roy was not opposed outright to the WDC application, but disagreed with aspects of the applications (these are listed on pp7 of Mr Purves' S42A WDC officer's report). He wished to be heard.
- ORC Policy opposed the land use consent application to the WDC, and wished to be heard.
- The Director General of Conservation (DDG) opposed both sets of applications, and wished to be heard.
- Macraes Community Incorporated (MCI) opposed both sets of applications, and wished to be heard.

All four parties who wished to be heard appeared at the hearing.

4 The Hearing

Usually at this stage of a decision we would provide a summary of evidence. Indeed s113 of the RMA requires us to do so. But in this instance we see little point providing a detailed summary. The topic by topic approach taken during the hearing and the degree of unanimity reached after discussion between the experts is the key matter to summarise. Avoiding the more common adversarial approach allowed us to focus more on mutually agreed outcomes and conditions, and less on the relative merits of contestable evidence. The decision came down to a number of key issues, which we discuss in Section 5 below.

We summarise the legal submissions we received in Section 4.2 below, and the submissions we heard in 4.3.

4.1 The Evidence Received

Sixteen working days before the hearing we were provided with reports prepared under the provisions of s42A of the Act by two officers. They were Ms Elyse Neville, who prepared a report on behalf of ORC Consents, and Mr Andrew Purves, an independent consultant who prepared the s42A report for the WDC. Each of these reports was supported by experts, most notably Dr Kelvin Lloyd and Mr Corey Knox (Wildlands Consultants) and Mr Ben Espie, a landscape architect, for the WDC, and Dr Richard Allibone (freshwater fish), Dr Michael Greer (water quality) and Mr John Iseli (Air Quality) for ORC consents. Dr Lloyd and all three experts listed from the ORC attended the hearing.

Ms Neville recommended that the consent applications lodged with the ORC could be granted, subject to a number of further or amended conditions being included in the draft conditions of

consent appended to her report. All but one of those matters, namely nitrate-nitrogen limits in the receiving environment, had been resolved by the time the hearing was adjourned.

Mr Purves was, quite appropriately, much more ambivalent. After a thorough report he concluded that "there are still outstanding matters to be addressed, particularly with respect to ecological matters". Indeed there were.

We next received 19 briefs of evidence, some quite voluminous, from the applicant. Some of the evidence was quite critical of elements of some of the expert reports that supported the reporting officers.

Once we had received and read all the expert evidence for the submitters, we were concerned to see how far some of the parties were apart, particularly the ecologists. Examples included the ecological values that would be lost by the proposed placement of the WRS, whether the proposed off sets at Red Bank and Middlemarch were adequate and/or "like for like", and whether or not the proposed Red Bank covenant could be grazed.

In some cases however the experts seemed largely in agreement. For instance there seemed strong common ground between the three herpetologists, all of whom agreed that the original lizard survey was inadequate, and all of whom supported the further work carried by Dr Mandy Tocher, an expert witness for the Applicant. Dr Tocher had also prepared a Draft Lizard Management Plan[1] that set out proposed mitigation and off sets in detail, and they all supported that. The outcome of their discussions was a Joint Witness Statement (JWS) that agreed all necessary steps. We are very grateful to Mr Carey Knox from Wildlands, Ms Karina Sidaway from DoC and Dr Tocher for the Applicant for their work on this. None of these witnesses needed to attend the hearing.

On a similar note before the hearing commenced the two landscape experts – Mr McKenzie for the applicant and Mr Espie, whose expert evidence was attached to the WDC officer report - had also agreed a JWS. They were also excused from attending the hearing.

Given the differences between the ecologists in particular, we decided to run the hearing on a topic by topic basis, as specified in our Minute 2. The eventual outcome of this – agreement by all the main parties on draft conditions of consent (with one exception) – far exceeded our expectations. It was clearly the best approach. The usual applicant/submitter/reporting officer framework would have left us weighing competing evidence time and again, and would have likely led to a "winners and losers" situation where at least some parties remain aggrieved by the decision.

This approach also led to further JWS's being prepared, and largely agreed. These were between experts in instream ecology and water quality, and among the seven ecologists. Additionally, the two air quality experts agreed on one additional condition of consent. All the JWS's are on file at the ORC.

We record our sincere thanks to all the expert witnesses for their willingness to work together to reach agreed outcomes/conditions. It is a great credit to all of them. It was also a considerable relief to the commissioners. It meant we could make our decision to grant all the consents sought with the confidence that the agreed conditions had the support of all the parties with legal counsel and expert witnesses at the hearing.

[1] We saw three progressive iterations of this draft plan, with the latest dated August 2020.

4.2 Legal Submissions

We were provided with three sets of opening legal submissions, along with the Applicant's right of reply. We summarise these briefly here.

Opening Submissions for the Applicant

These were read by Mr Stephen Christensen, the Project Barrister for the Applicant. Most of his submission traversed topics discussed elsewhere in this decision. He was critical of the evidence of both ORC Policy witnesses, quoting for instance examples where their evidence conflicted with that of other experts. He addressed the evidence relating to the offset/compensation package offered by the Applicant, and cited expert support for what was proposed. He discussed the policy framework in the Otago RPS in some detail, and noted the importance of Part 2 of the Act in our decision making.

ORC Policy

Opening submissions were made by Mr Simon Anderson of Ross Dowling. His client's submission was now focussed on the proposed location of the WRS, the ecological impact at this site, and these concerns were primarily in regard to the Otago Regional Policy Statement (the RPS). He submitted that the land on which the WRS is proposed to be located contains significant indigenous vegetation, significant habitats of indigenous fauna, and outstanding wetlands. Policy requirements mean such sites should be avoided, unless there is offsetting that meets the requirements of the RPS, which he said was not the case. He submitted this meant consent could not be granted for the WRS in its present location. He also helpfully listed a number of matters we should reference and use assessment measures against if we found that the functional needs of the WRS meant it must be located at the site proposed by the Applicant.

Director-General of Conservation[2]

Opening submissions were presented by Ms Pene Williams. She emphasised how experts from DoC had worked alongside the Applicant's experts to try and resolve any outstanding differences, and how DoC's experts had worked alongside Dr Thorsen in particular. She noted the three expert herpetologists had agreed a JWS. In response to a question she said that the overall enhancement of biodiversity promoted by the Applicant was a mix of offsetting and compensation. Ms Williams listed four outstanding concerns which at that stage had not been addressed. These were the management of the proposed Redbank covenant area, whether the ephemeral wetland at Middlemarch was appropriate, saying in answer to a question that it is not "like for like" but appears "bigger and better", the longer-term lizard strategy for the Applicant's activities at Macraes, and ensuring proposed offset/compensation measures are maintained in perpetuity. In relation to the latter she said that her preference was that the covenants be in favour of the QEII Trust, but if this did not work out the Minister of Conservation would accept that role.

The rest of her submission helpfully went through our decision making criteria.

[2] Although all the Department of Conservation's evidence was over the name of the Director General of Conservation, we have referred to them throughout as DoC, as that the entity that we and the public understand best.

Closing Submissions for the Applicant

Mr Christensen's closing submissions were received on 26 August. In them he:

- Confirmed that the Applicant is in agreement with the conditions now recommended by Mr Purves, and listed six matters that he now considered resolved.
- Said the Applicant "takes on board" the concerns raised by MCI and Mr Roy about compliance with conditions of consent of other projects, and encouraged the local community to contact the company directly if they have any concerns.
- Argued that contrary to what Ms Dawe had asserted in her evidence for ORC Policy, we need only "have regard to" s104 matters, not give effect to them, in decisions on resource consents.[3]
- Discussed the "natural wetland" definition in the NPSFM 2020. We address this in Section 9.1 of this decision.
- Asserted that as a matter of law the NPSFM and the National Objectives Framework within that do not set quality targets or limits that must be met in Camp and Highlay Creeks. In his view these have to be established for the wider Shag/Waihemo Functional Management Unit (which is a role for the ORC).

4.3 The Submissions Heard

We heard from four submitters as follows:

a. **DoC** provided five expert briefs of evidence. As already discussed, Ms Sidaway was excused from the hearing. Ms Cassie Mealey, an expert in off-setting, appeared via a video link, as did Mr Warren Chin, an invertebrate ecologist. Mr David Rance, an ecologist, and Mr Murray Brass, a planner, attended the hearing in person. We discuss their evidence in latter parts of this decision.

b. **ORC Policy** called two expert witnesses, both of whom attended the hearing. They were Ms Anita Dawe, the ORC's Policy Manager, and Dr Hannah Mueller, a freshwater scientist employed by Foresight Consulting Limited. We discuss their evidence in latter parts of this decision.

c. **Mr John Harvie and Mr Paul Roy spoke on behalf of Macraes Community Incorporated (MCI**). Both are local farmers.

   Mr Harvie opposed any more land going into covenants. He said that not all the consented WRS's are constructed and when they are constructed they often do not reach their consented size, which in his view means the offsets are often disproportional to the actual effects. He questioned the wetland values on the site of the proposed WRS, and said that each time land is lost to a rock stack there are cumulative effects on the local farming industry.

   Mr Harvie opposed the ORC Policy submissions, saying he could not see how the destruction of three wetlands, which he described as being of "low value", should be able to jeopardise this project.

[3] We agree with Mr Christensen on this matter. The stem of s104 specifies that "subject to Part 2" we must "have regard to" the criteria listed in s104(1) (a) to (c) inclusive.

Mr Paul Roy also opposed the covenanting of more "valuable farmland", saying that DoC already has over 3,000ha of land and all they run "is an amazing amount of rabbits and other pests." He wanted the waste rock put back into old pits. He was concerned about cumulative effects, and more needed to be done to make Oceana Gold accountable for rehabilitation. He said the dust nuisance has improved slightly in recent times but is still a real worry for MCI.

d. **Mr Neil Roy**, a local resident, also spoke to us. He is a fourth generation farmer at Moonlight, and lives about 5.5km to the west of the site. Mr Roy was supported by his wife Margaret. He did not oppose the applications but in answer to a question said he "was opposed to parts of the results of mining under this application which could be avoided". He raised long standing concerns about roading, and a perceived lack of monitoring of the Applicant's compliance with conditions of previously granted consents.

   Mr Roy's sentiments can perhaps be best expressed by a quote from his final paragraph:

   My family has resided in the farming community at Moonlight for 137 years. This place is more than a home to me. Farming is and will remain a vital contributor to the wellbeing of our community. Previous mining has left an insignificant ripple on the landscape compared to what modern mining has instigated. Long term values from farming appear to have been underestimated in reports with this consent application. Information delivered to the hearing verified my inclination that the more exposure anybody receives on successful mining ventures, the more credible they seem to become. That is only half the evaluation as alternative options are likely to exist. My aspiration is that there will be provisions in conditions to ensure farming along with social and economic wellbeing from natural and physical resources are not jeopardised with post mining encumbrances. Making certain conditional requirements are adhered to and monitoring them for any future discrepancies is essential.

4.4 The Decision

In the balance of this decision we address:

- Section 5 discusses the principal issues we consider need to be addressed.
- Section 6 discusses activity classifications
- Section 7 addresses our decision making criteria, notably that in s104 of the RMA
- Section 8 examines Part 2 of the Act
- Section 9 comments on several other matters pertinent to the hearing.
- Section 10 discusses conditions of consent, and their term.

5 Principal Issues to be addressed

Upon reading all the evidence and submissions it became clear that four main issues needed to be addressed in some detail in our decision. Discussion of those four main issues follows.

5.1 The Proposed Location of the WRS

Up to 59.5 million tonnes of waste rock needs to be placed somewhere if the proposal is to be consented.

In his evidence Mr Gavin Lee, the Environmental Manager for the Applicant, discussed the decision making that led up to the choice for the site of the WRS. The same issue is also discussed in Section 7 "Assessment of Alternatives" in the Assessment of Environmental Effects prepared by the Applicant.

Three possible locations – labelled A, B and C - were originally chosen for consideration. There were clear reasons why at that stage Option B, known as the Horse Flat WRS and lying to the north of the road, was initially preferred. These included Option A, which is to the northwest but on higher ground, having significant effects on noise and landscape that could not be mitigated, offset or compensated for. Similarly, Option C included land in the bed of the Highlay Creek with significant adverse effects on heritage and ecological values, and water quality.

However, when further studies were undertaken it was found Option B also had some significant drawbacks. These included significant adverse effects on terrestrial ecology and heritage, and landowners' concern about the value of the farmland being lost.

For these reasons a fourth location, Option D, which was identified during consultation, was investigated. Lying to the east of the proposed pit it became the preferred option. Compared with Option B it has substantially less adverse effects on terrestrial ecology and instream habitat, but does involve the direct loss of ephemeral wetlands and a seepage wetland.

The two options are compared in Table 23 of the AEE. This gives good reasons why Option D was chosen ahead of B. We accept that the Applicant has made a reasoned choice in accordance with Schedule 4 RMA requirements. We also accept that there would have been significant hurdles had we attempted to consent Option B, given the extent of the effects on terrestrial ecology in particular.

ORC Policy questioned the location of the proposed WRS, notably in relation to particular provisions in the Otago RPS. We discuss this matter in detail later in this decision; suffice to say here we conclude that it is the most practicable location for the WRS.

5.2 Ecological Values of the Project Impact Area

These were summarised by Dr Mike Thorsen of Ahika Consulting, an expert witness for the Applicant, in his evidence in chief (EIC). His Table 1 shows that of the ca.170ha in the PIA[4], 80.5ha is in cultivated pasture, 73ha in low producing grassland, ca.11ha in shrublands and 0.6ha are in shelterbelts or exotic trees. The balance is in wetlands: 0.3ha in ephemeral wetlands, the largest of

[4] Note that including the area lost to temporary noise buffers the total PIA is about 225ha.

which is 140m^2, 70m^2 in a seepage wetland located below a small culvert on Horse Flat Road, and 4.2ha is an ephemeral gully drainage system.

Dr Thorsen said that the PIA is representative of the modified nature of most of the Macraes Ecological District (ED). The PIA has moderate biological diversity, with 72 indigenous and 78 exotic species recorded.

Dr Mandy Tocher, an expert witness in herpetology (i.e. the biology of lizards and skinks) for the Applicant was critical of the lizard survey originally carried by Ahika. Her criticisms were echoed by the other two experts, Carey Knox of Wildlands and Karina Sidaway of DoC. Dr Tocher carried out habitat mapping over the PIA, and concluded that there were likely significant populations of four species, three of which are classified "at risk". Her proposed mitigation was outlined in a Draft Lizard Management Plan. All three herpetologists supported Dr Tocher's approach, and a result a JWS was prepared.

No significant invertebrates were found in the PIA.

There was some debate about the values of the wetlands present. The ephemeral wetland, which Dr Thorsen described as degraded, a description we agree with, is classified nationally as an example of a "historically rare and nationally critical ecosystem". Ephemeral wetlands are "key habitats for threatened and "at risk" plant species"[5]. Similarly the seepage wetland, also described by Dr Thorsen as degraded, is classified nationally as a "historically rare and nationally endangered ecosystem". In her evidence for ORC Policy Dr Mueller emphasised the national values assigned to such wetlands, but provided no local or regional context.

Certainly these descriptions apply nationally, but both wetland types are common in the Macraes ED and in Otago generally. The Wildlands Report said that about 3,000 ephemeral wetlands, covering 332ha, have been mapped in Otago and Dr Thorsen said he had mapped 1,360 ephemeral wetlands of over 1ha in the Macraes ED. Similarly, Wildlands said there are over 1,000 seepage wetlands mapped in Otago.

In her evidence Dr Mueller asserted that the wetlands within the PIA are "outstanding" from an ecological perspective.[6] However she carried no assessment of this against the criteria in Policy 10.4.1 of the Regional Plan: Water for Otago, which lists Otago's regional wetlands are:

(a) Habitat for nationally or internationally rare or threatened species or communities;
(b) Critical habitat for the life cycles of indigenous fauna which are dependent on wetlands;
(c) High diversity of wetland habitat types;
(d) High degree of wetland naturalness;
(e) Wetland scarce in Otago in terms of its ecological or physical character;
(f) Wetland which is highly valued by Kai Tahu for cultural and spiritual beliefs, values and uses, including waahi taoka and mahika kai;
(g) High diversity of indigenous wetland flora and fauna;
(h) Regionally significant wetland habitat for waterfowl; and
(i) Significant hydrological values including maintaining water quality or low flows, or reducing flood flows.

[5] Wildlands at their 3.3.
[6] At her Paragraph 40.

The wetlands within the PIA do not meet these criteria. In our view if they are not regionally significant they cannot be outstanding. Ms Neville came to the same conclusion[7], and Dr Thorsen concluded that although there was some fit with two criteria, the wetlands were so degraded they no longer "qualified as habitat in the sense of provision". He also concluded that the wetlands in the PIA " are not regionally significant wetlands based on the limited values they contain".[8]

In his Table 2 Dr Thorsen listed those values of the PIA that he considered significant using the criteria in the Proposed Otago Regional Policy Statement (the RPS), and the operative WDC District Plan.[9] We need not summarise those criteria here; suffice to say that the PIA clearly provides significant habitat for indigenous flora and significant habitats of indigenous fauna, and so meets the criteria in Section 6(c) of the RMA. About that there was no debate at all.

5.3 Biodiversity and the Mitigation Hierarchy

Section 5 of the RMA speaks about avoiding, remedying or mitigating the adverse effects of activities. In recent years this has been expanded to include offsetting and compensation. These are explicitly provided for as part of our decision making criteria in s104 of the RMA (namely s104(1)(ab)), in the Proposed Otago Regional Policy Statement and in guidelines produced by both the Environmental Institute of Australia and New Zealand (the EIANZ Guidelines)[10] and in an international programme known as Business and Biodiversity Offsets Programme which led to DoC and other government organisations developing the "Guideline on Good Practice Biodiversity Offsetting in New Zealand"[11] in 2014.

We understand the essential difference between offsetting and compensation is that the former involves "like for like" whereas the latter is "unlike for like". In practice these distinctions can become blurred in a complex proposal such as that before us. The key ecological principle is that whatever mix is used, there must be No Net Loss (NNL) of biodiversity values. We also observe that any full assessment of offsets and compensation can involve quite complex mathematical calculations, and has a jargon all of its own, as outlined in Appendix 1 of the Wildlands Report. We are very grateful that the large measure of agreement between the ecologists and offsetting experts meant we did not have to delve into these complexities. All we need to note here is that each element of the offset/compensation package scored more highly than what will be lost as a result of the Proposal, and so achieved NNL. That it does so was confirmed for us by the evidence of Dr Ussher[12], an expert witness for the Applicant who undertook a peer review of Dr Thorsen's original work, and each of Mr Rance[13] and Ms Mealey for DoC.[14]

The effects of the Proposal cannot be avoided if it is to proceed. Some mitigation is provided for with all thirteen rare plants within the PIA to be rescued, cultivated and replanted into safe sites. These are listed in Paragraph 37 of Dr Thorsen's evidence. Such transplants have occurred as part of a mitigation package for other Oceana Gold developments at Macraes, such as for the development

[7] On her Page 39
[8] See Paragraphs 66 and 67 of his Evidence.
[9] He also referred to the Operative RPS, but as that dates back to 1998 we do not consider it further in this decision
[10] See the evidence of Dr Graham Ussher for the Applicant at Paragraphs 15-20.
[11] See the evidence of Ms Cassie Mealey for DoC at Paragraphs 14-25.
[12] At his Paragraphs 51 and 52 for instance.
[13] Such as at his Paragraph 108
[14] Such as at her Paragraphs 69 and 79.

of the Coronation North pit. We asked Ms Williams, counsel for DoC, whether the willingness of Dr Thorsen in particular to follow through such commitments made for earlier developments had resulted in good deal of trust between DoC and the Applicant. She confirmed that this was the case.

There were three elements to the proposed offset/compensation package for the total loss of the area within the PIA.

The draft Lizard Management Plan

As already noted this approach had been agreed between the three expert herpetologists. This is primarily a compensation approach, as it does not involve entirely like for like.

The preparation of a final Lizard Management Plan, and its implementation, is provided for by Condition 22 of the WDC consent. The final must be in general accordance with the latest draft dated 4 August 2020, and must be implemented by the Applicant. Notably condition 22.4 requires an overall appraisal of the effects of all the Macrae's mining operations on lizards and the future preparation of an overarching Lizard Management Strategy, which the Applicant must also implement. This will enable cumulative effects to be taken account of.

A Wildlife Act permit is also required to catch alive or destroy lizards. Ms Williams said the Applicant had already applied for this, and that conditions of resource consent will be taken into account when considering the permit application.

The Proposed Red Bank Covenant

At the commencement of the hearing there was a general consensus among the ecological and offsetting experts that the proposed Red Bank covenant area was an appropriate offset/compensation for the loss of terrestrial biodiversity, including the seepage wetland, in the PIA. We had viewed the Red Bank area from the north during our site visit, but had not seen it on the ground. Even from our limited inspection it was apparent that parts of the proposed area to be covenanted had impressive ecological values.

At that time the proposed covenant would have covered some 89ha. There was strong debate between Dr Thorsen and Mr Rance, an expert witness for DoC, about whether or not the site should be grazed. Mr Rance's opposition to grazing was supported by Dr Lloyd for the WDC. This is not a matter we felt particularly competent to decide.

Fortunately, we did not have to. Further discussions among the ecologists agreed that the area to be covenanted would be reduced to the 50ha that embrace the highest conservation values on Red Bank, and this would be fenced out, left ungrazed and managed in perpetuity. The balance area of the originally proposed covenant, which covers about 40ha, would not be protected and can remain farmed. While this may not much satisfy MCI's concerns about the loss of farmland within this proposed covenant, it does significantly reduce the grazing land that would otherwise have been lost to a covenant.

All the expert ecological witnesses agreed, that subject to the 50ha area being fenced out, covenanted and managed in perpetuity for its ecological values, it fully offset (and to some extent compensated for) the loss of terrestrial habitat and a seepage wetland within the PIA.

The Ephemeral Wetland near Middlemarch

The Applicant proposed that to compensate for the loss of small ephemeral wetlands within the PIA a large ephemeral wetland of about 4ha near Middlemarch would be protected. It would then be managed in a variety of ways, essentially to improve biodiversity and to research options for future management of ephemeral wetlands.

This proposal did not receive universal endorsement from the ecological witnesses. Concerns raised included that although it is in the Macraes ED it is a much lower altitude, and that it has quite a large core of exotic vegetation. After the first day of the hearing Dr Mueller in particular expressed disquiet about the Middlemarch proposal, including its appropriateness as a "like for like" substitute and we noted those concerns at that time.

Further discussions about how the proposed Middlemarch wetland would be managed led to an agreement among the ecologists on the second day of the hearing. In that they proposed two outcomes for the wetland, and four specific actions that would be undertaken to help achieve these outcomes. We have looked closely at the associated conditions of consent they agreed to, namely 20.12 and 20.13 of the WDC consent, and we are comfortable with them.

5.4 Water Quality in the Receiving Environment

The freshwater ecologists and water quality experts largely agreed a JWS, which is attached in Annex A. The only significant matter they disagreed on is what band within the National Objectives Framework (NOF) of the NPSFM nitrate-nitrogen (nitrate-N) concentrations in the receiving environment should fall into.

Band A nitrate-N limits are less than or equal to 1 milligram per litre (mg/l) as an annual median, and less than or equal to 1.5 mg/l as a 95th percentile. The equivalent figures in Band B are 2.4 and 3.5 mg/l respectively. Band B is now what is known as the "national bottom line"; in previous iterations of the NPSFM this was set below Band C.

Dr Greg Ryder, an expert witness for the Applicant, considered the appropriate band should be Band B. Dr Michael Greer, an expert witness for ORC Consents, considered it should be Band A. Part of his reason for this was to control periphyton growth in the Deepdell and Highlay Creeks rather than to protect stream communities from toxic effects[15].

Band A is defined as applying to "high conservation value systems", which we do not think describes any of the small water bodies with the PIA, the Highlay Stream or the Deepdell Creek. They may however presently fall within Band A, and downstream nitrate-nitrite-nitrogen concentrations in the Shag River are meant to meet standards effectively better than Band A (although they do not currently do so).

Band B, where there is some growth effect on up to 5% of species (but not acute effects) is a more natural fit for the existing environment, given its extent of modification by mining activities. As Dr Ryder pointed out, the main conservation species of concern, the Tairei Flathead Galaxias, has been found to be very tolerant of high sulphate concentrations[16], and this was associated with relatively high nitrate-N concentrations of around 7-8 mg/l[17]. He also pointed out that while the growth of

[15] Such as at his Paragraphs 4.2 and 4.9.
[16] EIC of Dr Ryder at 4.11.
[17] EIC of Dr Ryder at 4.14

koura has been shown to be affected by nitrate-N concentrations of around 2.3mg/l, the ubiquitous mayfly *Deleatidium* showed no ill effects at nitrate-N concentrations of about 20 mg/l.

We are satisfied that Band B is an appropriate receiving environment standard for water bodies such as Highlay Creek and Deepdell Creek. We believe this band should be set based on the very low likelihood of fish toxicity, not to help prevent periphyton growth which Dr Greer considered important. In saying this we observe that somewhat elevated nitrate-N concentrations in the receiving environments will only slightly shorten the accrual period of periphyton accrual (i.e. the period after a fresh to the point when periphyton abundance reaches "nuisance" levels). We also do not accept Dr Greer's view that Band B "would not protect against significant adverse cumulative effects if adopted", as we cannot fully understand his rationale for this view, particularly in light of the overall description of Band B in the NPSFM.

This Band B classification could also be made more stringent in the future as the ORC works towards establishing new water quality targets and limits in the Shag/Waihemo FMU. We think that is the right place to change the classification, if it is considered appropriate and is supported by the community.

6 Activity Classifications of the Consents Sought

In her s42A report Ms Neville for ORC Consents listed all the activities for which consents were sought by the Applicant. She considered that they were all for discretionary activities. This was agreed by all parties who commented on this matter at the hearing.

In his report Mr Purves covered this matter under the heading "Statutory Considerations" in relation to the Waitaki District Plan. He described how much of the wider area affected by the Proposal is in the "Macraes Mining Zone" (MMZ) in the Plan. Within this zone all the activities embraced by the land use consent application are either restricted discretionary or discretionary activities.

He then discussed noise standards, an issue he described as "complex". He said this because although the Proposal can comply with noise standards within the MMZ, where it is a restricted discretionary activity, the Haul Road immediately abuts the Rural General Zone, where it cannot meet night time noise standards and so becomes a non-complying activity. The "bundling" principle would then suggest all the activities for which consent is sought from the WDC would then become non-complying activities. Mr Purves then outlined the case law on this issue, and concluded this was a "minor technical matter" and that the activity classification should remain discretionary overall. Mr Christensen, counsel for the applicant, supported this approach. Previous hearing panels had accepted Mr Purves' same advice on this matter.

There is some history to this. The Panel for the Coronation North pit hearing came to the same conclusion, and based on evidence from a noise expert determined that effects would be no more than minor. However that turned out not to be the case, as on calm foggy nights noise limits were substantially exceeded at the Howard property at 406 Horse Flat Road, which is the closest residence to the Haul Road. Oceana Gold responded to this initially by ceasing night time use of the Haul Road, and then substantially reconstructing the Howard's home so it was far more noise proof. As already noted the Howards have given written approval to the present applications, so any effects on them must be discounted. For these reasons we consider the overall activity classification for the WDC land use consent application should be discretionary.

Mr John Kyle, a planner called by the Applicant, considered that if we had decided that all the activities covered by the WDC application were bundled as non-complying, they could all have passed one the s104D "gateway" tests. We have not evaluated them against 104D, as the single "technically non-complying activity" has not been bundled with the other consents sought. Accordingly, all are given a discretionary activity status, and do not need to be tested against S104D.

Under s88A of the Act the activity classifications are those that apply at the time the applications were lodged. The destruction of several small wetlands within the PIA may as of 3 September 2020 become a prohibited activity, depending on whether or not they are classified as "natural wetlands". We discuss this matter in Sections 7.2, 7.3 and 9.1 below.

7 The Decision Making Criteria

Decisions on resource consent applications for discretionary activities are made under the criteria listed in Section 104(1) of the RMA. Subject to Part 2 of the Act, we must have regard to the following matters:

(a) any actual and potential effects on the environment of allowing the activity; and

(ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and

(b) any relevant provisions of

i. a national environmental standard;
ii. other regulations;
iii. a national policy statement;
iv. a New Zealand coastal policy statement;
v. a regional policy statement or proposed regional policy statement;
vi. a plan or proposed plan; and

(c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

In relation to these matters and the present applications:

- We discuss Part 2 RMA matters in Section 8 below.
- Actual and potential effects of the Proposal are discussed in Section 7.1.
- s104(1)(ab) is discussed in Section 7.2,
- The only potentially relevant national environmental standards are those for air quality, and for assessing and managing contaminants in soil for protecting human health. Conditions of consent will protect air quality and meet the national standards. No activities have occurred on the site that are included in the Hazardous Activities or Industries List, so it is very unlikely there are significant concentrations of any contaminants in the land to be excavated under the proposal.

- The only relevant regulation is that for monitoring and reporting of water takes, which is incorporated into conditions of consent. In saying this we note that the regulations that form part of the NPSFM 2020 do not apply to the present applications. Rather, as already discussed, s88A of the RMA applies.
- The relevant national policy statement is the National Policy Statement for Freshwater Management 2020. It commenced on 3 September 2020, and is relevant because our decision was made a few days after that date. We discuss this in Section 7.3.
- We discuss the relevant provisions of the Otago Regional Policy Statement (the RPS) in Section 7.4. In saying this we note that between the time of the hearing and this decision being released, the Environment Court released a decision that settles the only relevant outstanding relevant matter in the RPS (namely Policy 5.4.6(c))
- The potentially relevant regional plans are the operative Regional Plans: Water for Otago; Waste for Otago and Air for Otago, which we discuss in Section 7.5.
- The relevant district plan is the operative Waitaki District Plan, which we discuss in Section 7.6.

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

Ms Williams and Mr Brass also invited us to consider the Business and Biodiversity Offsets Programme which led to DoC and other government organisations developing the "Guideline on Good Practice Biodiversity Offsetting in New Zealand"[18] in 2014. We have already discussed this in Section 5.3 above, so there is no need to repeat that discussion here.

We also note here that Sections 105 and 107 of the Act are also potentially relevant to our consideration of the consent applications to the ORC. We are satisfied that both are met. In regard to s105 the discharges to the environment are site specific, and so there are no feasible alternative locations for discharges to occur. The Applicant intends to separate "clean" and "dirty" water discharges around the site of the proposed mine pit, and treat the "dirty" water via sediment ponds. This is good practice. Similarly, none of the s107(1) criteria are likely to be breached. Ms Neville reached the same conclusions.[19]

As the Proposal as a whole is classified as a Discretionary Activity, section 104B of the Act is also relevant. We can either grant or refuse one or more of the consents sought. If granted, we may impose conditions under s108.

[18] See the evidence of Ms Cassie Mealey for DoC at Paragraphs 14-25.
[19] At her Section 8.15

7.1 Actual and Potential Effects

We see these as being:

- Positive Effects
- Effects on Landscape
- Effects on Terrestrial Flora and Fauna and Wetlands
- Effects on other Water Bodies
- Effects of Discharges to Air
- Effects on Roading
- Effects on Local Amenity Values
- Cumulative Effects

We deal with these in turn.

We also note there are potential adverse effects on Tangata Whenua and Historic Heritage. All the matters submitted on by Te Runanga o Moeraki, Kati Huirapa ki Puketeraki and Te Runanga o Otakaou, as listed in Section 3.3 above, have been addressed by the Applicant and/or included in the conditions of the WDC consents. As for heritage, no items of particular interest have been found in the PIA, and if they are found during works, conditions of consent require the Applicant to follow an Accidental Discovery Protocol.

The evidence indicates that pit wall stability is high, and there is no significant earthquake hazard resulting from the implementation of the Proposal.

Positive Effects

We have already discussed the significant positive effects of the Proposal for the local and regional economy in Section 3.1 above. That discussion focused largely on the large numbers of people that will remain in employment as a result of the Proposal being consented. There are also national benefits: they include the payment of company tax and PAYE, as well as export revenue from the gold, which is also subject to royalties paid to the Government.

Effects on Landscape

The WRS has a potentially significant effect on local landscape values. It will create an entirely new landscape feature covering 57.4ha, and rising to a height of about 150m from the surroundings. Once the Proposal is completed the WRS will be rehabilitated, landscaped and over sown with grass.

The visual effects of the WRS, as seen from a variety of locations, are shown in the appendix to the evidence of Mr David McKenzie, the expert landscape witness for the Applicant. From some viewpoints – such as from one site on the Macraes Back Road, from Golden Point Road, and particularly along Horse Flat Road – the WRS is highly visible in the landscape. However other, now rehabilitated WRS's were also once highly visible, and some of these had to be pointed out to us during our site visit, because they do blend in well with existing landscape features. However, as Mr Neil Roy, a submitter pointed out, they "are conspicuous to those who knew the previous landforms". We do not doubt that at all.

As already noted the two landscape experts prepared a JWS, which is attached in Annex 2. In relation to the three sites listed above they agreed that the visual impacts of the proposed WRS will vary from moderate to high during the period of works, but that this will reduce to moderate-low to moderate-high following rehabilitation. They also sought that particular conditions, such as

requiring rehabilitation and re-grassing, and ongoing monitoring, be included within the WDC consents. This is the case, with Condition 13 specifying that the WRS must be constructed in general accordance with the application, and Condition 19 providing for bonds to ensure (among other things) that the WRS is fully rehabilitated and maintained.

We consider that while during construction there are potentially significant adverse effects on landscape values from the development of the WRS from several nearby viewpoints, these effects are reduced to an acceptable level once the WRS is rehabilitated and re-grassed, provided this work is maintained. Both MCI and Mr Neil Roy were sceptical about long term rehabilitation, noting there were many weeds on such sites and "renovation" was necessary on sites about 15 years or older.

On a similar theme we note Mr Purves' comments at his Paragraphs 100-109 where he discusses work carried out by Landcare Research for Oceana Gold. This indicated that long term problems can occur on rehabilitated WRS sites, and that on-going management, such as preventing overgrazing and carrying out weed control, is necessary to retain any productive values on these sites. These matters can be addressed in the Annual Work and Rehabilitation Plan (although we are not entirely sure they are), and although Mr Purves suggested that in future more prescriptive consent conditions may be necessary, he did not recommend them for this particular application. We agree with the sentiments expressed, and like him we are reasonably comfortable with the current approach at this time.

Effects on Terrestrial Flora and Fauna and Wetlands

We have discussed these in Section 5.2 above. In that section we concluded that there are significant adverse effects from the loss of habitats of indigenous flora and fauna, and the loss of several small wetlands. In that same section we considered whether those adverse effects were adequately mitigated, offset and/or compensated for, consistent for instance with the provisions of s104(1)(ab) and the effects management hierarchy in the NPSFM 2020 (see Section 7.2 below). We concluded they were.

The relevant provisions of the Otago RPS are discussed in Section 7.3 below.

Effects on other Water Bodies and their Biota

In general terms we find effects on water quality to be acceptable, particularly given that the threatened Taieri Flathead galaxias has been shown to be very tolerant of high sulphate concentrations in the receiving environment. In saying this we note that conditions imposing limits on contaminants such as copper, zinc and arsenic are the same as those on other consents granted to the Applicant. While we accept that these could be made more stringent, there is no evidence that current limits have caused any adverse effects.

Effects on instream biota were discussed by Dr Greg Ryder for the Applicant and Dr Richard Allibone, whose evidence accompanied Ms Fraser's s42A report for ORC Consents. Both these witnesses agreed that neither the threatened Taieri Flathead galaxias, nor the "at risk" longfin eel. will be directly impacted by the Proposal. There is a possible loss of some koura (freshwater crayfish) habitat in a cut off drain, but that will be mitigated by the provision of new koura habitat in a clean water drain that will flow to Camp Creek, which Dr Allibone considered reasonable.

This same approach, which is reflected in conditions of consent in RM20.024.03, was also supported by Mr Murray Brass, the planning expert for DoC.[20]

We conclude that the direct effects of the Proposal on freshwater fauna are no more than minor.

Effects of Discharges to Air

The main contaminant discharged to air is dust, generated by activities such as blasting, and the use of heavy vehicles on the site hauling away waste rock and ore for processing. Its effects were discussed in the AEE, and in evidence provided us by Ms Prue Harwood, an expert witness for the Applicant, and Mr John Iseli, whose expert evidence accompanied Ms Fraser's report.

Mr Iseli had been generally supportive of the assessment of the effects of discharges to air in the AEE, but he did in recommend three additional conditions of consent over and above those recommended by the Applicant. During the hearing he discussed these matters with Ms Harwood, and they agreed the only necessary additional condition was one requiring continuous dust monitoring at the Howard residence at 406 Horse Flat Road. This is included in the conditions on RM20.04.12, and given the suite of conditions on the same consent, we are satisfied that provided they are complied with in full, effects will be no more than minor.

Effects on Roading and Pedestrian Access

The Proposal involves re-aligning about 900m of Horse Flat Road slightly to the north. Mr Purves advised us that WDC staff do have any issues with this, provided the realignment is constructed to a suitable standard, including an appropriately sized culvert. Pedestrian use, which is expected to be very low, will be affected slightly, but provisions exist for pedestrians to cross the Haul Road to Golden Point Reserve. Accordingly, we are satisfied that these effects are no more than minor.

Effects on Local Amenity Values

Under this heading we include noise, including from blasting activities, and vibration. The expert evidence was that such effects will be no more than minor, except perhaps at times at the Howard residence on Horse Flat Road. These effects have to be discounted as the Howards have given written approval to the Proposal.

Mr Purves reviewed the technical evidence. He was satisfied with the suite of conditions put forward by the Applicant to manage these effects. We agree with him, and have included the consent conditions recommended to us that address noise and vibration.

Cumulative Effects

Mining activities carried out by the Applicant and its antecedents have taken place at Macraes since 1990. This has resulted in a network of mine pits, which unless backfilled are essentially very large holes in the ground, large "rehabilitated" waste rock stacks and associated activities including infilling and/or diverting watercourses, creating tailings dams, building large haul roads, and closing or re-aligning other roads. Notably it has also resulted in a network of protected and/or covenanted areas set aside in perpetuity to offset and/or compensate for the effects of mining activities.

All the activities that occur at Macraes have been consented where appropriate. However each set of consent applications – such as those for the current Proposal - are dealt with as a single "package"

[20] At his Paragraph 34.

on their own merit.[21] Rightly or wrongly this is how the RMA works. Where this single package approach works poorly is in considering the cumulative effects of activities. This is because we cannot go back and re-visit previous consent decisions to address cumulative effects. As Mr Christensen said in his opening submissions, there is no evidence that the current Proposal crosses some kind of "tipping point" in terms of cumulative effects.

In his evidence that accompanied Ms Fraser's s42A report Dr Richard Allibone made some pertinent comments on cumulative effects. Through a s92 RMA information request he had asked Dr Ryder to quantify the cumulative loss/disturbance of watercourses in the Deepdell catchment as a result of all mining activities since 1990. This was estimated to be 14,449m, but on the other hand 12.620m had been protected in some way. The cumulative loss was 1,829m. This is of course a simplistic approach because it is solely quantitative and says nothing about the comparative values of what was lost versus what has been protected. We suspect that in general those protected water bodies will have higher net value than what has been lost, much of which is only very small watercourses. But we cannot be certain about that.

The ORC now requires a No Net Loss approach. That is what we have applied in this decision. Dr Allibone suggests that in this consent and any future consents the cumulative loss is addressed.[22] We agree that this would be an appropriate approach if the RMA allowed us to do so. All we can suggest is that if Oceana Gold makes further applications for new mining proposals at Macraes, they be explicitly tasked with addressing the issue of cumulative effects in those applications.

Conclusion re Actual and Potential Effects

The above discussion indicates some potential adverse effects of the activity can be managed to the point where they are either minor, or not significant, by conditions of consent. Examples include the effects on tangata whenua, on water quality and freshwater biota, on air quality, on roading and on local amenity values.

There are three exceptions to this general finding. First, while effects on landscape are particularly obvious from some viewpoints, these can be made reasonably acceptable once the WRS is rehabilitated. What is abundantly obvious however is that ongoing maintenance by the consent holder is essential if the WRS is to remain suitable for activities such as grazing. Second, there are significant adverse effects on fauna and flora within the PIA, and these must be fully mitigated, offset or compensated for so there is no net loss. Third, the RMA does not allow us to address cumulative effects adequately. If the current Proposal does not constitute a "tipping point", an assertion about which we have little evidence either way, we believe this is an issue that should require consideration in the context of any future proposal for further open cast mining at Macraes.

7.2 Section 104(1)(ab)

This section refers to "*any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity.*"

[21] There is one notable exception to this, in that the Lizard Management Strategy provided for in condition 22.4 will look at the effects of all the Applicant's activities at Macraes and provide a way forward to address these.

[22] At his Paragraph 21

The Applicant has proposed a broad suite of mitigation, offset and compensation measures as discussed in Section 5.3 above. These clearly fit within the ambit of s104(1)(ab), which lends considerable support to the Applicant's Proposal.

7.3 National Policy Statement for Freshwater Management (NPSFM)

When the application was lodged, and when the hearing took place, the relevant NPSFM was dated 2017, which was itself an amended and updated version of the 2014 NPSFM.

By the time this decision was released the relevant NPSFM was dated 2020. As it commenced on 3 September 2020, it is that updated NPSFM that we must have regard to in this decision. Notably, it includes a new overall Objective, and a suite of new policies, which include:

Objective

(1) The Objective of this NPS is to ensure that natural and physical resources are managed in a way that prioritises:

(a) first, the health and well-being of water bodies and freshwater ecosystems
(b) second, the health needs of people (such as drinking water)
(c) third, the ability of people and communities to provide for their social, economic and cultural well-being, now and in the future.

Policy 6: *There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.*

This policy is supported by a "prohibited activity" rule in Regulation 53, which among other things prohibits earthworks in a "natural wetland". This does not apply retrospectively to the present applications.

Policy 8*: The significant values of outstanding water bodies are protected.*

We do not consider any of the wetlands within the PIA to be outstanding.

The NPS also sets out what it calls an effects management hierarchy in relation to inland natural wetlands as follows:

***effects management hierarchy**, in relation to natural inland wetlands and rivers, means an approach to managing the adverse effects of an activity on the extent or values of a wetland or river (including cumulative effects and loss of potential value) that requires that:*

(a) adverse effects are avoided where practicable; and

(b) where adverse effects cannot be avoided, they are minimised where practicable; and

(c) where adverse effects cannot be minimised, they are remedied where practicable; and

(d) where more than minor residual adverse effects cannot be avoided, minimised, or remedied, aquatic offsetting is provided where possible; and

(e) if aquatic offsetting of more than minor residual adverse effects is not possible, aquatic compensation is provided; and

(f) if aquatic compensation is not appropriate, the activity itself is avoided.

This hierarchy is supported by two definitions:

aquatic offset *means a measurable conservation outcome resulting from actions that are intended to:*
(a) redress any more than minor residual adverse effects on a wetland or river after all appropriate avoidance, minimisation, and remediation, measures have been sequentially applied; and
(b) achieve no net loss, and preferably a net gain, in the extent and values of the wetland or river, where:

> *(i)* ***no net loss*** *means that the measurable positive effects of actions match any loss of extent or values over space and time, taking into account the type and location of the wetland or river; and*
>
> *(ii)* ***net gain*** *means that the measurable positive effects of actions exceed the point of no net loss.*

aquatic compensation *means a conservation outcome resulting from actions that are intended to compensate for any more than minor residual adverse effects on a wetland or river after all appropriate avoidance, minimisation, remediation, and aquatic offset measures have been sequentially applied.*

We note that as this hierarchy is in a National Policy Statement, it has a higher status than the comparable policy framework in the Otago RPS. In relation to wetlands and rivers it is also more clearly expressed than is the policy framework in the RPS and the definitions are more straightforward. This means the NPS framework can be more readily and practically applied in aquatic environments than can the RPS.

In this instance the policy applies to the small ephemeral wetlands and the small seepage wetland that will be destroyed if the Proposal goes ahead. It can also be applied to the loss of koura habitat as part of the proposal, but as Mr Brass noted[23] it will fulfil one of these definitions. In response to a question he said it could equally apply to the wetlands within the PIA.

As already discussed in Section 5.3 above the ecological experts agreed that the protection of seepage wetlands within the fenced out Redbank Covenant, and the protection/management regime proposed for the ephemeral wetland at Middlemarch adequately offsets and/or compensates for the loss of ephemeral wetlands and a seepage wetland within the PIA. Accordingly, we consider this effects management hierarchy to be met.

In our view the provisions of the NPSFM 2020 when read collectively do not weigh against the application to the WDC being granted.

7.4 The Otago Regional Policy Statement

Chapter 5 of the RPS sets out a number of policies in relation to mining, and managing the effects of mining.

Policy 5.3.4 Mineral and petroleum exploration, extraction and processing

Recognise the functional needs of mineral exploration, extraction and processing activities to locate where the resource exists.

Policy 5.4.8 Adverse effects from mineral and petroleum exploration, extraction and processing

[23] At his Paragraph 73.

(1) Manage adverse effects from the exploration, extraction and processing of minerals and petroleum, by:

a) Giving preference to avoiding their location in all of the following:

i. Areas of significant indigenous vegetation and significant habitats of indigenous fauna in the coastal environment;
ii Outstanding natural character in the coastal environment;
iii. Outstanding natural features and natural landscapes, including seascapes, in the coastal environment.
iv. Areas of significant indigenous vegetation and significant habitats of indigenous fauna beyond the coastal environment.
v. Outstanding natural character in areas beyond the coastal environment.
vi. Outstanding natural features and landscapes beyond the coastal environment.
vii. Outstanding water bodies or wetlands;
viii. Places of areas containing historic heritage of regional of national significance.
ix. Areas subject to significant natural hazard risk.

b) Where it is not practicable to avoid locating in the areas listed in a) above, because of the functional needs of that activity

i. Avoid adverse effects on the values that contribute to the significant or outstanding nature of a)
ii. Avoid, remedy or mitigate, as necessary, adverse effects on values in order to maintain the outstanding or significant nature of a) iv – vii;
iii. Consider first biological diversity offsetting, and then biological diversity compensation if adverse effects described in b) ii on indigenous biological diversity cannot be practicably remedied or mitigated;
iv. Minimise any increase in natural hazard risk through mitigation measures.
v. Consider environmental compensation if adverse effects described in b) ii, other than on indigenous biological diversity, cannot practically be avoided, remedied or mitigated.

ba) Avoid significant adverse effects on natural character in all other areas of the coastal environment;

c) Avoiding adverse effects on the health and safety of the community;

d) Avoiding, remedying, or mitigating adverse effects on other values including highly valued natural features, landscapes and seascapes, in order to maintain their high values;

e) Reducing unavoidable adverse effects by

i. Staging development for longer term activities; and
ii. Progressively rehabilitating the site, where possible.

f) Applying a precautionary approach (including adaptive management where appropriate) to assessing the effects of the activity, where there is scientific uncertainty, and potentially significant or irreversible adverse effects.

(2) Where there is a conflict, policy 5.4.8 prevails over policies under objective 3.2 (except for policy 3.12), policy 4.3.1 and policy 5.2.3.

This policy provides for activities such as mining, but with a number of strong provisos. Policy 1(a) requires preference be given to avoiding activities where values such as those that exist within the PIA are located. Clearly this is not practicable for the present Proposal, so Policy (1(b) applies. It describes a series of steps, firstly to avoid, remedy or mitigate effects, then to consider off-setting and then compensation.

As we have already observed it is not possible to definitively quantify the difference between offsetting and compensation in a complex proposal like this. A strict policy hierarchy cannot realistically be applied in this instance. What matters is that there is no net loss and an overall gain. As Ms Williams said in a comment made during her legal submissions the wetland at Middlemarch "is not like for like, but appears bigger and better."

Policy 5.4.6 Offsetting for indigenous biological diversity

Consider the offsetting of indigenous biological diversity offsetting, when:

(a) Adverse residual effects of activities cannot be avoided, remedied or mitigated;

(b) The offset achieves no net loss and preferably a net gain in indigenous biological diversity;

(c) The offset ensures there is no loss of individuals of Threatened taxa, other than kānuka (Kunzea robusta and Kunzea serotina), and no reasonably measurable loss within the ecological district to an At Risk-Declining taxon, other than mānuka (Leptospermum scoparium), under the New Zealand Threat Classification System ("NZTCS").[24]

(d) The offset is undertaken where it will result in the best ecological outcome, preferably:

(i) Close to the location of development; or

(ii) Within the same ecological district or coastal marine biogeographic region.

(e) The offset is applied so that the ecological values being achieved are the same or similar to those being lost;

(f) The positive ecological outcomes of the offset last at least as long as the impact of the activity, preferably in perpetuity;

(g) The offset will achieve biological diversity outcomes beyond results that would have occurred if the offset was not proposed;

(h) The delay between the loss of biological diversity through the proposal and the gain or maturation of the offset's biological diversity outcomes is minimised.

The Proposal clearly meets the intention of this Policy. Taking the Red Bank covenant area as the clearest example of offsetting it delivers the following benefits:

- According to experts it provides a significant net gain in biodiversity values.
- It is within about 7km of the site of the Proposal, and at a similar altitude but with a more diverse landform.

[24] Note that the wording of this provision was decided by the Environment Court between the hearing and this decision being released.

- The site will be covenanted in perpetuity.
- Biodiversity will be enhanced by the 50ha area being fenced out and retired from all grazing, and managed entirely for its biodiversity values.

The overall management outcomes for the Red Bank covenant are set out in Condition 20.9 of the WDC consent, whereas Condition 2.10 specifies how those outcomes will be achieved. These were agreed by the ecological experts present at the hearing.

Policy 5.4.6A Biological Diversity Compensation

Consider the use of biological diversity compensation:
a) When:

i. Adverse effects of activities cannot be avoided, remedied, mitigated or offset; and
ii. The residual adverse effects will not result in

1. The loss of an indigenous taxon (excluding freshwater fauna and flora) or of any ecosystem type from an ecological district or coastal marine biogeographic region;
2. Removal or loss of viability of habitat of a threatened or at risk indigenous species of fauna or flora under the New Zealand Threat Classification System ("NZTCS");
3. Removal or loss of viability of an originally rare or uncommon ecosystem type that is associated with indigenous vegetation or habitat of indigenous fauna;
4. Worsening of the NZTCS conservation status of any threatened or at risk indigenous freshwater fauna.

b) By applying the following criteria:

i. The compensation is proportionate to the adverse effect;
ii. The compensation is undertaken where it will result in the best practicable outcome, preferably;

1. Close to the location of development;
2. Within the same ecological district or coastal marine biogeographic region;

iii. The compensation will achieve positive biological diversity outcomes that would not have occurred without that compensation;
iv. The positive biological diversity outcomes of the compensation last for at least as long as the adverse effects of the activity; and
v. The delay between the loss of biological diversity through the proposal and the gain or maturation of the compensation's biological diversity outcomes is minimised.

Taking the large ephemeral wetland at Middlemarch as the clearest example of compensation within the overall package offered by the Applicant:

- While not close to the location of the development, it is in the same ecological district.
- Biodiversity outcomes are positive.
- The wetland will be managed in perpetuity.

However as noted by both Mr Kyle for the Applicant and Mr Brass for DoC it is difficult for the Proposal to meet limb (a) of this Policy. Ms Dawe for ORC Policy asserted that *"environmental compensation is therefore not available to address the significant adverse effect of the loss of a wetland*".[25] As we have already discussed we do not regard the loss of two small ephemeral

[25] At her Paragraph 93.

wetlands and a seepage wetland as a significant adverse effect. Further, and as already discussed, in our view the proposal meets the test of s104(ab) of the Act. We agree with Mr Kyle that this section of the Act provides an alternative pathway through this policy.

We were also impressed by the evidence of Mr Brass on this issue. In discussing the provisions of the RPS he said:[26]

> (Court decisions) *"appear to structure offsetting and compensation as "all or nothing" tiers where a proposal either meets the full set of criteria or drops down to the next tier. I am concerned that this could potentially fail the best meet the purpose of the RMA, and fail to deliver the best ecological outcomes. I consider that the approach taken by OGL is preferable, such that even where one criteria of a tier cannot be met, they have still worked to comply with as many of the other criteria for that tier as possible…."*
>
> *"While I recognise the RPS provisions on offsetting and compensation, to an extent I consider the classification of the proposal in that way is somewhat academic. It is clear to me that OGL has taken an "effects management hierarchy approach – where adverse effects cannot be avoided, remedied or mitigated they have applied offsetting principles as much as practicable, where offsetting is not achievable they have applied compensation principles as much as practicable, and where compensation is not achievable, they have offered positive ecological enhancement measures."*

We agree with Mr Brass on these matters. Our primary concern is that ecological outcomes are enhanced by the Proposal. We consider they are.

The overall outcomes for the management of the Middlemarch wetland are listed in Condition 20.12 of the WDC land consent, and Condition 20.13 specifies how those outcomes will be achieved. These draft conditions were modified substantially as a result of discussions between the ecological experts at the hearing. All those experts were satisfied with the amended conditions, and we have not changed them.

7.5 The Relevant Regional Plans

Ms Neville thoroughly addressed the relevant provisions in regional plans in her s42A officer's report. The only other planner to review these same provisions was Mr Kyle for the Applicant.

The Regional Plan: Water (RPW) was made operative in 2004, and has since been subject to a series of plan changes. After an independent review found the RPW was no longer fit for purpose, the Minister for the Environment has directed the ORC to have a reviewed RPW notified by March 2020.

Ms Neville provided a very comprehensive overview of the relevant policy framework in the RPW, for which we thank her. Her overall conclusion was that the Proposal was broadly consistent with those relevant provisions, provided particular conditions of consent were imposed. Ms Neville's conclusions were also supported by Mr Kyle who described her assessment as "fulsome", a sentiment we agree with.

We agree with Ms Neville's overall conclusion, and apart from the nitrate-nitrogen standards in the receiving environment (see Section 5.4 above), we have adopted fully her recommended conditions on all consents involving taking, using, damming or diverting water.

[26] At his Paragraphs 71 and 72.

She similarly concluded that subject to conditions of consent the Proposal was also broadly consistent with the operative regional plans for waste and air. Again, we have adopted fully her recommended conditions on the relevant consents.

For these reasons we are satisfied that none of the relevant regional plans weigh against granting any of the applications made to the ORC.

7.6 The Waitaki District Plan

There are comprehensive provisions in the Waitaki District Plan that are relevant to the present application. This is particularly the case given that the suite of activities for which consent is sought fall within both the Macraes Mining Project Mineral Zone and the Rural Scenic Zone. These were reviewed by Mr Kyle for the Applicant, Ms Dawe for ORC Policy and Mr Purves in his s42A officer's report.

After carrying out a comprehensive review Mr Kyle found that the policy framework in the WDC Plan was broadly, but certainly not entirely, consistent with its provisions. Ms Dawe did not carry out any comprehensive analysis; rather her conclusion was that based on Dr Mueller's assessment that the loss of the wetlands "is a significant adverse effect" of the application, on which basis she asserted that this component of the activity is inconsistent with the District Plan (and various other instruments, including the RPS, the NPSFM and Sections 6 and 7 of the Act).[27]

Mr Purves also carried out a reasonably comprehensive assessment. In his Paragraph 165 he concluded that "the application is either consistent or neutral to a good number of the objectives and policies in the plan". He then expressed reservations about the objectives and policies related to nature conservation "which are the most significant for this application and need to be addressed further for a view to be formed on whether the (Proposal is contrary to them).

The most relevant of those Objectives and Policies are:

> ***16.9.2 Objectives***
> *1 The maintenance of biological diversity, nature conservation values, and ecosystem functioning within the district by:*
>
> *• The protection of areas assessed as having significant indigenous flora and significant habitats of indigenous fauna…*
>
> ***16.9.3 Policies***
>
> *1 To manage the adverse effects of the use or development of land on significant indigenous vegetation or significant habitats of indigenous fauna so that the values of these areas are protected.*
> *…*
> *7 To promote long-term sustainable protection of areas that have significant indigenous vegetation and significant habitats of indigenous fauna by encouraging landowners to investigate management options which maintain or enhance these sites and by supporting farmers and local community groups in private or valley conservation initiatives.*

[27] At her Paragraph 107

Taken in isolation this objective and associated policies could be said to weigh quite strongly against the WDC consent application being granted. However it is now 10 years since the District Plan became operative, and so it does not reflect the current approach, as for instance emphasised in s104(1)(ab) of the Act or the RPS, that provides for offsetting or compensation for the loss of significant habitats of indigenous flora and fauna. We also consider that the Proposal is broadly consistent with other provisions of the WDC Plan, not least because the Plan provides for the Macraes Mining Mineral Zone, specifically established to enable mining within that geographically distinct zone, which will generate effects inconsistent with some other Objectives and Policies in the Plan. The existence of this Zone indicates that the Plan is structured with an underlying weighting towards mining activities in this defined area, albeit with checks, controls and constraints to be considered in decisions like this.

For these reasons we find that overall the District Plan does not weigh strongly against granting the land use application.

8 Part 2 of the Act

Decisions on resource consent applications are made "subject to Part 2 of the Act". We discuss these provisions in turn.

8.1 Section 5 – The Purpose of the Act

Section 5 of the RMA states its purpose and defines the sustainable management of natural and physical resources. In relation to s5 we make the following findings.

As already discussed the granting of the applications confers strong social and economic benefits for the Applicant, over 550 employees and contractors, and the Government through the payment of royalties. OGL is the second largest employer in the Waitaki District, and this provides very strong benefits to communities in north east Otago and the wider region, including Macraes Flat, Dunback, Palmerston, Waikouiti and Dunedin.

Although the life supporting capacity of some terrestrial ecosystems will not be safeguarded, a full mitigation, offset and/or compensation package that involves (among other things) protective covenants and long-term habitat enhancement has been agreed by the ecological experts.

The proposal will also have major adverse effects on the life supporting capacity of wetlands in the PIA . Again, the ecological experts have agreed that these are fully offset and/or compensated for.

We consider overall that given the social and economic benefits of the Proposal and the extensive mitigation package, the proposal is consistent with the purpose of the Act. In saying this we particularly note that the Supreme Court has noted that:

> *At the risk of repetition s5(2)(c) defines sustainable management in a way that makes it clear that protecting the environment from the adverse effects of use and development is an aspect of sustainable management – not the only aspect of course, but an aspect.*[28]

[28] Environmental Defence Society Incorporated vs New Zealand King Salmon Limited (2014) NZSC 38

8.2 Section 6 – Matters of National Importance

Section 6 of the Act lists seven matters of national importance that decision makers have to recognise and provide for. Three of these are relevant to the present applications.

The first of these is s6(a), which requires among other things that rivers, wetlands and their margins be protected from inappropriate use and development. We do not view the loss of several small wetlands to be "inappropriate" given the extensive offsets/compensation proposed.

Section 6(c) states that the protection of areas of significant indigenous vegetation and the habitats of significant indigenous fauna is a matter of national importance. As already discussed some such habitat will be lost to the proposed WRS, but this is fully mitigated and/or offset and/or compensated for.

Section 6((e) states that the relationship of Maori and their culture and conditions with their ancestral lands, waters, sites waihi tapu and other taonga is a matter of national importance. As already discussed, Aukaha made a submission but did not want to heard. The issues they raised have been fully taken into account in the conditions of consent.

8.3 Section 7 – Other Matters

Section 7 of the Act lists other matters that we must have particular regard to in this decision.

Kaitiakitanga has been provided insofar that Aukaha made a submission and the matters they raised have been addressed in conditions of consent.

The Proposal should help enable the efficient use and development of local natural resources, namely rock containing gold of alluvial origin.

Sections 7(c) and 7(f) require respectively the protection and enhancement of amenity values, and the protection and enhancement of the quality of the environment. We discussed effect on amenity values in Section 7.1 above. The proposal will have significant adverse effects on the quality of the environment in the PIA, but these effects are is fully mitigated and/or offset and/or compensated for.

Section 7(g) lists any finite characteristics of natural and physical resources. Clearly the gold resource at Macraes is finite, but without consents for the Proposal being granted the employment of large numbers of staff and contractors would eventually be jeopardised. Natural resources similar to those in the PIA are found elsewhere in the Ecological District, and are provided for by the mitigation/offset/compensation package.

The extraction of relatively small amounts of gold from very large volumes of ore bearing rock uses large volumes of fossil fuels, most notably in the massive trucks that carry ore to the processing plant and which each use hundreds of litres of diesel per hour. As the effects of climate change become more daunting and challenging, it seems that at some time in the future open cast mining of the type carried out at Macraes may no longer be considered "sustainable". However, given the low priority presently given to the effects of climate change in the RMA, this is not a matter we can give any significant weighting to.

8.4 Section 8 – The Principles of the Treaty of Waitangi

We had no evidence that any part of the proposal is contrary to the Principles of the Treaty.

9 Comment

There are two matters that came up during the course of the hearing that we want to comment on.

9.1 The Definition of "natural wetland" in the NPSFM

One of the issues that came to the fore at the hearing was whether the 140m^2 ephemeral wetland on the Appin Farms property, that would be lost once the WRS is constructed, is a "natural wetland" as defined in the NPSFM 2020.

The definition of a natural wetland in the NPSFM is:

natural wetland *means a wetland (as defined in the Act) that is not:*

> *(a) a wetland constructed by artificial means (unless it was constructed to offset impacts on, or restore, an existing or former natural wetland); or*
>
> *(b) a geothermal wetland; or*
>
> *(c) any area of improved pasture that, at the commencement date, is dominated by (that is more than 50% of) exotic pasture species and is subject to temporary rain-derived water pooling*

If that was as far as the definition went, it would be relatively unambiguous. However, some additional words are added which define improved pasture as:

> *Includes an area of land where exotic pasture species have been deliberately sown or maintained for the purpose of pasture production, and species composition and growth has been modified and is being managed for livestock grazing.*

How anybody could reasonably determine this on the larger ephemeral wetland on the Appin Farms property is highly problematic. The wetland is not fenced, and has clearly been grazed. It could be argued it has been maintained for the purpose of pasture production; equally it could be argued that it has not been.

Fortunately we do not have to reach any conclusion on this, as it is not critical to our decision. If it were critical it could have been a close call, and whatever decision we reached would provide fertile ground for expert litigation in the Environment Court. This is a very unsatisfactory situation. If this is a "natural wetland", then from 3 September 2020, any significant modification becomes a prohibited activity under Regulation 53 of the NPS. No resource consent application can be lodged for a prohibited activity. No consent authority should be put in a position where a prohibited activity rule, no matter how laboriously worded, is as ambiguous and open to interpretation as this rule would be in this instance

We believe that regulation such as this leading to a prohibited activity rule has no place in a National Policy Statement. The established leading case law on this is that an activity should only be prohibited if it cannot be contemplated in any circumstances.[29] The potential modification of some natural wetlands should be able to be contemplated in circumstances such the Proposal before us,

[29] NZ Minerals Industry v Thames Coromandel DC W047/08

particularly given provisions in the RMA and the NPSFM that explicitly provide for offsets and/or compensation.

9.2 The Role of ORC Policy

We had concerns that the ORC had two "hats" during the course of the decision making process. ORC Consents was a decision making body, and we were appointed jointly by it and the WDC to hear and decide both the suite of applications to the ORC, and the land use application to the WDC. In this role we, and ORC Consents, were wearing a "referee's hat".

ORC Policy was a submitter. It was wearing a "player's hat". It submitted only on the application to the WDC.

In his legal submissions Mr Anderson said it was common for ORC Policy to make submissions on applications to other Councils. That would be our expectation. However, one of us has sat on dozens of joint hearing panels, and having the same Regional Council in two roles at a joint hearing is not something he has struck before.

It also struck us before the hearing that DoC, the statutory authority responsible for promoting conservation values in NZ, while opposing the applications had gone a long way towards agreeing mitigation, offset and compensation proposals with the Applicant. At that time DoC had only four outstanding issues. We would describe ORC Policy as somewhat more set in its opposition (which they narrowed specifically to the proposed site of the WRS) at that time, although not to the extent asserted by Mr Christensen in his opening submissions.

In the end none of this much mattered. Experts from ORC Policy and DoC agreed conditions with the Applicant that have resulted in significantly improved offsetting and compensation provisions within the conditions of the consents we have granted. For that we are grateful to all the expert witnesses from DoC and ORC Policy, and their respective Counsel.

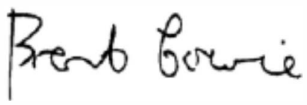
At the conclusion of the hearing we asked each of Ms Williams and Mr Anderson whether they wanted their submissions in opposition to the application(s) to remain. Ms Williams said that DoC did, but their objections would be satisfied if the consents were granted on terms and conditions discussed and agreed at the hearing. Mr Anderson said succinctly "the same as Pene said", which confirmed that ORC Policy's position was that their objections would be satisfied if the WDC consent was granted on the terms and conditions discussed at the hearing. We have followed their wishes.

10 Term and Conditions

We have granted the consents sought by the Applicant from the ORC and the WDC with only minor amendments from those agreed at the hearing. All these amendments were either grammatical, corrections in relation to cross referencing of conditions, and updating the WRC consent conditions to reflect the Environment Court's decision on Policy 5.4.6(c) dated 27 August 2020, which removed the reference to the Myrtaceae family in that policy.[30]

As agreed with Kāti Huirapa ki Puketeraki, Te Rūnanga o Otakou and Te Rūnanga o Moeraki the term of the WDC consent is 25 years. The ORC consents are for a variety of terms of between six and twenty years, apart from the land use consent (RM 20.024.06) which has an indefinite term as is for the Waste Rock Stack.

We thank Mr Purves, Ms Neville and Ms Claire Hunter, an expert planning witness for the Applicant, for their very robust work on the conditions of consent. It was a great help to us.



Dr Brent Cowie

Chair of the Hearing Panel

And Commissioner Jim Hopkins

23 September 2020

[30] NZ Env Court 137 (2020)

11 Decisions

To grant WDC 201.2019.1454 on the following conditions for a term of 25 years from the commencement of this consent:

Insert final conditions

To grant ORC RM20.024.01 to 024.14 inclusive on the following conditions, with the terms as specified in the individual consents:

Insert final conditions