

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of the Proposed Thames Coromandel District Plan

**STATEMENT OF EVIDENCE OF ROBERT JOHN SCHOFIELD FOR WAIHI
GOLD COMPANY LTD (TRADING AS NEWMONT WAIHI GOLD)**

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QUALIFICATIONS AND EXPERIENCE

- 1.1 My full name is Robert John Schofield.
- 1.2 I am a Partner of and Senior Planner at Boffa Miskell Limited, a national firm of consulting planners, ecologists, landscape architects and other environmental specialists. I hold the qualifications of BA (Hons) and Master of Regional and Resource Planning (Otago). I am a Fellow of the New Zealand Planning Institute, and a past President (1998-2000).
- 1.3 I have been a planning consultant based in Wellington for over 30 years, providing consultancy services for a wide range of clients around New Zealand, including local authorities, land developers, and the infrastructure and power sectors. My experience includes:
- (a) the development of district and regional plans for councils, as well as work on the preparation of plan changes for both councils and private clients;
 - (b) preparing Notices of Requirement and/or resource consent applications for a wide range of development projects, including roading infrastructure projects, before council or Boards of Inquiry hearings under the Resource Management Act 1991 ("**RMA**"); and
 - (c) analysing and advising on regional and district policies, including regional policy statements, for a range of clients, particularly energy and infrastructure providers.
- 1.4 I am an accredited RMA decision-maker (Chair endorsed) under the Ministry for the Environment's training, assessment and certification programme for RMA decision-makers. I have been appointed as a Commissioner (either sole or as part of a Panel) on a wide range of resource consent applications, proposed plan changes, and designations since 2000, and have been responsible for the preparation of the reports and/or decisions on those applications and plan changes.
- 1.5 In this matter, I was engaged by Waihi Gold Company Limited (trading as Newmont Waihi Gold Limited) ("**Newmont**") to provide planning evidence in relation to its submission through the hearing process on the Proposed

Thames Coromandel District Plan ("**Proposed Plan**"). While I was not involved in the preparation of that submission or any other earlier processes associated with the Proposed Plan, I am familiar with the content of the submission and the issues it raises.

- 1.6 I have read the Code of Conduct for Expert Witnesses as contained in the Environment Court Consolidated Practice Note (2014), and I agree to comply with it. My qualifications as an expert are set out above. I confirm that the issues addressed in this brief of evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

SCOPE OF EVIDENCE

- 1.7 This scope of evidence relates solely to Sections 6 and 29 relating to Biodiversity, of the Proposed Plan.

- 1.8 My evidence needs to be read in conjunction with my earlier evidence¹ relating to:

- (a) Section 14 and 37 - Mining
- (b) Section 32 - Landscape and Natural Character Overlay (as relevant to mining); and
- (c) Section 3 – Definitions (where relevant to mining)
- (d) Section 1 and 5 - Part 1; Introduction
- (e) Section 12 - Hazardous Substances and Contaminated Land;
- (f) Section 15 - Settlement Development and Growth;
- (g) Sections 18 and 39 - Transport;
- (h) Section 24 - Rural Area Zone; and
- (i) Part VIII - Zone Rules;

- 1.9 My evidence does not address Section 9 Landscape and Natural Character as, depending on the Section 42A report recommendations, Newmont will be presenting evidence at later hearings on that topic.

¹ Planning evidence of Robert Schofield, dated 18 December 2014

- 1.10 Background information relating to the activities undertaken by Newmont is provided in my evidence and that of Glen Grindlay, the General Manager of Newmont, dated 18 December 2014; rather than repeat this information, I refer the Commissioners to paragraphs 2.1 - 2.3 of my earlier evidence and to Mr Grindlay's evidence in its entirety.
- 1.11 Newmont submitted largely in support of the Proposed Plan, but sought a number of changes and clarification to the policies, rules and definitions. Specific to Sections 6 and 29 - Biodiversity, Newmont originally sought two minor policy changes within Section 6, and four specific rule changes within Section 29. While some of this relief has been superseded by the significant changes now recommended by the Council's reporting Planner, there are still a number of outstanding concerns relating to these provisions, as recommended to be amended. The key issue relating to the policies under Chapter 6 is to ensure that there is adequate recognition of the need to enable activities that have less than minor effects on the maintenance of the District's indigenous biodiversity (as intended to be provided by the rules). The key issue relating to the rules in section 29 is to enable exploration activities as a permitted activity, provided they comply with standards to ensure that the activity has less than minor adverse effects on indigenous biodiversity.
- 1.12 My evidence will address the following:
- (a) The higher level planning policy documents relevant to the indigenous biodiversity provisions of the Proposed Plan, being:
 - (i) the New Zealand Coastal Policy Statement 2010 ("**NZCPS 2010**");
 - (ii) the Operative Waikato Regional Policy Statement (2000) ("**Operative RPS**"); and
 - (iii) and Proposed Waikato Regional Policy Statement ("**Proposed RPS**").
 - (b) Those recommendations of the Council Officer in the Section 42A Report ("**Section 42A Report**") in relation to Chapters 6 and 29 of the PDP with which I do not agree or where I believe some further improvement or clarification would assist in plan implementation; and

- (c) How the recommended provisions as now sought by Newmont would ensure that the Proposed Plan more fully accords with Part 2 of the RMA to promote the sustainable management of the District's natural and physical resources.
- 1.13 I generally support the Council reporting officer's Section 42A report recommendations regarding Sections 6 and 29 (Biodiversity). My evidence focuses only on those matters of outstanding disagreement or on matters in which I consider there is scope for improvement or better clarity.
- 1.14 For ease of reference, based on the Officer's recommended version of Chapters 6 and 29 in the Section 42A report, I have incorporated the further amendments I recommend in a tracked changes version of Chapters 6 and 29 in **Attachment A**.
- 1.15 My evidence should be read together with the evidence of Dr Ian Boothroyd, which provides ecological evidence in respect of exploration activities and the indigenous vegetation clearance provisions.
- 1.16 I would also reiterate my earlier evidence that it is my preference that all Plan provisions relating to mining activities be contained within the one Mining section, including those relating to vegetation clearance.

HIGHER LEVEL PLANNING POLICY DOCUMENTS

Waikato Regional Policy Statement

Operative Waikato Regional Policy Statement

- 1.17 In terms of a regional context, the Operative Waikato Regional Policy Statement (October 2000) ("**Operative RPS**") is of particular relevance. Section 75(3)(c) of the RMA requires that a district plan must "give effect" to any operative regional policy statement.
- 1.18 The Operative RPS recognises the importance and biological diversity of the Thames Coromandel District, particularly the Firth of Thames and the Coromandel Peninsula.
- 1.19 Section 3.11 of the Operative RPS is specific to the biodiversity of plants and animals and provides two specific issues with an accompanying objective and policy, as follows:

3.11.4 Maintenance of Biodiversity

Issue: Biodiversity is important in maintaining ecosystem viability. Biodiversity tends to be lost when ecosystems are broken up or damaged by inappropriate use of land or water, invasion by exotic plants or animals or unsustainable use of species. There has been a reduction in the range, extent and health of indigenous vegetation and habitats of indigenous fauna and this trend is continuing.

Objective: Biodiversity within the Region maintained or enhanced

Policy One: Avoid, Remedy or Mitigate Adverse Effects on Biodiversity

Allow the use and development of natural and physical resources while avoiding, remedying or mitigating adverse effects on biodiversity in the region

Implementation Method:

1. Advocate, through environmental education:
 - i. community awareness of the values of indigenous vegetation and biodiversity and the need for its protection and restoration.
 - ii. voluntary mechanisms for the protection of the diversity and quality of habitat
 - iii. the planting of indigenous vegetation, particularly regionally appropriate species
 - iv. resource management practices that increase and strengthen the biodiversity of the Region
 - v. restoration or rehabilitation of degraded or modified areas of indigenous vegetation and habitats of indigenous fauna.
2. Through liaison with territorial authorities, other agencies and resource users advocate:
 - i. for the protection and creation of wildlife corridors
 - ii. the protection of the margins of lakes, rivers and coasts from inappropriate subdivision, use or development
 - iii. the avoidance of isolation or fragmentation of ecosystems
 - iv. the protection of the habitat of trout.
3. Provide, through consultation, for the cultural perspectives of tangata whenua in the management of biodiversity in the Region.
4. Investigate, in conjunction with landowners and other agencies, alternative mechanisms for the sustainable management of indigenous vegetation.

- 5 Recognise the effects of structures and barriers in waterways on aquatic habitats, and in particular on the migration of aquatic fauna and avoid, remedy or mitigate adverse effects through regional plans and resource consents.
- 6 Develop and maintain the Regional Pest Management Strategy in a manner which assists in the protection of biodiversity.
- 7 Encourage resource users and interested parties to sign and act in accordance with voluntary accords, (e.g. the New Zealand Forest Accord) for the protection of indigenous vegetation and habitats of indigenous fauna

Policy Two: Regionally Consistent Criteria for Use When Identifying Significant Area

Use a consistent approach throughout the Waikato Region when identifying areas of significant indigenous vegetation and significant habitats of indigenous fauna

Implementation Methods:

1. When preparing or implementing regional and district plans, assessing resource consent applications and in the consideration of areas to be protected by non-regulatory mechanisms; an area of indigenous vegetation or habitat for indigenous fauna is significant if the relevant decision-makers are satisfied, on the basis of all evidence presented, that the area currently meets one or more of the criteria in Appendix 3.
2. Through liaison with other organisations that are undertaking protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna advocate the use of the criteria in Appendix 3.

Policy Three: Protection and Management of Indigenous Vegetation and Habitats of Indigenous Fauna

- A. Ensure the existing characteristics that identify natural areas as significant indigenous vegetation and/or significant habitats of indigenous fauna are protected in an appropriate way from adverse effects when using or developing natural and physical resources except:
 - i. within Development Geothermal Systems provided for in Chapter 3.7, or
 - ii. where those effects cannot be avoided, in which case the effects are to be remedied or mitigated³ in such a way that biodiversity is maintained or enhanced, having particular regard to the specific characteristics that identify the area as significant.
- B. Subject to the exceptions in Policy Three A), once an area has been identified as being significant, the following factors should be taken into account when determining protective management methods including the allocation of resources:
 - i. positive landowner management initiatives
 - ii. current uses

- iii. relative significance (based on the characteristics that make an area significant)
- iv. threats to the characteristics that make the area significant (including relative vulnerability to threats)
- v. the effectiveness of management options to address threats
- vi. availability of resources
- vii. the use of non-regulatory methods.

Implementation Methods:

1. Identify areas of significant indigenous vegetation and significant habitats of indigenous fauna in conjunction with territorial authorities, other agencies and interested parties, using the criteria in Appendix 3.
2. Use existing information to develop and maintain a regional database and indicative map of sites known to meet the criteria for significance in Appendix 3. In developing this provide an opportunity for territorial authorities to store sites of local importance on the database.
3. Maintain a regional database of threatened species in the Waikato Region.
4. Through liaison with territorial authorities and the Department of Conservation, Ministry of Fisheries and the Ministry of Agriculture and Forestry advocate the establishment of conservation forests, marine reserves and other reserves in the Region to protect significant indigenous vegetation and significant habitats of indigenous fauna.
5. Through Heritage Protection Orders and Water Conservation Orders protect significant indigenous vegetation and significant habitats of indigenous fauna where appropriate.
6. Through regional and district plans and annual plans consider the use of, firstly the following mechanisms for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:
 - i. economic instruments as an incentive to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna.
 - ii. advocacy and provision of information
 - iii. providing for voluntary protection
 - iv. land acquisition and designation including the use of funding sources such as the Nature Heritage Fund, Queen Elizabeth II National Trust and Ngā Whenua Rahui.
 - v. the creation of esplanade reserves and marginal strips

vi. provision of works and services and secondly, regulatory controls which may include zoning, buffers, rules, conditions on resource consents, abatement notices and enforcement orders.

7. Progress trials of the utility of environmental domains for assessing significant areas of indigenous vegetation and significant habitats of indigenous fauna and, subject to evaluation, initiate a change to Criterion 4.

1.20 The Operative RPS also contains specific provisions relating to mining, specifically section 3.14. The relevance of those provisions was discussed in my 18 December 2014 evidence on mining activities and I would again refer the Hearing Panel to those provisions. In particular, I would refer to Policy One of the Operative RPS which focuses on not restricting the ability to use natural and physical resources so long as adverse effects on biodiversity are appropriately managed through avoidance, remediation or mitigating measures.

1.21 The relief sought by Newmont is, in my opinion, consistent with an effects-based approach as it recognises that sites can be investigated for mining suitability in a manner that maintains biodiversity through remediation and rehabilitation works. The submission also recognises that some areas are unsuitable for mining activities having regard to their effects on various environments within the District.

Proposed Waikato Regional Policy Statement

1.22 Also of relevance, is the Proposed Waikato Regional Policy Statement² (November 2012) ("**Proposed RPS**"). Section 74(2)(a)(i) of the RMA requires that a territorial authority shall have regard to a proposed regional policy statement.

1.23 Particular provisions of relevance to Newmont's submission are Objective 3.18, Policies 11.1, 11.2, 11.4 and Methods 11.1.1 – 11.1.3, 11.2.2, 11.2.3³ and 11.4.1. Section 11A⁴ also provides criteria for determining significance of indigenous biodiversity is also provided in the Proposed RPS:

Objective 3.18 Ecological integrity and indigenous biodiversity

Ensure the extent and **full range of ecosystem types** that occur in the Waikato region, and the indigenous biodiversity that they contain, exist in a healthy and functional state.

Policy 11.1 Maintain or Enhance indigenous biodiversity

² As amended by Decisions but subject to Appeals.

³ Subject to appeal.

⁴ Subject to appeal.

Promote positive indigenous **biodiversity** outcomes to maintain or enhance the full range of ecosystem types to the extent necessary to achieve continued functioning of ecosystems, including through restoration of, indigenous biodiversity with particular focus on:

- a) the continued functioning of ecological processes;
- ab) the re-creation and restoration of habitats and connectivity between habitats;
- b) supporting (buffering and/or linking) ecosystems, habitats and areas identified as significant indigenous vegetation and significant habitats of indigenous fauna;
- c) providing **ecosystem services**;
- d) the health and wellbeing of the Waikato River and its catchment;
- e) **natural character** and **amenity values**;
- f) tāngata whenua relationships with indigenous biodiversity including their holistic view of ecosystems and the environment; and
- g) managing the density, range and viability of indigenous flora and fauna.

Implementation methods:

11.1.1 Maintain or enhance indigenous biodiversity

Regional and district plans shall maintain or enhance indigenous biodiversity, including by:

- a) providing for positive indigenous biodiversity outcomes when managing activities including subdivision and land use change;
- b) having regard to any local indigenous biodiversity strategies developed under Method 11.1.10; and
- c) creating buffers, linkages and corridors to protect and support indigenous biodiversity values, including esplanade reserves and esplanade strips to maintain and enhance indigenous biodiversity values.
- d) *[Deleted]*

11.1.2 Adverse effects

Regional and district plans shall recognise that adverse effects on indigenous biodiversity within terrestrial, freshwater and coastal environments are cumulative and may include:

- a) fragmentation and isolation of indigenous ecosystems and habitats;
- b) reduction in the extent and quality of indigenous ecosystems and habitats;
- c) loss of corridors or connections linking indigenous ecosystems and habitat fragments or between ecosystems and habitats;
- ca) the loss of **ecological sequences**;
- d) loss or disruption to migratory pathways in water, land or air;
- e) effects of changes to hydrological flows, water levels, and water quality on ecosystems;
- f) loss of buffering of indigenous ecosystems;
- g) loss of ecosystem services;
- h) loss, damage or disruption to ecological processes, functions and ecological integrity;
- i) changes resulting in an increased threat from animal and plant pests;
- j) effects which contribute to a cumulative loss or degradation of indigenous habitats and ecosystems;
- k) noise, visual and physical disturbance on indigenous species, particularly within the **coastal environment**; and

- l) loss of habitat that supports or provides a key life-cycle function for indigenous species listed as 'Threatened' or 'At Risk' in the New Zealand Threat Classification System lists.

11.1.3 Remediation and mitigation

Regional and district plans shall require that where loss or degradation of indigenous biodiversity is authorised, adverse effects are remedied or mitigated (whether by onsite or offsite methods). Remediation or mitigation must result in no net loss of the region's indigenous biodiversity. Methods include:

- aa) replacing the indigenous biodiversity that has been lost or degraded
 - a) replacing like-for-like habitats or ecosystems (including being of at least equivalent size or ecological value);
 - b) the legal and physical protection of existing habitat; or
 - c) the creation of new habitat.

Remediation or mitigation may occur off site if improved ecological outcomes will result.

Policy 11.2 Protect significant indigenous biodiversity

Significant indigenous vegetation and the significant habitats of indigenous fauna shall be protected and enhanced by ensuring that the area and the characteristics that contribute to its significance are not adversely affected to the extent that the significance of the vegetation or habitat is reduced.

Implementation methods:

11.2.2 Protect areas of significant indigenous biodiversity

Regional and district plans shall:

- a) protect and where appropriate enhance areas of significant indigenous biodiversity;
- b) require that activities avoid the loss or degradation of areas of significant indigenous biodiversity, in preference to remedying or mitigating adverse effects; and
- c) require that any unavoidable adverse effects on areas of significant indigenous biodiversity are effectively remedied or mitigated through processes undertaken in the following priority that:
 - i) replace like-for-like habitats or ecosystems (including being of at least equivalent size or ecological value);
 - iii) involve the creation of new habitat;
 - iv) develop or enhance areas of alternative habitat supporting similar ecology/ significance; or
 - v) involve the legal and physical protection of existing habitat.

Any such remediation or mitigation must result in no net loss of the region's indigenous biodiversity and should relate as a first priority to the indigenous biodiversity that has been lost or degraded by the consented activity (whether by on-site or off-site methods).

11.2.3 Assess significance

Where regional and district plans require an assessment of significant indigenous vegetation and the significant habitats of indigenous fauna that have not been identified as significant indigenous biodiversity, the criteria in section 11A shall be used. The identification of the characteristics of any area will be undertaken prior to any modification of the area or site and will inform the decision-making process as to whether the proposed activity or modification is appropriate.

Policy 11.4 Safeguard coastal/marine ecosystems

Protect indigenous biodiversity in the coastal environment by:

- aa) avoiding adverse effects on:
 - i) indigenous taxa listed as 'Threatened' or 'At Risk' in the New Zealand Threat Classification System lists or taxa listed as threatened by the International Union of Nature and Natural Resources;
 - ii) habitats of indigenous species where the species are at the limit of their natural range, or are naturally rare; and
 - iii) areas containing nationally significant examples of indigenous community types; and
- a) maintaining or enhancing:
 - i) areas used by marine mammals and wading/coastal birds including breeding, feeding, roosting and haul-out sites (areas where marine mammals come ashore;
 - ii) whitebait spawning areas and shellfish beds;
 - iii) habitats, corridors and routes important for preserving the abundance and diversity of indigenous and migratory species;
 - iv) indigenous habitats and ecosystems that are unique to the coastal environment and vulnerable to modification and the impacts of climate change, including estuaries, lagoons, coastal wetlands, dunelands, rocky reef systems, sea grass and saltmarsh; and
 - v) habitats of indigenous species that are important for recreational, commercial, traditional or cultural purposes.

Implementation methods:

11.4.1 Regional and district plans

Regional and district plans shall:

- a) protect marine habitat in the **coastal marine area** that has been identified as an area of significant indigenous biodiversity in Method 11.2.1; and
- b) control the adverse effects, including cumulative effects, of activities

1.24 In my opinion, the Proposed Plan generally gives appropriate effect to the Proposed RPS in that it acknowledges the need for protection of the indigenous biodiversity within the District while recognising that some forms of land use and development should be enabled, provided that any potential adverse effects from that use are remediated and mitigated to maintain indigenous biodiversity (whether by on-site or off-site methods, as recommended by in the Section 42A Report).

1.25 In my opinion, the amendments sought by Newmont to the Proposed Plan would ensure it more fully has regard to, and gives effect to the Proposed RPS.

OUTSTANDING AREAS OF CONCERN ON BIODIVERSITY PROVISIONS

1.26 The Proposed Plan provides two chapters/sections specific to biodiversity: Section 6 – Biodiversity Overlay Issues, Objectives and Policies, and Section 29 – Biodiversity Overlay Rules. With reference to **Attachment A**

to my evidence, I shall outline the outstanding areas of concern with these provisions, and the recommended further changes that would address these concerns.

Section 6: Policy Framework for Indigenous Biodiversity

1.27 Under section 6.3, Objective 1 is recommended to be amended as follows:

The full range of the District's indigenous ecosystems and biodiversity is maintained in a healthy and functional state. ~~Indigenous biodiversity is maintained, restored or enhanced at the time of subdivision, use and development.~~

1.28 I am satisfied that this objective is generally appropriate in that it would ensure that:

(a) Temporary mining activities such as prospecting and exploration would have less than minor effects on indigenous biodiversity, and that any adverse effects arising from such activities would be temporary in duration and could be readily restored or rehabilitated, thereby maintaining the District's indigenous ecosystems and biodiversity.

(b) Longer term mining activities that have adverse effects on indigenous biodiversity would be required to undertake mitigation measures to ensure that the overall quality and level of the District's indigenous ecosystems and biodiversity is maintained, including restoration and offset mitigation.

1.29 I would however recommend including restoration and enhancement into this objective, to ensure the Proposed Plan appropriately promotes the restoration and enhancement, particularly where existing indigenous biodiversity is not in good condition. Thus this objective would read:

The full range of the District's indigenous ecosystems and biodiversity is maintained, restored or enhanced so that it exists in a healthy and functional state. ~~Indigenous biodiversity is maintained, restored or enhanced at the time of subdivision, use and development.~~

1.30 The key for achieving this objective is that the concomitant policies appropriately recognise and provide for a regulatory framework that will produce that outcome.

1.31 In regard to proposed Policy 1aa, clause (c) requires that any unavoidable adverse effects on areas of significant indigenous vegetation and

significant fauna have to be remedied or mitigated. Given that the permitted activity rules for the Biodiversity Overlay do enable some activities to occur, I consider that a fourth clause would be appropriate that recognises that minor or temporary activities should be provided for if they have less than minor effects “on the viability, integrity and sustainability” of indigenous biodiversity and ecosystems (this wording comes from the reworded Policy 1a). My recommended insertion is shown as new clause (ba) below:

Policy 1aa

Subdivision, use and development shall protect areas of significant indigenous vegetation and significant habitats of indigenous fauna by:

- a) Avoiding the loss or degradation of areas of significant indigenous vegetation and significant habitats of indigenous fauna;
- b) Avoiding the loss of habitat that supports or provides a key life function for Threatened or At Risk indigenous species;
- ba) Providing for minor or temporary activities with less than minor effects on the viability, integrity and sustainability of indigenous biodiversity and ecosystems; and**
- c) Remedying or mitigating unavoidable adverse effects on areas of significant indigenous vegetation and significant fauna.

1.32 The second part of Policy 1aa as recommended by the reporting Planner sets out the requirements for any offset mitigation. I would recommend that this be numbered as a separate new policy, **Policy 1ab**, for clarity purposes.

1.33 In regard to proposed Policy 1a, in relation to managing areas of non-significant indigenous vegetation and non-significant habitats of indigenous fauna, I note the concerns of Dr Boothroyd over the inclusion of ‘non-significant habitats of indigenous fauna’. As Dr Boothroyd states, indigenous fauna can live and thrive in some most unusual and non-indigenous habitats (for example, native birds in production forests). In my opinion, unless a better way to address this aspect can be proposed, I would recommend deleting it from Policy 1a thus:

Subdivision, use and development of sites with areas of non-significant indigenous vegetation ~~and non-significant habitats of indigenous fauna~~ shallould:

1.34 I also consider it important that the policy includes an enabling component to articulate the need to provide for some activities within these areas, as is proposed under the Overlay rules. To this effect, I would recommend

the following two new clauses to be inserted after clause (a), with the following clauses to be renumbered:

b) Use buildings and structures that are temporary and/or portable in nature; and

c) Minimise earthworks; and

1.35 In regard to that part of Policy 1a that requires a buffer around areas of indigenous vegetation, I recommend adding “**where practicable**” to the start of the clause to recognise that it may not always be practicable to provide a buffer, particularly for small-scale or temporary activities.

1.36 In regard to Policy 1d, which is recommended to be significantly overhauled by the reporting Planner, I consider it appropriate to include provision for temporary prospecting and exploratory activities associated with mining among the list of uses that have minor adverse effects on biodiversity. I therefore recommend this Policy be further amended as follows:

Reasonable use and enjoyment of land with minor adverse effects on biodiversity shall be provided for. This may include:

a) The maintenance, operation and upgrading of lawfully established infrastructure and network utilities;

b) The collection of material for traditional Maori cultural practices; and

c) **Temporary prospecting and exploration associated with mining; and**

de) **Actions necessary to avoid loss of life, injury or serious damage to property.**

Section 29: Biodiversity Overlay Rules

1.37 There are two rules relating to the Biodiversity Overlay, as recommended to be amended by the reporting Planner, about which I have some outstanding concerns.

1.38 With regard to Rule 1, relating to clearing vegetation outside the Rural Area, given how broad an ambit this rule covers, it is important that the scope of permitted activities be sufficiently wide to enable all appropriate types of vegetation clearance. Standard (l) allows for vegetation clearance if it involves no more than 5m³ of wood from trees or 50m² of other vegetation per site, per year. As I shall shortly explain, this is inadequate provision for exploration activities.

1.39 First, however, I have a concern regarding the lack of clarity over the interpretation of the “site” definition in the Proposed Plan. Currently, the proposed definition of site means:

..the area of land clearly related to a particular development, application, proposal or activity. A site contains at least one complete lot. Included in this definition are:

- *All buildings and land use that relate to a particular development, application, proposal or activity;*
- *The site can include more than one lot, however, lots must be adjoining.*

1.40 The first part of the definition clearly intends to cover the area of land affected by an activity, but the second sentence unhelpfully raises the possibility that the term covers the entire lot in which the activity is located. It is therefore uncertain as to whether the definition:

- (a) limits one activity per property title (for example, limiting only one exploration drilling site per lot, recognising there are some very large lots in the Rural Area); or
- (b) limits the vegetation clearance associated with each discrete activity to within the location of that activity (for example, the site of each activity is limited to just 50m² of vegetation clearance per year).

1.41 In my opinion, the word 'site' is intended to refer to the area affected or required by an activity, whether or not it includes the entire lot on which it is located or more than one lot. Given the limited scale and impact of exploration activities, and the large size of the lots in which they occur, I consider it appropriate, at least in regard to exploration activities, to have a definition of site that allows for the second interpretation to be made: I would recommend the Hearing Panel seek some clarification over this matter.

1.42 My second concern relates to the permitted area that can be cleared of vegetation. For the reasons set out by Newmont at the Hearing on mining on 18 December 2014, 50m² is not a sufficient area to practically accommodate exploration activities. If the Hearing Panel is of the mind to remove the equivalent rule from the mining section of the Proposed Plan, I would recommend including a new clause (m) (and subsequently renumber the following clauses) as follows:

m) It is for an exploration and involves no more than 150m² of clearance per site, per year; or ...

- 1.43 With regard to Rule 2, relating to clearing vegetation in the Rural Area or Conservation Zone, for the same reason, I would recommend specific provision for exploration activities. However, given that most of the District's highly valued indigenous vegetation is located in the Rural Area and Conservation Zone, I consider it appropriate to include some additional requirements as follows:

I. It is for exploration provided:

i) it is no more than 150m² per site, per year where either:

A) the area of clearance is not identified as significant as ground-truthed by a suitably qualified ecologist; or

B) the area is within the Conservation Zone and the indigenous vegetation clearance has been approved by the Department of Conservation; or

ii) Prior to commencing exploration a rehabilitation plan is provided to the Council detailing the steps that will be undertaken to rehabilitate the site upon completion of exploration; or

...

- 1.44 The first requirement would require confirmation by a suitably qualified ecologist to confirm that the area of no more than 150m² of vegetation that is proposed to be cleared is neither potentially significant nor provides significant habitat for indigenous fauna. This assessment would be undertaken by reference to the Waikato Regional Council SNA Technical Report 2010/36 to confirm that the indigenous vegetation area (noting Dr Boothroyd's comment on this report). The second requirement would address the potential overlap with the responsibilities of the Department of Conservation and remove the need to have a separate ecological assessment if the clearance has already been approved by the Department.

SECTION 32 OF the RMA

- 1.45 I can confirm that the s32 evaluation I provided in my evidence dated 18 December 2014 is relevant and applicable to the recommendations I have made in this evidence.

PART 2 OF THE RMA

- 1.46 Under current legislation the Crown owns particular mineral resources including petroleum, gold, silver and uranium, and all minerals on or under Crown land. Prospecting, exploration and mining activity requires permits from the Crown.

- 1.47 The extraction of minerals is also subject to local government controls under the RMA. The purpose of the RMA is for the sustainable management of natural and physical resources, with corresponding obligations relating to the use, development and protection of resources while providing for the wellbeing and health and safety of people, including to provide for social, economic, and cultural wellbeing. Significantly, the section excludes minerals from the requirement to sustain the potential of natural and physical resources to meet the needs of future generations recognising that minerals are a finite resource.
- 1.48 In the context of mining activities, I consider that the amendments currently sought by Newmont as outlined in my evidence would better achieve the purpose of the RMA in relation to sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations, having particular regard to:
- (a) safeguarding the life-supporting capacity of air, water, soil, and ecosystems through the avoidance, remedying or mitigating of effects;
 - (b) enabling the community to provide for their social and economic well-being through employment opportunities and various enhancement and preservation works undertaken by Newmont.
- 1.49 In relation to section 5(2)(c), I am satisfied the amendments proposed by Newmont, and which I support, would enable the effects of the various mining activities to be avoided, remedied or mitigated.
- 1.50 In relation to section 6 Matters of National Importance and section 7 Other Matters, I am of the opinion that the differing activity classifications for the varying mining related activities appropriately recognise and provide for Matters of National Importance.
- 1.51 The principles of the Treaty of Waitangi would be taken into account for any mining activity that requires resource consent.
- 1.52 Having considered the Proposed Plan, I am of the opinion, that the modifications sought by Newmont accord with provisions of Part 2 of the RMA and will achieve sustainable management of natural and physical resources.

CONCLUSIONS

- 1.53 Within the District, Newmont has active prospecting and exploration permits for the discovery of epithermal gold-silver deposits. The development of these and other high value minerals has the potential to contribute to economic growth and employment in the region, and would have significant economic benefits for the District, as well as for the nation as a whole.
- 1.54 From a resource management perspective, District Councils have a statutory obligation to provide for the integrated management of natural and physical resources, including mineral resources. This management regime also needs to reflect some of the unique characteristics of mineral resources: in particular, the static location of the resource and the need for exploration to find and define new resources.
- 1.55 For the reasons outlined in my evidence, I largely support the proposed plan provisions relating to biodiversity, and I largely concur with the recommendations of the Council reporting officer. In my opinion, however, the provisions should better enable exploration activities within parameters that ensure that any effects on indigenous biodiversity are less than minor and of a temporary nature. Such provisions would be a more appropriate approach to give effect to the objectives and policies of the RPS as well as the purpose and principles of the RMA.

Robert Schofield

12 February 2015

ATTACHMENT A – OUTSTANDING AMENDMENTS SOUGHT TO BIODIVERSITY SECTIONS 6 AND 29

- The recommended amendments made in the Section 42A report are shown in black underline and deletions shown in black ~~striketrough~~.
- All amendments recommended in my evidence are shown in red underline or red ~~striketrough~~.

Part II – Overlay Issues, Objectives and Policies

Section 6 – Biodiversity

6.3 Objectives and Policies

Objective 1

1. That **Objective 1** be amended as follows:

The full range of the District's indigenous ecosystems and biodiversity is maintained, restored or enhanced so that it exists in a healthy and functional state. ~~Indigenous biodiversity is maintained, restored or enhanced at the time of subdivision, use and development.~~

2. That **Policy 1aa** be amended as follows:

Policy 1aa

Subdivision, use and development shall protect areas of significant indigenous vegetation and significant habitats of indigenous fauna by:

- a) Avoiding the loss or degradation of areas of significant indigenous vegetation and significant habitats of indigenous fauna;
- b) Avoiding the loss of habitat that supports or provides a key life function for Threatened or At Risk indigenous species;
- ba) Providing for minor or temporary activities with less than minor effects on the viability, integrity and sustainability of indigenous biodiversity and ecosystems; and
- c) Remedying or mitigating unavoidable adverse effects on areas of significant indigenous vegetation and significant fauna.

Policy 1ab

More than minor residual adverse effects on significant indigenous vegetation and significant habitats of indigenous fauna, outside the Coastal Environment, that cannot be avoided, remedied or mitigated shall be offset by:

- a) Replacing like-for-like habitats or ecosystems; or
- b) Recreating habitat; or
- c) Developing or enhancing areas of alternative habitat supporting similar ecology/significance; or
- d) Legal and physical protection of existing habitat.

3. That **Policy 1a** be amended as follows:

Policy 1a

Subdivision, use and development of sites with areas of non-significant indigenous vegetation ~~and non-significant habitats of indigenous fauna~~ shall ~~ould~~:

- a) Retain the viability, integrity and ecological sustainability of the area and natural characteristics of indigenous vegetation; and
- ~~b) Minimise earthworks within and adjacent to areas of indigenous vegetation; and~~
- ~~c) Locate buildings, structures and accesses outside of areas of indigenous vegetation; and~~
- b) Use buildings and structures that are temporary and/or portable in nature; and
- c) Minimise earthworks; and
- d) Where practicable, Provide Apply a buffers around buffer around land use activities to minimise adverse effects on areas of indigenous vegetation including wetlands and dune ecosystems; and
- e) Not increase the threat from Avoid the introduction of plant and animal pests species and introduced predators into habitats where nationally threatened and at risk fauna and flora live; and
- f) Maintain, enhance or restore the functioning of ecological corridors and connections linkages linking indigenous ecosystems, habitat fragments and wetlands and dune systems; and
- g) Consider on-going management of priority locations mapped in Section 38 Subdivision, including legal protection, restoration, enhancement, pest control and stock exclusion.

Policy 1b

Significant residual adverse effects on non-significant vegetation and non-significant habitats of indigenous fauna, outside the Coastal Environment, that cannot be avoided, remedied or mitigated should be offset by:

- a) Replacing the indigenous biodiversity that has been lost or degraded; or
- b) Replacing like-for-like habitats or ecosystems; or
- c) Legal and physical protection of existing habitat; or
- d) Recreating habitat; or
- e) Replacing habitats or ecosystems with indigenous biodiversity of greater ecological value.

Policy 1b

~~Where subdivision, use and development will result in the clearance of indigenous vegetation, the clearance should be undertaken in a way that:~~

- ~~a) Retains the viability, integrity and sustainability of indigenous habitats and species; and~~

- ~~b) Does not increase the risk to nationally at risk and threatened species; and~~
- ~~c) Maintains the function of ecological corridors; and~~
- ~~d) Does not increase natural hazard risk (including erosion and flooding); and~~
- ~~e) Does not adversely affect wetland and dune ecosystems and their buffers.~~

4. That **Policy 1d** be amended as follows:

Policy 1d

~~Sustainable use of indigenous vegetation shall be provided for on private land where indigenous biodiversity is maintained or enhanced (this may be through remediation or mitigation on the site or off the site).~~

Reasonable use and enjoyment of land with minor adverse effects on biodiversity shall be provided for. This may include:

- a) The maintenance, operation and upgrading of lawfully established infrastructure and network utilities;
- b) The collection of material for traditional Maori cultural practices; and
- c) Temporary prospecting and exploration associated with mining; and
- de) Actions necessary to avoid loss of life, injury or serious damage to property.

Part VI – Overlay Rules

Section 29 – Biodiversity Overlay

29.3 PERMITTED ACTIVITIES

5. That **RULE 1** be amended as follows:

RULE 1 Clearing indigenous vegetation outside of the Rural Area

1. Clearing indigenous vegetation outside of the Rural Area, excluding the Conservation Zone is a **permitted activity** provided:

1

- a) The lot is less than 400m²; and
- b) The lot is connected to a reticulated water supply and reticulated wastewater system; and
- c) The lot contains a building used for industrial or commercial purposes or as a dwelling;

OR

- ~~d) It is for removing vegetation that endangers human life or existing buildings or structures necessary to avoid loss of life, injury or serious~~

- damage to property, or poses a risk to the integrity of, the safe use of, or access to existing network utilities; or
- e) The area to be cleared is dominated by exotic vegetation (e.g. forestry, existing domestic garden, or pasture, or horticulture that was established prior to notification of the District Plan on 13 December 2013); or
 - f) It is mahinga kai according to Maori custom for the collection of material for traditional Maori cultural practices; or
 - g) It is for ecosystem restoration works (e.g. beachcare, removing pest trees, pest control); or
 - h) It is within 10 m of an existing dwelling house, or within the building footprint of a proposed dwelling house with resource consent or building consent or an approved building platform; or
 - i) It is to create a driveway no more than 3.5 m wide from the an existing formed road to a dwelling house specified in h) above; or
 - j) It is a strip of no more than 3.5 m wide for land survey work, tracks or fences or existing formed roads, including 1m clearance to either side; or
 - k) It is within the legal width of an existing formed road (which includes road reserve); or
 - l) It is no more than 5m³ of wood from trees or 50m² of other vegetation per site, per year; or
 - m) It is for exploration and involves no more than 150m² of clearance per site, per year; or
 - n) It is for clearing no more than 5 m either side of existing lawfully established network utility infrastructure (excluding an existing formed road); and
 - i) it is for the purpose of maintaining and operating the network utility infrastructure; and
 - ii) it is undertaken by or commissioned by the network utility operator; or and
 - o) It is not within 10 m of a permanent waterbody wider than 1 m, unless the work is authorised by the Waikato Regional Council; and
 - p) It The indigenous vegetation is not protected by a conservation covenant registered or encumbered with the Council, or Queen Elizabeth II National Trust, or Nga Whenua Rahui, unless the covenant provides for the clearance; or.
- n) It complies with Section 37 Mining Activities Rule 2.1 b) and c).
2. Clearing indigenous vegetation in the Rural Area, excluding the Conservation Zone that is not permitted under Rule 21.1 a)-m) is a **restricted discretionary activity**.
 3. The Council restricts its discretion to all the matters in Table 2 at the end of Section 29.
 4. Clearing indigenous vegetation outside of the Rural Area, excluding the Conservation Zone that is not permitted under Rule 21.1 n) or o) is a **non-complying activity**.

6. That RULE 2 be amended as follows:

RULE 2 Clearing indigenous vegetation in the Rural Area or Conservation Zone

1. Clearing indigenous vegetation in the Rural Area or Conservation Zone is a **permitted activity** provided:
 - a)b) It is for replanting, managing, maintaining or harvesting existing production plantation forestry including understorey clearance and fire break maintenance or fire risk management; or
 - ~~b)~~ It is for replanting a production forest or establishing a new land use within 5 years of production forest harvesting on the site; or
 - ~~c)~~ It is for harvesting indigenous timber under a Sustainable Management Plan or Permit (under the Forests Act 1949); or
 - d)c) It is for removing vegetation that endangers human life or existing buildings or structures necessary to avoid loss of life, injury or serious damage to property, or poses a risk to the integrity of, the safe use of, or access to existing network utilities; or
 - e)d) The area to be cleared is dominated by exotic vegetation (e.g. forestry, existing domestic garden, or pasture, or horticulture that was established prior to notification of the District Plan on 13 December 2013); or
 - f)e) It is mahinga kai according to Maori custom for the collection of material for traditional Maori cultural practices; or
 - g)f) It is for ecosystem restoration or enhancement works (e.g. beachcare, removing pest trees, pest control); or
 - h)g) It is within 10 m of an existing dwelling house, or within the building footprint of a proposed dwelling house with resource consent or building consent or an approved building platform; or
 - i)h) It is to create a driveway no more than 3.5 m wide from the an existing formed road to a dwelling house specified in g) above; or
 - j)i) It is a strip of no more than 3.5 m wide for land survey work, tracks or fences or existing formed roads, including 1m clearance to either side; or
 - k) It is within the legal width of an existing formed road (which includes road reserve); or
 - l) It is no more than 5m³ of wood from trees or 50m² of other vegetation per site, per year; or
 - It is for exploration provided:
 - i) it is no more that 150m2 per site, per year, where either:
 - A the area of clearance is not identified as significant as ground-truthed by a suitably qualified ecologist; or
 - B the area is within the Conservation Zone and the indigenous vegetation clearance has been approved by the Department of Conservation;
 - ii) Prior to commencing exploration a rehabilitation plan is provided to the Council detailing the steps that will be undertaken to rehabilitate the site upon completion of exploration; or

- m) It is for clearing no more than 5 m either side of existing lawfully established network utility infrastructure (excluding an existing formed road); and
 - i) it is for the purpose of maintaining and operating the network utility infrastructure; and
 - ii) it is undertaken by or commissioned by the network utility operator; ~~or~~ and
 - n) It is not within 10m of a permanent waterbody wider than 1m, unless the work is authorised by the Waikato Regional Council; and
 - o) It is not protected by a conservation covenant registered or encumbered with the Council, or Queen Elizabeth II National Trust, or Nga Whenua Rahui, unless the covenant provides for the clearance; ~~or~~.
- ~~n) It complies with Section 37 Mining Activities Rule 2.1 b) and c).~~
2. Clearing ~~indigenous~~ vegetation in the Rural Area or Conservation Zone (excluding the Coastal Environment) that is not permitted under Rule 32.1 a) - ~~m~~) is a **restricted discretionary activity**.
 3. The Council restricts its discretion to all the matters in Table 2 at the end of Section 29.
 4. Clearing ~~indigenous~~ vegetation in the Coastal Environment that is not permitted under Rule 32.1 a) - ~~m~~) is a **discretionary activity**.
 5. Clearing ~~indigenous~~ vegetation in the Rural Area or Conservation Zone (whether within the Coastal Environment or not) that is not permitted under Rule 32.1 ~~m) or n or o~~) is a **non-complying activity**.
 6. A ~~resource consent application under Rule 32.2 or Rule 32.4 shall be limited notified to the Waikato Regional Council, the Department of Conservation and adjoining neighbours, whose property contains part of the same ecosystem or an ecosystem whose resilience depends upon buffering from the vegetation to be removed.~~

NOTE

1. Clearing indigenous vegetation in the Conservation Zone must be approved by the Department of Conservation.