

**BEFORE THE ENVIRONMENT COURT  
AT AUCKLAND**

**ENV-2016-AKL-**

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of an appeal under Clause 14(1), First Schedule of the Act in relation to the Proposed Thames-Coromandel District Plan Decisions

**BETWEEN** **WAIHI GOLD COMPANY LIMITED**

**Appellant**

**AND** **THAMES-COROMANDEL DISTRICT COUNCIL**

**Respondent**

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**NOTICE OF APPEAL**

**10 June 2016**

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**ANDERSON LLOYD  
LAWYERS  
DUNEDIN**

Solicitor: S W Christensen

Level 10, Otago House  
Cnr Moray Place & Princes  
Street,  
Private Bag 1959,  
DUNEDIN 9054  
DX YX 10107  
Tel 03 477 3973  
Fax 03 477 3184

**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST DECISION ON  
PROPOSED POLICY STATEMENT OR PLAN**

*Clause 14(1) of First Schedule, Resource Management Act 1991*

**TO:** The Registrar  
Environment Court  
Auckland

- 1 Waihi Gold Company Limited ("**WGCL**") appeals against parts of a decision of Thames-Coromandel District Council on the Proposed Thames-Coromandel District Plan ("**pTCDC Plan**").
- 2 WGCL made submissions and further submissions on the pTCDC Plan.
- 3 WGCL is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 ("**the Act**").
- 4 WGCL received notice of the decision on or about 29 April 2016.
- 5 The parts of the decision that WGCL is appealing relate to:
  - (a) Section 24 – Rural Area.
  - (b) Section 32 – Outstanding Natural Features and Landscapes ("**ONFL**") Overlay (Rules).
  - (c) Variation 1, Section 32A Natural Character of the Coastal Environment Overlay.
  - (d) Section 37 – Mining Activities (Rules) and Section 32 – Outstanding Natural Features and Landscapes Overlay (Rules) and Section 29 – Biodiversity (Rules) – Exploration.
  - (e) Section 37 – Mining Activities (Rules) – Mineral Processing and Waste Rock / Tailings Storage.

**SECTION 24 – RURAL AREA**

- 6 WGCL appeals part of the decision recorded in Recommended Decision Report 20, paragraph 6.1. The part of the decision appealed is the

decision to adopt the wording of Objective 1 as set out in Attachment 1 of Recommended Decision Report 20.

- 7 The particular part of Objective 1 being appealed is the inclusion of the words "without conflict".

### **Reasons for Appeal**

- 8 The Rural Area is large, comprising over 125,000ha and representing 57% of the District's total land area. Most of the District's primary production and rural industry is located in the Rural Area. It is an active work area. It comprises diversified land uses including primary production, industries that support primary production, and areas where people live and recreate.<sup>1</sup>
- 9 The multiple values and uses of the Rural Area mean that there is the potential for existing or proposed land uses to conflict with one another. While the policies and methods employed in the Rural Area are designed to appropriately manage that conflict such that overall sustainable management is promoted, it is unrealistic to have as an Objective that a variety of uses occur in the Rural Area *without* conflict.

### **Relief Sought**

- 10 The relief sought is:
- (a) Deletion of the words "without conflict" in Section 24.3 – Rural Area, Objective 1 or such other relief as the Court thinks appropriate; and
  - (b) Costs.

## **SECTION 32 – OUTSTANDING NATURAL FEATURES AND LANDSCAPES OVERLAY**

- 11 WGCL appeals part of the decision recorded in Recommended Decision Report 6 at paragraph 6.1 (page 10) to adopt the Reporting Officers' discussion and recommendations as contained in the Section 42A Report / Section 32AA Further Evaluation Report (subject to amendments not relevant to this appeal).

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<sup>1</sup> pTCDC Plan, Section 24.1, Rural Area Background

- 12 The particular part of the decision appealed is the decision to retain all underground mining as a non-complying activity in the ONFL Overlay.
- 13 This classification is found at Section 32.3, Rule 7 as contained in Appendix 2 of the Section 42A Report / Section 32AA Further Evaluation Report.
- 14 WGCL notes that Appendix 2 as described above appears to be included in the Hearings Panel decision, but Appendix 2 differs from the pTCDC Plan – Decisions Version found on the Respondent's website<sup>2</sup>. The Decisions Version Rule 9 states that underground mining (without surface expression) is discretionary and Rule 10 states that underground mining (with surface expression) is non-complying in the ONFL Overlay.
- 15 WGCL's appeal on this point is predicated on the understanding that the pTCDC Plan – Decisions Version referred to above does not reflect the decision of the Hearings Panel on the correct status of underground mining in the ONFL Overlay.

#### **Reasons for Appeal**

- 16 The ONFL Overlay includes areas with significant mineral development potential.
- 17 Issue 9.2(1) is clear that the resource management issues in the ONFL Overlay that the pTCDC Plan seeks to address relate to land uses which affect the land surface.
- 18 Underground mining without surface expression does not affect the surface of land.
- 19 WGCL submitted that within the ONFL Overlay underground mining without surface expression should be classified as a discretionary activity rather than a non-complying activity.
- 20 No explicit reference to WGCL's submission on this point is made in either Recommended Decision Report 6 or the associated Section 42A Report / Section 32AA Further Evaluation Report.
- 21 On an effects basis there is no justification for underground mining without surface expression to have non-complying status in the ONFL

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<sup>2</sup> <http://docs.tcdc.govt.nz/store/default/4248012.pdf>

Overlay when the activity does not affect the values which underpin the ONFL Overlay.

- 22 Non-complying status for this activity:
- (a) Is not the most appropriate way to achieve the objectives of the Mining Activities and ONFL Overlay sections of the pTCDC Plan;
  - (b) Is not supported by the objectives and policies of the Mining Activities and ONFL Overlay sections of the pTCDC Plan;
  - (c) Is misdirected in that it renders "inappropriate" an activity which has no adverse effects on the values for which the ONFL Overlay exists;
  - (d) Does not reflect an effects-based approach to activity classification; and
  - (e) Does not promote sustainable management.

#### **Relief Sought**

- 23 The relief sought is:
- (a) To classify underground mining without surface expression as a discretionary activity in the ONFL Overlay, or such other relief as the Court thinks fit; and
  - (b) Costs.

#### **VARIATION 1, SECTION 32A – NATURAL CHARACTER OF THE COASTAL ENVIRONMENT OVERLAY**

- 24 WGCL appeals part of the decision recorded in Recommended Decisions Report 31, paragraph 6.1(f). This decision is to "*Make any consequential changes necessary to give effect to this decision*". At paragraph 4.58(e) of Recommended Decisions Report 31 the Hearings Panel makes the following rule change:

*"Rule 9 shall be deleted. Underground mining (without surface expression) shall be listed in Rule 10 as a prohibited activity."*

- 25 Paragraph 6.1(d) of Recommended Decisions Report 31 records that section 32A is to be amended as shown in Attachment 3 of the Report.

Attachment 3 shows Rule 9 deleted and adds to Rule 10 "*Underground mining (with surface expression)*".

### **Reasons for Appeal**

- 26 There is an inconsistency between the text of the decision and the amendments to the rules shown in Attachment 3 of Recommended Decisions Report 31.
- 27 WGCL seeks clarification of an apparent error in the text of the decision. It is assumed that Attachment 3 is correct and that the intention is that Underground mining (with surface expression) is to be a prohibited activity but that Underground mining (without surface expression) is intended to retain the underlying activity status in the relevant zone in accordance with Rule 1 (i.e. discretionary activity status in Rural and Conservation Zones).

### **Relief Sought**

- 28 Clarification of the meaning and intent of paragraphs 4.58(e), 6.1(d) and 6.1(f) of Recommended Decisions Report 31, and confirmation that Appendix 3 is correct.

### **SECTION 37, RULE 2 – MINING ACTIVITIES**

### **SECTION 32, RULE 2A – LANDSCAPE OVERLAY**

### **SECTION 29, RULES 1 AND 2 – BIODIVERSITY**

- 29 WGCL appeals decision 6.1(b) in Recommended Decision Report 11 as it relates to Rule 2 Exploration.
- 30 The particular part of the decision appealed is the deletion of notified Rule 2(b).

### **Reasons for Appeal**

- 31 Exploration in the Industrial Area, the Rural Area and the Conservation Area is a permitted activity<sup>3</sup> provided it complies with requirements in relation to rehabilitation planning<sup>4</sup> and blasting<sup>5</sup>.

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<sup>3</sup> pTCD Plan, Section 37, Rule 2

<sup>4</sup> *ibid*, Rule 2.1(b)

<sup>5</sup> *ibid*, Rule 2.1(c)

- 32 Exploration in other zones is a discretionary activity<sup>6</sup>.
- 33 In order to allow exploration to occur, limited vegetation clearance is often a requirement so that drill rigs and associated support materials can be safely established and operated. Particularly in the Conservation Area, and to a lesser extent the Rural Area, indigenous vegetation is common.
- 34 The notified version of Rule 2 stipulated that up to 50m<sup>2</sup> of indigenous vegetation could be cleared in the Industrial, Rural and Conservation Areas as part of permitted exploration activities.
- 35 In its submissions and in evidence WGCL noted that 50m<sup>2</sup> indigenous vegetation clearance would be inadequate to allow exploration drilling and associated activities to proceed and that 150m<sup>2</sup> would be required.
- 36 WGCL proposed amendments to Rule 2 to allow up to 150m<sup>2</sup> of indigenous vegetation clearance associated with exploration drilling and associated activities as a permitted activity provided the vegetation was independently assessed to not be significant, or was approved by the Department of Conservation.
- 37 WGCL's submission was rejected and the 50m<sup>2</sup> clearance allowance in Rule 2 as notified is now deleted.
- 38 Section 32 – Outstanding Landscape Rules is also relevant. Clearing up to 50m<sup>2</sup> of indigenous vegetation in Outstanding Landscape Overlay areas is a permitted activity.<sup>7</sup>
- 39 However Section 29.3, Rules 1 and 2 – Biodiversity undermine both the permitted activity rules in Section 37, Rule 2 and Section 32, Rule 2A.1 by effectively requiring a resource consent for *any* indigenous vegetation clearance in connection with exploration as a restricted discretionary activity throughout the District<sup>8</sup>.
- 40 The requirement to obtain a resource consent for any indigenous vegetation clearance as part of exploration drilling and associated activities:

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<sup>6</sup> pTDCD Plan, Rule 2.4

<sup>7</sup> *ibid*, Section 32, Rule 2A.1

<sup>8</sup> *ibid*, Section 29.3, Rule 1.2 and Rule 2.2

- (a) Is not the most appropriate way to achieve Objective 1 of Section 14, Mining Activities;
- (b) Is not supported by the policies in the Mining Activities section of the pTCDC Plan;
- (c) Is inefficient and ineffective in the sense that requiring a resource consent for all indigenous vegetation clearance in association with exploration renders permitted activity status for exploration meaningless wherever indigenous vegetation is present;
- (d) Is not necessary or appropriate to achieve Objective 1 of Section 6, Biodiversity;
- (e) Does not reflect an effects-based approach when other non-exploration activities involving similar indigenous vegetation clearance are permitted by Section 29.3, Rules 1 and 2;
- (f) Is not necessary in order to protect areas of significant indigenous vegetation in the District; and
- (g) Does not promote sustainable management.

### **Relief Sought**

41 The relief sought is:

- (a) To allow up to 150m<sup>2</sup> of indigenous vegetation clearance as part of exploration as a permitted activity to allow for drilling and associated activities provided the vegetation is independently verified to be not significant, or the clearance is approved by the Department of Conservation;
- (b) Consequential amendments to the Outstanding Landscape Overlay and Biodiversity sections of the pTCDC Plan;
- (c) Such other relief as the Court thinks appropriate; and
- (d) Costs.

### **SECTION 37 – MINING ACTIVITIES (RULES)**

42 WGCL appeals part of the decision recorded in Recommended Decision Report 11 at paragraph 6.1 (page 7) to adopt the Reporting Officer's discussion and recommendations as contained in the Section 42A

Report / Section 32AA Further Evaluation Reports (subject to amendments not relevant to this appeal).

- 43 The particular part of the decision appealed is the decision to classify "*mineral processing*" and "*waste rock / tailings storage*" in the Rural Zone as non-complying activities.
- 44 This classification is found at Section 37.4, Rule 3.1, Table 1.

### **Reasons for Appeal**

- 45 The Coromandel Peninsula is one of the most mineral-rich areas of New Zealand<sup>9</sup>.
- 46 A significant portion of the District (57% of total land area) comprises the Rural Area consisting of the Rural Zone and Rural Lifestyle Zone<sup>10</sup>.
- 47 The Rural Zone is a place where most of the District's primary production and rural industry is located and it is important to strengthen the District's economy by providing for an ongoing range of land use activities in the Rural Area<sup>11</sup>.
- 48 The Rural Zone is predominantly a working environment and effects such as noise, odour, contaminants and traffic from primary production activities are to be expected<sup>12</sup>, with an emphasis on reduction and management of those effects to ensure they stay within acceptable levels.
- 49 Within the Rural Zone the pTCDC Plan makes extensive use of discretionary activity status for activities associated with primary production and rural industry. The following activities (amongst others) have discretionary activity status in the Rural Zone:
- (a) Mining (both surface and underground)<sup>13</sup>;
  - (b) Refuse transfer station, recycling operation<sup>14</sup>; and
  - (c) Sanitary landfill<sup>15</sup>.

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<sup>9</sup> pTCDC Plan, Section 14.1

<sup>10</sup> *ibid*, Section 24.1

<sup>11</sup> *idem*

<sup>12</sup> *ibid*, Section 56.2

<sup>13</sup> *ibid*, Section 37.4, Rule 3.1, Table 1

<sup>14</sup> *ibid*, Section 56.6, Rule 26

<sup>15</sup> *idem*

- 50 Quarrying in the Rural Zone is a restricted discretionary activity (subject to performance standards)<sup>16</sup> or otherwise a discretionary activity<sup>17</sup>. "Quarrying" includes "... removing and deposition of overburden, soil, spoil or other materials..."<sup>18</sup>. Deposition of overburden, soil, spoil or other materials as part of quarrying is the same or very similar in its effects to the storage of waste rock as part of a mining activity. Industrial activity in the Rural Zone that services farming, forestry or marine activities is a restricted discretionary activity (subject to compliance with bulk and location requirements)<sup>19</sup>.
- 51 The Hearings Panel has stated that "*The evidence shows that while mining can generate significant and permanent adverse effects, these are not unmanageable or inappropriate if managed responsibly.*"<sup>20</sup>
- 52 Mineral processing and waste rock / tailings storage are necessary activities in conjunction with surface and underground mining – activities that are discretionary in the Rural Zone.
- 53 It is inefficient and not supported by the findings on the evidence as to effects for the pTCDC Plan to be structured in a way that provides for mining in the Rural Zone (by way of discretionary activity) but does not provide for associated processing and storage of waste rock and tailings (by way of non-complying activity which "*has been used to show where activities are considered inappropriate in a particular zone or receiving environment*"<sup>21</sup>).
- 54 Further, in the case of waste rock / tailings storage the activity is not provided for *anywhere* in the District, with the activity status in all zones being either non-complying or prohibited.
- 55 On an effects basis there is no sound justification for mineral processing and waste rock / tailings storage activities to have non-complying status in the Rural Zones when activities such as industry and quarrying have restricted discretionary status and sanitary landfills have discretionary status.

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<sup>16</sup> pTCDC Plan, Section 37.4, Rule 3.1, Table 1 and Rule 3.2, Table 2

<sup>17</sup> *ibid*, Section 37.4, Rule 3.4

<sup>18</sup> *ibid*, Section 3 Definitions – Mining Terms

<sup>19</sup> *ibid*, Section 56.5, Rule 22

<sup>20</sup> Recommended Decision Report 11, paragraph 5.12

<sup>21</sup> Section 42A Hearing Report and Section 32AA Further Evaluations, Section 56 – Rural Zone, 22-23 October 2014, paragraph 17, adopted by the Hearings Panel in Recommended Decision Report 20, paragraph 6.1

56 Non-complying status for these activities:

- (a) Is not the most appropriate way to achieve the objectives of the Mining Activities and Rural Area sections of the pTCDC Plan;
- (b) Is not supported by the policies in the Mining Activities and Rural Area sections of the pTCDC Plan;
- (c) Is inefficient in the sense that it seeks to physically separate mining from mineral processing and storage of waste rock / tailings;
- (d) Is inefficient and ineffective in the sense that while provision is made for mining in the Rural Zone, no provision is made anywhere in the District for activities that are inevitably associated with mining;
- (e) Does not recognise the implications for economic growth and employment if mining is unable to proceed because no provision is made for processing and storage of waste rock / tailings;
- (f) Does not reflect an effects-based approach to activity classification and thereby leads to activities with similar types of effects being treated differently; and
- (g) Does not promote sustainable management.

### **Relief Sought**

57 The relief sought is:

- (a) To classify mineral processing and waste rock / tailings storage in the Rural Zone as discretionary activities, or such other relief as the Court thinks fit; and
- (b) Costs.

### **ATTACHMENTS**

58 The following documents are **attached** to this notice:

- (a) A copy of WGCL's submission and further submissions on both the pTCDC Plan and Variation 1.
- (b) A copy of the relevant parts of the decision.

- (c) A list of names and addresses of persons to be served with a copy of this notice.

**DATED** this 10th day of June 2016



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S W Christensen  
Counsel for WGCL

**Address for service of Appellant**

Anderson Lloyd Lawyers  
Private Bag 1959  
Dunedin 9054

Phone: 03 477 3973

Contact person: Stephen Christensen

Email: [stephen.christensen@andersonlloyd.co.nz](mailto:stephen.christensen@andersonlloyd.co.nz)

## **Advice to recipients of copy of notice of appeal**

### *How to become party to proceedings*

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

### *How to obtain copies of documents relating to appeal*

The copy of this notice served on you does not attach a copy of the Appellant's submission, further submission and the parts of the decision appealed. These documents may be obtained, on request, from the Appellant.

### *Advice*

If you have any questions about this notice, contact the Environment Court in Auckland.