

**ENVIRONMENTAL PROTECTION AUTHORITY
BEFORE AN EXPERT CONSENTING PANEL
IN THE MATTER OF THE FAST-TRACK APPROVALS ACT 2024
AND IN THE MATTER OF AN APPLICATION BY MATAKUNUI GOLD
LIMITED UNDER SECTION 42 OF THE FTAA
FOR THE BENDIGO-OPHIR GOLD PROJECT
APPLICATION NO: FTAA-2507-1089**

Hearing: Held in Monarch Room, Willeston Conference Centre,
11-15 Willeston Street, Wellington Central

Date: 18 June 2026

Panel: Hon Matthew Muir KC (Chair)
Gina Sweetman
Peter Kensington
Roger MacGibbon

Counsel: Joshua Leckie and Mia Turner, Lane Neave, for the Applicant
David Randal for Central Otago Regional Council
Pene Williams for Department of Conservation
Sally Gepp for Sustainable Tarras
Rob Enright and Jen Vella for Environmental Defence Society
Mike Holm and Nicole Buxeda (via AVL) for Kā Rūnaka

Experts: Mark Chrisp and Nicolai Berry for Applicant
Shay McDonald for Central Otago Regional Council
Ann Rodgers for Central Otago District Council
Liz Williams for Department of Conservation
Sylvia Allen for Sustainable Tarras

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1 **Mr Muir:** Well good morning and welcome to, I think, this the eighth day of
2 concurrent hearings. Some new faces today, as we get close to the end and
3 inevitably, therefore, we hear from the planners. A quick introduction to those
4 panel members who are present today. We are a panel of seven, as all of the
5 experts appreciate. We may sit in combinations of in-person and remotely, and
6 some of our panel members are observing simultaneously from other locations,
7 and others, on account of time zone changes, will be observing the proceedings
8 later. Those Commissioners today, myself, Mathew Muir. I am the Chair of the
9 BOGP Fast-track Panel. To my left is Peter Kensington, planner, landscape
10 architect

11 **Ms Sweetman:** And planner.

12 **Mr Muir:** And planner, and Commissioner. To his left, Roger MacGibbon, whose
13 speciality is ecology. I'm sure no introductions are necessary for the
14 Commissioner to my right, Gina Sweetman, a very well-known and experienced
15 planner and Commissioner. Could I have some introductions. Mr Chrisp.

16 **Mr Chrisp:** Yes Sir, Mr Chrisp.

17 **Mr Muir:** Good morning. And with you is Nicolai, Nicolai Berry. Thank you,
18 good morning.

19 **Ms McDonald:** Hello. Ms McDonald, Shay McDonald, from Otago Regional Council.

20 **Mr Muir:** Right, thank you very much, Ms McDonald. Ms Allen.

21 **Ms Allen:** Yes.

22 **Mr Muir:** Yes, good morning.

23 **Ms L Williams:** Kia ora, I'm Liz Williams from the Department of Conservation.

24 **Mr Muir:** Thank you, Ms Williams. That means you must be Ms Rodgers.

25 **Ms Rodgers:** Correct. Thank you.

26 **Mr Muir:** Yes, good morning, Ms Rodgers.

27 **Mr Muir:** As you've probably been advised – good morning - - -

28 **Ms Gepp:** Good morning, Sir.

29 **Mr Muir:** - - - Ms Gepp. I hope that was a successful conference. Ms Gepp, for
30 those who you don't know, is counsel for Sustainable Tarras. We have also as
31 counsel here today Mr Enright and Ms Vella, who are here for the Environmental
32 Defence Society. Behind them is Mr Randal, who appears for ORC, and Mr
33 Leckie and Ms Turner appear for the applicant. Oh and today, we have Ms
34 Williams, thank you, Ms Williams, for popping your hand up. You're here today
35 for DOC. Thank you, Ms Williams.

1 **Ms Buxeda:** Mōrena, Mr Chair, myself and Mr Holm online for Kā Rūnaka.

2 **Mr Muir:** Yes, good morning, Ms Buxeda; and good morning, Mr Holm. We
3 always welcome your attendance. So you have probably – the experts have
4 probably heard in advance that the process that we adopt in relation to these
5 concurrent hearings now are well established, after eight days, is to identify on a
6 whiteboard what we regard as the critical big picture issues that we have got to
7 address during the course of the day. It's not meant to be an exclusive set of all
8 of the sub-issues that might fall out of those. We aim for a relatively high level of
9 extraction in what we put on the board. And the process by which we will then
10 work is, having established what those topics are, and you may have had an
11 opportunity to discuss those between yourselves in advance of the hearing this
12 morning. But to the extent that you haven't, we will settle those relatively quickly,
13 usually within about 15 minutes or so, and then the process that we will adopt is
14 we will move through each of those topics. Typically, I will ask the applicant's
15 experts to lead off. The presentations are usually in the order of two to three
16 minutes at the outset, and then I will move around all of the experts to see whether
17 they wish to make a contribution to that particular topic or sub-topic as they
18 develop during the course of the day. There's no obligation to do so. We have
19 experts, consider they have a significant contribution to make.

20 We do entertain, call it interruptions, albeit that they are to be handled with utmost
21 professionalism, but sometimes that can be the most dynamic way in which to
22 explore an issue. So we needn't regard ourselves as having to rigidly adhere to
23 the system that I have indicated. And we have had some very dynamic discussions
24 over the course of the last eight days as various experts seek to involve themselves.
25 Usually, the appropriate approach is for you to indicate to me that you would like
26 to make a comment about it, so I can basically have some control over the process
27 and it doesn't degrade, not that we have had any of that in the last two weeks. We
28 have been greatly impressed by the professionalism of all experts that have
29 appeared before us, their civility and competence. So we will go, moving
30 sequentially through the issues that on the board.

31 On that process, we'll start with the applicant, we'll move around the table, and
32 we'll then come to the panel for any questions that the panel has on that specific
33 issue. I will then invite counsel to advise whether they wish to explore any topics
34 in cross-examination. We have asked for indications in advance from counsel on
35 topics that they wish to explore, and my approach has been generally liberal in
36 allowing for cross-examination, but that is because of the competence of counsel
37 that I have who have, without exception, confined themselves tightly to what
38 really matters from their perspective. And then we will close out on that particular
39 topic by ensuring that there are no other questions that the panel wishes to explore
40 and then move sequentially through our list.

1 At the end of the day, I will invite the experts to identify anything that they think
2 we haven't traversed that we need necessarily do before we close out of the
3 session. We've indicated broadly our hearing times, but we don't apply these
4 rigidly. We tend to try and close out topics before we take breaks; and our first
5 session is likely to be around an hour and three quarters, but sometimes up to a
6 couple of hours or thereabouts. And we're flexible about when we take lunch and,
7 indeed, the duration of lunch. We will conclude no later than 6.00 pm today. So
8 we must be mindful of the fact that that is our allocated time for the hearing. And
9 if the times – I hope I don't indicate impatience, but if you read the tea leaves and
10 suggest that I'm trying to move things on, it's because I have a concern about our
11 ability to do so. And we encourage a crisp, crisp relevant and focused
12 observations from all of the experts. So, with having consumed five minutes of
13 the day, that's quite enough from me. Let's get to try and identify the topics that
14 we need to discuss today. Mr Chrisp, have you had an opportunity to discuss with
15 the other experts what these might be?

16 **Mr Chrisp:** Yes Sir. We extended our caucusing on Monday - - -

17 **Mr Muir:** Yes.

18 **Mr Chrisp:** And came up with an agreed list of topics, and we nominated
19 Ms McDonald as our spokesperson.

20 **Mr Muir:** That's excellent.

21 **Ms McDonald:** Thank you. Topic number one. Topic one, adequacy of information,
22 including social impacts and consideration of alternatives.

23 **Mr Muir:** Ah, we've done the social impact report. There it is again.

24 **Ms McDonald:** Get it out of the way early. Topic two is duration of consents. Three,
25 management plans, in particular, their certification. Four, consistency with policy
26 direction for local, regional, national and RMA. Topic five is long-term
27 management of effects.

28 **Mr Muir:** Bonding trusts, those sorts of issues?

29 **Ms McDonald:** Correct, Sir. And the last topic is miscellaneous essentially. We've got
30 roading, transportation, and the extent of exploration activities currently under
31 that heading, but also anything else the panel wishes to ask us.

32 **Mr Muir:** Right. Well, I'm going to go to Commissioner Sweetman at this point
33 and identify with her anything else that she thinks that we should be discussing.

34 **Ms Sweetman:** So under management plans, also we'd like to talk about, well adequacy
35 of them and linkage with conditions.

36 **Mr Muir:** Where do we address cultural effects?

1 **Ms Sweetman:** So that was the next one. So adequacy of dealing with cultural effects,
2 and there's a whole realm that I'll discuss with you when we get to that point.

3 **Mr Kensington:** I think that captures the key ones.

4 **Ms Sweetman:** Oh, the other one was engagement with the community, well, sort of
5 community liaison or engagement should a consent be granted.

6 **Mr Kensington:** Yeah. I don't know where we'd put that, whether we'd put it at the
7 start in the list, number one, or in the conditions.

8 **Ms Sweetman:** It's part of the conditions.

9 **Mr Kensington:** Yeah.

10 **Ms Sweetman:** So I'll just put it as a – shall we throw an overall recommendation?

11 **Mr Kensington:** As well, yeah.

12 **Ms Sweetman:** Yeah. So we're on the clock.

13 **Mr Muir:** Right. I'm going to actually – looking at topic one, I infer from that of
14 course, supported by the RWSs, that there is concern in some quarters about the
15 adequacy of information. So I'm going to reverse the order around and get the
16 concerns on the table first before I come back to the applicant, Mr Chrisp.

17 **Mr Chrisp:** Thank you, Sir, I was actually going to suggest that, so we're not boxing
18 at shadows here.

19 **Mr Muir:** Yes, exactly, exactly. So where do I start? Perhaps with you, Ms Allen.

20 **TOPIC 1: ADEQUACY OF INFORMATION**

21 **Ms Allen:** Certainly, Sir. So you will have seen from my statement, initial
22 statement, that I had a number of concerns in terms of adequacy, and I have been
23 trying to keep up with the reading and watching some of the hearings. So those
24 concerns just increased, if anything. So, first and foremost, I was really surprised
25 not to see a social impact assessment. This is a major project. It's in an unusual
26 setting in the Clutha Basin, which is not a typical part of New Zealand in terms of
27 its social, cultural and population distribution. All the aspects of life down there
28 are a little bit different from what you get in the city. And so I thought that sort of
29 information should have been presented at an early stage; and in fact the fast-
30 track, is it appendix 5 or whatever, schedule 5, it's actually the first thing in clause
31 7 that you're required to – the applicant is required to provide: social and
32 community impact, including who's affected locally and effects on the wider
33 communities. Some of the information can be reduced to economic dollar values
34 but there's an awful lot of information that can't. There are known ways of
35 undertaking social impact assessments and, you know, including getting a good
36 baseline understanding and, you know, I noticed the economist said that you
37 should monetise non-market impacts as far as possible but otherwise form a

1 judgment on that. And the lack of a social impact assessment means that you're
2 also lacking advice from someone who has actually done that work, an expert,
3 who's formed their own judgments on that and can advise you.

4 There is obviously local stressors already in terms of worker availability for a
5 number of jobs, housing. And we heard yesterday, I think, that shortage of
6 educational facilities in some areas, health services, transport requirements. And
7 you'd be looking at the existing population as well as the needs of the incoming
8 population that – there is a local community plan in the Tarras area, as well as the
9 other statutory required plans that give you an idea of what the community thinks
10 in terms of its values.

11 And timing is also key in social impact. How do things change over time, as well
12 as where are the stress points. Doing the social impact can also inform the
13 economic assessments and also many of the environmental impacts can also – and
14 also can contribute to identifying suitable mitigation and there is really nothing
15 for the community in the conditions in this project. Other information gaps. Oh,
16 I should perhaps comment that there has been consultation, and you've been
17 provided with a brief record of that, but it hasn't been coalesced so you're left
18 with the information that you've been able to glean from a pretty wide request for,
19 or opportunity for people to comment in the hearings that you've had, but it's not
20 consolidated; it's not analysed, it's up to you to interpret. So that's - - -

21 **Mr Muir:** We did look specifically on account of that omission. It was one of the
22 factors we took into account in assessing whether, although not required to do so,
23 we would conduct hearings, local hearings, which we did.

24 **Ms Allen:** Yes. And I think that was very much appreciated.

25 **Mr Muir:** And there certainly was quite a lot of local feedback, some expressed
26 in quite concerning terms about impacts, particularly among those who live in the
27 environs of the proposed development.

28 **Ms Allen:** Mm, mm. So the flipside of that is that you will have had nothing from
29 the potential incoming population.

30 **Mr Muir:** Yes.

31 **Ms Allen:** You really know nothing about their make-up.

32 **Mr Muir:** Well, we do know something about their proposed response. For
33 example, you just mentioned transport a moment ago, and there has been some
34 work done on what percentage of the incoming workforce would, for example,
35 use company provided transport from various locae [check 01:11:34] within the
36 district. So there are, and I don't mean in any pejorative way, but there are
37 fragments that can be put together - - -

38 **Ms Allen:** Yes, yes.

1 **Mr Muir:** - - - which are relevant to this issue. But you said there's no cohesive
2 overall analysis of this, which we really out to have?

3 **Ms Allen:** Mm, yes, that's my opinion.

4 **Mr Muir:** Yes.

5 **Ms Allen:** Absolutely. And it's my experience as well. I mean, I have in the past
6 done social impact assessments of the Kupe Field for instance. But as you move
7 through your profession, you stop being so specialised.

8 **Mr Muir:** Yes, yes, right.

9 **Ms Allen:** So that was social impact. The other big area of inadequacy, and I think
10 this has come out in your previous hearings as well, is the alternatives assessment.
11 So if this was infrastructure and heading for a designation, you'd have to have
12 well documented consideration of alternatives, and that's methods as well as sites.
13 Here it's required for contaminant discharges and, you know, it did appear from
14 listening to the engineers is that there have been some background consideration
15 of alternatives, but again, of parts of the project, not of the project as a whole. So
16 – but it hasn't been documented, so it hasn't been available for you to take into
17 account in your final decision. So – and some of those alternatives, as you already
18 know, would reduce the landscape modification and the ecological impacts as
19 well, potentially reduce some of the water management effects, the surface water
20 management effects.

21 So yeah, and my expectation would have been that you would have those
22 documented alternatives laid out for you. The other thing that I picked up was
23 that this is a hazardous site, not just the extraction but also the processing and,
24 again in schedule 5, a risk assessment should have been done of the installations.
25 And we've really got very little description of the actual processes that are
26 involved. So I think you've done an RFI for that and the information hasn't come
27 back yet. So that's me coming from a planner, general planner's point of view,
28 but I have picked up from listening to some of the hearings and in talking to some
29 people that what else is missing. There's not a good ecological, aquatic ecological
30 baseline, or an AEE. There's some areas of heritage disturbance that haven't been
31 covered.

32 **Mr Muir:** Are you referring there to the potential effects of blasting, or - - -

33 **Ms Allen:** Well, that's one aspect.

34 **Mr Muir:** Yes.

35 **Ms Allen:** But also the area that's proposed for willow management further off,
36 you know, downstream, that hasn't been – I understand that hasn't been
37 investigated. And I also understand that the groundwater conditions at the
38 monitoring point are not particularly well understood and it would have been
39 useful to start monitoring five or six years ago, eight years ago, when this project

1 was obviously starting to be thought about, but that hasn't been done. So you're
2 left with very short-term knowledge about potential impacts. Sir, that might be
3 enough at the moment.

4 **Mr Muir:** Yes. Yes, thank you. Ms Williams?

5 **Ms L Williams:** Yes, thank you. So the Department of Conservation's concerns
6 relating to the adequacy of information were set out in the section 51 and 53
7 comments, primarily relating to conservation and heritage assessments. In terms
8 of the consideration of alternatives, I agree that there should be well documented
9 assessment of the methods, particularly in relation to the open pit versus the
10 underground mining. That's particularly relevant because of the high ecological
11 values specifically in the Come in Time pit area, and the significant adverse effects
12 of the open cast mining proposal. And then I agree also with Ms Allen that over
13 the course of the hearings and the joint witness statements that there are some
14 issues that are still being raised in terms of the assessment of effects related to
15 blasting and dust effects for heritage, the heritage sites in the area. The sort of no
16 assessment of the exploratory works outside of the direct development footprint
17 and what the effects will be and any sort of mitigational conditions to limit what
18 those ancillary activities will be. The spring annual report hasn't been provided
19 as yet, and - - -

20 **Mr Muir:** This is the work last week, last year?

21 **Ms L Williams:** Correct, yeah, 2025.

22 **Mr Muir:** It's, I'm sure, among the correspondence that I haven't yet got to that
23 will be – there's going to be a request that that be released, and I indicate that the
24 likelihood is that that will be a direction of the panel, yes.

25 **Ms L Williams:** And then some indirect effects such as blasting and lighting in terms
26 of the invertebrates and effects on those type of values. Yeah.

27 **Mr Muir:** Thank you. Very good. Ms Rodgers?

28 **Ms Rodgers:** I don't have an awful lot more to add.

29 **Mr Muir:** Yes.

30 **Ms Rodgers:** I think it's been quite well traversed by Ms Allen and Ms Williams. I
31 guess the – in relation to ecology, I mean, I do, I agree in terms of Ms Allen's
32 comments about the social impact assessment. There are some aspects that you
33 would normally – considerations that you might normally find in a social impact
34 assessment scattered through various reports, but that cohesive consideration
35 would have been appropriate in my view. In terms of ecology, there is still the –
36 there's the spring annual report but also our ecologist has indicated to us that
37 there's still large amounts of habitat, spring annual habitat that remains
38 unsurveyed.

1 **Mr Muir:** Of what, sorry?

2 **Ms Rodgers:** Spring annual habitat that remains unsurveyed.

3 **Mr Muir:** Yes.

4 **Ms Rodgers:** And all experts - - -

5 **Mr Muir:** The very ephemeral spring annuals, very difficult to survey.

6 **Ms Rodgers:** And that's the feedback from our experts, yeah. In terms of
7 transportation, the response to the RFI, our transport expert did have the
8 opportunity to have a quick look at it for us, and there are still some outstanding
9 issues for them, and I'm not quite sure what the panel's intention is in terms of
10 what kind of feedback or for an invitation perhaps for further comment. There's
11 some clarity that he's [check 01:19:38 (recording shaky)] in the information
12 provided.

13 **Mr Muir:** Well, that typically, typically would come to some form of
14 memorandum to the panel, which has occurred previously requesting us to issue
15 some RFI or some other type of response.

16 **Ms Rodgers:** Yeah, we weren't sure because I think it was foreshadowed that might
17 be, for want of a better term, a rats and mice hearing that might pick up transport
18 and some of the other things. But we're not sure what the intention was, but yes,
19 it's noted.

20 **Mr Muir:** Right, thank you. Could I – just for when, as our conversation develops,
21 could we just get the mic – we've got a bit of competition next door, which is
22 distracting, and just keep the microphones as close as possible. Ms McDonald,
23 did you wish to add to this?

24 **Ms McDonald:** Well, yes Sir, thank you. In terms of adequacy of information, my
25 position is largely informed by the findings of the various technical experts, and
26 it seems fairly evident that there is information gaps of varying significance across
27 all areas.

28 **Mr Muir:** From your perspective, give me the list.

29 **Ms McDonald:** I'm about to do so. In my view, after reading the JWSs and listening to
30 the hearings, for surface water quality, aquatic ecology - - -

31 **Mr Muir:** Sorry, I've just got to get these down, okay.

32 **Ms McDonald:** Yeah.

33 **Mr Muir:** So start again.

34 **Ms McDonald:** Surface water quality.

35 **Mr Muir:** Yes.

36 **Ms McDonald:** Aquatic ecology, geotechnical stability.

1 **Mr Muir:** What about geotechnical stability?

2 **Ms McDonald:** The stableness.

3 **Mr Muir:** I mean, we gave this fairly good – fairly comprehensive discussions
4 occurred around two days or so ago. To state the obvious, you could always do
5 more.

6 **Ms McDonald:** Sorry, Sir, this – if I could just finish my sentence, this was my list of
7 things that I think are - - -

8 **Mr Muir:** Yes.

9 **Ms McDonald:** - - - generally - - -

10 **Mr Muir:** Right, okay. Well, I'll - - -

11 **Ms McDonald:** - - - reasonably well understood.

12 **Mr Muir:** Pop down geotechnology.

13 **Ms McDonald:** Yes, and air quality. So in those areas, my view is that the potential
14 effects seem to be relatively well understood and could likely be managed to an
15 acceptable level by those - - -

16 **Mr Muir:** So those four?

17 **Ms McDonald:** - - - by robust conditions.

18 **Mr Muir:** And those four, right.

19 **Ms McDonald:** Yes Sir.

20 **Mr Muir:** Yes, thank you.

21 **Ms McDonald:** In other areas, I think the situation is less certain. The primary issues,
22 as I understand them, in the hydrogeology and groundwater space seem to be
23 missing baseline information in respect of downgradient aquifers and the degree
24 to which the underlying hydrology is understood, hydrogeology, sorry, is
25 understood, and the primary risk there of incorrect assumptions and
26 understandings, as I understand it, is the potential for uncapturable seepage
27 migrating offsite.

28 **Mr Muir:** Yes.

29 **Ms McDonald:** So I don't really doubt that this information could be obtained
30 post-consenting, if consents were to be granted, but the risk is obviously if the
31 assumptions made and conceptual models available to date are wildly inaccurate,
32 and I won't speculate as to whether they are, that's for the experts.

33 **Mr Muir:** Yes.

1 **Ms McDonald:** But if it eventuates that it's not possible to capture seepage, then we're
2 in the difficult position that what do we do about that if we've already granted
3 consents. So that's, to some extent, I think, your decision about the risk there.

4 **Mr Muir:** You mean, if it can, to an extent, it can be conditioned?

5 **Ms McDonald:** I think the information gathering can absolutely be conditioned.

6 **Mr Muir:** Yes.

7 **Ms McDonald:** Yes.

8 **Mr Muir:** And the consequences of non-compliance with trigger limits
9 established in the conditions and then fed through into the management plans
10 could be extremely adverse to the applicant?

11 **Ms McDonald:** Correct, yes. And then terrestrial ecology has already been raised by
12 my colleagues, but I do think the nature of the potential effects is relatively in
13 agreement by the experts and it's simply the magnitude that remains in question.
14 I think it's just important to remember that all of those effects will be realised
15 before we can understand if the remediation will be successful- and remediation,
16 I mean the onsite rehabilitation and the offsetting and compensatory actions that
17 have been proposed. And I think there is also agreement at this point in time that
18 the conditions and management plans don't adequately address those issues.

19 The landscape effects. My understanding following the hearing is that there are
20 probably three outstanding matters of significance. The first being the cultural
21 impacts, specifically those that cannot be mitigated, being the effects on wāhi
22 tūpuna and ara tawhito. Secondly, dark sky effects and night-time glow; and
23 thirdly, the extent to which the outcomes of [inaudible 01:26:03] can be delivered
24 within the 35-year timeframe.

25 So yeah, I guess in summary, there's some areas where we're on slightly more
26 solid footing and others where there's a lot of uncertainty remaining. Without
27 banging on for too long, I don't have too much to add on social impacts other than
28 my comments in the JWS, and I do agree that that is a gap in the assessment. I'm
29 not necessarily sure of the value of commissioning an assessment at this late stage
30 when there's possibly limited ability for fundamental alterations to the proposal,
31 but I do acknowledge that that is a gap in the assessment.

32 And finally, alternatives. Firstly, I agree there is no written assessment of
33 underground versus open pit mining. I would note that an assessment of
34 alternative locations is not particularly relevant. The mine has to be where the
35 gold is, and then alternative methods is just to understand the balance between the
36 underground and open pit methodologies. I agree that would assist in
37 understanding the extent to which particularly terrestrial ecology effects could
38 have been avoided if an underground methodology was feasible. But again, I
39 think the applicant has put forth the proposal that they're willing to progress and

1 understanding the extent to which they considered or didn't consider underground
2 mining and then, nonetheless, disregarded the option, I'm not entirely sure how
3 much assistance that would be at this stage. In relation to the importation of
4 essentially the section 105 wording and discharge permits, I personally am of the
5 view that the information set out in the application report, A15, adequately
6 addresses those matters. Thank you, that's all from me.

7 **Mr Muir:** Thank you. Mr Chrisp?

8 **Mr Chrisp:** Thank you, Sir. There's a lot there to respond to.

9 **Mr Muir:** There is.

10 **Mr Chrisp:** I'll just work through it, probably roughly in the order in which it was
11 presented. So firstly, talking about social impact assessment. It's correct to say
12 that that could have been one. There was an attempt by the applicant to prepare
13 one. I think you've already heard at the previous hearing in Cromwell that there
14 were issues with the methodology, and that became blatantly apparent when locals
15 came along to the hearing in Cromwell and had no knowledge of it, people who
16 lived in the immediate, immediate area. So that sort of illustrated – I haven't seen
17 it. I don't know what it says, but that to me sort of illustrated the point quite well
18 that if the immediate locals weren't even aware of it, then there must – it can't
19 have been done, done very well. Just on another sort of angle on this, I mentioned
20 in the joint witness statement about, as an example, a recent example was the Te
21 Awamutu waste-to-energy plant proposal, which was, is burning municipal waste
22 and turning it into electricity. That was the subject of social impact assessment.
23 It arose in the context of that as to whether there should have been one. The board
24 of inquiry said – did not require one in that instance. It was a situation where, you
25 know, it was right in town, right next to a dairy factory, a huge concern, and over
26 3,000 submissions in opposition. Now I've just put that as an example. I have
27 done, in my career, I've been involved in all sorts of proposals for major
28 developments, some of which have been of significant concern to people. The
29 only one that has actually involved a social impact assessment was a prison, and
30 it's not uncommon that when you have a prison proposal that a social impact
31 assessment is done as part of that.

32 I note also that in terms of some of the issues that have been raised, particularly
33 yesterday in relation to schooling and doctors' services and things like that, the
34 influx here of somewhere, or sort of it's quoted between 350 and 500 jobs. It
35 somewhat pales into insignificance compared to all of the other fast-track projects
36 around Central Otago in terms of the influx, that will result in an influx of people,
37 and the focus of those assessments, of those inquiries is all about the servicing in
38 terms of Three Waters. I'm not aware of social impact assessment being
39 undertaken because of a thousand lot subdivision. So it's one of those things: it
40 could have been done, it hasn't. I think you actually have on the table a significant

1 amount of information, a lot of it from the economists in terms of what you've
2 already heard. You also have the results of the consultation, which is documented
3 in the report that we prepared as part of the application. You've had the benefit
4 of, or comment submissions, to use the old language, and you've heard from
5 members of the community, including a psychologist who gave you a very
6 detailed assessment of the sort of adverse effects that can arise in terms of anxiety,
7 depression, for those that are in the immediate locality that do not like the idea of
8 a mine in their backyard. So I think there is a lot of information that is on the
9 table, but I don't think you're under any illusion as to where the effects arise.
10 Obviously the closer to the mine for those that oppose it, obviously there's a higher
11 level, a high level of anxiety.

12 The more you move away from the mine, you move to a position probably more
13 of neutrality from the terms of social impact assessment to when you get to the
14 towns of the likes of Cromwell, Wānaka, Lake Hāwea, where basically you're
15 getting, you know, increased employment and commercial opportunities, then you
16 typically would expect that to be a positive effect from the social impacts side of
17 things. And I think for things like schooling and doctors' services and things like
18 that, those are services which, I mean, the Ministry of Education has a
19 responsibility to monitor what is happening. I've done a lot of work for the
20 Ministry of Education over the years, basically predicting where schools need to
21 be, doing designations for schools, and part of their role is to figure out what's
22 happening in the economy, figure out where the demand is going to be and what
23 needs to be done. So I think that's probably enough on social impact assessment.

24 **Mr Kensington:** Just before you do move on, I wonder if you could respond to what
25 Ms Allen was saying about section 7 in the schedule which actually specifically
26 requires social impact assessment, or an assessment of social effects separate to
27 economic and cultural. Are you saying that your assessment has already included
28 that as a sort of general comment, rather than having a specific assessment being
29 required?

30 **Mr Chrisp:** Yeah, what I'm saying there is the panel has a lot of information before
31 it where, from these various sources that I've identified, that I think is probably
32 sufficient to be able to make an assessment as to the nature and magnitude and
33 significance of social impacts, particularly you know, on the basis of the economic
34 evidence which overlaps hugely with social impacts, and the other points that I've
35 made.

36 **Mr Kensington:** You've mentioned the comments that we've received. That's part of
37 the mix in your mind.

38 **Mr Chrisp:** Yes.

39 **Mr Kensington:** Okay.

40 **Mr Chrisp:** Yes, absolutely.

1 **Mr Kensington:** And would you ordinarily respond to those comments? And I guess
2 you have, haven't you, as an applicant team?

3 **Mr Chrisp:** Yes.

4 **Mr Kensington:** Yeah. Okay, thank you.

5 **Mr Chrisp:** Okay. So probably the next thing, if I go through the other points that
6 Ms Allen raised about lack of information, some of these things are really up to
7 the technical experts. Obviously you're aware of where things are at in terms of
8 aquatic effects and things like that. The heritage and blasting, there is an RFI
9 response that I uploaded to the portal yesterday afternoon which addresses the
10 heritage and blasting issues. Dust on the heritage, in relation to heritage is a matter
11 that will be addressed in the conditions that will be served up on Monday next
12 week. The issue of the effects of the willow management in relation to heritage
13 features, that does not form part of the current application that's been prepared by
14 Dr Woods in terms of any effects because at this stage of the game none are
15 proposed nor anticipated.

16 The likelihood is that part of, or part of the application, the concession application
17 to the Department of Conservation is that one of the conditions that I've proposed
18 is a methodology as to how that will management is to occur is to be provided to
19 the Department of Conservation for their approval, certification, and the
20 discussions that we've had with the Department of Conservation onsite between
21 them and the experts that I was for, the most likelihood is that it will be a drill and
22 poison operation, rather than a felling of the trees, and that – and then, and part of
23 the problem is you can't find the heritage sites in there, or with great difficulty,
24 because of all the willows. So it becomes a little circular. But it is acknowledged
25 that if and when, because there could be a – it's likely to be a combination but
26 mostly drilling and poisoning and then there might need to be a subsequent felling
27 operation for safety reasons and things like that, and in some places it might just
28 be straight to felling. And if that, if any of that, having completed that more
29 detailed methodology and have it approved by the Department of Conservation,
30 if that then triggers the need for a separate archaeological authority, then one will
31 be applied for at the time is the proposal in that regard.

32 There was also an issue raised about groundwater monitoring conditions. I
33 understand that concern to be one that relates to the larger Bendigo aquifer
34 downstream of the project site,

35 **Mr Kensington:** Actually the Ardgour and - - -

36 **Mr Chrisp:** And the Ardgour and the Bendigo aquifers, yes. Sir, in that regard, there
37 is monitoring that is proposed in terms of surface and groundwater at the two
38 points where the two streams come out of the site. There are compliance limits
39 proposed which are being pushed around at the moment but obviously there will
40 be a set of compliance limits that will be specified. Compliance with those limits

1 are intended to avoid any effect on the downstream aquifer. So if that's the case,
2 then it becomes a little academic sort of undertaking a whole lot of research in
3 terms of those large aquifers which is an acknowledged gap in everyone's
4 knowledge in terms of the Central Otago region. So it's – and obviously the same
5 reasons why the applicant hasn't done it and probably the same reasons why the
6 Council hasn't done it. It's not an easy or small task to characterise it.

7 **Mr Muir:** I think Ms McArthur had the view that it could be, you know, that it
8 could be done. She was a strong exponent of this. She said that, quote
9 “unequivocally it could have been done”.

10 **Mr Chrisp:** Yeah.

11 **Mr Muir:** And I don't think there's any disagreement that it would be technically
12 possible. Over what duration is not identified. But the point that you're making
13 is, if I could use a building analogy, it's not a critical path item and that there are
14 paths and that what is envisaged is an increasing number of testing sites; and then
15 the panel is being invited to conclude that if trigger limits are reached, then it's,
16 well it's invited to be satisfied that there are so many available contingent
17 interceptions and so much real estate in which to do so that we can have a high
18 level of confidence that if those trigger points are reached, it will not result in
19 contamination of the aquifers.

20 **Mr Chrisp:** Yes, that's precisely it, Sir. So there's the perennial issue of the
21 assessment of alternatives in terms of underground versus open pit mining. And
22 I guess I'll pre-empt the question about were we considered, or were we asked to
23 assess those alternatives as planners as part of the project. I'm not a mining
24 engineer and so it's not appropriate for me to determine what the mining
25 techniques should be. We were provided with a proposal. We have asked the
26 question for it to be explained as to why those options have been selected, and it
27 was very apparent to me there's a lot of work that's gone into the optioneering in
28 terms of figuring out what is the best way from a mining perspective in terms of
29 obtaining the gold. And clearly, you know, it seems pretty obvious to me the
30 explanation that we have gold that is very close to the surface, really the only
31 realistic way of extracting that is by way of open pit. And so that's particularly
32 the case in relation to the Come in Time pit where the gold is supposedly just
33 below the surface, so underground. And it's a relatively small scale. It's only 23
34 hectares that pit. The end result of which the proposal that is before you is, in
35 fact, a combination of open pit and underground mining where the options that
36 the mining engineers have selected are determined to be the ones that are
37 appropriate for those parts of the site.

38 I agree entirely that if this was like, for example, Waihi North where it is an
39 underground proposal and the surface expression is the size of two tennis courts,
40 then clearly you are in a situation where you avoid pretty much of all of the

1 ecological effects. You avoid the landscape effects, certainly in terms of the
2 mining. What you do with the tailings is another matter still to be considered.
3 And that's axiomatic. That is, yeah, if you go underground, you're going to have
4 less effects in terms of the surface. So – and there has been an extensive
5 assessment thing and consideration and moving around of elements, as Ms Allen
6 noted, of elements of the mine. So, for example, a processing plant was originally
7 proposed on the Ardgour terrace. It was moved down into the valley to reduce, to
8 be closer to the mining operations, to pretty much, and pretty much in that location
9 it avoids entirely any visual effects from publicly available viewing points, you
10 know, beyond private land things. So that's just one example but there's lots of
11 design alternative. The width and the alignment of all those to minimise the
12 effects on the ecology. There's been a lot of consideration for that and a lot of that
13 has been documented. I accept entirely it hasn't been all documented in one
14 comprehensive assessment of alternatives as part of the original application. It's
15 emerged as a consequence of this issue being raised throughout the hearing or
16 throughout the application process.

17 The next thing I noted here, Sir, was the issue of the spring annuals report. That
18 might crop up as an issue down the track, the spring annuals. And there was the
19 – and then you've obviously indicated that you're going to issue an RFI.

20 **Mr Muir:** That's our provisional position.

21 **Mr Chrisp:** Yeah.

22 **Mr Muir:** Of course, if there was any submission to the contrary from the
23 applicant, we would take it into account.

24 **Mr Chrisp:** Sure. So hopefully that might address that issue. But there was also a
25 comment about the areas that have not been surveyed. As you will appreciate,
26 spring, being when the annuals emerge, also happens to be the same time that
27 lambing occurs; and there was a strong desire on behalf of MGL to survey Ardgour
28 Station and couldn't because the lessee said, "you're not coming in here during
29 lambing", which happened to be when the spring annuals pop out of the ground.
30 So that was just a practical reason as to why that hasn't been done in respect of
31 that area. The condition that has been proposed, you'll all know, be familiar now
32 with the one per cent threshold, so that is intended to provide – so basically that's
33 a hard break on the mining of the Come in Time pit, excluding the initial 2.7
34 hectares. So that basically Matakanui Gold cannot mine that area unless and until
35 it is determined that the amount of spring annuals that are within that pit area are
36 less than one per cent of the total population in the - - -

37 **Mr Muir:** One per cent of the survey population.

38 **Mr Chrisp:** - - - the survey pop, yes, that's right. So, on that basis, if that eventuates
39 – so you've got two scenarios there: one is they fail the test, that mining doesn't
40 happen. If they do pass the test, then it's a small, it's not a significant effect on

1 that population in terms of it being one per cent, in my assessment, although I'm
2 not an ecologist.

3 **Mr Muir:** The indications, Mr Chrisp, are that the 2025 spring annual report is
4 indicating, of the surveyed populations of spring annuals, that around 40 per cent
5 of the surveyed population - - -

6 **Mr Chrisp:** Yeah.

7 **Mr Muir:** - - - is within the direct distribution area.

8 **Mr Chrisp:** Yeah.

9 **Mr Muir:** Around 20 per cent of the total surveyed population is within the area
10 of the Come in Time proposed pit, I think, and including the initial, I think, three
11 hectare - - -

12 **Mr Chrisp:** 2.7.

13 **Mr Muir:** - - - 2.7, yes, 2.7 hectare works.

14 **Mr Chrisp:** Yeah. I think the reason why the 2.7, well, my understanding is the
15 reason why the 2.7 hectares was selected is because there was just one little plot
16 where there was a very small amount of the spring annuals in that particular area.

17 **Mr Muir:** In that particular area.

18 **Mr Chrisp:** And it's a very easy part of the site to access the gold because that's the
19 point at which it's really close to the surface.

20 **Mr Muir:** That's right. I recall there's a very small percentage chance between
21 the two - - -

22 **Mr Chrisp:** Yes.

23 **Mr Muir:** - - - the two; the total of the Come in Time proposed workings and this
24 2.7 hectare.

25 **Mr Chrisp:** So I think the really important thing to keep in mind is that that, so the
26 2025 survey is the most recent baseline, it's the most recent survey, and that's
27 what's reflected in the consent condition as the baseline against which assessment
28 of that one per cent is to be made because that is the most recent information.
29 Now, as you pointed out, if it's, what did you say, it's 28, isn't it, per cent I think
30 within that Come in Time area, those percentages just largely reflect the lack of
31 surveying that has been done elsewhere. So at the moment you've got some sort
32 of pretty big percentages and that, which could be potentiality worrying but, as I
33 say, nothing can happen beyond the initial 2.7 hectares unless and until further
34 surveying work is undertaken, or propagation as part of the adaptive research
35 programme, to show that these things can be propagated and planted and
36 successfully grown out elsewhere. And one of the things I've added into the
37 condition for the CIT pit that you'll see on Monday is a certification process, so

1 that it's not just a case of a company does a bit of work and then rips into it. That
2 report has to be provided to ORC and CODC and DOC to be reviewed to confirm,
3 because it'll be certified, prior to getting the tick to be able to mine in that area.

4 **Mr Muir:** Yeah. And of course it would be open to the panel, although the
5 percentages are small, and we'll have to take into account a wider picture, to
6 impose the one per cent limitation in relation to all works, including the 2.7
7 hectare.

8 **Mr Chrisp:** Within the Come in Time.

9 **Mr Muir:** Within the Come in Time, yeah, absolutely.

10 **Mr Chrisp:** Yes, you could do. I'd invite you to look at the extent to which there
11 are spring annuals - - -

12 **Mr Muir:** Correct.

13 **Mr Chrisp:** - - - within that 2.7-hectare gap, yeah.

14 **Mr Muir:** You understand why it was selected.

15 **Mr Chrisp:** Yeah. Right, let's see what I've got here. So working through the issues
16 that Ms McDonald identified, so she gave you a list of things that she thought well
17 understood could be the subject of conditions. I think, Sir, you addressed the issue
18 of the hydrogeology and the seepage risk. That has certainly been a major focus
19 of attention throughout the hearing process, and conditions have been proposed
20 and more will be proposed in terms of trigger levels, in terms of – as part of the
21 performance monitoring so that, which require action if a certain, I think the figure
22 is 50 per cent of the compliance limit is achieved, then that trigger triggers action.
23 So I think those are matters that can quite properly be dealt with as part of the
24 conditions. I note that existence of a tailings dam and the risk of seepage is, in
25 my view, the number one issue associated with every gold mining proposal.

26 **Mr Muir:** Yes.

27 **Mr Chrisp:** And you're absolutely right to be focusing attention on that. That is –
28 and that is the one thing, that and failure, but I don't think failure is an issue in
29 this case because of the buttressing and the fact that the engineers have said that
30 there is no credible failure mechanism in terms of the thing falling over because
31 you've basically got a pile of rocks at the front end because it - - -

32 **Mr Muir:** There appears to be a responsible summary of the consensus position
33 with a little bit of - - -

34 **Mr Chrisp:** - - - yeah.

35 **Mr Muir:** - - - on the margins of engineering.

36 **Mr Chrisp:** Yeah, so obviously the spillway is obviously the critical thing in terms
37 of design.

1 **Mr Muir:** And there are issues about landslide risk and what that might - - -

2 **Mr Chrisp:** Yes.

3 **Mr Muir:** - - - the consequences of that - - -

4 **Mr Chrisp:** Yes.

5 **Mr Muir:** - - - for sudden injection of volumes of contaminated waste that might

6 overwhelm systems temporarily.

7 **Mr Chrisp:** Yes. And I'd sort of put it to you, from my experience, that none of

8 these are novel issues in terms of mining operations. These are the sort of things

9 that mining companies have to deal with and avoid as the priority obviously

10 because, as much as possible, and if things do happen, to be able to respond in an

11 appropriate manner. And all of that is capable of being subject of appropriate

12 consent conditions. So also, yeah, so Ms McDonald also raised the issue of

13 terrestrial ecology in terms of the magnitude and success of the remediation and

14 the management plans and conditions. It is accepted and agreed that the

15 management plans and conditions are an ongoing work in process, in progress.

16 So that is a typical situation for a project of this scale and breadth and, as you're

17 aware of obviously, on Monday we'll be serving up the next iteration of those

18 conditions. I hasten to add it won't be the final word because it's developing those

19 documents, the management plans and the conditions, is an exercise that benefits

20 hugely from the input of parties with disparate views, and I'll come to it. We can

21 talk about it.

22 **Ms Sweetman:** I'm just going to add an extra one in.

23 **Mr Chrisp:** Sure.

24 **Ms Sweetman:** The process from here.

25 **Mr Chrisp:** Yes, yes.

26 **Ms Sweetman:** Recommended process from here.

27 **Mr Chrisp:** Yes, okay. Do you want me to wait until the management plan topic, or

28 do you want me to - - -

29 **Ms Sweetman:** I think it's a bigger question than just your management plan.

30 **Mr Chrisp:** Sure, yeah. I've got it. I'm prepared for that one, so we can talk about

31 that as a separate topic, yeah.

32 **Mr Muir:** It's a very difficult one in that we, obviously the extent to which

33 conditions can mitigate risk and on and so forth is very, very relevant to the

34 fundamental decision-making. So you sort of don't even get to the go line unless

35 there is a certain quality in the conditioning.

36 **Mr Chrisp:** Yes.

1 **Mr Muir:** But that's only got you to go. And the Act itself of course recognises
2 that it's quite difficult to put in that it gives you an opportunity in the context of
3 consent for another whole process around conditions - - -

4 **Mr Chrisp:** Yes.

5 **Mr Muir:** - - - right towards the end of it. It's quite difficult to knit them together
6 and we need some assistance on that.

7 **Mr Chrisp:** Certainly, Sir, and just without stealing my own thunder, I will be able
8 to take the sting out of that issue for you, I hope, to your satisfaction. So I'll come
9 to that when we get to that topic for you. Right. So Ms McDonald also raised
10 about, and this is also another topic, but I think is in terms of cultural effects that
11 Commissioner Sweetman put forward, so I think I'll probably just leave that one
12 till then.

13 Ms McDonald also raised the issue of dark sky and glow. I'd like to emphasise
14 this is not a dark sky precinct. That said, we have proposed consent conditions
15 which seek to, as far as reasonably practicable, and I know that's a concerning
16 phrase in a condition, but because it is not a dark sky environment, precinct, we
17 have proposed a consent condition requiring to achieve the same outcomes in
18 terms of the omission of light as if it were a dark sky precinct, and that's why
19 there's the "as far as reasonably practicable" qualification in that regard. So it's
20 what I've described in notes to the conditions as a best endeavours condition; and
21 that's really important because human health and safety is always regarded as the
22 number one priority over, for example in this case, an amenity effect which would
23 only be experienced at quite some significant distance. So there is the all the hard
24 limits are proposed in terms of I think it's 3,000 K and all that sort of thing and
25 shielding lights and all those things you can do in a practical sense, but at the
26 end of the day it has to be a safe working environment for a night-time situation.
27 So that's the approach that's been adopted in that regard.

28 **Mr Kensington:** And there's no appetite to do no, no night-time works because the
29 plan is to keep working through the night. Is that?

30 **Mr Chrisp:** Oh, I think that's probably more of an operational question which is
31 beyond my expertise, but I think when – the proposal as advanced is a 24/7
32 operation.

33 **Mr Kensington:** Yeah.

34 **Mr Chrisp:** I think that's the nature of the economics of the way these mines work.
35 They just keep going. I mean, if you thought about from the point of view of,
36 okay, if you said no night-time and you said like you can only work 12 hours a
37 day - - -

38 **Mr Kensington:** Well, it's a 20-year project.

39 **Mr Chrisp:** Exactly. You're doubling the length of the mine.

1 **Mr Kensington:** Yeah.

2 **Mr Chrisp:** So in terms of – and it's the same, we have the same issue with sand
3 quarries when Councils try to put daily limits on the amount of sand that can be
4 extracted. I've got examples where all the daily sand limit has been achieved by
5 9.30 in the morning. All the trucks have been banked up outside, you know, you
6 create these perverse outcomes, and you just make the mine last longer.

7 **Ms Sweetman:** You missed out exploratory works.

8 **Mr Chrisp:** Oh yes, thank you, Commissioner. So yes, part of the application
9 includes the ability to undertake exploratory drilling activities, or exploration
10 which is primarily drilling, outside of the DDF but within the BOGP consent area.
11 So that's the delegatory yellow line, which is on plan number 3 I think it is. So
12 there have been some concerns raised about that. The answer to that is we will
13 propose consent condition which will limit the extent of that exploration to a total
14 of three hectares in that area. And just to put that into context, the DDF is 610
15 hectares. Within that 610 hectares, the actual mine site is 79 per cent of that area,
16 and the remaining 21 per cent is what's referred to as the buffer areas. And those
17 buffer areas are to provide some flexibility in terms of detail design and
18 positioning of things, particularly the extent of the pits and things like that. The
19 expectation is that not all of that, you know, 21 per cent will be utilised but if you
20 put that three per cent in that sort of context, it's, yeah, it's a pretty small amount.
21 And obviously wherever those drilling activities occur, and they – so I think you
22 might have seen them onsite when you did your site visit, I mean, they would be
23 lucky to take out an area the size of this room in terms of the size of the rig and
24 the supporting equipment. Those areas are still subject to all the management
25 plans and the mitigation measures in terms of rehabilitation and things like that.
26 So it's not as - - -

27 **Mr Muir:** Sorry, just to make sure I've got it right - - -

28 **Mr Chrisp:** Yeah.

29 **Mr Muir:** Three hectares is within the DDF?

30 **Mr Chrisp:** No, outside of it.

31 **Mr Muir:** It's outside, it's outside the DDF. I've just got this landscape mitigation
32 plan in front of me. Can you identify, would you be able to identify it on that with
33 a cross? No?

34 **Mr Chrisp:** A cross where?

35 **Mr Muir:** Where it's, where the three hectares is.

36 **Mr Chrisp:** Oh, no, it's a floating three hectares - - -

37 **Mr Muir:** A floating?

1 **Mr Chrisp:** - - - Sir, so it's an upper limit.

2 **Mr Muir:** I see.

3 **Mr Chrisp:** So basically you go, you know, you do a drill, a drill hole.

4 **Mr Muir:** Yes.

5 **Mr Chrisp:** And you find no, no useful ore; so you go and drill another one, and
6 then you find some useful ones, so you explore that area further. So it's an
7 iterative process in terms of - - -

8 **Mr Muir:** It's a combination but it could be multiple drill sites?

9 **Mr Chrisp:** Yes.

10 **Mr Muir:** How much, what area does one drill site occupy?

11 **Mr Chrisp:** Well, as I said, probably about - - -

12 **Mr Muir:** One room?

13 **Mr Chrisp:** - - - about the size of this room.

14 **Mr Muir:** Okay. So three hectares probably gets you, you know, like something
15 like about what a hundred, 200 or something drill sites does it?

16 **Mr Chrisp:** I haven't done the maths but it's - - -

17 **Ms Sweetman:** We look forward to seeing how you constructed the condition that will
18 manage that.

19 **Mr Chrisp:** Yeah, sure. That's not particularly hard. That's just a case of recording
20 that and, yeah, making sure that the aggregated total does not extend, that it does
21 not exceed three hectares in total, yeah.

22 **Mr MacGibbon:** Just a question to add to that. Does that include all access and all
23 disturbance getting to and from the sites as well, that three hectares?

24 **Mr Chrisp:** Yes, I think so.

25 **Mr MacGibbon:** So it's the total affected areas.

26 **Ms Allen:** I was just going to raise that very point. The investigations included
27 tracking and - - -

28 **?** Yes.

29 **Ms Allen:** - - - and culverting and things like that. So it wasn't just digging holes.
30 It was - - -

31 **Mr Chrisp:** Yes, it does include that, yes, that's right. So it won't be hundreds, Sir,
32 because the road, you know, the reality is that if you have to build a new access
33 track to a drill site - - -

34 **Mr Muir:** They mature very quickly?

1 **Mr Chrisp:** Yes, that's right, yes. So it's not a big part of the operation but obviously
2 with, you know, any mining operation, that ongoing exploration is usually an
3 integral part of the operation of the mine. Is there anything you wanted to add?

4 **Mr Berry:** Yeah, if I can just add a – I think the issues have been reasonably well
5 traversed in the last hour or so, but I can just add one additional point in terms of
6 the substantive application. I would like to note that consideration of alternatives,
7 including alternative methods of discharge and receiving environments, have been
8 undertaken as part of the functional need assessments required by the National
9 Policy Statement for Freshwater Management and the National Environmental
10 Standards for Fresh Water. That's set out in our section 8.7.3.7 of the substantive
11 application report; and part of that functional need assessment assessed a range of
12 factors to show why elements of the proposed mining-related infrastructure can
13 only occur where they are planned to occur. We also discussed a sort of range of
14 alternatives with Matakanui Gold in terms of the mine site and how different mine
15 components may have been rearranged and amended to reduce and minimise
16 effects to the extent that that is practicable and, as Mark may have mentioned, this
17 included the location and design of the processing plant and other facilities, the
18 design and location of haul roads, and the sequencing of certain mine pits such as
19 the Come in Time pit. And there's been further consideration of alternative
20 methods for discharges and those receiving environments through the responses
21 to the section 53 comments.

22 **Mr Muir:** Right. Questions from the panel on this topic?

23 **Mr MacGibbon:** Just ignore that. I might come back to it shortly, I think.

24 **Mr Muir:** Yes, thanks.

25 **QUESTIONS FROM THE PANEL:**

26 **Mr Kensington:** Just on the matter of alternatives, you would have heard the other
27 day the talk about refilling the, you know, the big pit.

28 **Mr Chrisp:** Yes.

29 **Mr Kensington:** And the practicalities of doing that, the double-handling issue.

30 **Mr Chrisp:** Yes.

31 **Mr Kensington:** Was that something that you guys, as planners, were involved in,
32 looking at that issue?

33 **Mr Chrisp:** No, that's sort of emerged as a concept throughout the hearing process.
34 The one sort of thought that I did really have in that regard is that, you know, as I
35 said before, the number one issue with any gold mining operation is the long-time
36 term security and safety of your tailings storage facility. So if you are basically
37 just putting it back in the hole, that is a unconstrained situation compared to having
38 a purpose-built tailings facility with under drainage and all sorts of stuff where

1 you can control and manage the effects. But if you're putting it back, just straight
2 back in the ground, my understanding is that - - -

3 **Mr Muir:** Well, possibly two issues there: we're not necessarily talking about
4 returning the contents of the tailings storage facility to a pit. There could also be
5 backfilled with what is destined to be Shepherds ELF, for example?

6 **Mr Chrisp:** Yes, that's correct, Sir, and I guess, and again I come back to the same
7 point is that the most important issue is the security of that tailings facility.

8 **Mr Muir:** Yes.

9 **Mr Chrisp:** So you're sort of like a sort of robbing Paul to pay Peter sort of type
10 situation there - - -

11 **Mr Muir:** Yes.

12 **Mr Chrisp:** - - - where you can reduce the size of the ELF and put some of that back
13 in the hole. That's not actually going to change any of the landscape visual effects
14 because they occur at the top of the - - -

15 **Mr Muir:** Yes.

16 **Mr Chrisp:** - - - not at the bottom of the hole. It might be a way of addressing
17 concerns about pit lake water quality, but I don't know whether there would be
18 still be a pit lake even if you put some of the material there. That's beyond my
19 expertise.

20 **Mr Berry:** Just one additional point to note. Again, not an expert in this space but
21 I understand that if you were placing some of that overburden back into the pit,
22 there may be further challenges with containing seepage in that location.

23 **Mr Muir:** Well, of course. You're putting back in rock and fill which will be
24 subject to oxidation processes and produce its own leachate and whether it is
25 better, can be better contained, having run down through all of the underground
26 passages and out through the bottom of the pit than it can be in a purpose-built
27 facility.

28 **Mr Kensington:** The second question that I have, in the first joint witness statement,
29 21st of May, paragraph 34, this is just in terms of information, there's talk of the
30 communications tower on top of Battery Hill and agreement that it's not part of
31 this application.

32 **Mr Chrisp:** Yes.

33 **Mr Kensington:** In your knowledge of the application or the proposal, how critical
34 was that piece of infrastructure to the success of this proposal and is it going to
35 inevitably come along as a new consent?

36 **Mr Chrisp:** To be honest, I don't know the answer to your first question because
37 that's an operational matter. There will obviously have to be communications

1 amongst staff. There already are. I mean, you can see it just as you're driving
2 around the site. There's radio communication and things like that. And I suspect,
3 I don't know, I guess that's, yeah, I don't know the answer to your question, sorry.
4 That's probably more something that the company [inaudible 02:11:00] - - -

5 **Mr Kensington:** Could you find out over the lunch break for example?

6 **Mr Chrisp:** Yeah, yeah, sure, yeah.

7 **Mr Kensington:** Interesting to find out.

8 **Mr Chrisp:** I have an expectation that – because what happened was it was shown
9 on, if you look at the main plan, which is the plan, I think it's O203, the one that
10 shows the BOGP project, you'll see there's two dots on there which are identified
11 in the key as communication towers. So and – but then it was assessed as being a
12 permitted activity, the one on Battery Hill, and indeed, so it was erected and then
13 it turns out the Council had a different view of the matter and then – so there was
14 an abatement notice issued and the tower was taken down. And so the position as
15 it stands at the moment, and I think we responded to this in one of the RFIs, it
16 does not form part of the current application. There's probably a likelihood that'll
17 come as a subsequent application if it's needed in that location.

18 **Mr Kensington:** So yeah, now I'm just looking at that drawing now. There are two
19 dots. Where's the other dot then?

20 **Mr Chrisp:** The other one's down, oh, it's down towards the administration area,
21 somewhere around there.

22 **Mr Kensington:** So that is part of the application?

23 **Mr Chrisp:** It is part of the application, yes.

24 **Mr Kensington:** Have you got the details of what looks like?

25 **Mr Berry:** There is a brief description in the project description section of the
26 application about just the key, the approximate height, I believe. We can check
27 that.

28 **Mr Chrisp:** Yeah.

29 **Mr Berry:** From recollection, it might be around six metres high.

30 **Mr Kensington:** Okay. And is that a consent trigger being in the ONL [check
31 02:12:49]?

32 **Mr Berry:** Yes, that's the – I think that's your distinction. It's because it's in the
33 ONL that triggers the need for a consent here.

34 **Mr Kensington:** Yeah.

35 **Mr Berry:** Yes, I think it's section 13 of the plan. But it's a standalone - - -

36 **Ms Rodgers:** It's a standalone code.

1 **Mr Berry:** - - - standalone code, that's right.

2 **Ms Rodgers:** Yeah, but it said somewhere else so.

3 **Mr Berry:** Yeah.

4 **Mr Kensington:** While I'm on that, the fence that goes around the sanctuary areas, or
5 the two fences, does that trigger a consent requirement?

6 **Mr Chrisp:** Yes, it does, to the extent that it's within the ONL.

7 **Mr Kensington:** Yeah.

8 **Mr Chrisp:** For sure, yeah.

9 **Mr Kensington:** And that's included as part of the?

10 **Mr Chrisp:** That's included, absolutely, yes.

11 **Mr Kensington:** That's all, thank you.

12 **Ms Sweetman:** Bear with me while I've got a few questions. So, Mr Chrisp, you talked
13 about the willow concession area and potential for a separate archaeological
14 authority to be required. Remind me of the purpose of the willow concession area.

15 **Mr Chrisp:** It's a mitigation in relation to the fact that there is something like - - -

16 **Ms Sweetman:** A mitigation?

17 **Mr Chrisp:** Just, hang on, hang on, just hang fire. This is one of things - - -

18 **Mr Muir:** An offset?

19 **Mr Chrisp:** Yeah.

20 **Ms Sweetman:** Compensation?

21 **Mr Chrisp:** I'm using the word mitigation in a generic sense. And this something
22 we'll come to when we talk about the biodiversity front, and the ecologists get
23 themselves, with all due respect, very tied up in terms of what's avoidance,
24 mitigation, remediation, offset and compensation. As a planner, I take a sort of
25 more holistic view of what is the magnitude of effect, what can you do about it?
26 And so when I say, sorry, so when I say mitigation there, I'm talking, it is a
27 compensation or an offset. I'm not sure what the ecologists have categorised that
28 as but it is a measure proposed, in my words, to mitigate the effect, or as a partial
29 mitigation of the effects of the stream diversions that are occurring elsewhere
30 within the site. So when that's all combined together, Dr Boothroyd comes to the
31 conclusion that there will be a net improvement in water ecology outcomes.

32 **Ms Sweetman:** My question's really what would the outcome be, or how much weight
33 can be place on that if doing such willow management requires removal that might
34 require a separate archaeological authority to be obtained?

1 **Mr Chrisp:** So the question, I guess, comes back to the risk of whether or not you
2 would be able to secure – or whether the company would be able to secure - - -

3 **Ms Sweetman:** But my, well, it's how much weight can we place where it requires on
4 the secondary, it may require a secondary consent process, albeit under
5 concessions.

6 **Mr Chrisp:** Yeah. While I personally think you can place weight on it, it is a part
7 of the proposal that has been advanced. It is part of the proposal; it's proposed to
8 occur. If it does require an additional authority, one would be obtained; and I
9 don't have any reason to believe why, with an appropriate assessment and
10 appropriate archaeological mitigation measures in place, that you would not – the
11 company would not be able to secure such a archaeological authority.

12 **Mr Muir:** It would sort of make sense in that what we are talking about is
13 potentially liberating archaeological sites that are otherwise utterly inaccessible
14 and - - -

15 **?** How I can get to them.

16 **Mr Muir:** How I can get to them. So provided that there was a mechanism, and
17 there has to always be a mechanism for removal of the willows but without
18 degrading the archaeological sites in the process and whether it's poisoning them
19 and then gradually dismantling them over time as they die, or whether it's
20 something else.

21 **Mr Chrisp:** Felling or helicopter.

22 **Mr Muir:** Or helicopter.

23 **Mr Chrisp:** I have done that recently - - -

24 **Mr Muir:** That's right, yes.

25 **Mr Chrisp:** - - - Te Rapa Dairy Factory - - -

26 **Mr Muir:** Yes, yes.

27 **Mr Chrisp:** - - - where felling trees on a pasture.

28 **Mr Muir:** And we'd have to take into account the fact that continuous willow
29 growth in areas where there are potentially or actually archaeological sites can
30 only over time further damage them too.

31 **Mr Chrisp:** Correct, that's right.

32 **Ms Sweetman:** And your view on that, Ms Williams.

33 **Ms L Williams:** So they have been in discussions about the willow removal with
34 DOC in terms of their concession approvals. I think in terms of the heritage, I
35 would be interested to see what assessment's been done for what's within that area

1 and if there has been consideration of sort of the methods looking at the heritage
2 values of those, that area that it's occurring within.

3 **Mr Chrisp:** Yeah. So I mean the short answer is there's been no – we are aware that
4 there are heritage features within that Bendigo Creek area. It's been reported to
5 us that they are very difficult to get to. There's been no archaeological assessment
6 of that at present, yeah, to date. But that is part of the assessment of the
7 methodology. So the idea is that the concession provides the activity of managing
8 those willows. So it's interesting using the word “management” rather than
9 “felling”. So it's not presupposing any particular methodology and, you know,
10 given that that's – that willow management is an activity that DOC would
11 ordinarily undertake itself in any event because that's a good thing to do, we –
12 well, I am of the view that it really just comes down to how you do it, rather than,
13 you know, is there any - - -

14 **Mr Muir:** Utility of doing it?

15 **Mr Chrisp:** True, yes, correct.

16 **Ms Sweetman:** Ms Williams, do you have any further comment on that?

17 **Ms L Williams:** I think we – so from the DOC perspective, we have repeatedly asked
18 for further information on that area and also in terms of ecological assessments
19 for that area too. So it is something that was outstanding and was raised in
20 previous correspondence with the applicant.

21 **Ms Sweetman:** And have you review the applicant's proposed conditions? Does that
22 address your concerns?

23 **Ms L Williams:** I personally haven't reviewed those conditions. So we have
24 permissions advisors that look at the concession conditions. But I know that
25 there's been ongoing conversations about that.

26 **Ms Sweetman:** Thank you. Now, Ms Allen, turning to the social impact assessment,
27 Ms McDonald said that she doesn't consider it necessarily would add much value
28 to us at this time. What value would getting a social impact assessment provide
29 us at this stage of the process; and how would we factor in a social impact
30 assessment to our decision-making?

31 **Ms Allen:** I think that's a very hard question because of the way the horse has
32 bolted in terms of attitudes, and I think there'd still be benefit in doing one because
33 it would clarify the – it would explain the nature of the wider community and
34 clarify just how the mine would impact on the community, particularly the
35 workers and the people that come with the workers. It would also help describe
36 the, I guess, the web of interactions that might happen in terms of the flow of
37 money through the community and things like that, the benefits that were
38 mentioned in terms of the Cromwell and other settlements. So whether you
39 absolutely have to do that, I would remain uncomfortable with consent being

1 granted without you having a better understanding of the social and community
2 impacts.

3 **Ms Sweetman:** re there any consent conditions, should we grant consent, that would
4 fill the gaps?

5 **Ms Allen:** You could have conditions that require ongoing social monitoring and
6 community consultation. But in terms of enforcing any response to problems, I
7 think that would be quite difficult. I mean, it could be beneficial to have a
8 condition because it would actually feed back information to the operator.

9 **Mr Kensington:** Are you suggesting a community liaison group type condition which
10 is common to these sort of - - -

11 **Ms Allen:** That's a possibility. I was hoping that the condition that relates to the
12 heritage and environmental beneficial fund, whatever it's called, would actually
13 have involved the community. But the condition we have at the moment doesn't;
14 it's entirely within the operator's realm to manage that.

15 **Mr Kensington:** They might be separate though.

16 **Ms Allen:** They could, yes, yes, that's right.

17 **Mr Kensington:** Yes.

18 **Ms Allen:** There's an iwi liaison condition that's proposed; so you could have
19 something that's parallel in relation to - - -

20 **Mr Kensington:** Community.

21 **Ms Allen:** - - - community, yeah.

22 **Mr Kensington:** And while I've got the mic, in your experience, how long does it take
23 to prepare a social impact assessment?

24 **Ms Allen:** Ooh.

25 **Mr Kensington:** How long in this case, given that we've already started the ball
26 rolling?

27 **Ms Allen:** I think you'd be talking at least six months.

28 **Mr Kensington:** Six months?

29 **Ms Allen:** Mm, maybe longer.

30 **Mr Chrisp:** Can I just make one comment on that?

31 **Mr Muir:** Could I just ask one question on the social, the possibility of the social
32 impact assessment. To what extent, Ms Allen, is the utility of a social impact
33 assessment? Does it degrade over time as local communities become, as in this
34 case, more polarised? So we're sort of well into the process now and there was
35 certainly strong evidence of this in the local hearings that people have firm views
36 about this application; perhaps some to the extent that they are not much interested

1 in hearing opposing views any longer. That's the sort of degree of polarisation.
2 How does that, once that's entrenched within a community, does it impact the
3 usefulness of a social impact assessment?

4 **Ms Allen:** I would have to say that I think it probably would. I think in a way
5 there's been missed opportunity in not doing a social impact report or having done
6 one inadequately, but we don't know.

7 **Mr Muir:** I mean - - -

8 **Ms Allen:** Yeah.

9 **Mr Muir:** We'll talk about this later in - - -

10 **Ms Allen:** Mm, yeah.

11 **Mr Muir:** - - - but quite, you know, self-evidently were we persuaded that this
12 application could not go forward with reasonable prospect of success without
13 having that report, then we would have to tell the applicant accordingly, and there
14 would be only one response. If we were saying to them, "your application cannot
15 succeed without one", then they would be essentially forced into utilising the
16 mechanisms under the Act to pause the application, to undertake the report and
17 provide it to us.

18 **Ms Allen:** Yes.

19 **Mr Muir:** So, I mean, that's where the rubber hits the road on this issue.

20 **Ms Allen:** That's right.

21 **Mr Muir:** And it's a question of whether, whether we think this is of such moment
22 now that we push the nuclear button, effectively.

23 **Ms Allen:** You've put – you're asking me now?

24 **Mr Muir:** Yes, yes. I'm asking whether your view, highly experienced planner
25 that you are, is that we could not in, we could not appropriately move on with the
26 consideration of this application without one.

27 **Ms Allen:** I would have to say I think you can move on.

28 **Mr Muir:** Yes.

29 **Ms Allen:** And one of the reasons for me saying that is there are obviously so many
30 other ones going on in this community in terms, I think, of applications for things
31 that we don't know the outcome of.

32 **Mr Muir:** Yes.

33 **Ms Allen:** So that leaves me with conditions that might require the applicant to go
34 and collect, or to start and go on collecting social information and feed that to the
35 authorities and to the applicant, of course, and provide an ongoing, I guess, the

1 story of how the impacts are actually playing out in the community, and what the
2 applicant is responsibly doing to minimise social adverse effects.

3 **Mr Muir:** Yes.

4 **Ms Allen:** And that then, that could work very well with a community liaison
5 group. So, yeah, I wouldn't say it's an absolute. I wouldn't like to pin your
6 decision on the absence of a social impact assessment which should have been
7 done some time ago.

8 **Mr Muir:** Most helpful, thank you.

9 **Ms Sweetman:** Mr Chrisp, did you have a comment you wanted to make?

10 **Mr Chrisp:** Yeah, it was just one of the outcomes you sometimes get out of a social
11 impact assessment or under the old, in the old days the old levy that came out of
12 major projects, was an annual payment to the local authority and, in this instance
13 there, I think you'd receive the [inaudible (over coughing) 02:29:15]. There is an
14 annual payment of \$1.25 million to the Council. It's triggered out of a roading
15 situation, but the use of those funds by the Council can be for any community
16 purpose. So that is something. It's a large amount of money and, but it is
17 something obviously to take into account in terms of community effect and
18 potential benefit.

19 **Ms Sweetman:** Ms Rodgers, do you have comment on that?

20 **Ms Rodgers:** Yeah, I probably do, yeah. In terms of the – I think that there has been
21 submissions from CODC from our counsel in terms of where that sits and was to
22 be traversed by the economics hearing which I, unfortunately, I hadn't, wasn't
23 able to sit in on yesterday. But in terms of the, I think it's quite different to the
24 sort of the community funds that I've had experience of in the past with large-
25 scale mining activities because in Central Otago there have been in the past some
26 quite large alluvial mining, gold mining activities and they tend to be funds that
27 are administered by the Council for the community for a specific purpose. For
28 example, there was Erskine [check 02:30:47] which is near Alexandra. There was
29 a fund set up for the hall committee to be able to do things and raise and do
30 improvements and things like that. That's much more direct than, I guess,
31 compensating Council for the extraction of gold from its land, which is a little
32 different, so.

33 **Mr Muir:** Compensating for access.

34 **Ms Rodgers:** Yeah, access to it, yeah. In terms of the discussion around the social
35 impact assessments, I think there would be – I tend to agree with Ms Allen that
36 there would be some benefit in perhaps gathering some of the baseline data that
37 would ordinarily be part of it, be part of a social impact assessment: things like
38 community history; culture; things that have shaped the community; identification
39 stakeholders; and an ongoing kind of, an ongoing engagement part of that, perhaps

1 that could be part of that, that there's an ongoing engagement. It is true to say that
2 there has been a polarisation in the community. So it would be good to see some
3 kind of efforts made to address or have more understanding of the impacts on the
4 local community. The first hearing at Cromwell heard from a few neighbours - - -

5 **Mr Muir:** Yes.

6 **Ms Rodgers:** - - - but not all, and that does concern me a little bit in terms of the
7 impacts on those that perhaps didn't feel that they could or wanted to, or were not
8 - - -

9 **Ms Sweetman:** Weren't able to because this wasn't - - -

10 **Ms Rodgers:** - - - or weren't able to participate.

11 **Ms Sweetman:** - - - a publicly notified application.

12 **Ms Rodgers:** Yeah, yeah. So I think there was definitely, there would definitely be
13 some benefit in gathering some of that data, perhaps as Ms Allen has indicated. I
14 mean, the timeframe is such that a full assessment is probably not practicable at
15 the moment. But on that, my experience in terms of commissioning reports is that
16 the commissioning of an independent technical report is an iterative process
17 between the expert and the person, and the party that's engaging them. I am a
18 little bit surprised that when the methodology was found to be flawed, given the
19 amount of clear back and forth on other technical reports that more effort wasn't
20 made to complete that process or improve the methodology, yeah. So if we could
21 look at potentially gathering baseline data and creating a liaison group or
22 something like that would be quite good.

23 **Mr Kensington:** And how would that occur practically? I mean, what do we do to
24 make that happen? Is it a condition of consent, or is it a further information
25 request, or what is it?

26 **Ms Rodgers:** I think a condition of consent's too late.

27 **Mr Kensington:** Too late?

28 **Ms Rodgers:** Yeah. I think it could be further information.

29 **Mr Kensington:** And then what would - - -

30 **Ms Rodgers:** But again, there's a time constraint on that now, so.

31 **Mr Kensington:** And what we would be asking for the applicant to do?

32 **Ms Rodgers:** Oh, well, I guess that there is kind of practices in terms of, you know,
33 the gathering of, I mean, just even an understanding of the community and the
34 impacts and, yeah. I can probably come back to you on exactly what that might
35 look like, bearing in mind that we are mid-process now and; but there is some
36 information, I'm sure, that we could, yeah, suggest to gather.

1 **Mr Kensington:** And how long that might take; if it's not the six months, is it three
2 months kind of thing or, you know.

3 **Ms Rodgers:** Yeah, yeah.

4 **Mr Kensington:** Is there still six months?

5 **Ms Rodgers:** I think there is a value. I think there is a value in terms of the
6 community and the impact that that might have on the community, yeah. Even
7 some of those parties that were invited to attend the hearing in Cromwell
8 suggested that they hadn't been involved, those that perhaps were quite directly
9 affected, which is surprising. So, yeah. I think Mr Chrisp is dying to say
10 something.

11 **Mr Chrisp:** Yes, yes. Could I request we have the morning tea break?

12 **Mr Muir:** For other reasons?

13 **Mr Chrisp:** For other reasons, yes, thank you, Sir.

14 **Mr Muir:** Very good. That's fine. Let's take it now. It's actually, we're due, so
15 we'll take a break now for 15 minutes.

16 **morning adjournment**

17 **Mr Muir:** Before the break, I think that you were looking like you needed to
18 something.

19 **Mr Chrisp:** Yes Sir.

20 **Mr Muir:** Whether it was relevant or not.

21 **Mr Chrisp:** Yeah, we've got just two points, and Mr Berry will respond to the tower
22 issue.

23 **Mr Berry:** Yeah, Commissioner Kensington, Mr Chrisp and I have conferred with
24 MGL during the break regarding that communications tower, as requested. We
25 understand that the tower isn't required as an essential part of the operation at the
26 mine. But that said, if it is an option MGL wishes to pursue later, a consent
27 application would be needed and would be sought at that time.

28 **Mr Kensington:** Understood, thank you.

29 **Mr Chrisp:** And I just wanted to follow up on the point about a community liaison
30 group. There is one in place already. It was established last year and it was to
31 create a formal structure to talk to a diverse range of people rather than the
32 historical sort of, or one-on-one sort of communications that have been, you know,
33 going on prior to that. It's been set out with a charter. It is chaired by Mr Paul
34 Miles, who is the general manager of Matakanui Gold, and it meets quarterly, the
35 members. The members of the group undertook a site visit last week I understand.
36 Sustainable Tarras were invited to be part of that group but declined. And just
37 finally, if you think it's something that should be the subject of a consent condition

1 to formalise it to become a legal requirement, then MGL has no problem with that,
2 and I can draft some conditions to that effect for the set up on Monday. I've been
3 involved and my - - -

4 **Mr Muir:** My suggestion is that it would be certainly worth the energy in doing
5 so and that it has significant buy-in from the panel.

6 **Mr Chrisp:** Thank you, Sir.

7 **Ms Sweetman:** Ms Allen.

8 **Ms Allen:** I'm just – yeah, we're partway through Ms Rodgers' response, I think
9 and she and I have been discussing so.

10 **Ms Rodgers:** Yeah, yeah. In terms of a social impact assessment, we understand from
11 residents, or somebody that participated, that it has been completed. So in terms
12 of availability of baseline data, I would think it's some way towards that being
13 already known in terms of that social impact. So it wouldn't be necessarily
14 starting from scratch. It's unclear what the issues were with the methodology or
15 identified by the applicant. But I would expect at the very least there'd be a range
16 of baseline data that would be quite useful in terms of understanding.

17 **Ms Sweetman:** I recall in having read all the 53 comments that someone did append
18 correspondence between themselves and the author, Alex Jepson, from GHD, that
19 it was completed and with the applicant.

20 **Ms Allen:** That's correct. Perhaps some of the Sustainable Tarras information.

21 **Ms Rodgers:** Yeah. So it is available, and it's unclear what the methodology concerns
22 were in terms of the applicant. But I would imagine that that would include the
23 sort of baseline data we've discussing in terms of the social aspects.

24 **Ms Allen:** So it hasn't been made available but it's something the panel could
25 perhaps ask for, as redacted as the applicant wants to make it.

26 **Ms Sweetman:** And maybe a commentary from them as to why they consider the
27 methodology wasn't appropriate. Thank you. I'd be interested, if we do go down
28 that track, for Mr Chrisp's evaluation of why the methodology.

29 **Mr Muir:** All that's been currently expressed is an outcomes-based assessment
30 that it didn't seem to capture very many people within the community because
31 they were stating that they had not been engaged in that process when the
32 opportunity emerged.

33 **Ms Rodgers:** I guess we're dealing with quite a bit of unknowns at the moment.

34 **Mr Muir:** Yes, unknowns.

35 **Ms Sweetman:** Any other comments on the SIA from the planners; otherwise I want to
36 change topic slightly and go to hydrogeology. Mr Chrisp, to colloquialise what

1 you said, I think it was effectively “she’ll be right” in terms of the trigger standards
2 provided.

3 **Mr Chrisp:** Well, I would never express it in that way, Commissioner. The way I’d
4 express it is that there have been consent, compliance consent limits proposed.
5 Tey have been the subject of caucusing. There is some movement in terms of
6 where those will land, but my expectation is that they will land at a point where
7 compliance with those limits will result in the avoidance of effects in the larger
8 Bendigo and Ardour aquifers.

9 **Ms Sweetman:** So there’s still some water, colloquially, to go under the bridge - - -

10 **Mr Chrisp:** True.

11 **Ms Sweetman:** - - - before we’d know for sure - - -

12 **Mr Chrisp:** What those numbers should be.

13 **Ms Sweetman:** Yeah.

14 **Mr Chrisp:** Yes.

15 **Ms Sweetman:** Or where performance and compliance monitoring should occur.

16 **Mr Chrisp:** That’s right. And there is some outputs from the joint witness sessions
17 which have identified some potential sites which might well find their way into
18 the conditions on Monday on a best endeavours basis.

19 **Ms Sweetman:** Ms McDonald, do you have any comments on that? Does that address
20 your concerns as far as you’re aware from your groundwater experts?

21 **Ms McDonald:** Somewhat.

22 **Ms Sweetman:** Excuse me.

23 **Ms McDonald:** Somewhat. But my understanding was that I agree that there are
24 currently proposed groundwater water quality limits. But I understand the
25 concern is that due to the absence of baseline quality information, the extent of
26 the change from the current situation can’t be understood. However, those limits
27 are set at the, currently, drinking water standards, so that does offer protection in
28 that respect. The other piece of the puzzle I think was some uncertainty about an
29 appropriate compliance monitoring location for the bore in the Shepherds Valley
30 but, beyond that level of detail, I probably wouldn’t wish to comment further. But
31 I understand that that’s still a matter to be resolved.

32 **Ms Sweetman:** Thank you. Nothing further, Mr Chrisp?

33 **Mr Chrisp:** No.

34 **Ms Sweetman:** No, okay.

35 **Mr Berry:** Sorry, Commissioner, if I can - - -

36 **Ms Sweetman:** Mr Berry.

1 **Mr Berry:** - - - just add minor point. I do understand from the joint witness
2 statements that there's discussion about further modelling to be undertaken in the
3 groundwater environment and some thought has been put into how that might play
4 out into conditions and any further updates in terms of refining those monitoring
5 locations at an appropriate time in the process, you know, at the start of any sort
6 of commencement of consents and how that might play out. That's still being
7 worked through.

8 **Ms Sweetman:** I guess we'll probably talk about management plan certification
9 certainty.

10 **Mr Muir:** Yes.

11 **Ms Sweetman:** What comes, what do we need now versus what is appropriate to deal
12 with later. So no further questions from me at this point in time.

13 **Mr Muir:** Cross-examination.

14 **Mr Enright:** Yes Sir, I think I'm going to go before Ms Gepp.

15 **Mr Muir:** Yes, Mr Enright.

16 **CROSS-EXAMINATION BY MR ENRIGHT:**

17 **Mr Enright:** Just, Mr Chrisp, and you have sort of given some helpful preliminary
18 responses on the question of alternatives. I just want to remind you of what was
19 said in the first JWS. Do you have that with you?

20 **Mr Chrisp:** The planning one?

21 **Mr Enright:** Yeah, the first planning one.

22 **Mr Chrisp:** Yes, I do.

23 **Mr Enright:** And if you could look at para 15 please. Just read that to yourself. So
24 I just want to test with you the assertion in the second sentence, or the first two
25 sentences really. "There has been extensive assessment of alternatives to most of
26 the key elements. This includes open pit versus underground mining techniques".
27 Now that's not really correct, is it?

28 **Mr Chrisp:** Well, my understanding is the mining engineers had undertaken that
29 assessment. They advised us; we questioned them about it, about what the, why
30 what was proposed was proposed. And I did give some answers earlier about why
31 that was, I mean, obviously the very deep part of the gold resource can only
32 realistically lead to, be sourced by underground, and that the stuff that's near the
33 surface lends itself to an open pit. And, in this instance, it's not been necessarily
34 a competition between the two; it's been a horses for courses in terms of the
35 proposals end up with elements of both.

1 **Mr Enright:** Yeah. So that's information you're privy but, but the panel and the other
2 experts are not privy to because it hasn't been provided unless it's part of the
3 application, correct?

4 **Mr Chrisp:** Oh, I see. There hasn't been a written document pulling all of the
5 assessment alternatives into one spot, that's correct.

6 **Mr Enright:** And specifically underground versus pit, correct?

7 **Mr Chrisp:** There's not been, as I said, not been a document done as an assessment
8 of alternatives. There has been explanation as to why each of those options have
9 been pursued in those different circumstances.

10 **Mr Enright:** But it, and, you know, I'm sure sat through all the technical experts
11 earlier this week and last, and there seems to be a bit of a flavour of "well, that's
12 what the client wanted", the optioneering / auctioneering [check 03:03:35]
13 approach essentially where the technical experts for the applicant have deferred
14 to the client preference, rather than exploring in some detail the benefits, the pros
15 and cons of underground versus open pit, for example. That's fair, isn't it?

16 **Mr Chrisp:** Yeah, that's probably a fair summary of where those experts got to,
17 yeah.

18 **Mr Enright:** And you made the point quite rightly that it's really axiomatic. If you
19 went with underground mining, you would avoid some of the key effects. I just
20 wanted to step through that just briefly. Essentially, undergrounding would avoid,
21 with certainty avoid effects on matters of national importance that relate to
22 ecology, water and landscape, ONLs. Correct?

23 **Mr Chrisp:** Not entirely because you still have to have some surface expression and
24 you would still have a tailings dam probably and things like that. So there would
25 still be quite a substantial footprint imagine, and your processing plant is
26 obviously going to be above ground; so there would be elements of the mine that
27 would still be in the same category of needing consent under an ONL needing to
28 be assessed in that regard.

29 **Mr Enright:** That's fair comment, but it would be an avoidance, effective avoidance
30 of matters of national impacts on - - -

31 **Mr Chrisp:** It would be substantially less.

32 **Mr Enright:** Yeah. I'm not sure I agree with you. Thank you. And so we know what
33 the pros are but, problematically for the panel, the applicant hasn't told them what
34 the cost side of the equation would be for example if one was to opt for
35 underground mining and the practical realities of that just simply haven't – that
36 side of the equation hasn't been made manifest to the panel in terms of the
37 applicant information, has it?

38 **Mr Chrisp:** Not that I'm aware of, no.

1 **Mr Enright:** Just on the topic of groundwater and your point, quite rightly made,
2 that, you know, if you set a limit for compliance, then that normally is assumed to
3 address the risk. But, I mean, do you accept on the other hand, even if you have
4 compliance limits set, it does remain a risk of irreversible impact to the aquifers,
5 a low probability high impact effect.

6 **Mr Chrisp:** Yeah, yeah. I don't think anyone can ever say there would be no risk,
7 but basically the approach is to minimise that risk with the performance
8 monitoring that occurs between the activity and the compliance monitoring point
9 so that there's early detection of anything heading in the wrong direction, and
10 whereupon things can be done about it.

11 **Mr Enright:** Yes, that's quite right. But, I mean, do you agree for a large-scale
12 infrastructure project, I'll call it infrastructure in a non-technical way - - -

13 **Mr Chrisp:** Yeah.

14 **Mr Enright:** - - - large-scale projects of this nature, it's most unusual not to have
15 undertaken the groundwater characterisation. One would normally expect that to
16 have been done for a project of this scale.

17 **Mr Chrisp:** Are you talking about the Bendigo and the Ardour aquifers or?

18 **Mr Enright:** Well, I suppose, well, particularly, yes. But, I mean, it seems, I think
19 it's probably fair to say that emerged as consensus that that baseline work hasn't
20 been done, and I'm putting to you in your capacity as a planner, that's unusual. It
21 should have been done; normally it would be done for a project of this scale, in
22 your experience.

23 **Mr Chrisp:** Yes, we do need some baseline data, yes.

24 **Mr Enright:** And the fact that it hasn't been done for this project is a failing for this
25 application in terms of you would need to assess those effects, isn't it?

26 **Mr Chrisp:** Well, that's a question for those technical experts. What they can and
27 can't do with the information that they've got available to them is their area of
28 expertise, not mine.

29 **Mr Enright:** That's fair, but again, you're the – I think the planner's always the
30 sweeper, aren't they?

31 **Mr Chrisp:** Not with every problem, no you're right.

32 **Mr Enright:** I just would like you to draw on your extensive experience with other
33 large projects, usually infrastructure of course, but that is completely
34 unsatisfactory that that groundwater baseline information has not been provided
35 to this panel in assessing the key issue of groundwater effects.

36 **Mr Chrisp:** Well, if you think about it from the perspective that the applicant is
37 proposing consent limits which, as noted, are the equivalent of the drinking water

1 standards, if those limits are achieved, then there will be no effect. So, therefore,
2 researching the quality of groundwater downstream becomes somewhat
3 academic. You could do the big aquifers. You could go and do the Clutha; you
4 could go way downstream of the Clutha as well. But at the end of the day, if
5 there's no effect proposed in terms of assuming the drinking water standard is
6 regarded as a no effect, I'm using that term loosely, then that's the, from a planning
7 point of view, that's the outcome to be achieved. If it's proposed as consent
8 condition and the engineers and the groundwater people say that that is
9 achievable, then from a planning perspective that's what I rely on.

10 **Mr Muir:** And from a Crown perspective, however, it would never be the case that
11 we would consent it unless we were of the view that it was realistically achievable
12 and that there were in place sufficient levels of contingent response to deal with
13 the remaining uncertainty because, as you said, you can never totally exclude all
14 risk.

15 **Mr Chrisp:** Correct; and I agree with exactly what you said, Sir.

16 **Mr Muir:** And then the question becomes whether in the absence of the baseline
17 information we can get to stage one, making assessment that it's realistically
18 possible.

19 **Mr Chrisp:** I think there's a physical divide insofar as you're making this, and
20 rightly, you to make an assessment as to are those limits achievable at that
21 compliance point.

22 **Mr Muir:** Yes.

23 **Mr Chrisp:** If the answer to that is yes, then there will be no effect and, therefore
24 - - -

25 **Mr Muir:** Correct.

26 **Mr Chrisp:** - - - there's no - - -

27 **Mr Muir:** Correct.

28 **Mr Chrisp:** - - - so characterising the downstream resource.

29 **Mr Muir:** We don't send off the applicant to go and build, spend hundreds of tens
30 of millions of dollars in the construction of something that we know is not going
31 to work.

32 **Mr Chrisp:** Correct, yes, 100 per cent.

33 **Mr Enright:** Yes, and thank you, Sir. And that's really the point is the "if" part of
34 the equation. Of course, if you can comply with the water quality limits, then that
35 would theoretically avoid the effect. But the question around the "if", and this is
36 where there are some unknowns unfortunately because of the lack of baseline
37 information, which means it's not known whether there will be irreversible effects

1 on groundwater, or not knowing whether you can achieve the standard that you're
2 setting recommending that they be set for the consent holder.

3 **Mr Chrisp:** Well, again that's a question for the relevant experts to answer. I can't
4 tell you whether that limit will be achieved. I'm told that is what the limit is; I'm
5 told that, from a technical point of view, that is an appropriate limit. I'll put it in
6 the consent conditions.

7 **Mr Enright:** Okay. So you accept there is that prior question which we just talked
8 around whether you actually can meet, whether it's realistic, that's obviously - - -

9 **Mr Chrisp:** That is a relevant question for the panel to explore with the relevant
10 experts.

11 **Mr Enright:** Yes, sure. Just a point about another alternative which was raised earlier
12 in the week around filling some of the pits, and it may not be reasonable to require
13 that for every pit, but it just seemed to me you were a bit simplistic in your
14 criticism because you suggested that having a TSF is a far better idea than putting
15 tailings back into a particular pit. And you'd have to agree, wouldn't you, that if
16 that was being considered as a reasonable alternative, clearly an assessment would
17 need to be made by the applicant, by their geotechnical experts particularly,
18 around managing tailings, or whatever product it is that's put into the pit, to avoid
19 adverse effects. That's fair, isn't it?

20 **Mr Chrisp:** You would need to undertake an assessment, and I think Mr Weber did
21 comment on that, about when you've got the option of having just a pit which,
22 you know, because with the tailings facility, because it's higher in the catchment,
23 you have the ability to, through gravity, collect what comes out of it. If you have
24 a very deep pit which is below, which is the lowest point on the site, you have no
25 ability to collect what is seeping out of the bottom and then deal with it. So that
26 issue is obviously relevant to if you are putting tailings in there. I have a lesser
27 understanding in terms of what that means in terms of putting waste rock in there
28 because that obviously has leaching potential as well.

29 **Mr Enright:** Yeah, correct. So, and of course, there are some pros and cons simply
30 unaddressed by the applicant around filling in pits. There might be some pros on
31 landscape, for example, but the panel doesn't have the information to evaluate
32 whether that's a reasonable alternative, do they?

33 **Mr Chrisp:** It's certainly been discussed. I don't know. Well, that's a matter of
34 opinion as to whether there is enough information on the table or not in that regard,
35 but that's not what's proposed, obviously.

36 **Mr Enright:** It's a matter of opinion. I'm asking for your opinion. The level of
37 adequacy of information alternatives is very poor for this proposal, isn't it?

38 **Mr Chrisp:** It's not documented. As I said before, it's not all documented in one
39 place, that's for sure.

1 **Mr Enright:** It's not documented; therefore, it's not information in front of the panel.
2 It may be, in your mind, you may have had discussions with experts; but it's not
3 information available to the panel, is it?

4 **Mr Chrisp:** Well, the panel has queried a lot of the technical experts on those
5 alternatives, so there is information available. It's not necessarily documented.
6 It's been verbally provided through the hearing process and through joint witness
7 statements.

8 **Mr Enright:** And might it be matters of national importance at stake here? That is a
9 very poor scenario, poor quality of information, I suggest to you.

10 **Mr Chrisp:** Well, it comes down to what is the, what is the, again, I use the word
11 mitigation in a planning sense, rather than a slice and dice sense. It's the adequacy
12 of the mitigation to address those issues under the, that are relevant to the ONL
13 provides in the plan.

14 **Mr Enright:** Yes.

15 **Mr Chrisp:** That's what, that's the way I look at that is to say, "okay, you recognise
16 there is a proposal, there is an effect, is the mitigation, in the broader sense,
17 adequate to address those effects to an acceptable level?"

18 **Mr Enright:** And when you're the panel and you're weighing up the pros and
19 constable of this proposal, there are a number of uncertainties that the panel has
20 here: lack of information around how it could be done better in ways that would
21 avoid effects on matters of national importance. That's fair, isn't it?

22 **Mr Chrisp:** Well, it's pretty clear that that I would expect the panel to have a very
23 clear view that if you went purely underground, you'd have much less effects.
24 That's, as I said, it was axiomatic. But yeah, so you can put those two alternatives
25 on the table; and it's a case of understanding "well, what are the reasons for the
26 option that has been selected". I think that explained. I think, or I don't think
27 there's any lack of explanation as to why that is. And in any project of this nature,
28 there's a balance between operational, you know, matters, site health and safety,
29 cost benefit, environmental effects, costs of mitigation, etcetera; and all those
30 things go into the mix to craft up a project and say, "this is the way that it should
31 be advanced".

32 **Mr Enright:** Yeah, and look, I won't dwell on this any further but other than I'm sure
33 you'd accept that the duty of all the independent technical experts employed by
34 the applicant here is to explore alternatives, not simply accept a client's brief but
35 that seems to have happened here, doesn't it?

36 **Mr Chrisp:** There is an obligation to consider alternatives as part of an application
37 of this nature.

38 **Mr Enright:** Just on the topic of the adequacy of information of c-pungens, I just
39 want to understand better the suggestion that essentially there'll be an avoidance

1 approach taken to the c-pungens' population within the CIT pit predicated on
2 either there'll be a net gain from in terms of if it's elsewhere or it will be less than
3 one per cent of the total population, right, at least that's - - -

4 **Mr Chrisp:** That's correct, yes.

5 **Mr Enright:** But the applicant hasn't adopted the same approach to the DDF because
6 we understand there's a further 20 per cent of the entire population within the
7 direct disturbance footprint. Why hasn't that approach also been applied to the 20
8 per cent, which is a material proportion of the entire national population of the
9 species?

10 **Mr Chrisp:** Well, those percentages are based on the current survey, which is just
11 one survey and, as we discussed earlier this morning, is very limited because it
12 didn't extend to the adjoining property where it's expected there will be more
13 found, because of lambing. But, so that's neither here nor there. I don't have
14 really have an answer – or basically it's acknowledged that the effects on spring
15 annuals is a significant effect by Zac, what's Zac's last name?

16 **Mr Enright:** Milner.

17 **Mr Chrisp:** Oh sorry, by Mr Milner, Dr Milner. So that is acknowledged as an effect
18 in the process, and then it's a case of so what. So from my perspective as a planner,
19 what is done about that? And that's where the ecologists have provided advice on
20 what they think is appropriate in terms of mitigation measures, again in the
21 broader sense. They, and they basically advised, they came to us and said, "right,
22 this is all we can do", and because that's because of the strictures of the NPSIB
23 and, as I said, "well, I don't agree with that, there's always more that you can do".
24 And so, hence, that's where the Biodiversity and Heritage Enhancement Fund
25 came from.

26 **Mr Enright:** Mm.

27 **Mr Chrisp:** So that's a matter that, quite apart from the NPSIB, if you look at
28 section 104(1)(ab), that's a provision of the Resource Management Act where a
29 consenting authority must take into account any measures proposed by an
30 applicant to offset or compensate for any adverse effect which will have a positive
31 outcome. So that's 104(1)(ab). So that's the way I approached that in terms of –
32 and that started out as a \$500 fund; it's been increased to a \$10 million fund and
33 the idea is that's for offsite works or activities within, from an ecological
34 perspective within the Dunstan Ecological District and from a heritage point of
35 view within Central Otago.

36 **Mr Enright:** So just coming back though to the proposed approach, if it's important
37 to protect the 20 per cent of c-pungens' population located within the footprint of
38 the CIT, surely it must be equally important to protect the 20 per cent of
39 population within the DDF. That's fair logic, isn't it?

1 **Mr Chrisp:** Yeah, I think that the issue with the CIT pit is that that's where the
2 greatest concentration of the spring annuals are located.

3 **Mr Enright:** Well, if we assume as correct the information that I think came up
4 earlier this week that there's essentially 40 per cent within the subject site on
5 current known information, obviously. But just going, and 20 per cent of which
6 is within the DDF and 20 per cent within the CIT, now the applicant has quite
7 helpfully proposed an avoidance regime for the 20 per cent located within the CIT
8 pit on that proposed condition we've just discussed. Doesn't it apply, doesn't the
9 same logic apply to the 20 per cent of the c-pungens' population of national
10 significance? I think someone said international during the ecology session.
11 Shouldn't that also have the same protection?

12 **Mr Chrisp:** Well, you could make an argument to that effect, but you'd need to
13 consider the whole thing in the round, and it's in – yeah, I don't know if I can help
14 you much more with that. That is what has been proposed. There's been
15 mitigation proposed to address those effects and it's a case of is that mitigation
16 adequate to address the effect?

17 **Mr Muir:** There's a bottom line here that we have 20 per cent of the population in
18 a concentrated area. It's subject to the less than one per cent overriding criteria.
19 But the other 20 per cent are so differentiated in their location throughout the DDF
20 that, to be perfectly blunt, the project could not proceed in any way if it was
21 subject to the less than the one per cent criteria.

22 **Mr Chrisp:** That's my understanding, Sir. It's a binary situation.

23 **Mr Muir:** So it would operate if applied across the entire, over the entire
24 application, it would be effectively like a conditional consent and go out and do
25 all of the survey work that is required to get to less than one per cent for the total
26 population within the DDF, and then you can get on with your mining.

27 **Mr Chrisp:** Correct.

28 **Mr Enright:** So just following that up, my understanding is that the 20 per cent
29 within the DDF of the mine site CIT, it's currently an unknown exactly where the
30 c-pungens are located, and do you have – can you comment on that, or is that
31 something that you don't - - -

32 **Mr Chrisp:** Well, the data has been released from the 2025 survey. It's sort of
33 beyond my expertise to comment on that, but it's - - -

34 **Mr Muir:** Well, the data in terms of the numbers.

35 **Mr Chrisp:** Yes, the numbers.

36 **Mr Muir:** We haven't seen the report yet. It's under discussion as to how that will
37 be released and when. The position which we have raised with the applicant is
38 that there is no resistance to provision of the report insofar as it applies to the

1 DDF, but the report itself engages with other land that is not within their purview
2 and the owners of which have said they do not want public release of. So that is
3 having to be negotiated. It will inevitably end up in some form of redacted release.

4 **Mr Enright:** Yes Sir, that's helpful, thank you. Just to close out. So the 20 per cent
5 within the DDF, you'd agree that maintenance and protection of that ecosystem is
6 important in terms of section 6C. It's a section 6C matter of natural importance,
7 isn't it?

8 **Mr Chrisp:** Correct, yeah, right.

9 **Mr Enright:** Thank you, Sir.

10 **Mr Muir:** Thank you very much, Mr Enright. Now Ms Gepp, did you, yes.

11 **Ms Gepp:** Yes, I do have questions, thank you, Sir.

12 **Ms Gepp:** Just to check on when I should ask questions about the covenant
13 because I have some questions about that and it sort of comes into both adequacy
14 of information and policy statutory consistency, but you haven't commented on it
15 at this stage. So, Mr Chrisp, do you suggest, or would the panel have a view on
16 when questions about the covenant are best raised.

17 **Ms Sweetman:** I thought that would probably come up with policy direction under four.

18 **Ms Gepp:** Thank you. Alright, I'll leave it to then.

19 **CROSS-EXAMINATION BY MS GEPP:**

20 **Ms Gepp:** So in terms of the social impact assessment issue, and actually I'll start
21 with the community liaison group that you mentioned Sustainable Tarras has been
22 invited to join and had declined. You've seen the correspondence about why that
23 invitation was declined, haven't you?

24 **Mr Chrisp:** No.

25 **Ms Gepp:** You haven't read Sustainable Tarras' comments that included, that
26 attached - - -

27 **Mr Chrisp:** Are you talking about the comments, the section 53 comments?

28 **Ms Gepp:** Yes.

29 **Mr Chrisp:** No, I didn't personally read those particular comments. We had a team
30 of us responding to those comments in the space of the one week, over a thousand
31 points of comments, so.

32 **Ms Gepp:** It's pretty important for you to be across all of these issues, though, isn't
33 it?

34 **Mr Chrisp:** Well, it's certainly desirable, but I haven't read that particular piece of
35 correspondence.

1 **Ms Gepp:** Right. So one of the reasons that was given for declining a role on that
2 community liaison group was that the terms that Sustainable Tarras would have
3 had to sign up to, to join it, included the statement that MGL retains full discretion
4 on the selection of community members. So there would not have been an
5 opportunity under that process for the community to self-nominate a person unless
6 that person was accepted by MGL. You can understand why that would be of
7 concern to a group seeking to have a role in a process like this, can't you?

8 **Mr Chrisp:** Yes.

9 **Ms Gepp:** So would you accept that it may have been entirely reasonable for
10 Sustainable Tarras to decline to be involved in that community liaison process.

11 **Mr Chrisp:** Well, they could have put someone up and see how they go.

12 **Ms Gepp:** Yeah, that retains all the power with one entity though, doesn't it, and
13 doesn't – it's not a partnership process. It's a process where you can try your luck
14 and see how you get on from a community perspective, isn't it?

15 **Mr Chrisp:** I guess you could say that.

16 **Ms Gepp:** So the comments also included a community – so there was like the
17 legal comments and then attached to those comments was a community comment.
18 Have you read that at appendix 17?

19 **Mr Chrisp:** No.

20 **Ms Gepp:** Right. So that includes some mitigation that Sustainable Tarras was
21 seeking and it saw, Sustainable Tarras saw that mitigation as coming out of a
22 social impact assessment. So the proposition was that once the social impacts
23 were assessed, as is the normal course of events with any kind of impact
24 assessment, there would be recommendations as to how to mitigate those impacts.
25 So you haven't looked at, or sorry, you would agree with that: that normally a
26 impact assessment also includes recommendations about mitigation.

27 **Mr Chrisp:** Yes, that's a true proposition, yes.

28 **Ms Gepp:** So that's something that we don't have because we don't have a social
29 impact assessment, isn't it? We don't have those recommendations on how to
30 mitigate social impacts?

31 **Mr Chrisp:** That's fair.

32 **Ms Gepp:** Okay. On page, as part of that comment, I'm just going to get myself
33 to find it. There was a recommendation to look at international best practice for
34 mitigating community impacts from mining and one of the examples that's given
35 is a community agreement such as used in Queenstown. Do you have any – sorry,
36 Queensland. Do you have any familiarity with those kinds of community
37 development agreements?

1 **Mr Chrisp:** I have not done any work in Queensland.

2 **Ms Gepp:** Okay. Do you – so that would include things like a funded independent
3 community group, access to data, grievance processes.

4 **Mr Muir:** When you say independent community group, you mean independently
5 chaired or - - -

6 **Ms Gepp:** The Chair, well obviously the Chair would be part of it.

7 **Mr Muir:** I mean, obviously the applicant's got to have some involvement on the
8 group.

9 **Ms Gepp:** Yes, absolutely, yeah.

10 **Mr Muir:** Yes.

11 **Ms Gepp:** But the difficulty I'm in, Sir, is we haven't got any effective response
12 to this, so we haven't had any opportunity to work through any of those details
13 but. Okay, so I'll just put it to you that there is a proposition there that it may be
14 of assistance for you to look at, given that you haven't, as you are - - -

15 **Mr Chrisp:** Drafting conditions.

16 **Ms Gepp:** Yes.

17 **Mr Chrisp:** Yes, I agree with you.

18 **Ms Gepp:** There's also – are you aware of the approach that's taken by
19 Oceana Gold for Waihi of having essentially a property devaluation compensation
20 policy?

21 **Mr Chrisp:** No, I'm not aware of that one.

22 **Ms Gepp:** Okay. So at Waihi, Oceana Gold has a policy that covers impacts, both
23 direct impacts from mining operations such as breakage or damage, but also loss
24 of value from properties adjacent to the mine; and that's discussed also in the
25 Sustainable Tarras' community comments. Has any consideration been given to
26 that kind of policy for this project?

27 **Mr Chrisp:** Not that I'm aware of.

28 **Ms Gepp:** Okay. Do you think that would be of value to consider?

29 **Mr Chrisp:** Well, I make the point that valuation effects are not effects for the
30 purposes of the RMA, or any other legislation that I'm aware of in terms of the
31 Public Works Act type of thing. But in terms of an environmental effects
32 assessment, the courts have been very clear on, that valuation effects are not
33 effects because they basically amount to a double counting of an actual effect. I
34 am aware of an example with the geothermal industry that I've been heavily
35 involved in where, in the Wairākei Tauhara geothermal system, there is a set of
36 consent conditions with a presumption of fault if subsidence occurs and causes

1 damage, whereupon Contact Energy has to make good and fix. But that doesn't
2 extend to any valuation effects where a deposit is needed.

3 **Ms Gepp:** Okay. But to the extent that that position's been taken under the RMA,
4 there may well be differences in this fast-track context, given the much more
5 limited role, participatory role, much less ability for those who may be affected,
6 but not immediately affected, to participate, and the difference in weighting where
7 economic impacts are weighed more highly in many instances than environmental
8 and social impacts. There may be, it may be that a different approach applies,
9 mightn't it?

10 **Mr Chrisp:** I would still expect that a condition of that nature compensating for loss
11 of property value would have to be profit on a Augier basis.

12 **Mr Muir:** Sorry, I just missed that.

13 **Mr Chrisp:** Sorry. I would expect that a condition of that nature would have to be
14 profit on an Augier basis. That's an Environment Court decision where it's not a
15 condition that can probably properly be imposed by a decision-making authority,
16 so.

17 **Mr Muir:** I don't think it can be.

18 **Ms Gepp:** No.

19 **Mr Chrisp:** But it can be volunteered by an offer for discussion. So it's like, it's
20 often in the form of a cash payment or something like that, or you'll proffer up a
21 condition to deal with an effect over and above what might otherwise be required,
22 or what, yeah, over and above what would otherwise be required. It's referred to
23 the planning resource management industry as an Augier condition.

24 **Mr Muir:** An Augier?

25 **Mr Chrisp:** Augier, A-U-G-I-E-R. It was a case, *Augier v Someone*, I can't
26 remember who.

27 **Ms Gepp:** Back to the issue of whether a social impact assessment should have
28 been prepared, you've given an example in the planning joint witness statement
29 and just earlier when you were giving evidence, you gave me an example of the
30 Te Awamutu project - - -

31 **Mr Chrisp:** Yes.

32 **Ms Gepp:** - - - and where the panel was informed by thousands of submissions
33 that were made on that. Presumably, that was a publicly notified application.

34 **Mr Chrisp:** Correct.

35 **Ms Gepp:** So we do have a difference here, don't we, where this is not a publicly
36 notified application.

37 **Mr Chrisp:** That's a difference, yes.

1 **Ms Gepp:** My clients have referred quite extensively to and relied on the Tarras
2 Community Plan as encapsulating the vision of the community for the community
3 and for Tarras essentially. Do you – have you considered that plan?

4 **Mr Chrisp:** I have not, no, I have not.

5 **Ms Gepp:** That's something that a social impact assessment might well look at,
6 mightn't it; published information that had been developed by the community
7 about its vision for the community.

8 **Mr Chrisp:** Yes, it might do.

9 **Ms Gepp:** But you think you said – did you say you haven't seen the GHD social
10 impact assessment?

11 **Mr Chrisp:** Correct.

12 **Ms Gepp:** Okay. Okay. Moving on from the social impact assessment issues,
13 when it came to adequacy of information, and you've said quite a few times in
14 relation to groundwater that while you could always have more, but as long as you
15 have a limit to avoid adverse effects and you can demonstrate that you can achieve
16 that, then why do you need more information? Firstly, setting drinking water
17 standards when we – we don't know what the quality of the aquifer is, so setting
18 drinking water standards may well represent a significant degradation of water
19 quality, mightn't it, up to that drinking water limit?

20 **Mr Chrisp:** Theoretically. I don't know.

21 **Ms Gepp:** Okay. And the groundwater experts in the second water and
22 geochemistry joint witness statement, it was identified that more recent – that
23 initial drilling at groundwater compliance monitoring location MW101 had found
24 considerably different hydrogeological conditions than anticipated. It's therefore
25 unclear whether MW101 is an appropriate compliance monitoring location. And
26 several of the experts, including the applicant's expert, Dr Burgess, had said that
27 further characterisation work is required to determine appropriate groundwater
28 compliance monitoring locations. Now I understood you to say earlier that they
29 had identified appropriate monitoring locations and that those would find their
30 way into the conditions but, from my read of this, they're saying the work needs
31 to be done to identify those locations.

32 **Mr Chrisp:** I can't remember where I've read it but I've read a list somewhere of
33 suggested locations for that, potentially for that monitoring. I'm not sure where I
34 recall I've seen it, but the intention is try and address that in the next round of
35 conditions so that there is more monitoring proposed.

36 **Ms Gepp:** Okay. But the further characterisation work that Dr Burgess is
37 recommending hasn't been done, has it?

38 **Mr Chrisp:** Not that I'm aware, no.

1 **Ms Gepp:** So we've got a bit of a circular issue there where - - -

2 **Mr Chrisp:** Yeah, yeah.

3 **Ms Gepp:** - - - where it would need to be done. And just, the Chair referred to it
4 before, the nuclear option, but if there are issues that need a little bit longer to
5 address, the applicant does have the option of asking for a suspension of this
6 process, doesn't it?

7 **Mr Chrisp:** Yes, it does.

8 **Ms Gepp:** Right. Other issues that you didn't identify in terms of, or that weren't
9 discussed with respect of adequacy of information, I don't think, was ecotoxicity
10 of standing water in pit lakes and other standing water on the DDF post-
11 rehabilitation. You'd agree that that's an issue that still has a fair bit of work to
12 be done to sort it out?

13 **Mr Chrisp:** Yes.

14 **Ms Gepp:** And that's not a matter of just setting a condition, is it?

15 **Mr Chrisp:** I don't know. I'm not an expert in that field.

16 **Ms Gepp:** No, but you are writing conditions and addressing the panel on where
17 there are information gaps.

18 **Mr Chrisp:** Yeah, I'm not making it up though. I'm basing stuff like that on the
19 advice of the experts.

20 **Mr Muir:** It couldn't be appropriately conditioned on the basis of the information
21 currently available because we just don't have the baseline information about
22 ecotoxicity and migration through the food chain and concentrations within the
23 food chain, correct?

24 **Mr Chrisp:** Yes.

25 **Ms Gepp:** Mr Enright has asked my questions on spring annuals, so I'll leave that.
26 And then just in relation to this willows covenant, we wouldn't normally place
27 weight on - - -

28 **Mr Chrisp:** The concession, you mean?

29 **Ms Gepp:** Concession. What did I say?

30 **Mr Chrisp:** Covenant.

31 **Ms Gepp:** Concession, sorry, thank you. We wouldn't normally take into account
32 mitigation actions that required other approvals, would we, in consenting?

33 **Mr Chrisp:** Oh, I think you can. There's often situations where you require some
34 form of further approval, whether it's a Building Act approval or, in this case, you
35 know, or actually there's a part of the RFI that was responded to yesterday, RFI
36 10 at point five of that, Dr Woods, who has concluded that the likelihood of

1 requiring an archaeological authority for the Bendigo Creek area of that low
2 catchment area is unlikely.

3 **Ms Gepp:** Okay, I'll have to take your word for that because I haven't seen it yet.
4 Hazardous substances and hazardous installations. I appreciate we have an
5 outstanding RFI on that issue, but I just wanted to pick up on your statement in
6 the joint witness statement that there's enough information because the site
7 doesn't contain active fault lines. We can't say that this is a seismically safe area,
8 can we? We know, for example, there's a fault line 10 to 12 kilometres away.

9 **Mr Chrisp:** Well, I don't feel qualified to make categorisations of relative risk of
10 seismicity because that's well beyond my expertise.

11 **Ms Gepp:** Well, isn't that exactly what you're doing in the joint witness
12 statement?

13 **Mr Chrisp:** No, what I'm saying and what I said in the joint witness statement is
14 that we have a plethora of standards that have been developed in the New Zealand
15 context which takes into account the seismic risks of the country and has
16 determined what is appropriate in terms of the nature and construction and
17 operation of facilities that store hazardous substances.

18 **Ms Gepp:** Yes.

19 **Mr Chrisp:** And so my view is that, the view that I was expressing there is that if I
20 rely on compliance with those standards to achieve a safe hazardous substances
21 installation. And I guess if you're putting those in a location where there are no
22 known fault lines on the site, then that means that – well, where I get to is there's
23 no reason why those standards should not be appropriate.

24 **Ms Gepp:** So do those standards say that these apply provided there's no active
25 fault lines within the site?

26 **Mr Chrisp:** No, they apply across the country - - -

27 **Ms Gepp:** Yeah.

28 **Mr Chrisp:** - - - including where there are fault lines.

29 **Ms Gepp:** Yeah. And the requirements, the informational requirements of the
30 Fast-Track Act don't say as long as you comply with the external standards, you
31 no longer need to provide the information in clause 6B and 7G, do they?

32 **Mr Chrisp:** No, they don't. I suppose that information is being provided on
33 Monday.

34 **Ms Gepp:** Thank you, those are my questions on this topic. Thank you.

35 **Mr Muir:** Ms Williams, did you have any cross-examination? Thank you.

36 **Ms L Williams:** My questions have been asked and answered. So no, I have no cross-
37 examination.

1 **Mr Muir:** You have no cross-examination, right, thank you, Ms Williams.
2 Mr Randal?

3 **Mr Randal:** Same for me, Sir, on this topic, thank you.

4 **Mr Muir:** Thank you. And Mr Leckie?

5 **Mr Leckie:** Likewise for me, no questions, Sir.

6 **Mr Muir:** Thank you. Yes. Ms Buxeda, we'll just run on the same basis that you
7 just pop your hand up if, of course, you want to address us.

8 **Ms Buxeda:** Thank you.

9 **Ms Sweetman:** Duration of consent.

10 **TOPIC 2: DURATION OF CONSENTS**

11 **Mr Muir:** Yes, right, very good. Duration of consent. I think we will start with
12 you this time, Mr Chrisp.

13 **Mr Chrisp:** Thank you, Sir. Yeah, so we discussed this at some length in our caucus
14 thing. So there was, so basically there is a one, there's one single land use consent
15 applied for within the jurisdiction of CODC for all land use activities. An area of,
16 I guess, dispute was that my view was that or is that a 35-year consent is a – sorry,
17 a consent, a land use consent with no expiry is appropriate. That's the normal
18 default setting in terms of granting a land use consent. You typically only have
19 terms of consent on a land use sense for temporary activities. There was
20 suggestion that elements of the proposal could be the subject of a consent
21 condition requiring cessation of those activities at a certain point, so in particular
22 the actual processing plant. So on the assumption that all processing would be
23 finished within say the 15 years which has been predicted. My view is that that is
24 unnecessary. It'll be what it is. Any arbitrary sort of cut-off within the consent
25 while everything else carries on, you know, you could end up in a ludicrous
26 situation where you said: "Well, hang on, I've got six months more processing to
27 do. Now I've got to apply for a whole new", you know, "apply for a 127
28 application to change those conditions and go through a whole process", which
29 would probably have a high likelihood of notification, appeals to the Environment
30 Court, etcetera, and it just goes on and on and on; in a situation where, if the
31 consents have been granted, then the environmental effects of those activities are
32 therefore deemed to be appropriate. So if they continue for a slightly longer period
33 than the 15 years that are anticipated, then what's the problem?

34 And the other one in that regard, sorry, is the air discharge permit within the
35 jurisdiction of the Otago Regional Council because that's a severable sort of
36 aspect which – well, it's a standalone consent which relates specifically to the
37 processing plant, and should that have a similar shorter terms of consent than the
38 35-year maximum being applied for. And again, the same position applies, is that

1 if you arbitrarily just cut that off, then you might be in the same situation of having
2 to re-consent and all the cost and hassle to go down that path. And my
3 understanding from the joint witness statement with the air quality experts is that
4 they don't have any concerns about those discharges in terms of environmental
5 effects. So again, why arbitrarily cut it off? I understand from Ms Allen it comes
6 down a concern about the length and duration of that part of the activity in terms
7 of the community's expectation. But, as I say, it'll be what it'll be in terms of the
8 life of the mine and, yeah, having to go through another consent process just to
9 finish it off is not an efficient use of resources, yeah. So that's – I don't think
10 there's any – oh, there's no dispute about the experts, if I can speak on behalf of
11 them, in terms of the [inaudible 03:48:55] matters in terms of the other regional
12 consents that they should be a 35-year period, which is the maximum duration for
13 the RMA. The only other issue tied to this was the six-year matter.

14 **Mr Muir:** As to water?

15 **Mr Chrisp:** As to water, yes.

16 **Mr Muir:** That may be a legal issue.

17 **Mr Chrisp:** Yes, yes. I've just related on legal advice.

18 **Mr Muir:** The applicant seeks 35 years in respect - - -

19 **Mr Chrisp:** Yes.

20 **Mr Muir:** - - - also; and this issue has to be very well litigated - - -

21 **Mr Chrisp:** Yes.

22 **Mr Muir:** - - - in submissions about the ability to do so. It's quite a technical
23 argument, one of which we will be taking some advice.

24 **Mr Chrisp:** Thank you. So that's probably all I can say.

25 **Mr Berry:** I'd like to make just one additional comment. I do not that in terms of
26 the air discharge permits, that also applies to the crushing and screening from the
27 aggregate pits on the Ardgour terraces site. I understand a lot of that aggregate
28 will be used in the initial start-up phase of forming haul roads and other mine
29 components like that. But there was also a rehabilitation component where some
30 of that material may need to be used at that stage throughout the process. So
31 again, tying a consent term too short may have implications in terms of the ability
32 to carry out some of that rehabilitation and ultimately mine closure aspects in
33 terms of re-providing for access etcetera.

34 **Mr Muir:** Ms McDonald.

35 **Ms McDonald:** Thank you. Yeah, so my position is set out in the joint witness
36 statement, but I can speak to that a bit. Mr Chrisp stated that if consents are

1 granted, then that means the effects have been deemed to be appropriate. I don't
2 entirely agree in this respect because - - -

3 **Mr Muir:** They'd need to be appropriate for 15 years but not for - - -

4 **Ms McDonald:** Yes.

5 **Mr Muir:** - - - for 30?

6 **Ms McDonald:** Yes, that's correct. And I have a couple of examples of where I believe
7 that approximate active mining duration has been important in the technical
8 experts reaching their conclusions. Firstly, in respect of water quality, we've read
9 and heard about the critical importance of limiting oxygen and water ingress,
10 particularly into the ELF's, to reduce the water treatment burden, and that also has
11 an impact on the timing of the mine water surplus, as I understand it. We did hear
12 from Mr Burgess on Monday about the importance of the capping and the
13 covering of the ELF's and the role that that material plays in terms of reducing
14 water ingress.

15 **Mr Muir:** Encapsulation?

16 **Ms McDonald:** Yes Sir. And essentially the correct capping reduces that water ingress.
17 So if the active mining period were to be substantially extended, and I'm not
18 suggest that a one or two-month extension or deviation from 14 years and several
19 months is important, but a substantial increase would likely result in at least some
20 of the ELF's not being rehabilitated in the timeframe.

21 **Mr Muir:** Well, not encapsulated, therefore, opportunity for further water ingress,
22 therefore, opportunity for further leachate.

23 **Ms McDonald:** Correct.

24 **Mr Muir:** Therefore, greater – ongoing pressure on your primary and secondary
25 catchment, or primary and secondary treatment systems.

26 **Ms McDonald:** Yes, that's right; and potentially bringing forward the need for water
27 treatment earlier.

28 **Mr Muir:** Yes.

29 **Ms McDonald:** The second area I think is important is in the terrestrial ecology
30 outcomes and also landscape.

31 **Mr Muir:** If it's to happen, you'd want it put back together as quickly as possible.

32 **Ms McDonald:** Yes, yes, and I think it does go to the feasibility of the outcomes, the
33 ecological outcomes which I think there is agreement that those will be difficult
34 to achieve. They may well be achieved but they will still be difficult. And if
35 mining progresses for 20 or 25 years, then that substantially reduces the time
36 available to achieve the outcomes. I acknowledge the outcomes are in conditions,
37 but they do need to be feasible, and I think that that is a risk there. And I believe

1 the landscape assessment, my understanding of it, clearly sets out timeframes and
2 associates effects with mining phases. So those outcomes, those effects might be
3 different if mining progressed longer. I don't suggest that that should result in a
4 shorter duration of the land use consent, for example, I think that would be
5 possibly managed by a condition limiting active mining to approximately with a
6 buffer. The duration anticipated currently: that could be varied, as Mr Chrisp, has
7 identified, with an appropriate assessment of effects of that change.

8 Just to touch briefly on the air discharge permit for the processing plant, that is
9 just one of the only clearer activities, activities rather that have a clear end point.
10 Once there is no more ore to process, there is no need for the plant. And I think
11 it is just good practice to not give out consent directions far in excess of what is
12 needed to undertake the activity. Again, an appropriate buffer could be considered
13 in terms of the timeframe needed so that it's unlikely to affect small deviations,
14 be affected by small deviations in the mining sequencing, or yeah.

15 **Mr Muir:** Can I ask a question just arising, and it probably is or maybe too
16 technical a question, and perhaps Commissioner Sweetman knows the answer in
17 any event.

18 **Ms Sweetman:** I'm not giving evidence though.

19 **Mr Muir:** You're not giving evidence, that's right. But probably it's an issue of
20 law, not an issue of evidence; and you might just be able to help me on it. This
21 is, as we can see from the number of Queen's Counsel and others, a highly
22 contested application. There is an appeal and obviously there's always judicial
23 review sitting in the back. An appellate process in this case could take, you know,
24 if it went to the Supreme Court, could take years to resolve. Does – when you
25 talk about a buffer, does a buffer have to build that in, or can, during an appellate
26 process, can the initial terms of the consent be extended for the time that's been
27 lost in disposal of the appeal? Do you know the answer to that?

28 **Ms McDonald:** I'm sorry, I don't, Sir.

29 **Mr Muir:** You don't, right.

30 **Ms Sweetman:** Mr Chrisp might.

31 **Mr Chrisp:** No, I can't help you with that.

32 **Mr Muir:** Does any counsel know the answer to that offhand? It's something that
33 we'd have to reflect on.

34 **Mr Enright:** I do recall, Sir, I'd have to check for you but to the extent that there is
35 no appeal is lodged, a consent will be operative, so.

36 **Mr Muir:** Correct.

37 **Mr Enright:** But we'll have to check the rest but.

1 **Ms Sweetman:** The question there is when the does the consent commence.

2 **Mr Enright:** Right, yes. That's free of charge, at least otherwise appealed it
3 commences - - -

4 **Ms Sweetman:** Yeah. So we know what it is for a resource consent.

5 **Mr Enright:** Yeah, yeah.

6 **Ms Sweetman:** It's after any appeals are resolved, unless leave is sought otherwise to
7 commence.

8 **Mr Randal:** Yeah, I'd share the view of my friend on that as well, and I don't think
9 an appeal would automatically prevent it commencing.

10 **Ms Sweetman:** It depends on what the nature of the appeal is.

11 **Mr Randal:** Correct.

12 **Ms Sweetman:** And when the leave is sought to commence.

13 **Mr Randal:** And it may also be impacted by whether any stays are sought as well.

14 **Ms Gepp:** I think the relevant provision is section 97 of the Fast-track Approvals
15 Act.

16 **Mr Muir:** 97?

17 **Ms Gepp:** 97, Sir. So an approval - - -

18 **Mr Muir:** Can I just pull that up, Ms Gepp?

19 **Ms Gepp:** Yes.

20 **Mr Muir:** "Commencement of approval". Well, that's a promising heading. We
21 tend to, tend to suggest that the clock starts ticking on the 15 years from the
22 moment we granted the consent, assuming we did, and that we could lose, you
23 know, upwards of one or two years in the process if were not very careful about
24 the buffer.

25 **Ms Gepp:** Yes, although it can – I note that it does say "or on any later date
26 specified by the panel in the decision document". So it will be open to the panel
27 to specify that the consent commenced when any appeals had been determined.

28 **Mr Muir:** Yes. Very good. Yes, I think that's a perfectly fair description. Right,
29 thank you very much, Ms Gepp.

30 **Ms McDonald:** Can I just add one further note, briefly, on the duration of water permits.
31 This was discussed in the ORC's section 53 comments and, you know, it is our
32 view that the panel is not precluded from granting those permits to take and use
33 water for - - -

34 **Mr Muir:** Yes, yes, that point was made very clearly in Cromwell and, as I say,
35 we are alive to the importance of it. The arguments were very, very well put to

1 us. We don't think that anything has been left on the table. Well, there's nothing
2 that needs to be further ventilated about it. We have taken some advice on it, and
3 we are reflecting on all of that at the moment.

4 **Ms McDonald:** Thank you. I'd just like to make one clarification from the 53
5 comments. In those comments, which I did prepare, I spoke only about the
6 Bendigo ore / four [check 04:00:07] field take.

7 **Mr Muir:** Yes.

8 **Ms McDonald:** But the reasoning set out in that section of the comments would also
9 apply to the other permits, water permits to take and use water throughout the site.

10 **Mr Muir:** Yes.

11 **Ms McDonald:** Yeah, thank you.

12 **Mr Muir:** Thank you very much, Ms McDonald. Ms Allen.

13 **Ms Allen:** I'm on the side that there should be, for the land use consent, there
14 should be a limitation on the duration that's granted for the mining operation and
15 the processing.

16 **Ms Sweetman:** A question on that, Ms Allen. Could that be an unlimited duration of
17 consent but limited duration through conditions?

18 **Ms Allen:** That's how I saw it, yes, yes.

19 **Ms Sweetman:** So like you can only mine gold for 14 years, well, in an indefinite period
20 or that it should be just a limited duration of consent?

21 **Ms Allen:** No, no. I'm saying the land use consent should be open-ended as - - -

22 **Ms Sweetman:** Yeah.

23 **Ms Allen:** - - - was described and, but a component of it should be limited, and
24 that would get over the problem of maybe varying a consent if it, a condition of
25 consent that included a time component if we absolutely had to do that; because
26 if it's tied to a duration for the whole consent, you couldn't vary it, you couldn't
27 vary the length of the consent.

28 **Ms Sweetman:** So that would address the issue should it be appealed or judicial
29 reviewed, then they could just start the gold mining at a later date while things
30 were getting sorted out, should consent be granted?

31 **Ms Allen:** Yeah, I think that, I think that's very interest, and I would perhaps
32 suggest that if you were going to give consent, you should specify the date at
33 which consent starts and tie it to any other judicial action being completed. The
34 other aspect that we didn't actually discuss in our planning conferencing but is my
35 original statement is the lapse period of consent. So the applicant's applied for a
36 10-year lapse period; and what I noticed was that some of the consent conditions
37 as they're expressed at the moment have got performance at the end of 35 years,

1 but if delay the start for 10 years, that's reducing your time to achieve the
2 conditions. Now there's different ways of dealing with that. One is not to have
3 the 10-year lapse period because I don't think that was assumed by some of the
4 technical experts when they advised on conditions or modify the performance
5 standards at the end of conditions.

6 **Mr Muir:** And just going back to this issue of appeals, Ms Allen, because it does
7 concern me. Typically in any judicial process, there is another inquiry once the
8 appeal is initiated and that is as to whether the decision of, in this case, the expert
9 panel should be effectively put on ice at that point pending disposition of the
10 appeal, something that Mr Leckie has already adverted to. And, in this case, we'd
11 start with – the High Court would make some assessment as to whether it was
12 appropriate that the consent be stayed pending disposition of the appeal. And let's
13 just take, not that I would expect it of any of these parties, but if you've got to test
14 it against a hypothetical, a completely unmeritorious appeal point that a High
15 Court Judge was just quite clearly of the view that it was not going to fly, but
16 nevertheless, the processes require that that appeal be given the opportunity to be
17 marshalled, argued, appealed itself, up to the Court of Appeal and the
18 Supreme Court potentially by leave. So that you would effectively be changing
19 the usual dynamic by expressing the terms of consent as applicable only from the
20 point of disposition of ultimate appeal. It would change the balance of power
21 within the whole structure of this application and would encourage unmeritorious
22 appeals. I'm not suggesting that, you know, that all appeals would be but that it
23 would – but what are the, you know, what the critical – how would people respond
24 to that environment? It would encourage unmeritorious appeal.

25 **Ms Allen:** That's a fair comment.

26 **Mr Muir:** Yes.

27 **Ms Allen:** If you didn't, I suppose anyone lodging an appeal could also apply for
28 an injunction to prevent any activity on the site.

29 **Mr Muir:** Correct. Again it involves some assessment of the utility of the appeal's
30 arguability. etcetera.

31 **Ms Allen:** Mm-hm.

32 **Mr Muir:** So, I mean, when Ms Gepp raised the point, I thought "oh yes, well,
33 that's a way that we could deal with that". Then I have to think about the
34 dynamics, the bigger dynamics here, and I see some potential problems with it
35 which then pushes you back into either a very generous period, 20 years or
36 something thereabouts; or an unlimited period. Is that fair, those – I think Mr
37 Chrisp wants to comment on this too.

38 **Mr Chrisp:** No, no, I agree with it. I agree with it.

39 **Ms Allen:** I can't take it any further - - -

1 **Mr Muir:** Right.

2 **Ms Allen:** - - - than I have I think.

3 **Mr Muir:** Okay, well, we'll just have a good think about it.

4 **Ms Allen:** With the injunction being my "get out of gaol" - - -

5 **Mr Muir:** Yes.

6 **Ms Allen:** - - - position.

7 **Mr Chrisp:** Sir, I'd probably just make one comment on it. I had forgotten that
8 we'd applied for a 10-year lapse period. My understanding is the applicant wants
9 to start as soon as possible. But just one thing on lapse periods is often with
10 activities that you would regard as intermittent, you sometimes run a risk of those
11 activities not occurring, for example, and I just can't think off the top of my head,
12 but particularly for the regional consents; and in the geothermal industry there's
13 things that happen periodically, for example, like exploration drilling and things
14 like that. And if you have the standard five-year consent but you don't have a
15 drilling campaign until year six, you've got a problem because your consent's
16 lapsed and you've got to apply again. So what you do is you have a longer lapse
17 period or, in that instance, we've had consent conditions that require the lapse
18 period to be coincidental with the expiry, which is 35 years. And that's just a
19 mere tech – a conditioning technique to address intermittency to avoid
20 unintentional lapsing of consents.

21 **Mr Muir:** Yes. But I think in, certainly Ms Allen's defence, she said that the land
22 use consent should be open-ended. It's just that you would, through the
23 imposition of conditions, you could, I mean, if it's through the conditions
24 mechanism, then the opportunity for whatever reason MGL found some, you
25 know, geotechnical issue that significantly delayed the works in the Rise and
26 Shine pit, for example, and we have two or three years out as they resolve that
27 issue, then we would be in the process not of a fully notified application again, we
28 would be in a condition – we would be looking at the conditions that were
29 imposed.

30 **Mr Chrisp:** I see, I see.

31 **Mr Muir:** You know. Unfortunately, you have a commercial lawyer, not a
32 resource management lawyer, that's heading up this panel.

33 **Mr Chrisp:** Okay. So Ms Allen is absolutely correct insofar as you can impose a
34 condition that requires certain aspects of the activity, an activity to cease at a
35 certain point. There is nothing wrong from a *vires* [check 04:09:20] point of view
36 for that. But if you are the situation where you say, "look, I need another six
37 months, I need another two years", or whatever it is to complete that element, then
38 you have to apply for an application under section 127 - - -

1 **Mr Muir:** Absolutely.

2 **Mr Chrisp:** - - - to amend the conditions.

3 **Mr Muir:** Yes.

4 **Mr Chrisp:** The consent authority has to consider the issue of notification in terms
5 of section 95 of the Act, and one of the first things you assess is who were the
6 submitters of the original application and are they interested, or are they
7 potentially affected parties? And you can bet your bottom dollar that the answer
8 would be yes.

9 **Ms Sweetman:** But you're supposing Mr Chrisp was going to have the same
10 legislation?

11 **Mr Chrisp:** Oh, yeah, yeah, yeah, that's true, [inaudible 04:10:03] you and I we're
12 involved in a whole lot of new legislation, that's true.

13 **Ms Allen:** And also the people who have engaged in this process aren't actually
14 technically submitters?

15 **Mr Chrisp:** No. I think they would be treated as such.

16 **Mr Muir:** They might tease [check 04:10:19], yes.

17 **Mr Chrisp:** I think they would be treated as such though. Anyway, you're
18 absolutely right, Commissioner, we do have a new legislative legislation that is
19 coming. None of us can predict exactly what that might be, or how it finally lands
20 or where it will be in 15 years' time, yeah.

21 **Mr Muir:** So all that leaves us in the view that if, accepting that the land use
22 consent not be time-limited, we need to be wary about tightly constrained at least
23 conditions around the anticipated, or the currently anticipated duration of mining
24 activity. You're saying do not impose a 13 year, 14 year, or whatever it might be,
25 consent in that regard because it - - -

26 **Mr Chrisp:** You can almost guarantee, well, the royal we, we'll get it wrong. So
27 unless you particularly, you know, unless you said 20 years, but then you get to
28 the point of saying, "well, what's the point?". If it's intended – if it's likely to
29 finish within 15 years in any event, it costs money to run a processing plan, you
30 know, you're only going to do it if there's gold available and, as I say, it'll be
31 what it'll be; and repeating a consent process where the environmental effects
32 have already been determined as being appropriate. I was involved in the
33 Tongariro Power development where there was, the decision was appealed on the
34 matter of term. The Environment Court said, "we'll grant a consent for 10 years",
35 and that was actually so that the parties, Genesis and iwi, could have time to get
36 together and figure out something. And it was turned over on appeal to the
37 High Court on the basis that if the environmental effects of the TP, this is
38 Tongariro Power scheme, Tongariro Power development, if they were acceptable

1 for a period of 10 years, then there's no reason why they wouldn't be acceptable
2 for a longer period. They got their 35 years.

3 **Ms Sweetman:** Except, Mr Chrisp, we're operating under quite a different legislative
4 regime. We're operating under the Resource Management Act - - -

5 **Mr Chrisp:** Sure, sure but - - -

6 **Ms Sweetman:** - - - aren't we?

7 **Mr Chrisp:** Yes. So it's, okay, so it's up to you to determine what level of, what
8 relevance resource management jurisprudence is.

9 **Ms Sweetman:** And I don't, you know, the test of the weighting that we are required to
10 give to regional national benefits versus adverse impacts is quite different than
11 under Resource Management Act, correct?

12 **Mr Chrisp:** Yeah, correct. And I guess my point in terms of the duration is, because
13 I don't think the benefits should be arbitrarily shortened when there is some
14 uncertainty as to exactly how long it will take to materialise those benefits.

15 **Ms Rodgers:** Can I - - -

16 **Mr Muir:** Sorry.

17 **Ms Sweetman:** I was going to say I'm pretty sure Ms Rodgers can - - -

18 **Mr Muir:** Yes, absolutely.

19 **Ms Rodgers:** Thank you. A lot of it's already been said but I'm in favour of that if
20 there's a way of conditioning the mining activity, the application itself is
21 predicated on a 14-year period and certain effects associated with that in terms of
22 traffic, noise, dust, lighting, that kind of thing. It's anticipated that it would be 14
23 years, as stated in the application. It doesn't have to be, as Ms McDonald has
24 indicated, but something that kind of restricts that so there's a bit of certainty
25 around those effects, particularly with the community and what that expectation
26 might be, rather allowing it to run with the duration of the wider consent and
27 continue in perpetuity, which seems where, what we're being asked to consider,
28 or it was certainly part of the discussion that the expert witness conferencing was
29 around that, that kind of open-ended. I'm not comfortable with that because the
30 project description itself talks about the mining activity for a duration of
31 approximately 14 years. So those activities and the effects associated with them
32 are expected by anybody reading the application to be limited. Thank you.

33 **Ms Sweetman:** Thank you.

34 **Ms L Williams:** Thank you. Yes, I support there being some sort of limit on the
35 active mining timeframes, and mainly because of the implications it might have
36 on the rehabilitation outcomes.

37 **Mr Muir:** Yes.

1 **Ms L Williams:** And we know that – well, it's been indicated that there will be
2 adaptive management. There'll need to be performance standards and targets that
3 will need to be met, and my understanding is that some of those would need to be
4 met within that 35-year sort of timeframe. So the consequence of not limiting that
5 active mine phase activity could have implications on those outcomes.

6 **Mr Muir:** That's right, but acknowledging there are some natural economic
7 drivers in here which favour getting in and doing the job and completing it and
8 rehabilitating it.

9 **Mr Chrisp:** Sure.

10 **Ms L Williams:** Yes.

11 **Mr Muir:** Any questions from the panel about that before I invite cross-
12 examination. No. Ms Gepp, did you wish to address on this or cross-examine?

13 **Ms Gepp:** I do just have a couple of questions, thank you, Sir.

14 **CROSS-EXAMINATION BY MS GEPP:**

15 **Ms Gepp:** Really just picking up on the points that some of the other experts have
16 made about the extent to which the duration of mining has been taken into account
17 into the technical assessments, and I was just going back to the Boffa Miskell
18 landscape assessment and there's very much a focus on there being temporary
19 mining effects, isn't there?

20 **Mr Chrisp:** Yeah, but the assessments are based on the 14 to 15-year timeframe. I
21 note that a lot of the mitigation measures, it's not a case of waiting till year 15 or
22 16 and then doing the mitigation measures. They would occur; they will occur
23 concurrently throughout the life of the mine.

24 **Ms Gepp:** Some will.

25 **Mr Chrisp:** Some will, yes.

26 **Ms Gepp:** Many are; many are later once mining ceases.

27 **Mr Chrisp:** Yeah, well, they'll be ongoing, yeah.

28 **Ms Gepp:** And so when you said – you referred to the scenario of having to apply
29 for a variation as determining a variation. We've already determined the
30 environmental effects are appropriate. But you've determined that very much
31 based on that particular period of time, haven't you? You haven't determined that
32 the environmental effects are appropriate over any length of time?

33 **Mr Chrisp:** Just – you need to slice and dice that a little bit. In terms of the air
34 quality, the discharge effects from the air discharges, based on my understanding
35 of where the technical experts have got there, whether those effects continued for
36 a 15, 20, 25-year period wouldn't make any difference because they are acceptable
37 in terms of air quality matters. So there should be no reason why if they're

1 acceptable for 15 why they're not acceptable for longer. I take your point about
2 if there is a longer mining period that would potentially delay some of the
3 mitigation measures that are required to be undertaken.

4 **Ms Gepp:** Well, that's not my point.

5 **Mr Chrisp:** Sorry.

6 **Ms Gepp:** My point is that the effects, for example, on the landscape - - -

7 **Mr Chrisp:** Yeah.

8 **Ms Gepp:** - - - are assessed over a period of time. It's not just about the mitigation
9 but it's about the effect and the magnitude of effect has taken into account - - -

10 **Mr Chrisp:** Oh, I see, so.

11 **Ms Gepp:** - - - the temporary nature of the effect.

12 **Mr Chrisp:** Okay, yeah, but it's not intended – the scenario that I'm thinking about
13 is not that there'll be any greater level of effect just because things take longer to
14 happen. The example that the Judge gave where, you know, if you had a problem,
15 say you had a landslide issue or something like that and it took you months or a
16 year or something to fix it, that might delay your mining programme by a year but
17 the effects that will end up in terms of the size of the pit and the landscape and
18 visual effects as a consequence of that wouldn't be any different. They'd just take
19 a longer period to get to that point.

20 **Ms Gepp:** The duration of landscape effects is relevant to the magnitude of the
21 effect, isn't it?

22 **Mr Chrisp:** Well, I guess the speed at which you can rehabilitate to whatever
23 standard is relevant to the magnitude of – or certainly relevant to the longevity of
24 the effect.

25 **Ms Gepp:** Yes, and the longevity of the effect is relevant to the magnitude of
26 effect, isn't it?

27 **Mr Chrisp:** What, of times, years by me, you know, I guess if you were to do it a
28 mathematic way, you'd save years here.

29 **Ms Gepp:** Well, no, I'm just doing it – I'm just reading Mr Girben's report and
30 saying that where he refers to a temporary effect of mining, if you said to him,
31 "this is actually going to be 25 years of mining", he may well come up with a very
32 different effects mitigation – effects magnitude because of that longer, no longer
33 temporary impact.

34 **Mr Chrisp:** Well, it's still going to be temporary, it's just a longer temporary effect.
35 But I mean I can't speak for Mr Girben in terms of what his assessment might be
36 if there was another year or two bolted onto that 15-year assessment.

1 **Ms Gepp:** That's fine, but if it was 10 years or more, that may be a different
2 scenario mightn't it though?

3 **Mr Chrisp:** And Mr Girben might come to a different conclusion, I don't know.

4 **Ms Gepp:** Yeah. But he has based his assessment on the description of the activity
5 which was a 14-year mining series, wasn't it?

6 **Mr Chrisp:** Yes, he's based his assessment on the current proposal, and I can't
7 predict what it might, how that might change.

8 **Ms Gepp:** The benefits that have been put forward by Mr Paterson are also based
9 on mining being over that 14-year period aren't they?

10 **Mr Chrisp:** Yes, they are. If the duration was longer or if there was more gold, say,
11 for example, your underground mine went deeper or found more ore, more gold,
12 and it takes longer to process.

13 **Mr Muir:** Well, that scale of benefits would also reduce on a net value basis?

14 **Mr Chrisp:** Yes.

15 **Mr Muir:** Because the benefit's arrived further down the track.

16 **Ms Gepp:** Thank you, Sir, that was my point. But just on that point, if the pit went
17 deeper, is that not something that would be outside the scope the consent?

18 **Mr Chrisp:** I don't think there's a lower limit on the pit. There's certainly not any
19 issues in the conditions.

20 **Ms Gepp:** Okay. The exploration drilling, if that were to – presumably that's for
21 the purpose of looking for more deposits, is that right?

22 **Mr Chrisp:** This is getting beyond my expertise but what I understand it also is to
23 characterise the existing resource in terms of direction and where you go and it's
24 a normal part of most mining operations is you're still researching the resource as
25 you – it's to develop your annual mining plans and things like that. So with more,
26 with more information, you might prioritise different directions if you like. So I
27 think it could be, I don't know, it's beyond my ability.

28 **Ms Gepp:** Let me know. You haven't asked what the point of the exploration
29 drilling is.

30 **Mr Chrisp:** It's for exploration. But what happens when you use that information
31 is up to the company.

32 **Ms Gepp:** Okay. So you've just evidence that part of it is for characterisation.
33 That sounded like quite detailed evidence about the point of it.

34 **Mr Chrisp:** Well, just from my experience in working in the mine industry is that
35 you do exploratory work throughout the life of the mine that could be for
36 characterising the resource to be able to mine it in the most efficient way possible

1 throughout the life of the mine. It could be that as a result of that you'd find more
2 resource and if that goes beyond the scope of the current application, then
3 obviously there'd need to be a new application to be able to mine that resource.

4 **Ms Gepp:** So if there was a new application, would that be able to make use of the
5 existing processing plant?

6 **Mr Chrisp:** Presumably.

7 **Ms Gepp:** Based on the conditions that you have proposed?

8 **Mr Chrisp:** Well, yeah, it will, in terms of the [inaudible 04:23:04] tolerance
9 operation, it has a 35-year-old term.

10 **Ms Gepp:** Yeah.

11 **Mr Chrisp:** So there is a limit of 35 years in terms of the consent.

12 **Ms Gepp:** But it could be that the processing plant instead of running for the
13 14years that mining is occurring for, it could be running for 35 years based on a
14 subsequent processing, or from a subsequent mining application.

15 **Mr Chrisp:** Well, that would have to be the subject of a further mining application,
16 that's correct. When you say a mining application and a land use consent
17 application from within the CODC as a matter of jurisdiction.

18 **Ms Gepp:** But would it require a – could it rely on the current processing plant
19 consent?

20 **Mr Chrisp:** Yes, it could do.

21 **Ms Gepp:** So shouldn't, wouldn't, shouldn't there be a condition that limits that
22 processing plant duration to the duration of this mine so that if it is going to be
23 run for longer, there is at least a need to vary that consent and consider the impacts,
24 all of the impacts of that processing plant?

25 **Mr Chrisp:** Well, you could go either way on that one. It's on the one hand you
26 could say if you're assessing a new proposal, then you would want to consider all
27 elements of that and that would include the discharges from a processing plan.
28 But by the same token that if you've got a consent in place already and the effects
29 of that are deemed to be acceptable, then why would you go through the cost and
30 hassle of re-consenting something that's already in place.

31 **Ms Gepp:** It's not just air discharges though, is it? I mean, it's traffic going to and
32 from; it's the storage of hazardous substances. There's a whole raft of activities
33 associated with the processing plant.

34 **Mr Muir:** Well, perhaps even more significantly there is the disposal of the, what
35 would have to be taken to the storage facility, storage containment facility.

1 **Mr Chrisp:** It's all of those matters would have to be considered as a new
2 application. The only bit that you're not considering is if you've already got a
3 consent in hand for an air discharge from the existing plant, then you could use it.

4 **Ms Gepp:** What about the storage of hazardous substances?

5 **Mr Chrisp:** In terms of chemicals and that sort of stuff?

6 **Ms Gepp:** Yeah.

7 **Mr Chrisp:** Well again, if that's part of the, if that's part of the land use consent - - -

8 **Ms Gepp:** Yeah.

9 **Mr Chrisp:** - - - then that could carry on as well.

10 **Ms Gepp:** And at the moment that's been approved on the basis that it's a
11 temporary 14-year activity, isn't it?

12 **Mr Chrisp:** Well, there's no, there's been no restriction placed on the duration of
13 hazardous substances that can be stored and used on the site as a general
14 proposition. But it's self sort of controlling insofar as you wouldn't have, you
15 know, because these chemicals are expensive, you wouldn't have chemicals onsite
16 beyond, you know, associated with the processing beyond the life of the
17 processing plant.

18 **Ms Gepp:** Well, of course, Mr Chrisp, but the problem, where we started this was
19 if mining continues because there's a new application made for additional mining,
20 potentially off the back of this exploration drilling that's occurring, you have a
21 processing plant that's been put forward on the basis it'll be there for about, be
22 used for about 14 years. You've now said it could potentially be used for a longer
23 period. That's not - - -

24 **Mr Chrisp:** That's subject to securing the consent for the extraction of additional
25 material.

26 **Ms Gepp:** But that consent wouldn't consider the processing plant, would it, if it's
27 already in place?

28 **Mr Chrisp:** If it's already in place, no, it wouldn't, that's right.

29 **Ms Gepp:** Right.

30 **Mr Chrisp:** Yeah.

31 **Ms Gepp:** So the long-term effects of that processing plant continuing to be
32 available for a subsequent mine haven't been considered because they're not part
33 of this, what we're considering in this application, are they?

34 **Mr Chrisp:** Well, they haven't been because, they haven't been considered as part
35 of this application, no.

1 **Ms Gepp:** And they wouldn't be considered as part of that subsequent application
2 is what you've told me.

3 **Mr Chrisp:** Those elements that are, you could rely on those elements continuing
4 to be in place as having existing [inaudible (overspeaking) 04:27:12] - - -

5 **Ms Gepp:** Thank you.

6 **Mr Chrisp:** - - - in place that was actually consented right to.

7 **Mr Muir:** Any other cross-examination?

8 **Mr Enright:** Yes Sir.

9 **Mr Muir:** Yes.

10 **CROSS-EXAMINATION BY MR ENRIGHT:**

11 **Mr Enright:** Just one small topic. Ms McDonald essentially addressed the key points
12 I had here, but I just wanted, Mr Chrisp, some precision around the anticipated
13 end-date for mining, and Ms Gepp referred to 14 years. But what interested me
14 is that the table attached to the landscape joint witness statement, appendix B,
15 dated 8 June 2026 refers to start-up years three and mining activity years three to
16 11, closure years 11 through 30. And then, of course, each of those respective
17 landscape experts gave their assessment of magnitude effect, level of nature of
18 effect. But all of them were acting on the predicated assumption that mining
19 activity was completed by year 11. And I'm curious why we have this lack of
20 precision.

21 **Mr Chrisp:** I can't help you with that in terms of what those landscape experts have
22 done in that regard. My understanding, and I'll bounce around numbers for the
23 purposes of the discussion here, but my understanding is that 14, is 14 years.

24 **Mr Enright:** And that's, presumably you'd agree that's a scope point, right? If it's
25 specified in the AE of application is 14 years, then that normally would mean it
26 follows the scope, correct?

27 **Mr Chrisp:** It's not specified, it's predicted. So it's not intended to be a hard stop
28 that you get to year 14 and suddenly you have to stop. That's never, it's never
29 been advanced, the application's never been advanced on that basis.

30 **Mr Enright:** Yes.

31 **Mr Chrisp:** It's been, so we have the same issue with quarries is everyone wants to
32 know how long, how long is it going to last and how long is it going to take to
33 extract the sand. Well, that depends on market demand; it depends on a whole
34 heap of things. So you make an assessment as to what the likely life of the mine
35 is and, in this case, my understanding the number is 14 years from start to the
36 completion of processing.

1 **Mr Enright:** So that's how you characterise it as the planner who was intimately
2 involved in the AE?

3 **Mr Chrisp:** Correct.

4 **Mr Enright:** Preparation of the AE?

5 **Mr Chrisp:** Well, it's Mr Berry who prepared the AE.

6 **Mr Enright:** Yeah, yeah.

7 **Mr Chrisp:** Mr Berry is the primary author, which is why he's here as well.

8 **Mr Muir:** Ms Williams or Mr Randal.

9 **Mr Randal:** Thank you, Sir.

10 **CROSS-EXAMINATION BY MR RANDAL:**

11 **Mr Randal:** Learned senior counsel has asked many of the questions I was going to,
12 as they sometimes do, and Mr Enright too, thank you. But perhaps, I'm just trying
13 to round out a couple of final Chrisp observations. At one point during the
14 questioning from the Chair, Mr Chrisp, I thought we were getting to a position,
15 you know, of effectively accepting that the effects envelope framed by the
16 application is clearly premised on active mining finishing around year 15 or
17 thereabouts. Is there acceptance at that point?

18 **Mr Chrisp:** That's correct.

19 **Mr Randal:** And I thought that, you know, leaving aside the question of the duration
20 of the air discharge consent, there might have been an indication that re-looking
21 at the conditions to ensure, conditions as a whole, setting aside the consent sought
22 and permit sought, RMA approvals as a whole, there might be a willingness to
23 revisit those to ensure that the effects envelope isn't being exceeded. Was that,
24 was I right about that? Was there a commitment to look again at the conditions
25 to ensure that there's some clarity there around the period of active mining?

26 **Mr Chrisp:** There was, there would have certainly been the discussion in the
27 planning joint witness caucusing about the – that was one of our topics, was the
28 term of consent. I'm not aware of any discussions beyond that in terms of that as
29 a discrete issue.

30 **Mr Randal:** Yeah.

31 **Mr Chrisp:** Yeah.

32 **Mr Randal:** Well, thank you. So, and I don't want to take us through all of this
33 again, you know - - -

34 **Mr Chrisp:** Yeah.

35 **Mr Randal:** - - - but there's an acceptance that the effects envelope presented by the
36 application and assessed by the experts including, as Ms Gepp said, Mr Paterson

1 in terms of benefits, the landscape and the ecological experts in terms of those
2 effects - - -

3 **Mr Chrisp:** Yeah, and that - - -

4 **Mr Randal:** - - - based on that active period of time?

5 **Mr Chrisp:** Yeah, that's right and, as I say, that's similar to, you know, any sand
6 quarry that I've done as well, and that's you do an assessment based on that and
7 if it goes slightly longer, then the adverse effects go slightly longer, the benefits
8 go slightly longer as well.

9 **Mr Randal:** Yeah.

10 **Mr Chrisp:** And that that's a, there shouldn't be any change in the proportion
11 between those two things.

12 **Mr Randal:** Well, that may be the case in other proposals, Mr Chrisp, but I mean I
13 put it to you that what you might expect to see there is a range of scenarios
14 assessed to set that effects envelope. So, you know, it could be, yeah, that the
15 sand mining could take 10 years, could take 20 years; here's what that would like
16 in terms of truck movements on a daily basis, in either scenario, likewise in terms
17 of other effects, to set an envelope within which the operator, with consents in
18 hand, can then operate. So would that be fair?

19 **Mr Chrisp:** Yeah, that's fair. And you're correct that this application has been
20 assessed on the basis of a 14-year [inaudible 04:33:06] number. Then I think that
21 might have been year of processing, although just thinking about it, because
22 processing starts about year three. So you take three off 14, you get to 11. Maybe
23 that's the answer, I don't know.

24 **Mr Randal:** Yes. And so accepting then that Ms McDonald's point that some of
25 buffer in addition might be reasonable - - -

26 **Mr Chrisp:** Yes.

27 **Mr Randal:** - - - well, there's quite a, quite a, quite a distance between 15 and 35
28 years, isn't there? We're talking about a human, a human generation effectively.

29 **Mr Chrisp:** Yes, and I accept that.

30 **Mr Randal:** So I suppose would you accept too that to the panel there are two
31 options really for, you might call it enforcing that effects envelope.

32 **Mr Chrisp:** Mm-hm.

33 **Mr Randal:** One would be imposing conditions the likes of which, you know, could
34 be considered further by the applicant - - -

35 **Mr Chrisp:** Yes, that's an option.

36 **Mr Randal:** - - - to constrain the period of active mining.

1 **Mr Chrisp:** Yes, that is an option.

2 **Mr Randal:** And another would be constraining the consent term, for example, the
3 air discharge consent relating to the process plant.

4 **Mr Chrisp:** Yes, those are options yes.

5 **Mr Randal:** Thank you, Mr Chrisp. And I think the specifics of the landscape and
6 the ecological rehabilitation and the water treatment issues I think have been
7 traversed, so I won't take you back through those. Thank you.

8 **Mr Chrisp:** Thank you.

9 **Mr Muir:** Thank you. Mr Leckie.

10 **Mr Leckie:** Yes, thank you, Sir, just some short questions on the same point, and
11 I'll ask them of Ms Williams.

12 **CROSS-EXAMINATION BY MR LECKIE:**

13 **Mr Leckie:** If I could take you to paragraph 12 of the second planning joint witness
14 statement. It's on this point around duration. And have got the conditions in front
15 of you, Ms Williams?

16 **Ms L Williams:** I've got them online.

17 **Mr Leckie:** And so the joint set of conditions, so common conditions applying to
18 both Councils, BO3.

19 **Ms L Williams:** Yeah.

20 **Mr Leckie:** And I take you to condition C39.

21 **Ms L Williams:** Yeah.

22 **Mr Leckie:** It's around ecological rehabilitation, and a few of the planners agreed
23 to this paragraph 10, but I'm just asking you the question because you mentioned
24 rehabilitation earlier.

25 **Ms L Williams:** Mm-hm.

26 **Mr Leckie:** So at paragraph 10 of the joint witness statement, you've raised the risk
27 of rehabilitation outcomes being delayed and that having a, you know, a resulting
28 risk of increased adverse effects. And to borrow my friend's term, which I like,
29 in terms of enforcing this effects on the mine and tightly constraining conditions,
30 your proposed solution, if I'm hearing it correct, is to limit the duration of mining
31 activities, that's correct, isn't it? So if I could take you to C39G.

32 **Ms L Williams:** Mm-hm.

33 **Mr Leckie:** And you'd agree that what this condition does is create a link between
34 the mining activity and the resulting rehabilitation activity, is that, you would
35 agree with that?

1 **Ms L Williams:** I'm just, bearing in mind that these are just all draft conditions and I
2 think that there's still going to be work proposed for those - - -

3 **Mr Leckie:** Absolutely.

4 **Ms L Williams:** - - - so, you know - - -

5 **Mr Leckie:** But based on what they are now?

6 **Ms L Williams:** Yeah.

7 **Mr Leckie:** Yeah. And I can ask the question in a different way if that helps. Just
8 that the way this condition works, the trigger of the rehabilitation condition needs
9 to come, needs to kick in once the final landforms become available. So there's
10 a link between the mining activity and the rehabilitation activity, would you agree
11 with that?

12 **Ms L Williams:** Yes.

13 **Mr Leckie:** So for example in relation to Roman one, it describes some particular
14 parts of the proposal and then gives a requirement for that rehabilitation to kick
15 in.

16 **Ms L Williams:** Yeah.

17 **Mr Leckie:** Cool. In relation to rehabilitation, would you agree then that that
18 method of tightening the conditions is another way to manage that risk of adverse
19 effects from activities taking longer, rather than necessarily limiting the duration
20 of the mining activity itself? You'd agree that's another approach to manage those
21 effects?

22 **Ms L Williams:** Potentially, but I think the active mining phase will be sort of wider
23 than just confined to this rehabilitation. There's different things that have been
24 proposed, like translocation of plants and lizards and that kind of thing that would
25 also have a bearing. So it would be a number of conditions probably that would
26 need to be looked at more closely.

27 **Mr Leckie:** That's fair, and when Mr Chrisp was potentially looking at those
28 conditions though, you'd agree that this approach is another way to provide that
29 more tightened, precise framework.

30 **Ms L Williams:** Yeah, that's an example. I guess my only concern would be that the
31 sort of the delays in the duration in the active mining phase, that may, there may
32 be changes that occur throughout that phase. That may have not been constrained
33 by these conditions.

34 **Mr Leckie:** Okay, thank you. Thank you, Sir.

35 **Mr Muir:** Any questions from the panel arising out of the cross-examination? No.
36 Well, then that's probably a convenient time and we'll take lunch. And could we

1 just please have, I'm concerned about time, could we just have 35 minutes and be
2 back at 10 to two, and we'll see how it goes.

3 **Luncheon adjournment**

4 **Mr Muir:** I'm conscious of the fact that we've got a maximum of about four hours,
5 10 minutes or thereabouts in which to get through the balance of the agenda.
6 We're being a little bit creative here. We're going to roll together items three and
7 really item seven, the process from here. And I'm going to start with Mr Chrisp,
8 because he has kindly indicated to me that he thinks we can make quite good
9 progress on this quite quickly. Then go to issue number four. We realise that
10 that's bigger than Ben Hur and we're going to have limit ourselves really to a half
11 hour on it or thereabouts if we can. So we're going to be quite crisp in the way
12 we deal with it. And if we could do that, then I think that we are all good to go to
13 the end of the agenda. Thank you, Mr Chrisp.

14 **TOPICS 3 AND 7: MANAGEMENT PLANS, IN PARTICULAR THEIR**
15 **CERTIFICATION**

16 **Mr Chrisp:** Thank you, Sir. I'll just read something just so I've just got it taped.
17 Since the substantive application for the project was lodged with the EPA in
18 October of 2025, MGL has sought that the various management plans lodged with
19 the application be certified by the expert panel. This approach was intended to
20 minimise any delay to the commencement of mining operations following the
21 granting of consents, assuming the consents applied for are granted. My statement
22 of evidence on the 17th of April 2026 at paragraphs 103 to 107 in response to
23 section 53 comments set out a proposed way forward whereby the above could
24 potentially be achieved in a robust manner. However, MGL and its core advisors,
25 myself included, acknowledge the positions expressed by the various regulators
26 that the management plans should be certified by the regulators following the
27 consents being granted. Rightly or wrongly, we have also observed an apparent
28 reluctance on the part of the expert panel to certify the management plans, so
29 reading the tea leaves.

30 **Mr Muir:** Rightly.

31 **Mr Chrisp:** I didn't want to be too presumptuous, Sir. So on the basis of the above,
32 MGL now proposes that, with one exception, the various management plans be
33 certified by the relevant regulators following the granting of any consents by the
34 expert panel. The exception is the archaeological and heritage management plan.
35 The reason for this exception is that whenever Heritage New Zealand Pouhere
36 Taonga grants a archaeological authority, it includes the applicable management
37 plan as an inherent and inextricable part of the authority granted. In the case of
38 the current application, the expert panel is performing the consenting role that
39 would normally be undertaken by Heritage New Zealand and there is no reason,
40 in my opinion, why the same approach should not be adopted, and indeed, I think

1 it would be very difficult for you to do, to do otherwise because of the way those
2 authorities work. In any event, the expert panel has foreshadowed workshopping
3 of the management plans and the conditions at some point in the process following
4 the completion of the concurrent hearings. At paragraph 24 of the planning
5 number one joint witness statement, all experts, all the planning experts, support
6 the panel's' foreshadowing of workshopping in relation to the conditions and
7 management plans; that's note 26 at paragraph three, and are of the opinion that
8 this should occur. The planning number two joint witness statement also
9 reinforces that position as an agreed point by all planning experts. I, and I think I
10 can safely say the other planners as well, purposely use the term workshopping,
11 rather than expert caucusing, because such an exercise necessarily needs client
12 and expert input. On the basis of the above, the proposed way forward, and this
13 is where we're sort of straying into item nine now; on the basis of the above, the
14 proposed way forward is as follows in relation to which the panel's endorsement
15 is sought and which can be formalised by way of legal memorandum, and I'm
16 seeking, seeking directions from the expert panel if necessary.

17 **Mr Muir:** Just slow down - - -

18 **Mr Chrisp:** Yeah.

19 **Mr Muir:** - - - the delivery rate a little bit here because it's important.

20 **Ms Sweetman:** Actually, are you going to email it to us as well?

21 **Mr Chrisp:** We can email it to you, yes.

22 **Mr Muir:** Yes, if you could, thank you.

23 **Mr Chrisp:** Yes. So what I'm proposing, Sir, is that, a two-step process essentially,
24 is following the circulation of the updated management plans and conditions on
25 the 22nd of June, next Monday, in accordance with note 26, the regulators and the
26 other parties be given a period of about two weeks to review the documents and
27 be ready to participate in workshops to identify and constructively address any
28 remaining issues of concern. Step two is that MGL then convenes a series of
29 workshops in relation to the management plans and conditions from Tuesday the
30 7th of July onwards with a view to these workshops being completed by the end
31 of July or thereabouts. MGL successfully conducted workshops with the
32 regulators in February and March this year, with myself acting in the role of
33 facilitator, and it is anticipated that the same sort of process can be successfully
34 undertaken in relation to the management plans and conditions without the need
35 for Chancery Green involvement or any of the expert panel's time. That last point
36 is obviously up to you as to - - -

37 **Mr Muir:** Yes.

38 **Mr Chrisp:** - - - whether you wish to participate. The workshops would likely be
39 held in person. I've said here in Cromwell but that could be a moving feast,

1 depending on where the centre of gravity is in terms of personnel, with the ability
2 for the parties and/or their experts to participate remotely via MS Teams. I note
3 that undertaking the workshops I think so to the management plans as part of the
4 current process provides the opportunity for the participation of the experts
5 engaged by parties other than the regulators should they wish to be involved,
6 which would not occur if the management plans were only considered to be a post-
7 consenting matter.

8 **Mr Muir:** Yes.

9 **Mr Chrisp:** Following the process outlined above, it is proposed that a post-
10 workshopping version of the management plans and the conditions be provided
11 to the expert panel, noting any aspects of remaining disagreement.

12 **Ms Sweetman:** What was that last timeframe?

13 **Mr Chrisp:** That would be by – sorry, Commissioner Sweetman, I haven’t, didn’t
14 put a timeframe on that but I would expect that that would be - - -

15 **Mr Muir:** Sometime after the end of July?

16 **Mr Chrisp:** Yeah, so that would be a week or two after that, because one of the
17 things that I was thinking about which might be, you know, those documents
18 become very iterative, they’ve got all these conditions that say, “new this”. There
19 comes a point where you really need to have them tidied up and having sequential
20 numbering all the way through and checking cross-referencing, so they actually
21 hang together. So I would anticipate you’d probably want a reasonably good
22 version and that might take a week or two following the - - -

23 **Mr Muir:** Yes.

24 **Mr Chrisp:** - - - the conferencing, the workshopping, sorry.

25 **Ms Sweetman:** And we assume your client’s all good with this?

26 **Mr Chrisp:** Yes.

27 **Ms Sweetman:** Okay.

28 **Mr Muir:** Well, I note that as a very constructive contribution to what we’re doing
29 at the moment, but we’ll just have to reflect on how that timing works with our
30 own timing.

31 **Ms Sweetman:** Yes. So that was going to be my next question of how would that timing
32 work with our due date, is that the way I call it, of the 29th of - - -

33 **Mr Chrisp:** Of October.

34 **Ms Sweetman:** - - - October?

35 **Mr Chrisp:** Yeah. So if you assume that we got, like let’s say our worst-case
36 scenario is that say the second appointment in my calendar but say the second

1 week of July is the worst-case scenario, I'm not sure of your timetable for the
2 release of your draft decision.

3 **Ms Sweetman:** Well, I think you're talking about, if you're talking workshops from 7th
4 of July to end of July - - -

5 **Mr Chrisp:** Yeah.

6 **Ms Sweetman:** - - - and then one or two weeks - - -

7 **Mr Chrisp:** Sorry, August.

8 **Ms Sweetman:** - - - so we're talking about mid-August then.

9 **Mr Chrisp:** Yeah, the first or second week or August, yes.

10 **Mr Muir:** Yes, because you're essentially accelerating a process that in terms of
11 the Act would occur at a later phase. Do understand that we, I'm speaking for
12 myself, I think is an excellent idea to bring that forward because of the way in the
13 conditioning, management plan conditioning interrelates with the fundamental
14 question about whether we should be granting consent or not.

15 **Mr Chrisp:** Yes.

16 **Ms Sweetman:** Except that - - -

17 **Mr Chrisp:** I don't think - - -

18 **Mr Muir:** Sorry.

19 **Ms Sweetman:** - - - we still then have to review those and we still have to, should we
20 be looking to grant consent, circulate what we're proposing.

21 **Mr Muir:** Yes.

22 **Mr Chrisp:** Yes, that's right, that is what I was going to say.

23 **Mr Muir:** Of course.

24 **Mr Chrisp:** But I don't think, I don't think it changes that part of the process.

25 **Mr Muir:** It doesn't change it but to the extent that you are refining something,
26 but we still must say or we have the liberty to say "and this and this and this" - - -

27 **Mr Chrisp:** True.

28 **Mr Muir:** - - - which you get an opportunity, or the applicant gets an opportunity
29 to comment on at a later process, a later point in the process.

30 **Mr Chrisp:** Yes.

31 **Mr Muir:** But all I am just wondering is, I'm just completely thinking aloud here
32 at the moment and please don't take it as anything more, whether to get best
33 advantage from what you are proposing now, the applicant simultaneously pauses
34 the process for the period of July so that you are not, I mean, the reality is we

1 would be in a better position to undertake our assessment and decision-making
2 after your proposed process than we are before.

3 **Mr Chrisp:** Yes.

4 **Mr Muir:** But we cannot afford to, and I tell everyone here, we will not be
5 embarking upon an assessment process at the beginning of August. It's too late.

6 **Ms Sweetman:** Yes. Looking at what Ms Thomson has usefully put together as a
7 timeline for the panel, should we be recommending decline or, no, should we be
8 going a decline route, we would have to put a draft decline out on Monday, August
9 the 31st; and should we be looking to grant, we would need to put the draft
10 conditions out on September the 29th. Please tell me if I'm wrong, Ms Thompson.
11 I'm all good, cool.

12 **Mr Muir:** I just can't recall whether those were those hard statutory dates or
13 whether they were - - -

14 **Ms Sweetman:** They might just be our dates.

15 **Mr Muir:** I think they are our dates. They're not prescribed by statute but working
16 back from 29 October but they are realistic dates in which to be able to deal with
17 all that you do in the context either of a decline or a consent draft. We can't go
18 from point zero to a draft decision in four weeks, completely impossible.

19 **Ms Sweetman:** Two to three.

20 **Mr Muir:** Two to three weeks. Three would be or, yeah, two weeks you'd be
21 [inaudible 05:25:09]. I'm going to give the final answer on this this afternoon.
22 We need to think about.

23 **Mr Chrisp:** I'm just thinking maybe we, or are we able to have a - - -

24 **Mr Muir:** Yes.

25 **Mr Chrisp:** - - - five-minute chat with - - -

26 **Mr Muir:** Absolutely, and it doesn't need to be resolved today necessarily. It
27 needs to be thought about and be assured that the panel is also thinking about
28 issues, which will be no surprise, that have emerged from the last seven or eight
29 days as to whether there are, whether we're talking about ecotoxicity or whether
30 we are talking about flow paths etcetera, whether there is more information that
31 we require, which cannot be provided in a 10-working day period. Realistically,
32 this can't be done, you know, because we've already had the expert tell us how
33 long it might take. There's been no decision about that at all yet. It's just a matter
34 that we are addressing or about to address when we do a stocktake at the
35 conclusion of these hearings. But they may be intersectional - - -

36 **Mr Chrisp:** Yeah.

37 **Mr Muir:** - - - the things that you're raising and what we are concerned about.

1 **Mr Chrisp:** Yeah, okay. Just one thought that comes to mind is that as of next
2 Monday, you will have a new set of consent conditions - - -

3 **Mr Muir:** Yes.

4 **Mr Chrisp:** - - - and an updated set of management plans. We will be, there will be
5 a covering note with that which acknowledges that there still will be room for
6 improvement. Obviously, there's still water to go under the bridge.

7 **Mr Muir:** Yes.

8 **Mr Chrisp:** And, as you've said yourself, Sir, it's a next iteration. But we will be
9 trying to put our best foot forward. We're trying to deal with as many of the issues
10 as possible. So for the purposes of any deliberation from next Monday onwards,
11 obviously you can and are entitled to rely on that version of the conditions, I guess,
12 with the caveat that if we are authorised to engage in this further workshopping
13 process, then any feedback that can come from the panel in terms of "we're not
14 happy with these conditions" or whatever, that can be fed into that process as well.
15 If the first deadline is the 31st of August, you would have in that, well, as I said,
16 in that first week or second week or second week, you would have the
17 workshopped version, and even if, you know, you go for the grant option of
18 September, because obviously you've got a whole another month on top of that;
19 but it means that you have a set of conditions that are in pretty good, well, I expect
20 to be in pretty good shape with comment boxes to the side identifying all of the
21 areas of disagreement. So essentially, if you were minded to grant the consents,
22 then your decision-making, if you accept that the joint effort, is that really you're
23 going to be limited to those matters in dispute. And so a good example is, from
24 today, that term of consent issue. If there's going to be condition limiting the
25 length, you know, that's not a - it's a decision and it's then making the change
26 and the conditions are pretty straightforward.

27 **Mr Muir:** Yes.

28 **Mr Chrisp:** Yeah.

29 **Mr Muir:** It's not an accept or decline matter. It goes to the terms of an acceptance
30 here.

31 **Mr Chrisp:** Yes, yes, that's right. So if - because the other thing too obviously,
32 you're going to have the latest version of the management plans with you on
33 Monday but with an acknowledgement that they will still be going through a
34 certification process down the track and need to respond to whatever the final
35 version of the condition is. So at least that takes that burden away from you,
36 although you probably would be kicking it to touch in any event. But yeah. It
37 really comes down to - - -

38 **Mr Muir:** I suppose inferentially you're inviting us to conclude that whatever is
39 produced on Monday of next week, after this proposed workshopping period,

1 from an effects – in terms of effects management, if I can describe it broadly in
2 those terms, it can only get better.

3 **Mr Chrisp:** Correct, yes Sir. So I think, you know, if you look at it in percentages
4 terms, you know, we're probably 85 per cent there now with the conditions. I
5 think next Monday will take it to 95, 90, 95, and then the following version of the
6 workshops, you know, because when you look at this, there's hundreds of pages
7 of conditions. Most of them are not in dispute. It's really these crunchy issues
8 that you are dealing with in terms of seepage and water quality and things like
9 that. So obviously the Matakanui Trust is a late braking / breaking matter, which
10 I'll talk to you when we get to that on the agenda, so yeah. And then all those
11 things are plugging gaps, if you like, or issues that are live to the panel, or seeking
12 to in any event.

13 **Mr Muir:** Well, we'll need to go quietly go away and reflect on that and yes, if
14 through Ms Thomson, you could email that, have that emailed to her.

15 **Mr Chrisp:** Sure.

16 **Mr Muir:** Thank you.

17 **Ms Sweetman:** We'll just ask the other panellists if they had any - - -

18 **Mr Muir:** Yes, yes, absolutely.

19 **Ms Sweetman:** Did any of the other panellists want to comment on that proposed way
20 forward?

21 **Ms Rodgers:** Possibly not on the proposed way forward but just in terms of the
22 conditions – we haven't had a fulsome look at them or been invited to. There's
23 been a lot of moving parts, as the panel's well aware. So I think it is beyond areas
24 of agreement and disagreement in terms of how those conditions might - - - so
25 there's still, it's not just about looking at the areas of agreement or disagreement
26 because we had agreed in our conferencing that they needed some work, and it's
27 not just about areas of agreement or disagreement. It's about sort of just in terms
28 of outcome focusing and a whole lot of stuff like that.

29 **Ms Sweetman:** It was the question that we posed about compliance with the
30 Environment Court's practice.

31 **Ms Rodgers:** Yeah.

32 **Ms Sweetman:** And knowledge there.

33 **Ms Rodgers:** Around management plans, yeah. So there's quite a bit of that to
34 traverse, so it, you know, just. In principle I think it sounds okay but the timing,
35 yeah, might be challenging because I guess we've got to make available and make
36 sure that the experts available within a two-week period to turn that around, but
37 acknowledging that it is not perhaps as simple as Mr Chrisp was suggesting that
38 we're 95 per cent there. I think we don't really know until we get into it. We've

1 not been privy to the drafting of those conditions. We don't know what they look
2 like. And even through our conferencing, there's reference to what might be
3 coming but we haven't seen it yet. So there's still a little bit of work to do in there
4 beyond just areas of agreement or disagreement.

5 **Mr Kensington:** And, Ms Rodgers, if I may, Sir, in terms of facilitating those
6 workshops, Mr Chrisp said that he facilitated them last time. Would you want the
7 same approach, or would you want someone independent?

8 **Ms Rodgers:** I would prefer independent.

9 **Mr Kensington:** Right, okay.

10 **Ms Rodgers:** Yeah. I think ChanceryGreen have done an exceptionally good job or
11 very, yeah, very professional and very straightforward and efficient.

12 **Ms McDonald:** Yeah, I would be supportive of the process, if it could be
13 accommodated. I think it would add a lot of value. But I understand that time
14 restrictions make it challenging, and ORC could make its experts available for
15 that.

16 **Mr Muir:** Anyone else want to comment?

17 **Ms Buxeda:** Hello Sir, Ms Buxeda online here. If we could have a chance to - - -

18 **Mr Muir:** Yes.

19 **Ms Buxeda:** - - - briefly respond on this.

20 **Mr Muir:** Yes.

21 **Ms Buxeda:** Thank you very much. We would appreciate the chance to take
22 instruction on this and possibly reply in writing, particularly on whether our
23 experts are available to attend further workshops in this matter, particularly at this
24 stage of the process. And I think that Ms Rodgers' comments regarding the fact
25 that we're not 95 per cent there are supported by us in this matter. And if that was
26 a chance, we would, it would be a brief, a brief written reply, Mr Chairman, but
27 that would be appreciated.

28 **Mr Muir:** Will you want, Ms Buxeda, you'll want to look and assess what you get
29 on Monday before you respond further, will you; or are you contemplating
30 responding as a matter of principle, irrespective of content?

31 **Ms Buxeda:** Mr Chairman, I suspect it's a matter of both. It's both procedure and
32 it's also a matter of content. But I suspect that the question would be whether our
33 experts need to attend workshops or whether they can provide comment on what
34 is received on Monday without that process.

35 **Mr Muir:** Right. Well, I don't think that there would ever be any compulsion on
36 any party to attend the workshopping. But what Mr Chrisp was saying was that,
37 you know, typically the sort of the workshopping approach applies as between

1 regulator and applicant but that utility is seen, obviously in this case, to engaging
2 a broader audience, broader, or a broader input.

3 **Ms Buxeda:** Yes Sir, Mr Chairman, thank you. My understanding is that the
4 applicant did have that chance with the regulators early on and that was
5 undertaken previously.

6 **Mr Muir:** It is an iterative process however, and the objective must be ultimately,
7 even though people have clearly reserved their positions to oppose the entire
8 application, we're in this unusual, or you are in this unusual situation where you
9 are required really to wear both hats; the oppositional hat, and the constructive
10 hat. And they all operate in twin parallel streams until such time as they don't
11 effectively. Agreed?

12 **Ms Buxeda:** Correct, Mr Chair, and I wonder if that is the issue that arises in my
13 mind, and the example is obviously Dr Ra and her concern that conditions are
14 incapable of mitigation and how that sits with attending weeks of conferencing on
15 conditions.

16 **Mr Muir:** Yes, well, it doesn't in any way detract from Kā Rūnaka's position, as
17 explained by her, that almost it's a philosophical level of objection and it cannot
18 be remedied by no matter whether it was two weeks or four weeks of
19 workshopping. And we understand that position.

20 **Ms Buxeda:** Thank you, Mr Chair.

21 **Mr Muir:** Right. Where do we go from here?

22 **Ms Sweetman:** Well, I think that probably agreement from everyone that that covers
23 off everything. Ms Gepp, did you want to say anything.

24 **Ms Gepp:** I would just like to comment on the workshopping proposal as well, if
25 that's alright?

26 **Mr Muir:** Yes, yes.

27 **Ms Gepp:** Thank you.

28 **Mr Muir:** So this is not cross-examination; this is in the nature of submission - - -

29 **Ms Gepp:** Yes.

30 **Mr Muir:** - - - just to try and help us through this.

31 **Ms Gepp:** Well, I'll need to equally take instructions, just as Ms Buxeda said; and
32 just in terms of timing, I just want to note everybody involved in this process has
33 dropped everything in order to be able to attend these hearings and participate in
34 this process to the extent we've needed to. We very much appreciate the hearings.
35 It's certainly not in any way a criticism of having the hearings; but we can't sustain
36 it. We can't continue to drop everything and focus on this project; and I don't just
37 mean me, I mean my clients, my expert witnesses. Everybody has put so much

1 effort into this. Unlike the authorities, my client is not able to cost recover for any
2 of this work. So even though we've done a huge amount to contribute to what
3 you have before in terms of bringing information: both Fish and Game, and
4 Sustainable Tarras has brought information that you would not otherwise have.

5 **Mr Muir:** Yes.

6 **Ms Gepp:** But we can't cost recover. To be frank, we can't keep going at this kind
7 of level. So I would invite the applicant to – I would ask Mr Chrisp to take
8 instructions on whether there can be some financial support given to those parties
9 who have put so much effort into this process and who, if we were in the
10 Environment Court, would be absolutely involved in the preparation of conditions
11 and management plans. Even when opposing a consent decision, we'd still very
12 much be involved in these workshops, but would be able to cost recover for their
13 time at the conclusion, if they were successful. So I'd just make those
14 observations. I agree also that there are some fundamental issues with the
15 availability of information. I've traversed it this morning. I am some real
16 concerns about tinkering with conditions when we have these fundamental
17 information gaps. So I would very much invite the applicant to suspend while
18 that information is gathered, rather than us, rather than putting the panel in the
19 position of having to make a decision based on inadequate information. Thank
20 you.

21 **Mr Muir:** Yes, we understand your position very much, Ms Gepp, and, as I say,
22 we have to make a decision about it. We've got to understand to what extent, you
23 know, if I use the wrong phrase from the building environment, to what extent
24 these information gaps are what I call critical path. Can they be adequately picked
25 up sort of at a later stage in the analysis so that they become redundant? Yes, we
26 should have that information. We've got to consider all of that and we are
27 devoting time very soon after the conclusion of these hearings precisely to that
28 issue.

29 **Ms Gepp:** Thank you, Sir.

30 **Mr Muir:** Thank you. Right. Commissioner Sweetman is going to lead the
31 discussion of the next topic, the consistency with policy direction. Obviously a
32 conservation covenant falls into this bracket also.

33 **TOPIC 4: CONSISTENCY WITH POLICY DIRECTION FOR LOCAL,**
34 **REGIONAL, NATIONAL, AND RMA**

35 **Ms Sweetman:** But I would like to keep this as short and brief as possible. The panel
36 obviously has read your first JWS and item G. So we've already read through
37 what your views are in terms of consistency, as of the 21st of May. So Ms Gepp
38 did raise the issue of the conservation covenant prior, and it has been a matter that
39 has been traversed over the last two weeks; and we've certainly asked the
40 landscape, heritage and ecological people as to the consistency with objectives

1 and the magnitude of effect. So it's just introduction. What I would like to hear
2 from each planner is, taking your first JWS as your baseline positions and your 53
3 comments and your 53 response, have you changed your mind at all in terms of
4 consistency with the planning documents that you addressed? And have you
5 changed your mind to the conservation covenant and consistency with that
6 document? So, Mr Chrisp, you can start.

7 **Mr Chrisp:** Can I ask that Mr Berry commence that.

8 **Ms Sweetman:** Yes. Mr Berry.

9 **Mr Berry:** Yeah, sure. In terms of the question about whether the views have
10 changed in light of recent information, I think an example of that is in terms of
11 the Dunstan Mountains' outstanding natural landscape and in relation to the
12 central western portion of that ONL where there has been acknowledged that there
13 will be some high adverse effects during mining operations, but I do note there is
14 still some differences in the landscape experts' opinions in terms of the wider
15 ONL as a whole and whether that is protected and to the extent that there are
16 impacts on that.

17 **Ms Sweetman:** So what's your view; because the planner's role is to obviously take
18 into account the experts' view and inform a view against the policy framework?
19 What's your position?

20 **Mr Berry:** My position is that the broader ONL will remain protected. There will
21 be some, there will be effects on that central western portion. But the remainder
22 of the ONL will remain protected.

23 **Ms Sweetman:** And how about the conservation covenant?

24 **Mr Berry:** Yeah. So I – a point to note is our substantive application, the
25 assessment of the values protected by that covenant was a starting point; and I
26 acknowledge that that assessment has been strengthened through the RFI process
27 for those areas outside the DDF. That's in relation to the heritage, the landscape
28 and the ecology values. But where I land on this is that there will be some limited
29 effects but that those effects will be managed through a number of measures,
30 including those proposed conditions for the project that will apply to that area of
31 the covenant. That is proposed to be revoked from day one and there will be a
32 restriction on those activities that can be undertaken; and those conditions require
33 more active management measures in terms of rehabilitation and habitat
34 enhancement activities such as the mine regeneration zone and the sanctuaries,
35 compared to what is provided for currently. And I also would like to point out the
36 conditions in the proposed new – for the proposed new covenant, which have been
37 further bolstered in the 17th April condition set, and also the introduction of the
38 trust funding which provide greater certainty that the rehabilitation and restoration
39 outcomes can be achieved. Yeah. And an additional point is also that exploration
40 - - -

1 **Mr Muir:** So the programme's [check 05:45:02] sustained?

2 **Mr Berry:** Correct, correct. And that's where that funding comes in. So my view
3 is that, yes, there will be some localised effects but the measures that are proposed
4 will be sufficient to protect those values outside of the DDF.

5 **Ms Sweetman:** Outside of the DDF. So we're dealing with the Resource Management
6 Act here. Understandably, we're dealing with clause 45 of schedule 6, which has
7 particular criteria that we need to consider giving different weight to as decision-
8 makers. So the purpose of the Act is outside your purview. We have to take into
9 account the purpose of the covenant and the conservation values of the land, and
10 whether the amended, well, the revocation will compromise values of regional,
11 national or international significance. It's not a will those be mitigated or avoided
12 or – well, avoided is part of it. But it's not whether it will be mitigated; it's those
13 three matters that we're required to consider. And then part of the application
14 relies on creating a new covenant area. If we were to impose a condition in respect
15 of that, we need to consider whether that is equivalent land. So that's what I'm
16 really asking you, Mr Berry, is can you help us in terms of the consistency of this
17 application in terms of the purpose of the covenant, its values, and will the
18 revocation, if granted, compromise values of regional, national or international
19 significance?

20 **Mr Berry:** I think there's some acknowledgement that the works in the DDF will
21 compromise those values, and there has been discussions with the ecologists about
22 values, on where those values sit, and hence the measures proposed. But I – so
23 that's within the DDF. But outside of the DDF area that is to be revoked, yes,
24 there are some localised features that exist only in that area but based on the expert
25 advice and assessment received from the heritage, the landscape assessment
26 experts, noting that there is some further mapping to be undertaken for those
27 features, and the ecologists, I understand, and consider that the amendment of that
28 covenant will not compromise those values, with the caveat that with the
29 landscape mapping that is still be undertaken.

30 **Ms Sweetman:** Thank you.

31 **Mr Chrisp:** Can I just add to that?

32 **Ms Sweetman:** Yes, Mr Chrisp.

33 **Mr Chrisp:** So just specifically in relation to the covenant, my starting point is the
34 covenant as it currently exists, and that covenant explicitly provides for the
35 opportunity to undertake exploration and mining activities, subject only to the
36 approval of the Minister. That approval has been given previously in respect of
37 the current exploration activities that have been occurring, so it is foreshadowed
38 in the actual covenant that there could be mining. That's the first point. The
39 second point is that clause 45 is – there are three matters that you are required to

1 take into account. They're not if you – they're not hard lines that if you breach,
2 it's not a one strike and you're out type of thing, so.

3 **Mr Muir:** We must take them into account.

4 **Ms Sweetman:** We must take them into account and then we need to in our section 35
5 of the regulation - - -

6 **Mr Chrisp:** Yes, yes, you must take them - - -

7 **Ms Sweetman:** - - - provided those are significant - - -

8 **Mr Chrisp:** Yes.

9 **Ms Sweetman:** - - - impacts.

10 **Mr Chrisp:** So there's – what I'm saying is there is a judgment to be exercised on
11 your part in terms of these matters. It's not an automatic pass, fail. So if there is
12 – because it is recognised that there will be some compromise of values on the
13 site in terms of ecological matters within the DDF, the part of the DDF that is with
14 the Bendigo covenant.

15 **Mr Muir:** Would you accept that being of regional sis, at least?

16 **Mr Chrisp:** At least, yes. And I've added my evidence on the 17th of April. I put
17 the sort of proportions into context in terms of, I've got it here.

18 **Mr Berry:** I can add a note to that in terms of those percentages if you like.

19 **Mr Chrisp:** Let's see if I can find it again. Here it is. Okay. Let me get my glasses.
20 So the total covenant area is, and we've got the maps in there, 700, oh, 7,962
21 hectares of land. The uplift – the area that's proposed to be revoked is 11 per cent
22 of that area. The portion of the uplift area located within the DDF is 252 hectares,
23 which represents approximately 28 per cent of the uplift area. When considered
24 in the context of the total Bendigo conservation area, this equates to a loss of
25 values of approximately three per cent of the overall covenant area.

26 **Ms Sweetman:** So that's on the basis of area?

27 **Mr Chrisp:** That's right.

28 **Ms Sweetman:** Did you read the documents, the three documents that are specifically
29 addressed in the covenant?

30 **Mr Chrisp:** Yes, yes, I've seen those.

31 **Ms Sweetman:** And the values contained?

32 **Mr Chrisp:** Yes. And so that's where it's part of the evidence that was filed on the
33 17th of April. There was also statements of evidence from Dr Woods, Emeritus
34 Professor Graham, yes, Norton, sorry, Norton. Sorry, I always call him Graham
35 Norton. And also from Matt Baber I think it was. And so the aspects of that
36 documentation was the subject of more detailed evidence. So that's just to try and

1 put things into context. And, as you say, the purpose of the Act is something
2 you'll consider; and the other thing I'd say is that, you know, at the moment, the
3 property is grazed with heavy cattle. I've got a fantastic photo of them all sitting
4 in the wetland and stomping around that and – but basically what happens is that,
5 so the uplift, the covenant is proposed to be partially revoked on day one. On that
6 same day, if consent is granted, then the conditions apply. So that then provides
7 the next level of protection which are far more onerous than what is occurring at
8 the moment, because that requires a whole lot of active management to occur of
9 the site, whereas it's difficult to say that's happening at the moment in terms of
10 the farming operations occurring there. And then as you work through, we then
11 have the covenant put in place which is intending to protect those values that are
12 on the site and will be enhanced in some respects due to the uplift mitigation, and
13 then that carries on. So that covenant goes, is an obligation on the landowner,
14 whoever the landowner might be in the future, and it goes in perpetuity. And then
15 you have the trust coming into play, which we'll talk about this afternoon, which
16 then provides the financial weight, if you like, to make sure that it all happens.

17 So all of that picture, to me, leaving aside the obvious unavoidability of effects if
18 you're going to have a mining operation within the DDF, that will still result in,
19 which is only three per cent of the total covenant area, will result in a better
20 outcome than what is there. And so that's why I say that, overall, it's not going
21 to compromise those values; in the long-term it will probably enhance them. And
22 also, there's public access that's thrown into the mix as well, which is probably
23 going to be, again, a better outcome than what is currently there because the public
24 access at the moment is really the Thompson Gorge road, the paper road, which
25 no one can realistically follow because of its alignment relative to the topography.
26 And so there should be a better outcome in that regard as well.

27 **Ms Sweetman:** Thank you. Ms McDonald, the same two things.

28 **Ms McDonald:** Yeah, thank you. My position on consistency with statutory documents
29 is set out in the JWS and section 53 comments which I've prepared and my
30 opinion has not changed.

31 **Ms Sweetman:** Do you have any comment on no conservation covenant?

32 **Ms McDonald:** No, I don't. I haven't considered that.

33 **Ms Sweetman:** Thank you. Ms Allen.

34 **Ms Allen:** My position hasn't changed from what's set out in paragraph 37 and 40
35 in the joint witness statement, first planners' joint witness statement; and I can't
36 comment, I haven't spent enough time with the conservation covenant to comment
37 usefully on that.

38 **Ms Sweetman:** And Ms Williams.

1 **Ms L Williams:** Thank you. Yeah, my comments haven't changed from paragraph
2 38 and 40 in the joint witness statement. In terms of the Bendigo conservation
3 covenant, I don't agree that the proposal is consistent with that covenant. We've
4 heard from the experts that there are significant values. There's critically
5 threatened species within the area of the Bendigo conservation covenant and there
6 will be a loss of some of those values as a result of the proposal. It's also, with
7 the replacement covenant, it's difficult to know what the future values will be
8 because the outcomes aren't certain. There's a lack of certainty around sort of the
9 experimental and trialling of the options. There's also the question about who
10 will be in favour of the covenant because I don't think it's in agreement yet who
11 will be, who will be looking after that. And the other point to make is that, I mean,
12 in DOC's section 51 comments, we have suggested that the area of revocation is
13 within the DDF. They're asking for a much larger area than the DDF. There's
14 also gaps in information around the values that are outside of that DDF area that
15 we don't really know about. And the conditions are still draft; they need more
16 work I think. There's still issues with those. Thank you.

17 **Ms Sweetman:** Thank you. So we had Dr Schimdt from DOC talk to us about the
18 heritage values as well. Did you consider his comments?

19 **Ms L Williams:** Yes. So he's assessed that as having a significant loss of heritage
20 value within that area also; and it's not clear about how the remaining heritage
21 values will be managed or maintained within that area.

22 **Ms Sweetman:** And Ms Rodgers.

23 **Ms Rodgers:** My position hasn't changed. I think it's still, having had another look
24 at it, I'm still of the view that it's generally inconsistent with the framework.

25 **Mr Muir:** Sorry, just speak up, Julie.

26 **Ms Rodgers:** Sorry, now I've moved it right out of the way, sorry. Generally
27 inconsistent with the, certainly with the objectives and the polies and with the
28 framework in the District Plan, inconsistent with the zoning and what's
29 anticipated in that zone, and not something that would reasonably be anticipated
30 or supported within the framework in the District Plan.

31 **Ms Sweetman:** I have just a side question to ask you, Ms Rodgers, about historic
32 heritage in the Central Otago District Plan.

33 **Ms Rodgers:** Mm-hm.

34 **Ms Sweetman:** And I did ask this of your expert, Mr Jennings and Dr Carl, I can't
35 remember his name - - -

36 **Ms Rodgers:** Chris Jennings.

37 **Ms Sweetman:** - - - yes, about the Council's approach to the conservation covenant in
38 terms of the historic heritage. So obviously there's some level of protection of

1 the historic heritage through the conservation covenant and obviously through the
2 NZ Heritage Pouhere Taonga Act. Does the Council normally also then list
3 heritage sites within its District Plan?

4 **Ms Rodgers:** There are some, there are some that are listed. I don't think this is one
5 that's listed though, and so it's not afforded any protection in the wider framework
6 of the District Plan.

7 **Ms Sweetman:** Okay.

8 **Mr Kensington:** Is there any response?

9 **Ms Sweetman:** Did you want to respond, Mr Chrisp?

10 **Mr Chrisp:** Oh, just only one thing that you noted yourself, Commissioner
11 Sweetman, is that in relation to heritage values, those values are protected by
12 virtue of the Heritage New Zealand Puhere Taonga Act in a far more legally
13 robust and enforceable way than the covenant, including powers of prosecution
14 and all sorts of stuff. So that remains regardless, so those heritage values. And
15 they can't be adversely affected or lessened until you get an archaeological
16 authority.

17 **Ms Sweetman:** Thank you. I think it's a subject you know a little bit about, Mr Chrisp.

18 **Mr Chrisp:** Yes, too much, sorry.

19 **Mr Kensington:** Can I just ask a question of Mr Chrisp. Oh no, sorry, you go first.

20 **Ms L Williams:** I was just going to say so I think for the heritage values as at pre-
21 1900s, the archaeological authority would be required, but some of these things
22 won't be within that kind of timeframe, so it won't have that same level of
23 protection.

24 **Mr Kensington:** Yeah, Mr Chrisp, you mentioned the conservation covenant and the
25 clause in there about prospecting or mining, and your response just confused me
26 a little bit because you said the Minister of Conservation has given - - -

27 **Mr Chrisp:** Oh, it's the Minister of Lands.

28 **Mr Kensington:** Minister of Lands.

29 **Mr Chrisp:** Yeah.

30 **Mr Kensington:** So even though it says in there it's excluded, you know, you're
31 saying - - -

32 **Mr Muir:** Because it's not mining, it's exploration. That's why it's been
33 consented, hasn't it?

34 **Mr Chrisp:** Prospecting or mining for minerals.

35 **Mr Muir:** It's prospecting.

36 **Mr Chrisp:** Prospecting, exploration, po-tay-to, po-tah-to, yeah.

1 **Mr Kensington:** Can you just explain it to me. I missed what you said.

2 **Mr Chrisp:** No, that's not necessarily true. Under the Minerals Act, however, I
3 think there's the distinction between prospecting and exploration and mining. But
4 the point I'm making is that mining, which is the subject matter of obviously this
5 application - - -

6 **Mr Kensington:** Yeah.

7 **Mr Chrisp:** - - - is explicitly foreshadowed, recognised as a possible activity and it
8 sets a process by which that can occur, which is that you have to get the written
9 approval of the Minister. And interestingly enough, it doesn't sort of say, based
10 on - - -

11 **Mr Muir:** Not pursuant to the covenant, pursuant to the legal framework within
12 which the covenant sits.

13 **Mr Chrisp:** Yeah, yes.

14 **Mr Kensington:** Okay, I think I understand, yeah.

15 **Mr Chrisp:** Well, I guess my point is it's not a novel or foreign concept to the
16 covenant that there could be mining occurring here. It's explicitly recognised in
17 the wording of the document.

18 **Mr Kensington:** Okay.

19 **Ms Sweetman:** With the Minister of Conservation's approval.

20 **Mr Chrisp:** Correct.

21 **Mr Muir:** Any cross-examination arising out of this topic?

22 **Ms Gepp:** Yes Sir.

23 **CROSS-EXAMINATION BY MS GEPP:**

24 **Ms Gepp:** Mr Chrisp, I think it's the Minister of Conservation, isn't it, that can
25 give approval under this covenant, not the Minister of Lands?

26 **Mr Chrisp:** Yeah. No, I think you're right, yeah. I haven't pulled the document up
27 today so - - -

28 **Ms Gepp:** Oh, okay.

29 **Mr Chrisp:** - - - to refresh.

30 **Ms Gepp:** Now this point about it anticipating mining, I put it to you that you're
31 drawing a pretty long bow there because the covenant doesn't actually prohibit
32 anything at all, but it specifically lists certain activities that must not occur without
33 the Minister's prior approval, including the erection of a fence, cultivation, tree
34 planting, prospecting or mining for minerals, coals or other deposits on or under

1 the land. So it's setting those things out as things that may not occur, isn't it? It's
2 not anticipating them.

3 **Mr Chrisp:** They may not occur with the Minister's prior written approval.

4 **Ms Gepp:** Yes, but there's no other section of this that says things that may not
5 occur at all, is there?

6 **Mr Chrisp:** No.

7 **Ms Gepp:** You've placed quite of weight, it sounds, in your analysis on the
8 percentage area that's protected, or that would be affected by the revocation and
9 by the direct disturbance footprint. That's not something that the statutory criteria
10 direct us to, is it?

11 **Mr Chrisp:** It doesn't specifically refer to a percentage, no. That was my attempt
12 to put it in some sort of scale of context.

13 **Ms Gepp:** And this is – I'll ask both of you, so whichever of you wants to reply
14 first, Mr Berry or Mr Chrisp. You have referenced Professor Norton's statement
15 and Ms Woods' statement to support your opinion. I think, Mr Berry, your
16 opinion was that there is a small area where values of regional, national or
17 international significance are compromised; and, Mr Chrisp, your final statement
18 was: "It's not going to compromise those values. In the long-term, it will enhance
19 them".

20 **Mr Chrisp:** I did exclude the DDF in that regard.

21 **Ms Gepp:** You're excluding the DDF in that regard, okay.

22 **Mr Berry:** And my comments along those lines are referring to the impacts
23 experienced in the DDF.

24 **Ms Gepp:** Okay. So Professor Norton said that he hadn't actually considered the
25 criteria, the covenant criteria. So he wasn't giving an opinion on whether the
26 project would compromise values of regional, national or international
27 significance. So you'd accept that you couldn't rely on his opinion to reach a
28 view that it won't have that impact?

29 **Mr Chrisp:** Well, I have. I've taken into account his analysis of the values that he
30 has undertaken in his evidence as part of my valuation.

31 **Ms Gepp:** He doesn't analyse values though. He talks about two documents. And
32 the particular subject matter experts, so the lizard experts, the vegetation experts,
33 and the – well, those, let's start with those two. Both said that they hadn't
34 specifically looked at the values in that covenant area specifically, didn't they?

35 **Mr Chrisp:** Outside of the DDF, you mean?

36 **Ms Gepp:** Well, no. They hadn't overlaid the covenant - - -

37 **Mr Chrisp:** Overlaid the - - -

1 **Ms Gepp:** - - - to understand what area - - -

2 **Mr Chrisp:** Yeah.

3 **Ms Gepp:** - - - within the DDF was affected by the covenant?

4 **Mr Chrisp:** And so I recall what they said is they have not undertaken an analysis
5 of the covenant as part of their assessment.

6 **Ms Gepp:** Yes. So there was nothing for Professor Norton to draw on because
7 there wasn't that covenant-specific information from the subject matter experts,
8 was there?

9 **Mr Chrisp:** Well, my understanding is he's expressing his own opinion as an
10 ecologist.

11 **Ms Gepp:** But he doesn't have the covenant-specific information to rely on. So
12 he's taken general information and applied that general information to a very
13 specific issue of some documents referred to in the covenant, isn't he?

14 **Mr Chrisp:** I can't recall. I haven't read his evidence for a while since it was, yeah,
15 I can't.

16 **Mr Berry:** Yeah, my recollection is that his evidence considered that the
17 documents that are referred to in the purpose and objective of the covenant and to
18 form a view on those values that exist based on those documents.

19 **Mr Chrisp:** Yeah.

20 **Ms Gepp:** And you recall that your heritage witness, Dr Woods, said that there we
21 be revocation, there would be compromised values for at least regional
22 significance, didn't she?

23 **Mr Chrisp:** I'll take your word for it. I can't remember exactly what she said on
24 this particular topic.

25 **Ms Gepp:** Well, it's quite a critical issue though, isn't it?

26 **Mr Chrisp:** Well, there's a lot that happened in the - - -

27 **Ms Gepp:** Yeah.

28 **Mr Chrisp:** - - - last two weeks.

29 **Ms Gepp:** Tell me about it. Okay. Now you said the new covenant would be far
30 more onerous. I just wanted to ask how you anticipate that being enforced?

31 **Mr Chrisp:** Okay. So when you put in a covenant, you put it in favour of a party.

32 **Ms Gepp:** Mm-hm.

33 **Mr Chrisp:** And that is, and in this case, I have proposed that that be the Central
34 Otago District Council as the land use regulator and the relevant, the site is within
35 their district. So I proposed that it be the CODC. It could be DOC, it could be

1 both, in which case they would have the ability to enforce the covenant and, which
2 is we're in the exactly same situation that you have at the moment; is that at the
3 moment there is a covenant there in favour of DOC, and DOC is the one that has
4 the ability to enforce it should it choose to do so.

5 **Ms Gepp:** Yes, but the Reserves Act has specific enforcement powers in it. So
6 how would, what would, how would this new covenant with CODC be enforced?
7 Would somebody have to make an application under the Property Law Act, or
8 how would that occur?

9 **Mr Chrisp:** You're asking legal questions.

10 **Ms Gepp:** And you're relying on the covenant, and I'm - - -

11 **Mr Chrisp:** Well, yeah, I'm, yeah.

12 **Ms Gepp:** - - - and how you see it.

13 **Mr Chrisp:** Yeah, well I see it like any covenant where you've got a, like if I put a
14 height limit on my, you know, property for the benefit of a neighbour, then that
15 is, that covenant is enforceable by that neighbour I presume under the Property
16 Law Act in that respect.

17 **Ms Gepp:** By the neighbour? Who has the - - -

18 **Mr Chrisp:** By the neighbour. Whoever the covenant is in favour of has the ability
19 to enforce it.

20 **Ms Gepp:** So in this case do you have any information on the appetite for the
21 CODC to be - - -

22 **Mr Chrisp:** They've said they don't want it.

23 **Ms Gepp:** Okay, thank you.

24 **Ms Sweetman:** Would it be a conservation covenant or would you see this extending,
25 and I know I've read everything but there's so much, would you see this as joining
26 on to the existing conservation covenant area, or is this just a new covenant and
27 under the RMA framework, or the Reserves Act framework?

28 **Mr Chrisp:** Yeah, no, that's a very good question, Commissioner. It basically
29 covers 2,219 hectares which is most of the yellow line in terms of the consent
30 area, excluding those areas on the Ardgour terrace. So if you look at plan, I think
31 it's C23 which is the, it's called the ecological enhancement areas. So it's all
32 defined in the conditions. So it's the Ardgour conservation area, the mine
33 regeneration zones, the two sanctuaries and the DDF to the extent that it is within
34 the mine generation zone. So the only exclusions are those bits of activity that are
35 on the Ardgour terrace and the Ardgour rise. So those two elements are not part
36 of that. And although Ardour rise might be actually – but certainly the bits on the
37 terrace are excluded. So it's 2,219 hectares; and that then joins up with at least

1 three other – it's contiguous with at least three other conservation areas which are
2 already administered by DOC. And that's the Bendigo historic reserve, the
3 Ardour conservation area, and then there's the Bendigo conservation area, and
4 then there's actually a fourth one to the north as well. So I had envisaged it as
5 just being a covenant, if it's a conservation – a conservation covenant, it doesn't
6 matter in my view. It's a case of whatever's the most appropriate instrument to
7 achieve the outcome. You'll see that we've all entered the condition to set out its
8 purposes. So that focuses on the, you know, ongoing maintenance of the
9 landscape and ecological values within the areas the subject of the covenant post-
10 mining, including the enhanced state of some of those values as a result of the
11 implementation of the consent conditions, including the implementation of
12 various management plans relating to the Bendigo-Ophir gold project; the
13 exclusion of stock except for the beneficial – except to the extent that it's
14 beneficial for the maintenance of ecological values. So we were told that grazing
15 sheep apparently, occasionally is good for the cushion [check 06:15:11] fields.
16 The protection of archaeological and heritage values and public access as shown
17 on the landscape closure plan, which is the very last page of the landscape
18 assessment. And, at the moment, we've said that's in favour of the CODC. Now
19 that, as I say, that could be DOC, or it could be both.

20 **Ms Sweetman:** And that will obviously be something subject to your proposed
21 workshopping. Sorry, I interrupted you, Ms Gepp.

22 **Ms Gepp:** No, that's alright, Commissioner, thank you. You mentioned those –
23 well, first of all, it wouldn't be a conservation covenant, would it, because that
24 has to be something that the Minister of Conservation puts in place under the
25 Reserves Act - - -

26 **Mr Chrisp:** Yeah, it's not - - -

27 **Ms Gepp:** - - - as a condition?

28 **Mr Chrisp:** - - - it's not been proposed as that. It's been proposed as a regular
29 covenant like the height one that I gave you an example of.

30 **Ms Gepp:** Yeah. And what happens if CODC and DOC don't agree to be a
31 covenantee?

32 **Mr Chrisp:** Well, I don't, I assumed that the panel has the decision-making power
33 to require it to happen.

34 **Ms Sweetman:** I don't know if we have.

35 **Mr Muir:** I would be reluctant to impose any obligation on any third party as part
36 of a condition of consent for an applicant.

37 **Mr Chrisp:** Yes. They are a regulator in this instance but, yeah, because I did say
38 in my evidence that I regard it as very similar to covenants that are imposed under,
39 you know, often proposed under subdivision consents, under section I think it's

1 221 of the Resource Management Act where, which is not an uncommon thing.
2 Yeah, in the event that the Council refuses, then, yeah, I mean, DOC at one of the
3 previous hearings, I think it was Dr Schmidt, said, made, sort of lamented the fact
4 that the Department of Conservation was losing a covenant but not gaining one
5 back so. But I don't understand that DOC's position is that they don't want to
6 leave it.

7 **Mr Muir:** If there's blanket refusal out of those public entities to accept itself as
8 the beneficiary of the covenant, then what does that leave us with? The
9 possibility, I suppose, the land itself could be transferred into the perpetual trust.

10 **Mr Chrisp:** Yes, and when I come to that, that is one of the consent conditions is
11 that the land will be transferred to the trust.

12 **Mr Muir:** Yes. Then the terms of the trust - - -

13 **Mr Chrisp:** Yeah.

14 **Mr Muir:** - - - could embody all of the things that you would expect in a
15 conservation covenant.

16 **Mr Chrisp:** Yes, that's right; and indeed the way the conditions are framed at the
17 moment is that the, or the trust if it becomes the landowner is then bound by the
18 covenant. So that is the intention.

19 **Ms Sweetman:** But we're jumping ahead a little bit.

20 **Mr Chrisp:** Yes.

21 **Ms Sweetman:** But that also assumes that people or organisations or bodies are willing
22 to be on the trust as well.

23 **Mr Chrisp:** That's right, yes, yes, and we've used the Martha Trust at Waihi as an
24 example, with some differences. So that, I mean, we could jump ahead or we
25 could wait till we get to that point and I can take you through it.

26 **Ms Gepp:** With that scenario, it sounded like you had the trust being both the
27 covenantor and the covenantee.

28 **Mr Chrisp:** Yeah, well, that's not what was intended. It was that the covenant goes
29 onto the title so therefore it runs with the land, irrespective of who the landowner
30 is. So in the first instance, that would be Matakanui Land Ltd being the
31 landowner. And then when that land is transferred to the trust which we're
32 proposing be subject to the approval of the regulators, so there's brakes and checks
33 along the way, that the covenant then applies to the new landowner. Now like I
34 fully accept that that's actually a good idea, that if there's a problem with people
35 accepting, or organisations accepting a covenant, then it could be the terms of the
36 trust.

37 **Mr Muir:** Yes.

1 **Mr Chrisp:** And that be conditioned as well.

2 **Ms Gepp:** That would bring me back – so it's a bit tricky because this whole
3 scenario keeps changing, but that would mean that we would still have the issue
4 of enforcement, wouldn't we? If the trust were to enable, allow activities that
5 weren't provided for, or that were contrary to the objectives that you've described,
6 we wouldn't have any entity to enforce it would we?

7 **Mr Chrisp:** That's right, and where we're trying to make it work and one of the
8 difficulties we have is the obvious regulator refusing to be a party to it, so.

9 **Ms Gepp:** But for understandable reasons.

10 **Ms Rodgers:** If I might, can I say something on this?

11 **Ms Sweetman:** Yes.

12 **Ms Rodgers:** Is that okay? CODC has not discussed, the covenant has not been
13 discussed with CODC at all, other than in passing and observing that if it had
14 turned up in conditions of consent that it would be favour of CODC. There has
15 been - - -

16 **Mr Muir:** It's certainly the attitude to being the beneficiary of a trust, a beneficiary
17 of a covenant over land that was owned by a trust which had a corpus of
18 approaching 50 million, if it were to assess that as an adequate sum of money to
19 maintain ecological values of that site may be rather different than if CODC was
20 being invited to pick up the cheque.

21 **Ms Rodgers:** Yes, and also be responsible for the monitoring and compliance of
22 enforcement - - -

23 **Mr Muir:** Agreed, yes.

24 **Ms Rodgers:** - - - which requires Environment Court proceedings and other things on
25 the, I guess, initially on the ratepayers' tab.

26 **Mr Chrisp:** Well, that's not correct because we have a condition that specifically
27 enables the Councils to charge the consent holder for all of their actions associated
28 with the consent. And so if this is part of the consent, then that falls within that
29 ambit. It's the very idea - - -

30 **Ms Rodgers:** Assuming the covenant continues in perpetuity, that's not necessarily,
31 well, the applicant or the consent holder would not necessarily be in play.

32 **Ms Sweetman:** Mr Chrisp, is there also some confusion between the role of the Council
33 in its monitoring and compliance role of consent conditions versus being party to
34 a covenant which binds it in a different way?

35 **Mr Chrisp:** It's very common in subdivision situations where covenants are
36 involved.

37 **Ms Sweetman:** Quite a different situation here to a subdivision I would think.

1 **Mr Chrisp:** Well, in terms of the function, the different functions of Council - - -

2 **Ms Rodgers:** They also tend to be consent notices, not covenants in subdivision
3 context.

4 **Mr Chrisp:** Mm.

5 **Ms Gepp:** I don't want to unnecessarily prolong this, I think, I don't think. Is it
6 fair to say that until we have some certainty that there is an entity that could be a
7 covenant party and would be both able to and willing to enforce the covenant, the
8 panel can't place any weight on this consent?

9 **Mr Chrisp:** Well, it certainly needs to be rounded out, that's for sure.

10 **Ms Gepp:** Okay. And just in terms of the condition about the objectives of the
11 covenant, you said it proposes maintenance of particular values. Would it
12 preclude mining?

13 **Mr Chrisp:** It doesn't do that at the moment.

14 **Ms Gepp:** Is it going to in the version on Monday?

15 **Mr Chrisp:** To be honest, I hadn't turned my mind to that. I hadn't thought about
16 that. I'd have to have a chat with my client about that.

17 **Ms Gepp:** Okay. So whether it does it doesn't, the mechanism to change the
18 covenant would also be something we'd need to think about, wouldn't we, in
19 terms of the longevity of any protection that the covenant provided?

20 **Mr Chrisp:** Yes, you would, yeah.

21 **Ms Gepp:** Okay. That's it on the covenant. I've just got one question on the
22 assessment of policy consistency and that is from the joint witness statement at 35
23 where you both say, about halfway down the paragraph - - -

24 **Mr Berry:** Is the first or the second one?

25 **Ms Gepp:** The first one, sorry. I didn't think that you got to paragraph 35 in the
26 second one. About halfway down, you say: "There will inevitably be some
27 tension between the BOGP and some of the more directive avoidance provisions".
28 I just want to test you both on that concept because the provisions you're talking
29 about here and back in your evidence all have particular provision for mining; and
30 what this doesn't meet is the mining specific exceptions. So there are avoid
31 policies and then there are policies that say if you're mining, you don't have to
32 fully avoid but you have to apply the effects management hierarchy. You're not,
33 this project is not meeting that exception. So when you say, "there will inevitably
34 be some tension", I put it to you that it's not inevitable; you're simply not meeting
35 the mining specific lenient exemption that these policies put in place and that that
36 failure needs to have full weight put on it.

1 **Mr Berry:** So if you're referring to the effects management hierarchy and the
2 lowest offsetting and compensation principles, is that one of the examples you're
3 talking about?

4 **Ms Gepp:** In both the - - -

5 **Mr Berry:** Yes.

6 **Ms Gepp:** - - - National Policy Statement for Biodiversity and Freshwater, yes.

7 **Mr Berry:** Correct. I mean, I think that statement is a comment on the provisions
8 as a whole but in terms of those specific exemptions, it would be fair to say that
9 those provisions are not met.

10 **Ms Gepp:** Thank you.

11 **Mr Chrisp:** I concur with that too.

12 **Ms Gepp:** Thank you.

13 **Ms Sweetman:** Any other cross?

14 **Mr Enright:** Yes, thank you.

15 **CROSS-EXAMINATION BY MR ENRIGHT:**

16 **Mr Enright:** My focus is just on the planning instruments and just in terms of the
17 national trends on ONLs, biodiversity and freshwater, and just I'm happy for
18 either of you to answer, Mr Chrisp or Mr Berry. But just as a starting point for
19 ONLs, there's no relevant national direction instrument on the ONLs, is there?

20 **Mr Berry:** Correct.

21 **Mr Enright:** Yeah, and so we've got to go down one tier to the RPS level, don't we?

22 **Mr Berry:** Correct.

23 **Mr Enright:** Neither of you comment on whether you agree that the operative RPS
24 has effectively been superseded by the proposed RPS. Is that something you
25 accept?

26 **Mr Berry:** Yes, I understand that the appeals on the proposed RPS have been
27 resolved and final consent orders have been issued by the Environment Court. So
28 the operative RPS still has legal effect but that will cease soon.

29 **Mr Enright:** Yes, but in terms of a planning analysis and weighting, would you agree
30 that the predominant weight should go to the proposed RPS as distinct from the
31 operative.

32 **Mr Berry:** Yes.

33 **Mr Enright:** Yes, alright. And so if we look at the provisions on ONLs in the
34 proposed, if we still call it the proposed RPS, so it's objective in NFL 01 and
35 policy NFL P1 P2.

1 **Mr Berry:** Give me one second.

2 **Mr Enright:** Sure.

3 **Mr Berry:** Could you repeat that policy?

4 **Mr Enright:** Yeah. So it's under natural features and landscapes NFL - - -

5 **Mr Berry:** NFLP2?

6 **Mr Enright:** NFL01 and then NFL P1 and P2 have been identified as the relevant
7 provisions, correct?

8 **Mr Berry:** Yes.

9 **Mr Enright:** Yeah. So just a starting question is that both the objective and the two
10 policies effectively reflection section 6B of the RMA because they require
11 protection of ONLs from inappropriate subdivision use development, correct?

12 **Mr Berry:** Yes.

13 **Mr Enright:** And the second point in terms of those three provisions in the proposed
14 RPS, none of the, neither the two objectives, sorry, neither the objective nor the
15 two policies anticipates protection of ONLs in part only, does it?

16 **Mr Berry:** No, it just refers to the ONL in the broad sense, in a broad sense.

17 **Mr Enright:** So one of the planning considerations you mentioned I think earlier in
18 your comments today was that, well, although the ONL values are not protected
19 for a subset of the Dunstan Mountains ONL as a whole, there is protection but
20 that's an invalid way of approaching these provisions, isn't it?

21 **Mr Berry:** I wouldn't phrase it that way, I mean, protect isn't a term that's defined,
22 but I understand that when you take into account that term, you're needing to take
23 into account measures to address effects; and there is also some form of value
24 judgment. It's not an entirely complete bar on development.

25 **Mr Enright:** Well, that's an interesting interpretation. Protect is a directive
26 requirement, isn't it? It's directive language, you accept that?

27 **Mr Berry:** Yes.

28 **Mr Enright:** And I put it to you that the proposal is inconsistent with that objective
29 and two policies to the extent that ONL values are not protected within the
30 Dunstan ONL.

31 **Mr Berry:** Yes, that is acknowledged but the position I take is that the majority of
32 that ONL, it still remains protected, it is unimpacted. There is acknowledgements
33 that there will be impacts on that ONL during the operations phase until
34 rehabilitation is undertaken.

35 **Mr Enright:** Yes, so we do have a problem with inconsistency, in effect, don't we,
36 with those final provisions?

1 **Mr Berry:** I think, and my position is still as it stands that the policies and
2 provisions are talking about the ONL in general, and the ONL as a whole will
3 remain protected with exception to this area.

4 **Mr Chrisp:** If I could just add something there. I guess what you're getting at is
5 really it's a scale of analysis sort of issue and it's do you consider – the policy
6 regime refers to it as a single entity, so you could argue that any part, sorry, the
7 provisions apply equally to the whole, the whole phenomenon. But then you say
8 if, so if I put one fencepost in the ground and take out a plant in the process, am I
9 protecting the values of that, you know, 100 square, square kilometres. Clearly
10 not. But are you affecting the values of the ONL as a whole, probably not. So
11 that's an extreme example at one end of the scale. This is obviously a much bigger
12 impact but it's only in one part of a very, very large ONL.

13 **Mr Enright:** So, Mr Chrisp, I mean, I think that the fencepost would be *de minimus*,
14 right? It's not really relevant.

15 **Mr Chrisp:** Well, we could take a big example and say a shed or a gold processing
16 plant in terms of the property value.

17 **Mr Enright:** I suppose I'm reflecting really on what Stephen Brown said in his
18 evidence to the panel which was, you know, whether by detracting from the heart
19 of the Dunstan ONL, you know, whether you can split them in two and, you know,
20 that whole math discussion. But I suppose the point I wanted to raise with you
21 both was there's no wording in NFL01 or NFL P1, P2 that anticipates protection
22 in part of identified ONLs. That's fair, isn't it?

23 **Mr Chrisp:** Yes, you can interpret that way, yeah.

24 **Mr Enright:** So the only other point, I'm happy to stay with you, Mr Chrisp, but
25 there's that policy NFL P1 specifically singles out Te Tangi o te Manu, doesn't it,
26 to identify areas of values of ONLs in accordance with Te Tangi o te Manu,
27 correct?

28 **Mr Chrisp:** Yes, it does.

29 **Mr Enright:** And so do you take, as a planning inference from that, that it is
30 appropriate then to have regard to the level of consistency of the proposal with
31 those guidelines? If they're not consistent with the guidelines, they're more likely
32 to be inconsistent with policy NFL P1, aren't they?

33 **Mr Chrisp:** So that policy is requiring the methodology, specifying the
34 methodology and so that's the methodology that's been adopted by Mr Girben
35 - - -

36 **Mr Enright:** Yes.

37 **Mr Chrisp:** - - - in his assessment.

1 **Mr Enright:** But it brings in as relevant, when you're looking at consistency with
2 policy NFL P1, it's then relevant to reflect on the landscape evidence and whether
3 the assessment undertaken by the applicant was consistent or otherwise with
4 Te Tangi o te Manu?

5 **Mr Chrisp:** Yes.

6 **Mr Enright:** You accept that?

7 **Mr Chrisp:** Oh yeah, 100 per cent, yeah.

8 **Mr Enright:** And it's also somewhat unusual, I'm not sure I've seen many planning
9 instruments that actually require an assessment in accordance with Te Tangi
10 o te Manu. It seems a bit unusual. Do you agree or in your experience?

11 **Mr Chrisp:** Certainly at a policy level, yes.

12 **Mr Enright:** Yeah.

13 **Mr Chrisp:** Normally that would be a method or advice note that an assessment
14 should be undertaken in accordance with that methodology.

15 **Ms Sweetman:** Can I just jump in here, Mr Randal? Has that policy been updated now?
16 You've provided us - - -

17 **Mr Randal:** Yeah.

18 **Ms Sweetman:** - - - with that NFL P1 identification of ONLs.

19 **Mr Randal:** That's right, Commissioner.

20 **Ms Sweetman:** hat reference to Te Tangi o Te Manu has gone, correct?

21 **Mr Randal:** That's right, yes, sorry, yeah, that's correct. I think that was circulated
22 to the parties last, yesterday afternoon, but I appreciate some people might not be
23 across every single - - -

24 **Mr Chrisp:** We're looking at the version that was in the application, the separate
25 application on 20 - - -

26 **Mr Enright:** I apologise; I wasn't aware of that.

27 **Mr Chrisp:** Yeah, we only found out yesterday, yeah, sorry.

28 **Mr Enright:** I think, okay, well I'll leave that to one side in that case in tatters.

29 **Ms Sweetman:** I also wanted to demonstrate I've been reading things that you've put
30 through, Mr Randal.

31 **Mr Randal:** Indeed.

32 **Mr Enright:** So moving off ONLs to the NPS IB, and I did, just as Ms Gepp did, sort
33 of reflect on how you'd carefully worded things in the first JWS at paragraph 35
34 where you further, the sentence around tension and specifically went on to refer
35 to the – this is particularly the case when applying the effects management

1 hierarchy for the NPS IB etcetera. So I'm just trying to get clear with you both
2 whether you consider the proposal is not consistent with the NPS IB objective.

3 **Mr Berry:** My view of the project is certainly partially inconsistent, particularly in
4 terms of giving full effect to the effects management hierarchy, yes.

5 **Mr Enright:** Partially, alright. Mr Chrisp?

6 **Mr Chrisp:** Yeah, I think I agree with what Mr Berry has said. It's the advice from
7 Dr Baber is that it doesn't get you all the pit [check 06:36:36]. Where he gets to,
8 you don't get all the way there. And then they get to the point, the ecologists
9 collectively, get to the point where they've run out of road in terms of the options
10 available to them under the NPS, and so hence what I was talking about earlier
11 was, okay, that's fine for you guys to stop there but, from a planning point of view,
12 I think I can go further and propose other measures beyond that, which is what
13 we've done.

14 **Mr Enright:** Yes, well, I just want to – you might both reflect on, I mean, the
15 question was about the objective itself and if one goes back to the joint witness
16 statement, ecology effects management dated 10–11 June, paragraph 106. And
17 I'll just give you a moment to bring it up.

18 **Mr Chrisp:** Sorry, could you say that again.

19 **Mr Enright:** So it's the ecology effects management JWS.

20 **Mr Chrisp:** I'll just find it.

21 **Mr Enright:** Dated 10–11 June.

22 **Ms Sweetman:** Which paragraph, 106?

23 **Mr Enright:** Paragraph 106. And I'm happy to read it out but you might want it in
24 front of you in any case.

25 **Mr Chrisp:** 106 you say?

26 **Mr Enright:** Yeah, and to be – to give you the full context, we should probably start
27 on page 19.

28 **Mr Chrisp:** Yeah, I've got it.

29 **Mr Enright:** Yeah, consistency, the top of consistency, I mean, 25, 26.

30 **Mr Chrisp:** Yeah.

31 **Mr Enright:** Right. So just in light of what I understand was an agreed position of
32 all the ecologists that the proposal, quote, "is not consistent with the objective in
33 the NPS IB", I presume that you would defer to the subject matter technical
34 experts on the consistency in that, would you?

35 **Mr Berry:** Correct.

36 **Mr Chrisp:** Yes.

1 **Mr Enright:** Yes, right. So you would accept it's not consistent with the sole
2 objective in NPS IB?

3 **Mr Berry:** Yes, I would.

4 **Mr Enright:** Yeah, alright. And just on water, what I found interesting when one
5 looks at the proposed RPS, how it approaches water, it very much reflects the
6 priorities stated in the NPS FM about priority to Te Mana o Te Wai, and health
7 and wellbeing of water bodies is the first priority; second, health needs of people;
8 and third, socioeconomic cultural wellbeing. That's correct, isn't it?

9 **Mr Chrisp:** That's right.

10 **Mr Enright:** And if you want a reference, it's objective LFY01 and policy YP1 and
11 P4. Page 24 of that summary document that's what you're working off, summary
12 of policies.

13 **Mr Chrisp:** Is that the Appendix H?

14 **Mr Enright:** I think it is, yeah.

15 **Mr Chrisp:** That's right.

16 **Mr Enright:** Page 24 under land and freshwater.

17 **Mr Berry:** Yeah, I'll just load that.

18 **Mr Enright:** Sure.

19 **Mr Chrisp:** Page 24.

20 **Mr Berry:** Yeah.

21 **Mr Enright:** Oh good, okay. So it's really to just confirm the proposed RPS is very
22 much faithful to that hierarchy approach in the NPS FM, isn't it, around health
23 and wellbeing of water first; second, health needs; third, providing for
24 wellbeing's. You accept that, don't you?

25 **Mr Berry:** [Inaudible 06:40:61].

26 **Mr Enright:** And it's also reflected in policy YP4 that the objective in P1, P2, P3
27 are, quote, "fundamental to upholding Te Mana o te Wai", correct?

28 **Mr Berry:** Yeah, that's what it says.

29 **Mr Enright:** Yeah. And so just the point here is that, I put to you the proposal is
30 inconsistent with Y01 in policy P1 P4 because it is not prioritising health and
31 wellbeing of waterbodies and freshwater ecosystems; and instead, is focused on
32 the third limb, providing for social, economic, cultural wellbeing?

33 **Mr Berry:** I wouldn't agree with that perspective. The application and the
34 statutory assessment details a broad number of measures that are proposed to
35 address effects on water, whether that ranges from compliance limits, the
36 formation of ELFs, the capture of seepage, the water treatment plants. I would

1 contend that there are a lot of measures that have been put forward to protect the
2 quality and the value of water.

3 **Mr Enright:** You're not giving priority to the health and wellbeing of wetlands, are
4 you, in the proposal?

5 **Mr Berry:** As I recall, there are a number of measures put forward to offset and
6 compensate for the loss of I think it's 3.1 hectares of wetland in the DDF with
7 7.5 hectares of replacement swamp and marsh wetland. And setting aside any
8 discussions and further assessment about the provision of water to those wetlands
9 that the hydrologists are undertaking now that there have been, yeah, substantial,
10 substantial efforts to increase the scale and extent of these wetlands. But it's
11 acknowledged for some wetlands types such as the Fening Gully wetland, there is
12 no offsetting compensation for those and there is some uncertainty with potential
13 drawdown effects on wetlands outside of the DDF surrounding microponds,
14 notwithstanding that there are conditions in terms of augmentations and flows and
15 further monitoring to better understand that. So in a pure sense, similar to before
16 in terms of the application of the effects management hierarchy, that cannot be
17 fully applied for those types of wetlands but for the swamp and marsh, then those
18 provisions are achieved. And so in their entirety, there are a number of measures
19 to protect water, with exception to those examples of wetlands that I've discussed.

20 **Mr Enright:** Mm. But would you accept in principle that if you're giving prior to
21 health and wellbeing of waterbodies, freshwater ecosystems, you would start with
22 avoidance?

23 **Mr Berry:** No. Where it says prioritise, I don't, I don't interpret that as meaning
24 avoid. There's great weight placed on providing for those wetland values as much
25 as can be done, but it's not a stringent avoidance test.

26 **Mr Enright:** Isn't offsetting and compensation more in the nature of providing for
27 the social, economic, cultural wellbeing of people in communities?

28 **Mr Berry:** Offsetting compensation would go towards trying to achieve those
29 values, yes, of wellbeing.

30 **Mr Enright:** Alright. And just finally, the assessment of consistency with both the
31 PSFM and the objective three policies we've just discussed, it's also partly an
32 effects-based issue, isn't it? So it will depend where the panel lands on effects of
33 freshwater and surface and groundwater?

34 **Mr Berry:** Yes, that is correct. When we're making these assessments, we are
35 largely driven by the technical information that's in front of us and, as a planner,
36 we need to, as new information arises, we need to take them into account in those
37 assessments, so yes, I agree.

38 **Mr Enright:** Thank you. Thank you, Sir.

39 **Ms Sweetman:** Ms Williams.

1 **Ms Williams:** Thank you.

2 **CROSS-EXAMINATION BY MS WILLIAMS:**

3 **Ms Williams:** I am returning to the subject of the covenant, and Ms Jepp and
4 Ms Sweetman have already asked a number of the matters that I was going to
5 raise, so just following from that. Mr Berry, you stated that you considered that
6 the project will compromise values within the DDF; but outside the DDF, you
7 understood that the amendment or revocation would not compromise those values.
8 That's what you said before.

9 **Mr Berry:** Ah.

10 **Ms Williams:** Something to that effect anyway.

11 **Mr Berry:** I think what I probably didn't mention before and it is important to
12 caveat is that I've not undertake a complete revision assessment of those values
13 since the application. This is working with new information that is arising in front
14 of us. I think what I said is that there will be, there will undoubtedly be some
15 compromise, for example, historic structures that are there and that may be
16 impacted. But there are measures that are put in place to manage those effects.

17 **Ms Williams:** So there are measures to manage the effects, but there still will be
18 effects, you agree?

19 **Mr Berry:** I understand not to heritage or in terms of - - -

20 **Ms Williams:** Perhaps if I could.

21 **Mr Chrisp:** Could I assist you?

22 **Mr Berry:** Yeah.

23 **Mr Chrisp:** Yeah. So as I said before, outside of the DDF I'm sure we're talking
24 about - - -

25 **Ms Williams:** Mm-hm.

26 **Mr Chrisp:** - - - all the heritage features, certainly as Ms Williams has pointed out,
27 but certainly the pre-1900 ones are protected by the Heritage New Zealand Act.
28 There is no proposal to affect those features in any way. There is a RFI response
29 that came through yesterday which is putting in place a whole lot of measures to
30 ensure that blasting effects do not have effects on those heritage features as well.
31 There will be an effect of up to three hectares that I talked about this morning in
32 terms of exploration activities beyond the DDF, so that is acknowledged. But
33 those areas are also still subject to the rehabilitation measures that would occur
34 post, post-exploration.

35 **Ms Williams:** I actually just want to come back to the objectives of the covenant
36 because one of the objectives is, sorry, I have to find the right document again, is
37 to maintain the historic values of the land as referred to in the meeting a little

1 while ago by Dr Hamill from February 1993. So that was a matter that was
2 discussed at the heritage conference.

3 **Mr Chrisp:** Yes.

4 **Ms Williams:** And the heritage experts, and I'm, it's, what page is it, page 12 of their
5 JWS at section G dealing with the conservation covenant. They all agreed that
6 revocation from the project area and impacts were not consistent with the
7 objective and conditions of the covenant. They all agreed that the level of impact
8 of the loss of heritage was major; and they all interpreted the question about a
9 potential replacement covenant as saying that the area proposed to be protected
10 was not equivalent to the values which would be lost in terms of heritage values.
11 So that's what the heritage experts said and they largely confirmed that. That's
12 my understanding of the heritage hearing last week. Do you agree?

13 **Mr Chrisp:** Yeah. So my understanding is they're talking about the effects that are
14 going, that are within the DDF in terms of which are within the scope of the
15 archaeological authority, those activities will be lost.

16 **Ms Williams:** This is specifically referring to the covenant, not the archaeological
17 authority.

18 **Mr Chrisp:** Yes, but the covenant, it's talking about the features that are within the
19 covenant area.

20 **Ms Williams:** And do you understand that the conservation covenant in respect of the
21 upper Rise and Shine valley or Thompson Gorge, whichever way we want to
22 discuss it, covers and protects ecological botanical values, landscape values and
23 heritage values? It covers all three.

24 **Mr Chrisp:** Yes, yes, I agree.

25 **Ms Williams:** And in the heritage context, it's not just the individual sites that the
26 covenant protects; it's that cultural heritage landscape in that upper Rise and Shine
27 and/or Thompson Gorge valley that it protects, doesn't it?

28 **Mr Chrisp:** Yes.

29 **Ms Williams:** If you are going to have a revocation over the DDF which will
30 inevitably destroy I think it was 13 sites - - -

31 **Mr Chrisp:** 13.

32 **Ms Williams:** - - - and damage another 17, something like that, that's going to detract
33 from that overall heritage and cultural landscape, isn't it?

34 **Mr Chrisp:** Yes.

35 **Ms Williams:** And that is going to have a major impact on those values that are
36 currently protected by the covenant.

1 **Mr Chrisp:** ell, Dr Woods' assessment is that those are the sites of lesser value
2 but, yeah, I accept that there will be an overall effect. I'm not qualified to tell you
3 what the magnitude of that effect is; that's beyond my expertise.

4 **Ms Sweetman:** Can I just jump in, just quickly? Mr Chrisp, did you consider the
5 evidence provided by the other parties as well, the other heritage experts?

6 **Mr Chrisp:** Well, absolute – when?

7 **Ms Sweetman:** Well, you sat through the hearings - - -

8 **Mr Chrisp:** Yeah.

9 **Ms Sweetman:** - - - last week - - -

10 **Mr Chrisp:** Yeah, yeah.

11 **Ms Sweetman:** - - - and you've read the section 53 comments, I'm sure.

12 **Mr Chrisp:** Yeah.

13 **Ms Sweetman:** And as a planner, it's important that you consider all - - -

14 **Mr Chrisp:** Yeah.

15 **Ms Sweetman:** - - - information provided.

16 **Mr Chrisp:** Yeah, I've heard, yeah, I've heard that evidence, yeah. So I've
17 considered that, yeah, yeah, no, there will be – as I just said, there will be effect,
18 but I'm not qualified to, for me to express an opinion on the magnitude of it.
19 That's beyond my expertise.

20 **Ms Williams:** Thank you. Do you have anything you want to add?

21 **?** Thank you. Again, my learned friend, Mr Enright, has covered good ground that
22 I was intending to talk to. But perhaps very briefly, noting that we've still got
23 overall recommendation, that's a separate topic matter later on, Commissioner, do
24 you think, or? My questions may be relevant to that. Anyway, I'll ask it.

25 **CROSS-EXAMINATION BY MR RANDAL:**

26 **Mr Randal:** Again, yeah, Mr Berry perhaps but, or Mr Chrisp. But looking at
27 paragraph 35 of the joint witness statement, the first planning joint witness
28 statement, I've been left wondering a couple of things, you know, having read
29 through, you know, it's a good, there's a lot in there to unpack. I'm trying to
30 understand just exactly what the difference is between you and the other planners
31 in terms of consistency or inconsistency with certain provisions and certain
32 instruments, and then stepping back and, you know, undergoing the
33 thoroughgoing analysis, you know, the fair appraisal, everything in the round; and
34 I'm keen to tease. You know, whether there's any other information the panel
35 might need now in its process. Certainly no criticism of the application, you
36 know, the relatively high-level statutory valuation in the application documents

1 itself, goodness knows there's enough for us all to read; and the summary in
2 paragraph 35 of the joint witness statement, no criticism there. But I think you'd
3 accept it is important for this panel to understand, be able to evaluate the
4 significance of all effects on the environment of this proposal, positive and
5 negative, mitigated or residual, considered in light of all of those relevant RMA
6 instruments. You'd agree with that; that that's an important thing for the panel to
7 have, notwithstanding the FTAA context?

8 **Mr Chrisp:** Yes.

9 **Mr Berry:** Yes.

10 **Mr Randal:** And in that paragraph, they're perhaps a little euphemistic, but there are
11 some indications there, a statement there about general consistency, which
12 perhaps leaves open a point of specific inconsistency. There's the point Ms
13 Gepp's asked about in terms of, you know, inevitable tensions. And then there's
14 a curious section at the end of that paragraph around a scenario where this
15 proposal is considered under the traditional decision-making framework under the
16 RMA and some potential impediments. It may, I think may pose impediments for
17 granting a consent. Is there anything else you'd like to offer the panel now or
18 could that be done that could assist in future? Just where this all lands in your
19 professional opinion, Mr Berry, if this were considered under the RMA, noting
20 that then there's an FTAA overlay for the panel to apply?

21 **Mr Berry:** Yes, notwithstanding that there are still some technical information
22 where there's differences of expert opinion and there's still some further
23 information gaps that have been identified, I think our statement in the joint, well,
24 my statement in the joint witness statement stands that where do you – it is
25 acknowledged that there are some, or some of those more directive avoid
26 provisions in the NPS IB, the NPS FM in relation to giving full effect to the effects
27 management hierarchy, those cannot be achieved; and my understanding is under
28 a normal RMA framework, there would be potentially some, yeah, definitely some
29 challenges to granting consent. That is acknowledged.

30 **Mr Randal:** Yeah, so I understand the answer, but it's not hypothetical in this
31 situation, is it? It is relevant for the panel to consider whether this, how well this
32 proposal is aligned with the RMA instruments and if it is, or isn't consistent, you
33 know, even stepping back considering all those provisions and, you know, the
34 relative strength of the wording and what might have been intended by the drafters
35 of all of those instruments in terms of what's appropriate in this particular setting,
36 anything else to offer us on that?

37 **Mr Chrisp:** Yeah, thank you, Mr Randal. I guess this is one of those classic
38 situations that occurs in many resource consent application processes for large-
39 scale developments. You always have a situation where you have policy
40 imperatives pointing in the opposite direction, and the same, and that's inherent

1 in Part 2 of the Act as well. And where you have these major – well, it's not even
2 really a gap, but where you have those challenges, obviously, coming back to Part
3 2 is supposedly now only where you have a gap or an inconsistency something
4 like that, but then you end with the same conundrum because at the end of the day,
5 the RMA is an Act about enabling this. It's about enabling people in the
6 community to provide, in the communities to provide for their social and
7 economic and cultural wellbeing, while doing these other things as well. And so
8 you end up in this immediate conflict where to enable people to provide for their
9 social, economic and cultural wellbeing through enabling economic activities
10 such as a mining operation, you get a tick in terms of that aspect of the purpose of
11 the Act. And indeed you find support for that throughout a whole bunch of
12 objectives and policies that are the ones that you'll find in these statutory
13 instruments that are focused on enabling things and the beneficial and efficient
14 use of resources etcetera. But then at the same time, you also have, you know,
15 and this is what we in the industry sort of got to and why the legislation is being
16 changed, there's a massive bunch of negative imperatives that say, "don't do this"
17 and "don't do that" and, you know, avoid remedy. And then the avoid policies
18 have been elevated to this funny concept, you know, avoid means avoid. That
19 was never intended when those things were, most of those things were originally
20 drafted. It was part of a consideration. And so we end up in the situation – you
21 always end up in the situation where you have these conflicting [inaudible
22 00:00:40] policy imperatives.

23 And so, in this situation, I agree with Mr Berry, this would be very hard to consent
24 under the RMA. And we accept that we've used the word significant challenges.
25 We've talked about the strong avoidance provisions; and those are matters that
26 are front and centre, that have been documented. We've been very honest about
27 that in the process. There are some major challenges, and this paragraph 35 is
28 really just trying to encapsulate what is, as you've observed, hundreds of pages of
29 analysis presented in the substantive document, more analysis presented in
30 evidence, my evidence, and there's a lot of it. And, at the end of the day, we have
31 to come down with a position. And with both Mr Berry and myself, because he's
32 done the principal writing of the actual substantive application, I've been the peer
33 reviewer. And that's why we – and nothing goes out the door until we agree on
34 it. So I guess that's why there's a coincidence of opinion on these things. At the
35 end of the day, as I say, it would be very challenging to consent this if it was just
36 purely an RMA application. The benefit of this process, and indeed why it has
37 been created is to do something different and have a different legislative
38 imperative, and that's a decision for the panel to make obviously, taking these
39 matters into account. So hopefully that is helpful in terms of where we've got to.

40 **Mr Randal:** Thank you, those are my questions.

1 **Ms Sweetman:** think we could probably extend that in terms of the approvals
2 required under the Reserves Act potentially and the New Zealand Heritage
3 Pouhere Taonga Act and the Wildlife Act, noting the different statutory
4 frameworks and different - - -

5 **Mr Chrisp:** Yes.

6 **Ms Sweetman:** - - - documents, okay.

7 **Mr Chrisp:** Yes, I think that's a fair, fair summary too, yes, yeah.

8 **Ms Sweetman:** Ms Buxeda has disappeared, I see. Hopefully she'll come back soon.
9 Any further questions?

10 **Mr Leckie:** Commissioner Sweetman, I can - - -

11 **Ms Sweetman:** Oh sorry - - -

12 **Mr Leckie:** - - - ask my questions while Ms Buxeda is away.

13 **Ms Sweetman:** Mr Leckie.

14 **Mr Leckie:** That's okay. I won't be long. I just have short questions on this question
15 of planning documents, firstly, for Ms Allen.

16 **QUESTIONS FROM MR LECKIE:**

17 **Mr Leckie:** If I just take you to paragraph 37 of the first planning joint witness
18 statement.

19 **Ms Allen:** Yes.

20 **Mr Leckie:** Where you give your view that the project is high inconsistent with the
21 Central Otago District Plan in the rural area and more generally. Am I right that
22 that conclusion is based on the content of your evidence from paragraph 40
23 onwards, your evidence that was filed and attached to the section 53 comments?

24 **Ms Allen:** Yeah, that's how I got to that conclusion, mm.

25 **Mr Leckie:** Thank you. And you'd agree that that policy assessment you've carried
26 out, in doing that, you've only assessed and given your view on policies that the
27 project is inconsistent with, haven't you?

28 **Ms Allen:** No, I've looked at the whole policy framework.

29 **Mr Leckie:** But you haven't recorded your views on the policies that the project is
30 consistent with?

31 **Ms Allen:** I'd have to go back and review the Otago District Plan.

32 **Mr Leckie:** Could I take you to that evidence. Could you just take the panel to
33 where you've done that.

1 **Ms Allen:** If you could again refer to - - -

2 **Mr Leckie:** Yeah, absolutely.

3 **Ms Allen:** - - - a particular paragraph.

4 **Mr Leckie:** So I'm just starting at paragraph 40 under the heading - - -

5 **Ms Allen:** Protection of – oh, Regional Policy Statement and District Regional
6 Plans, yes.

7 **Mr Leckie:** That's it. So I can see where you've commented on the policies that the
8 project are inconsistent with.

9 **Ms Allen:** Yes.

10 **Mr Leckie:** But what I'm putting to you is I can't see comment around the policies
11 that project is consistent with.

12 **Ms Allen:** I obviously haven't included them but that's not to say that I didn't look
13 at them.

14 **Mr Leckie:** But they're not there for me to question you on or for the panel to test
15 you on, are they?

16 **Ms Allen:** I'm quite happy for you to ask me questions about that, if you just take
17 me to the right parts of the plan.

18 **Mr Leckie:** No. But my question is they're not in your evidence, are they?

19 **Ms Allen:** Well, my evidence stands as it is.

20 **Mr Leckie:** And as a planner, would you agree it's standard good planning practice
21 when you're carrying out a policy assessment against a plan to carry out that
22 assessment against the whole policy framework?

23 **Ms Allen:** I think it's appropriate for to accept that this was a seat of the pants
24 short-term exercise, and I said that at the start of my statement that I've just picked
25 up and presented things that concern me particularly about this application. I'm
26 not in the position of the applicant's planners or the Council planners, so I haven't
27 presented a full assessment. But that is not to say that I haven't looked at those
28 and taken them into account.

29 **Mr Leckie:** Thank you, Ms Allen. A similar question for you, Ms Williams, and
30 I'm just coming over the page at paragraph 30, 38 - - -

31 **Ms L Williams:** Yeah.

32 **Mr Leckie:** - - - where you give your view in relation to the NPS IB.

33 **Ms L Williams:** Yeah.

1 **Mr Leckie:** You haven't carried, you haven't carried out a written assessment or
2 review of that in evidence before the panel, have you? Your view's just within
3 that paragraph.

4 **Ms L Williams:** Correct, yeah.

5 **Mr Leckie:** Thank you. Not to leave you out, Ms Rodgers.

6 **Ms Rodgers:** I'm just waiting for my turn.

7 **Mr Leckie:** I have a different question for you. It's on the conservation covenant,
8 but covenants more generally.

9 **Ms Rodgers:** Mm-hm.

10 **Mr Leckie:** And my question for you is in your role as a Council processing planner,
11 I assume; well, not that you're a processing planner at the moment but do you
12 have experience in the process of resource consents?

13 **Ms Rodgers:** For context, I've processed resource consents for about a decade or so.

14 **Mr Leckie:** My question still flies.

15 **Ms Rodgers:** Yeah.

16 **Mr Leckie:** Do you have the RMA on your computer, or can I take you to some
17 sections? If you don't, I'll just read them out for you. I won't take long.

18 **Ms Rodgers:** Yeah, I do.

19 **Mr Leckie:** So I'll take you to section 108 - - -

20 **Ms Rodgers:** Yeah.

21 **Mr Leckie:** - - - of the RMA.

22 **Ms Rodgers:** I'll just have a look for it.

23 **Mr Leckie:** I'm sure it's a section you're familiar with.

24 **Ms Rodgers:** Yeah.

25 **Mr Leckie:** And clause 1 of that section says, "a resource consent may be granted
26 on any condition that the consent authority considers appropriate, including any
27 condition referred to in subsection (2)". So you'd agree in this context the FTA
28 panel is really in the place of the consent authority? It's the FTA panel - - -

29 **Ms Rodgers:** Mm-hm.

30 **Mr Leckie:** - - - I'm considering this clause. And if I take you to clause 2 in respect
31 of a resource consent, "a condition that a covenant be entered into, in favour of

1 the consent authority, in respect of the performance of any condition of the
2 resource consent”.

3 **Ms Rodgers:** Mm-hm.

4 **Mr Leckie:** Would you agree that that’s a condition, or that’s a mechanism, sorry,
5 commonly used by a Council in relation to land use consent to ensure that actions
6 within consent conditions are protected in perpetuity. Do you agree with that?

7 **Ms Rodgers:** Absolutely, yeah.

8 **Mr Leckie:** And an example would be a dwelling in an ONL landscape mitigation
9 required by resource consent, and that section 108 covenant approach would be
10 used to register that protection on the title.

11 **Ms Rodgers:** Yeah.

12 **Mr Leckie:** And you’d agree that that would be a mechanism within the powers of
13 the panel to also put in place in relation to offsetting and compensation actions in
14 this instance, as a concept?

15 **Ms Rodgers:** As a concept, yes.

16 **Mr Leckie:** Okay, thank you. No further questions, Sir.

17 **Ms Sweetman:** That will end that topic, bearing in mind we haven’t covered all aspects
18 of that topic, some of which will be dealt with in six. We’ve talked a lot about the
19 long-term effects management, but I think there might be only still a couple of
20 more things to round out.

21 **Mr Chrisp:** Long-term, yes.

22 **Ms Sweetman:** Yes, okay. We’ll break now for 10 minutes till 3.55 and then reconvene
23 and we will talk about long-term management. Hopefully we can get all done by
24 5.30.

25 **Ms Allen:** Just before you close, in terms of the policy assessment, I don’t know
26 if you’ve had a chance to see the second joint witness statement, the planning one.

27 **Ms Sweetman:** Yes.

28 **Ms Allen:** There are consistency with Kāi Tahu of the natural resources
29 management plan we commented on in paragraphs 25 to 27, and then at the very
30 end consistency with Part 2 of the RMA.

31 **Ms Sweetman:** Yes.

32 **Ms Allen:** So that all sets out all the planners’ opinions on this, everything there.

33 **Ms Sweetman:** Thank you. I do want to come back to cultural effects though and
34 section 6F matters. So 3.55.

1 **Afternoon adjournment**

2 **TOPIC 5: LONG TERM MANAGEMENT OF EFFECTS**

3 **Mr Muir:** Long-term management effects and the bond, Mr Chrisp.

4 **Mr Chrisp:** Thank you, Sir. Okay, so - - -

5 **Mr Muir:** And the trust, I mean, or specifically the trust.

6 **Mr Chrisp:** - - - okay. So you would have received I think it was RFI number seven
7 was Mr Damien Spring's letter which out the proposed Matakanui Trust. You'll
8 note there's a slight different spelling there that is I think we talked about that
9 other day. It's Matakanui with an "I" rather than an "A". That was of some
10 historical difference in terms of the spelling of the name. So the intent, so the
11 conditions that you will see on Monday will include new conditions which firstly
12 require the establishment of the trust no later than nine years following the grant
13 of consents but with the ability for the consent holder at its discretion to set it up
14 sooner. The conditions will set out the functions and responsibilities of the trust.
15 This is, the structure of the conditions, I've drafted them with the benefit of the
16 corresponding conditions in the Waihi North situation in relation to the Martha
17 Trust. Now that trust is a little different insofar as it was set up under a previous
18 consent and has been sort of adapted. It also doesn't have a cash accumulation; it
19 has a capitalisation bond, which is a bit of a different beast. So I'll come to that
20 in terms of funding shortly.

21 But basically the conditions will set out the functions of the trust, which including
22 maintaining the residual structures within what I've defined as the trust land. So
23 the trust land is the same as the land area shown on plan C.23 which is the
24 ecological restoration area. So that's the 2, 219-hectare area which is where all
25 the ecological works are to occur. So it's all the structures, and so that includes
26 all the structures, the residual structures of the mining operation. To hold and
27 transfer any, to hold any transferred resource consents should that occur, or obtain
28 new consents required for the mill, or ongoing activities for the trust land; to take
29 out reasonable insurance to cover against any relevant and insurable risks;
30 maintain water treatment and active and passive water treatment to ensure
31 compliance with relevant water quality resource consent conditions;
32 decommissioning of either the passive, or the active or the passive water treatment
33 facilities as and when that falls due; establishment of passive water treatment
34 facilities to ensure ongoing compliance with the relevant water quality resource
35 consent conditions; maintaining the predator-proof ecosanctuaries; maintaining
36 the site-wide scale pest control within the ecological restoration and habitat
37 enhancements areas; maintaining the ecological outcomes, including managed
38 grazing within the ecological restoration and habitat enhancement areas as set out
39 in, and then there'll be a list of the management plans which, the provisions of
40 which will still apply; maintaining public accessways within the covenanted land

1 and any new heritage features that might arise from this mine. But obviously they
2 won't be regarded as heritage until sometime down the track, but it'll be history
3 in the making; and to invest the funds – to do monitoring and reporting and also
4 then to invest the funds held to generate the necessary income to pay for all of the
5 above.

6 **Mr Muir:** It's a very wide remit.

7 **Mr Chrisp:** It is a wide remit, yes.

8 **Mr Muir:** And Commissioner Barry has already done some work on that and in
9 the nature and in the context of what is a perpetual trust, the likely investment
10 vehicles and the likely returns. And even at the level of 50 million, that looks to
11 be a 50 million corpus of the trust. You'd have to be chasing, I would have
12 thought, upper level returns commensurate with perpetual trust investment profile
13 in order to generate even income of \$1.5 to \$2 million a year, which an awful lot
14 of – that's just our first workings on this. That's an awfully large remit for \$1.5
15 to \$2 million a year.

16 **Mr Chrisp:** I had looked at it from the point of view of you had, when you get to
17 50 million, a five per cent return on that is two and a half million a year.

18 **Mr Muir:** Yes, well, he doesn't come to that on a five per cent return because of
19 the usual investment vehicles that would be applied, which are more like, you
20 know, loser to US Treasury bond rates and these sort of long-run rates. But look,
21 that's obviously a matter for refinement - - -

22 **Mr Chrisp:** Yeah.

23 **Mr Muir:** - - - but you've run it, you've run on a five per cent of a two and a half
24 million a year return.

25 **Ms Sweetman:** It would be useful to see the calculations about how you've come to the
26 50 million and what would be required in terms of ongoing obligations and
27 effectively this trust becomes the consent holder, doesn't it?

28 **Mr Chrisp:** Ultimately, yes.

29 **Ms Sweetman:** Yeah.

30 **Mr Chrisp:** Yes. Okay. So then the next thing is that there's an advice note about
31 the trust in no way diminishes or derogates the responsibilities of the consent
32 holder while it remains the consent holder. And then of course, and we've also
33 got a condition that says that the consent holder may only transfer the trust land
34 and any of the consents to the trust, included the associated obligations to the trust,
35 with the written approval of the Councils, DOC and Matakānui Trust.

36 **Mr Muir:** So in simple terms, I've been looking at it in this way and just tell me
37 if I'm right or wrong. There's a whole series of closure obligations and these
38 include some very significant ecological closure obligations in relation to

1 replanting etcetera. I have looked at it thus far on the basis that these are liabilities
2 of the company independently of the trust. It delivers up at the end of closure a
3 project which has met its closure obligations, but because we know that we are in
4 an arid and inhospitable environment and it may well be that two or three years
5 down the track some parts of that restoration are not performing as well as they
6 should, we are in a situation where we have an adequately endowed trust to be
7 able to step in for the ongoing maintenance. Is that the overall perspective?

8 **Mr Chrisp:** Yes, that's yes, yes. There's more to it than that - - -

9 **Mr Muir:** Yes.

10 **Mr Chrisp:** - - - which I'll keep going on.

11 **Mr Muir:** Yes.

12 **Mr Chrisp:** So the idea is, is that the purpose, the functions, responsibility and
13 powers will be recorded in a trust deed.

14 **Mr Muir:** Yes.

15 **Mr Chrisp:** The expectation is that, like the Martha Trust, it will be a charitable
16 trust.

17 **Mr Muir:** Yes.

18 **Mr Chrisp:** And therefore, coming to the financial issue, tax-free. So the idea of it
19 is it's accumulating the 50 million to create a non-wasting endowment fund which
20 is to be used for the land, not to be paying tax. So this is not, so when there was
21 discussion yesterday about would there be tax paid, no. It would be part of the
22 benefit to the national - - -

23 **Mr Muir:** We would work on the premise that that's highly likely that it's going
24 to meet all of the current judicial requirements of charitable trusts.

25 **Mr Chrisp:** Trusts, yes. And so that brings me onto the next thing, which is that
26 there'll be the trust deed which then sets out who is to be appointed, who gets to
27 appoint members of the trustees. And now, this is an opening gambit for feedback
28 of the parties, but we're saying basically each of Kā Rūnaka, Central Otago
29 District Council, Central Otago, Otago the Council, DOC and Matakanui Gold
30 shall appoint a trustee each. The Matakanui Gold is, their trustees, is only to be
31 there for the duration of the closure phases of the mine. And then - - -

32 **Mr Muir:** At the point of transfer of and in, they would drop out?

33 **Mr Chrisp:** Yeah, yes, that's right. They would have no involvement post that.
34 Then, basically then there's a condition that prior to the expiry of the consents, the
35 consent holder must transfer the trust land to the trust at no cost to the trust. So
36 that doesn't cut into the 50 million.

37 **Mr Muir:** Yes.

1 **Mr Chrisp:** That's in addition, okay. And that that if the trust land is then defined,
2 which is those areas I talked before, so the mine regeneration zones, the Ardgour
3 restoration area, the Bendigo and Ardgour sanctuaries, and the DDF to the extent
4 that it's located - - -

5 **Mr Muir:** The whole 2,290?

6 **Mr Chrisp:** Sorry.

7 **Mr Muir:** The whole 2,290 is - - -

8 **Mr Chrisp:** Yeah, 2,219 hectares.

9 **Mr Muir:** Yes, 2,219.

10 **Mr Chrisp:** 2,219.

11 **Mr Muir:** 2,219.

12 **Mr Chrisp:** and it's shown on plan C.223.

13 **Mr Kensington:** Mr Chrisp, can that occur without a subdivision?

14 **Mr Chrisp:** It might require a boundary adjustment, which would be pretty
15 straightforward, I imagine.

16 **Ms Rodgers:** If I may, there's provision currently for it as a controlled activity for
17 reserve purposes. I thought it was good.

18 **Mr Kensington:** For reserve purposes?

19 **Ms Rodgers:** Yeah.

20 **Mr Kensington:** Right.

21 **Ms Rodgers:** Thank you.

22 **Mr Chrisp:** Okay. Then just carrying on, so there's a solicitor to be appointed for
23 the trust which cannot be the same solicitor that acts for the consent holder and
24 that person must be approved by the Councils. I think I should say and DOC as
25 well. And then we get to the interesting part which is the funding. So I've drawn
26 you a picture, Sir.

27 **Mr Muir:** Yes.

28 **Mr Chrisp:** So basically, so there's a graph there that basically sort of shows time
29 along the bottom axis, with the years of the duration of the consent up to 35 years.
30 Up the Y-axis is dollars; and the blue line shows the funding of the trust. So at
31 year six it commences at \$5 million, and \$5 million thereafter up to \$50 million.
32 And what it is, is that - - -

33 **Mr Muir:** What, annual contributions?

34 **Mr Chrisp:** Annual contributions starting at year six of gold production.

1 **Mr Muir:** Yeah.

2 **Mr Chrisp:** Gold production. My graph, you might have to slide it a little bit to –
3 I've actually drawn it at year six, not year six of gold production, so sorry - - -

4 **Mr Muir:** Yes.

5 **Mr Chrisp:** - - - that might just slide a wee bit. And every year there whilst
6 producing gold funds within the escrow – so these funds are to be put into escrow,
7 okay, and there has to be an arrangement approved by the Councils, and probably
8 DOC, accrued and they are, and to accrue a total sum determined via the bond
9 calculation. So there is a relation, as was mentioned in Mr Spring's letter, there's
10 a relationship with the bond. Well, this is what I've tried to illustrate here on this
11 graph. And so, and don't worry about the numbers or what that might be
12 portraying in terms of total. I've looked at the information in the Malcolm Lane's
13 report, which I think is report number B44 which shows a graph of the likely shape
14 of the bond in terms of the life of the consents where basically it goes up and then
15 it peaks and then it starts to come back down. And so the idea is that the bond,
16 you know, in the absence of the trust, the bond would be it, and that's the normal
17 course of events where you have an amount that is determined on an its annual
18 basis by the bond expert and signed off by the Councils as to what amount of
19 money needs to be set aside, whether it's by way of bank bond or whatever, in the
20 event of a collapse of the company or whatever. To the extent that there is cash
21 in the bank which is locked up for the same purpose, that can then legitimately
22 reduce the quantum of the bond, that that then just needs to be topping up, if you
23 like, to get to that same dollar amount.

24 So that's where my orange lines there, the vertical lines are the difference between
25 the two lines and at some point, the orange line will dip below the blue line, but
26 the blue line will not dip. So, I mean, as I say, take with a grain of salt when and
27 how occurs in the quantum that I've shown you. That's to show it conceptually
28 as to how it works. So in the absence of this trust, you would just normally have
29 the bond, but now you have a cash build-up and if that gets to the point where
30 that's the 50 million that doesn't get - - -

31 **Mr Muir:** Yes, but this bond is not going to be provided in cash, this bond will be
32 provided through a banking arrangement.

33 **Mr Chrisp:** That's typically the way it's done, yes.

34 **Mr Muir:** Yes, yes, for which an annual sum is paid by a solvent company. All of
35 those, you know, have a series of assumptions underneath them expressed for a
36 finite life presumably?

37 **Mr Chrisp:** Yes. And the bond, so the bond's conditions, as a whole, have a story.

38 **Mr Muir:** Yes.

39 **Mr Chrisp:** And so that, and the bond extends beyond the life of the mine.

1 **Mr Muir:** That's right.

2 **Ms Rodgers:** Could I please ask a question of Mr Chrisp?

3 **Mr Muir:** Yes, yes.

4 **Ms Rodgers:** How would the regulators access the money in the trust if the bond was
5 discounted by that amount?

6 **Mr Chrisp:** It's in escrow and in a manner which is approved by the regulators, so,
7 yeah, presumably that amount of money is available if that were there to be called
8 upon.

9 **Mr Muir:** Well, you've now got a charitable trust which is underpinning –
10 effectively a charitable trust underpinning a private company obligation, which is
11 otherwise reflected in the bond.

12 **Mr Chrisp:** That's right, and you've got – so the idea is the trust is set up at year
13 nine - - -

14 **Mr Muir:** Yes.

15 **Mr Chrisp:** And then carries on from there, but basically takes control, if you like,
16 once the land is dropped into it, which is prior to the, prior to the cessation of the
17 consents. So that could be at year 35, it could be sooner; but again, that can only
18 happen with the agreement of the regulators.

19 **Ms Sweetman:** This is quite complex.

20 **Mr Chrisp:** It is quite complex.

21 **Ms Sweetman:** And not wanting to speak for the planners in the room, but I can imagine
22 they will be wanting to get advice and see this, or see this as conditions and go
23 and get - - -

24 **Mr Chrisp:** Yes.

25 **Ms Sweetman:** - - - advice on it.

26 **Mr Muir:** From our perspective, it falls into a bundle of issues which would
27 include this whole discussion we've had about the conservation covenant like over
28 a cup of tea. There's a consensus for the panel that were this to be consented, it
29 is highly desirable that this area of land reverts into either – it passes either into a
30 trust or it passes into public ownership or it, and if the latter, it passes into public
31 ownership in a way that the public just does have to underscore the ongoing costs
32 of the maintenance of it. There's no problem with taking public ownership of this
33 nice big pot of money in order to sustain it probably; and it's sort of, not frustration
34 because we understand that these are quite complex concepts that are all working
35 together, but it really, if there's a will, there's a way. There has to be mechanism
36 by which that laudable public objective could be achieved and properly funded in
37 a way that does not bear an ongoing cost on ratepayers.

1 And it's just really I think that we are at some stage, and whatever the mechanism
2 of it is and the reality of our decision-making process is long before you know
3 which way we are going to fall on the substantive application, you have to do the
4 work; and you've just got to now move into a constructive mode, whether it is in
5 the context of the workshopping that has been suggested, or in some other context
6 to brainstorm about the best vehicle by which to achieve that objective and, as we
7 say, there has to be, there has to be one. It's just a question of working out the
8 minutiae of it; and we've got quite sufficient on our plate, without actually
9 wanting to get into that. We really would like to have that delivered up to us
10 within some reasonable timeframe. And this issue that we're now addressing is
11 exactly the same category. No one here is going to take issue with the fact that
12 were we minded to consent to this application, the idea of having a perpetual trust
13 well-funded in order to achieve in perpetuity the ecological, cultural, importantly
14 cultural, ecological, cultural and heritage primarily objectives is a good outcome.

15 And, also well understood, that in perpetuity or at least for probably 80 or 100
16 years, there is going to have to be reliable testing of the groundwater, and there is
17 going to have to be an opportunity to respond to those long-term challenges. It's
18 a question of – and I'm extremely, conscious, Ms Gepp, of the very well-made
19 point that you focused on about a couple of hours ago, acting for a group of, a
20 community group that has produced an enormous amount of very helpful evidence
21 in the context of this, they have got counsel instructed and have been here for
22 days. We do understand the limits and it may well be that this is primarily an issue
23 for the regulator counsel, counsel for the regulators; and they get as far as they
24 can go and then they come back to you and others in your situation for input as to
25 whether they've gone far enough or how it might be tweaked, but just to reduce
26 the workload on you. So, I'm not making any directives about it, but I just have
27 to tell you that that's our expectation of the parties, that this be workshopped,
28 developed, whatever context you want to call it, both this and the conservation
29 covenant issues. And I don't know that we can really take this much further today,
30 do you think?

31 **Ms Sweetman:** No. I was just going to ask if any of the other planners had any
32 comments on this particular subject now, or any other aspects about the long-term
33 effects management?

34 **Ms Rodgers:** I must admit that when I read Mr Spring's, you know, I didn't quite
35 understand it. It took me a bit to try to understand where the bond correlation
36 came in because it would appear that they, the trust, the way that it's set up has a
37 different purpose to the bond, so.

38 **Mr Muir:** Yes, it is.

39 **Ms Rodgers:** I'm not quite sure of how that correlates with them being connected in
40 some way. I think that because the intention of a bond is normally, well, in my

1 experience, it's been when a consent holder is unable or, for whatever reason, it
2 cannot complete the work, it enables the regulatory authority to pick up that fund
3 and complete what needs to be done.

4 **Mr Muir:** Correct.

5 **Ms Rodgers:** Whereas the trust, I think, appears to have a different purpose.

6 **Mr Muir:** Correct.

7 **Ms Rodgers:** Which is more that kind of long-term management of the restoration
8 areas and sanctuary areas in terms of that 2,200 hectares. So to me, they're quite
9 separate.

10 **Mr Muir:** You're quite right.

11 **Ms Rodgers:** Yeah.

12 **Mr Muir:** From our perspective, they have a conceptually - - -

13 **Ms Rodgers:** Yeah, I'm not quite sure - - -

14 **Mr Muir:** - - - purpose.

15 **Ms Rodgers:** - - - how that – we'd have to give it some more thought.

16 **Mr Muir:** Yes, and then if we roll back to the Otago hearings, it was a point that I
17 was making then. Indeed, at the [inaudible (over-coughing) 00:45:27] was that
18 when we are talking about the bonds in that context, always – this was before the
19 trust was engaged, it was not responsive to some of the problems which we on the
20 panel envisaged.

21 **Ms Rodgers:** This kind of set up is, this kind of trust arrangement was something that
22 we discussed in the context of the joint witness statement and when we
23 conferenced was that was seen as a bit a preference that for that long-term
24 management of those areas, some kind of trust; and I think we might have also
25 reflected that it would be appropriate for a community member to be on the trust
26 as well. So, in principle, but I just don't see how that two are together, yeah. So
27 more consideration, I think, needs to be given.

28 **Mr Chrisp:** Just commenting on the community bit, I did have a bit in there about a
29 community-appointed trustee, but then it was – and I thought, “well, that's exactly
30 what the caveat”, you know, “we've got two Councils, they are representatives of
31 their communities those two organisations”, so. And it was like who becomes the
32 appointer, you know, of – because, you know, you can say Sustainable Tarras but
33 we've got no idea if Sustainable Tarras will be around in 35 years, so; or is there
34 some alternative community organisation? But you can probably, even with
35 amalgamations and all sorts of things, you'll probably – there will always be some
36 regulator of some sort, who has community representation mandate, you know.

37 **Ms Rodgers:** You could call for nominations, of course - - -

1 **Mr Chrisp:** That's ridiculous [check 00:47:03].

2 **Ms Rodgers:** - - - on a biannual basis or whatever.

3 **Mr Chrisp:** Yeah.

4 **Ms Rodgers:** Yeah. There are other ways of thinking about it.

5 **Mr Chrisp:** When you look at the Martha Trust, if you look at the names of the
6 people on there, there's Sir Basil Morrison; there was Alan Livingstone, who's
7 recently died who was a former Waikato Regional Council and Mayor of Waipā
8 District; there's Tregidga, who's the Mayor of Hauraki District, or was. You know,
9 they're senior community figures, yeah, as trustees, yeah.

10 **Mr Muir:** They're not in, they're emoluments.

11 **Mr Chrisp:** No, no, that's right, no, no.

12 **Ms Sweetman:** Any other high-level comments from any of the other planners?

13 **Ms Allen:** I'd just comment that we're now dealing with three things: so there's
14 the short-term trust that gets the five million up front and - - -

15 **Mr Chrisp:** Same trust.

16 **Ms Allen:** Same trust?

17 **Mr Chrisp:** Yes, it's the same trust.

18 **Ms Allen:** Okay.

19 **Mr Chrisp:** So basically what happens is the money goes into escrow from the start
20 and builds up. By year nine - - -

21 **Ms Sweetman:** I think Ms Allen was talking about the heritage and ecological - - -

22 **Ms Allen:** Yes.

23 **Mr Chrisp:** Oh sorry.

24 **Ms Sweetman:** - - - funds.

25 **Mr Chrisp:** Yes, sorry.

26 **Ms Allen:** Yes, yes.

27 **Ms Sweetman:** I think it would be really useful if we had a nice - - -

28 **Ms Allen:** Picture.

29 **Ms Sweetman:** - - - presented on Monday some nice diagrams, pictures of how this is
30 envisaged.

31 **Ms Allen:** So there's that, there's the bond, there's this longer-term trust that
32 eventually takes over, and then there's the tangata whenua advisory group. So
33 how they all fit together is quite bewildering.

1 **Mr Chrisp:** Well, to be honest, they don't necessarily all fit together. Some of them
2 have a relationship with one another. The biodiversity and heritage fund, the \$50
3 million fund, that's quite separate to all this. That is a during the life of the mine
4 offsite mitigation with its own separate committee to do good stuff offsite, and.

5 **Mr Muir:** Outside the 2,219 - - -

6 **Mr Chrisp:** Correct.

7 **Mr Muir:** hectares.

8 **Mr Chrisp:** Yes. And then when we're talking about like potential for peer review
9 panels of some description, they would have an advisor – this is just like
10 geothermal happens around – each development geothermal system has a peer
11 review panel. They provide an advisory role to the regulator. So our iwi liaison,
12 an iwi advisory group which is on the agenda which is for iwi to be providing
13 input into the management of the mine in an advisory capacity as well. So these
14 are all just elements of a bigger picture. They don't necessarily cross over into
15 [inaudible (over coughing) 00:49:39] too much. But there is a relationship
16 between the bond and the cashflow built up.

17 **Ms McDonald:** If I could just briefly that I agree with Ms Rodgers that the bond is quite
18 divorced from this proposed trust; and I would need to take some advice and talk
19 with others at ORC about particularly the relationship between the two. I can't
20 speak for ORC's risk appetite or anything like that. But yeah, we would be willing
21 to work with the applicant and CODC separately if that would assist.

22 **Mr Muir:** It certainly would. I mean, as you can see from the RFI that the panel
23 issued virtually simultaneously with Mr Spring's advice of the intention to do this.
24 We were very interested in the interrelationship between the bond and this from
25 an early stage.

26 **Mr Leckie:** Excuse me, Sir, Mr Spring, was wondering if he could perhaps
27 introduce some comments from his perspective that might help.

28 **Mr Muir:** Look, we would be - - -

29 **Mr Leckie:** I imagine it's brief.

30 **Mr Muir:** We are perfectly – we have the right under the Act to adopt an informal
31 procedure, and I might be minded to hear from Mr Spring about just to the extent
32 it might just bring some early clarity for later discussions.

33 **Mr Leckie:** So we thought, thank you, Sir.

34 **Mr Spring:** Just give me the mic, thanks. Thank you, Sir. Look, what we've
35 proposed in my response of Friday or whatever it was, I'd really like to just really
36 distil it down to the key parts. So we have, we're all very familiar with normal
37 bonding under the District Council, the Regional Council for a mining project,
38 and that's fundamentally to enable those authorities to call on the bond to carry

1 out mine closure activities in the event that that situation arises. What's occurred
2 through this fast-track process for our application is obviously concern about the
3 enduring effects and/or uplift in terms of the ecology for the Ardgour restoration
4 of the parks and the ecosanctuaries and the maintenance of those elements. So in
5 offering, in my response last week, what we were trying to do is recognise that
6 cost. So in my mind, there is still a bond that has two parts to it; a mine closure;
7 and then a post-closure aspect to it. And when it's appropriate and we finalise
8 conditions and we do get our consents granted, we'll engage with that bond expert,
9 and banks obviously, to provide a bond for closure and a bond aspect for any post-
10 closure activities in perpetuity.

11 Now the idea of the trust is obviously, as Mr Chrisp has spoken about, modelled
12 somewhat on Martha Trust. That also provides that enduring aspect of post-
13 closure to the community, iwi, regulators etcetera; but with a funding mechanism
14 to carry out the duties that it will assume once that transfer is approved by the
15 regulators for those post-closure activities: ecosanctuary fences, monitoring,
16 reporting, sampling and, of course, in terms of water, actual water treatment for
17 the period of time that our experts have outlined and the subsequent monitoring
18 delivers on. So what we are proposing is there will be a – the bond will cover
19 both mine closure and post-closure. The funds that are built up in escrow initially
20 till the trust is set up is the case component of that bond. So at any point, the bond
21 would need to point to either the escrow funds or enable the trust to – or get on
22 with the post-closure maintenance activities if that's the case. So essentially it's
23 still a bond primarily, and then as we start transitioning towards a planned closure,
24 it's the Matakanui Trust that takes up that responsibility with all the relevant
25 regulator approvals at the relevant stage.

26 **Mr Muir:** Can I ask a practical question? Three years after mine closure,
27 buildings will be removed and, with all of the best intentions, 100 or 50 hectares
28 of south-facing revegetated slopes completely fail; and it's understood that there's
29 an element of experimentation involved in all of this and that there might be some
30 failures before you get to an ultimately satisfactory outcome. So where does the
31 liability fall for the revegetation of that of that 50-acre slope under this model.

32 **Mr Spring:** I go back to my, and when I say I go back, to my mind, MGL is the
33 applicant and the resource consent holder remains responsible for giving effect to
34 those consents, including the long-term ecological uplift which the ecologists put
35 on a period of 20 years post-mining. That will have to be recognised in the
36 bonding plans but, of course, we can't necessarily cater for every foreseen or
37 unforeseen circumstances. So that will be a matter that will be teased out through
38 bond experts and, of course, the Councils that overlook that process. Maybe just
39 to add, the trust may not necessarily assume its responsibilities until giving our
40 full-term of consents are granted, 35 years.

1 **Mr Muir:** So until such time as the consents expire, the obligations, all obligations
2 of mine closure will be performed either by the company or, in default, under a
3 post-closure bond. That post-closure bond, if called upon, the money would come
4 out of the trust that had been built up at that point. It wouldn't be coming from
5 the bank, and the corpus of the trust would suddenly, in case of something, some
6 major ecological failure here that costs multiple millions to fix, the trust corpus
7 would then be reduced in a way which in perpetuity would not be able to sustain
8 all of these obligations going forward because it just lost 10 million of its corpus
9 or 20 million of its corpus. Isn't that – this is where I'm just sort of having a bit
10 of a problem that if the trust effectively becomes an indemnifier of the bond, the
11 trust has capacity not to fulfil its function in perpetuity. Can I put it that way? Do
12 you understand my problem?

13 **Mr Spring:** Not really. I do but it all goes – and that's why I did ask my advisors if
14 we should get Malcolm Lane involved because he understands these issues.

15 **Mr Muir:** Yes.

16 **Mr Spring:** But he wasn't part of the conferencing. But I don't – I have not done
17 the bond calculations myself. I've been involved in providing the information
18 necessary for them to do that work, but I trust that they do understand a little bit
19 about trying to anticipate what, in a post-closure sense, when all the objectives
20 have been achieved, some level of what is ultimately you're talking about and it's
21 some form of insurance. Now whether that's insurance as we know it or an
22 estimation of likelihood of, or what is the event, the likelihood of consequence
23 and how do you put a number on. It sort of goes back to some of the topics that
24 were discussed yesterday.

25 **Mr Muir:** And in simple terms, if post-closure obligations are bonded
26 independently by bank arrangement for a reasonable period of time after closure,
27 so we are starting to get a stable post-closure environment, there's a problem, the
28 bond has been – if there's a problem, Santana pays, or if MGL has been wound up
29 by then, someone pays from the applicant, okay; or if they are no longer in
30 existence, the bond is called upon. Then when we've reached this point of some
31 stability and equilibrium in the project, we recognise that there are all of these
32 things to be done, at least for the next hundred years probably: all this testing, all
33 this maintenance of fencing etcetera, etcetera, which in my sort of simplistic way
34 of thinking about it will be adequately funded, I presume, probably of a couple of
35 million dollars a year of recurrent income coming out of the trust.

36 **Mr Spring:** That's a reasonable - - -

37 **Mr Muir:** That's my realistic approach.

38 **Mr Spring:** Yeah.

39 **Mr Muir:** Right.

1 **Mr Spring:** I agree with that.

2 **Mr Muir:** Right. I don't think we can probably take that much further at this stage.

3 Is that right? Did anyone - - -

4 **Ms Gepp:** Can I just ask a clarification question - - -

5 **Mr Muir:** Yes.

6 **Ms Gepp:** - - - to either Mr Spring or Mr Chrisp.

7 **Mr Muir:** Yes.

8 **Ms Gepp:** Just in terms of making the maths, math. If you start putting five million

9 in from year six, which is year or nine I think of the actual project; year six of gold

10 production is year eight or nine of - - -

11 **Mr Chrisp:** The project, yeah.

12 **Ms Gepp:** Yeah. So then you start, then you finish mining in year 14.

13 **Mr Chrisp:** 16.

14 **Ms Gepp:** Year 16.

15 **Mr Chrisp:** According to your mine life, two years' construction.

16 **Ms Gepp:** I see we've got a longer mine now.

17 **Mr Chrisp:** No, it's the same length of mine, it's just, oh, I see what you're saying

18 there.

19 **Ms Gepp:** Yeah. I couldn't get it to 50 million if it was five million a year from

20 - - -

21 **Mr Chrisp:** Oh, the idea is it's five million for ten years, so that's 50 million.

22 **Ms Gepp:** Yeah, but you're not mining for that long. If you're starting this in year

23 eight or nine - - -

24 **Mr Chrisp:** Yeah, the company still exists so it's, because it's doing all this

25 rehabilitation at that time, it just has to keep back enough money to drop five

26 million in each year for those subsequent years.

27 **Ms Gepp:** And why wouldn't it just walk away at that point? It's not getting any

28 more money out of the site.

29 **Mr Chrisp:** Because the bond's worth too much to lose. I don't know. That's a

30 question for Mr Spring but.

31 **Ms Gepp:** Mm-hm, okay.

32 **Mr Chrisp:** Sorry mate.

33 **Mr Spring:** Sorry, what was the question, oh.

34 **Mr Muir:** Ms Gepp is suggesting that the arithmetic doesn't add up.

1 **Ms Gepp:** Well, I - - -

2 **Mr Muir:** Fair enough?

3 **Mr Berry:** The funding to get to 50 million extends beyond the life of the actual
4 gold production potentially.

5 **Mr Spring:** It's aligned. So the 14-year mine life is 14 years of gold production.

6 **Mr Muir:** Fourteen years of which 10 years will be contributed to at the rate of
7 five million per annum.

8 **Mr Spring:** Correct.

9 **Mr Muir:** And then we add two years on for the establishment before gold
10 production. So now we're at year six the first payment is made, and it's made
11 thereafter the following 10 years, 50 million.

12 **Mr Spring:** I think the key aspect that, I can't recall if Mr Chrisp made it, is that the
13 company will be responsible for any top up if those funds aren't reached sufficient
14 for post-closure.

15 **Mr Chrisp:** So that means that if there is still required to be more money, then it's
16 there for the – if this line is still up above here, there'd be a top up so that before
17 the bond. I'm not explaining that very well. Because it's all based on the mine
18 closure and the costs associated with that, which are calculated every year. So at
19 any point in time, when you get to the point of transfer, there has to be enough
20 money in there for that full closure scenario if – to the extent that it hasn't already
21 occurred.

22 **Mr Muir:** Yes. Well, I think that we all understand. Our concern – I haven't
23 discussed this obviously with the panel members, this is very – this is all new to
24 us. But I think I can speak for the panel in saying that we would have a concern
25 about any arrangement which had a corpus of a trust applied to mine closure
26 obligations, and those mine closure obligations will be at cost to the company or
27 to a party providing the bond in the event of company default, then we are left
28 with a trust sufficiently well capitalised to meet this plethora of ongoing
29 obligations around passive water management, maintenance of the ecosanctuary,
30 pest control, all the other ecological outcomes, monitoring and reporting, okay.

31 **Mr Leckie:** Sir, if I could just jump in there. That's certainly the intent of what
32 we're seeking to achieve. We take the point that we need to progress that. But
33 the way you've described in terms of those categories of activities is certainly the
34 intent.

35 **Mr Muir:** Right.

36 **Mr Leckie:** And I think a key point is the timing the trust kicks in is one key aspect
37 that helps provide clarity but - - -

1 **Mr Muir:** Exactly.

2 **Mr Leckie:** - - - we acknowledge that it needs some refinement.

3 **Mr Spring:** And one final point. We did say we've included the figure 50 million
4 but really the number needs to be worked out as part of the mine closure plan
5 process and annual bond calculation. That's where the real, from a engineer's
6 point of view, is where we really get into the detail of what that number is.

7 **Ms Sweetman:** And I was going to ask you, Mr Spring, where that number exactly came
8 from and how it had been costed up. So I expect when we get the revised
9 conditions that there will be a lot more context and background provided to us at
10 that time. And I see nodding heads. As McDonald said, you know, the Councils,
11 the organisations will need to go back and we expect discussions, further
12 discussions to happen. I was going to ask, Mr Spring, you sent the letter to Kā
13 Rūnaka conveying the proposal. Have you had a response?

14 **Mr Spring:** No, not at this stage. They've acknowledged the letter.

15 **Ms Sweetman:** Okay, thank you. Is there anything else in terms of long-term
16 management of effects, or can we move on? In terms of five and a and a half or
17 five-star, miscellaneous roading exploration, have we dealt with that? We've
18 talked about exploration outside of the DDF. [Inaudible 01:06:42] that. Roding:
19 you made that point, Ms Rodgers, earlier about the revised information that's
20 come and the need - - -

21 **Ms Rodgers:** We'll prepare a memorandum.

22 **Ms Sweetman:** So in our RFIs around the Ardgour Rise, we also indicated that we'd
23 want recreation expert input into that as well. So that's just an outstanding thing
24 that needs to happen. Is there anything further in terms of community
25 involvement and engagement, because we have had a discussion this morning
26 about social impact and the opportunity, you know, will the panel still need to
27 make a decision about where we go with that.

28 **Ms Allen:** Can I just go back to the roading.

29 **Mr Muir:** Yes.

30 **Ms Allen:** There's an outstanding issue relating to blasting for the aggregate pit
31 because of its proximity to both the existing and new roads, and the ability of the
32 applicant to close the road for more blasting when necessary. It's a very minor –
33 it's a rats and mice issue, but it's - - -

34 **Mr Berry:** I can clarify that - - -

35 **Ms Allen:** Oh good.

36 **Mr Berry:** - - - if I can be of assistance. Yeah, this is in relation to the western
37 aggregate pit on the Ardgour Terraces and the 500-metre setback and the

1 conditions for any blasting activities and to the extent that that might impinge on
2 public roads or private property. We've confirmed that the existing roads,
3 Thompson Gorge Road, is further than 500 metres setback. So there would be no
4 – any setbacks for blasting would not affect the public road.

5 **Ms Sweetman:** And you'll provide that perhaps, import it in writing somewhere with a
6 plan or something like that. Or you have?

7 **Mr Berry:** We can, yeah.

8 **Mr Chrisp:** We can do that as part of the covering note that we're putting together
9 for the conditions.

10 **Ms Sweetman:** Anything else on the community involvement engagement?

11 **Mr Chrisp:** We've got an action to – I told you about the group that has been set up
12 and that that can be the subject of conditions. So that will form part of Monday's
13 offering.

14 **Ms Rodgers:** Sorry, is the liaison, liaison group? Is this what we're talking about?

15 **Mr Chrisp:** The community liaison group.

16 **Ms Rodgers:** The liaison group.

17 **Mr Chrisp:** Yeah.

18 **Ms Rodgers:** We probably don't have a lot of understanding of how that operates in
19 terms of being a true community group, or liaison group. So that perhaps needs
20 - - -

21 **Mr Chrisp:** An explanation to go with that?

22 **Ms Rodgers:** Yeah, and a bit of understanding about membership and how that
23 functions.

24 **Mr Chrisp:** Sure. A long weekend.

25 **Ms Sweetman:** So can we turn to cultural effects now.

26 **Mr Muir:** Yes.

27 **Ms Sweetman:** So this was a question from me to you, Mr Berry and Mr Chrisp, in
28 terms of your proposed iwi advisory group and how you see that working. It was
29 a question I put to Mr Gerbin at the landscape; and he advised me that the intent
30 was that Kā Rūnaka and others would have the ability to input, well, would have
31 the ability to input into management plans and other things. Can you show me
32 where that says that?

33 **Mr Chrisp:** Okay. So the conditions, starting, this is in schedule 1 which is
34 document D03. These are the common conditions to both Councils. And the
35 conditions start at condition C23 and basically – so that sets out the establishment
36 of the group, the functions of it, and the first one of those is to facilitate the

1 engagement and long-term working relationships between the consent holder and
2 tangata whenua in respect of the BOGP and the management, mitigation,
3 offsetting, and compensation and monitoring of environmental effects; and
4 identify and create opportunities for social, economic, environmental
5 enhancement through enhancement of cultural values and interests as they relate
6 to the project; and provide other cultural advice to the consent holder as may be
7 required. I accept there's no explicit reference to management plans there, but
8 that is certainly the intention is that that, and we can tickle those conditions up to
9 that effect. So the idea is that they will – this again is a set of conditions which is
10 similar to that which is at Waihi North. It's also very consistent with what I've
11 done in geothermal projects around the Taupō area for Contact Energy where on
12 each side of the river there is separate iwi liaison groups which provide cultural
13 advice and have the opportunity to be involved in reviewing documentation and
14 providing advice on cultural matters.

15 **Ms Sweetman:** I'm not wanting to give evidence on my own behalf but I deal with a
16 lot of matters relating to cultural values; and I would normally expect to see a lot
17 more certainty in a condition about – if the intent is that they have the opportunity
18 to review management plans and input and have their feedback taken into account,
19 I'd normally actually expect to see that quite spelled out - - -

20 **Mr Chrisp:** Got that.

21 **Ms Sweetman:** - - - including timeframes and the like. I look at this and it doesn't give
22 me any certainty - - -

23 **Mr Chrisp:** Sure.

24 **Ms Sweetman:** - - - of that ability. Have you had any further discussions with those
25 groups that you anticipate would form the iwi advisory group?

26 **Mr Chrisp:** All of those groups are basically represented through Kā Rūnaka, and
27 Mr Spring has been the person dealing with them on an ongoing basis. So I've
28 only had limited involvement in the past. So I have not specifically talked this
29 through with them, but these conditions have been sent to them and, yeah.

30 **Ms Sweetman:** So with those other applications that you just talked to me about where
31 you've put similar conditions in place, were the iwi or hapū involved in this
32 matters? Were they involved earlier in the application, like through that consent
33 process?

34 **Mr Chrisp:** Yes.

35 **Ms Sweetman:** And so they were able to input into the application itself and the AEE?

36 **Mr Chrisp:** Yes. And so, yeah, and so in this case we've had – it was initially
37 through Aukaha, ha, sorry.

38 **Ms Sweetman:** Aukaha?

1 **Mr Chrisp:** Yes, sorry, just trouble saying it. And we had – and the cultural impact
2 which identified the values, and then there's been the ongoing interaction between
3 the company and Kā Rūnaka directly. And these matters have been the subject
4 matter of those discussions.

5 **Ms Sweetman:** So they produced the final cultural impact assessment at the same time
6 that you provided the section 53 responses to the section 53 comments, the two
7 sections. Have you had the opportunity to review the cultural impact assessment
8 and undertake an evaluation of how consistent the application is with those
9 matters outlined in the cultural impact assessment?

10 **Mr Chrisp:** Yes. I've done a detailed review. There's an appendix 8 at the end of
11 the CIA and it sets out a whole lot of matters and a lot of them actually come down
12 to involvement on the part of tangata whenua; and that's – this is one vehicle. I've
13 got a note which you'll see is what's currently called the iwi advisory group. It
14 might become the joint steering, called the joint steering group because that is an
15 entity that is already set up with Kā Rūnaka; and the functions of that will be
16 further refined as those discussions advance, is my understanding.

17 **Ms Sweetman:** Have you got any time scheduled over your next three days to have
18 further discussions with Kā Rūnaka about these proposed conditions?

19 **Mr Chrisp:** Not me personally because I've already got 10 days of work to do in
20 the next four, so. But again, as I say, that's not been role on the project. That's
21 been Mr Spring's role, so.

22 **Ms Sweetman:** Mr Spring, come closer.

23 **Mr Muir:** Come into my web, Mr Spring.

24 **Mr Spring:** Yes, I have a meeting tee'd up tomorrow afternoon to discuss next steps.
25 Now, specifically conditions, it's probably not necessarily on the agenda but can
26 certainly be part of that, but I don't expect that we'll have much input, if you like,
27 from Kā Rūnaka between now and Monday.

28 **Ms Sweetman:** May I ask what's on your agenda for discussions?

29 **Mr Spring:** It's next steps.

30 **Mr Muir:** Should be broad.

31 **Ms Sweetman:** So obviously we're mindful of, having heard from Dr Ra in particular
32 and what she considers to be outstanding effects that can't be avoided or
33 compensated for and the like. It's always tricky when we're talking about these
34 things because only cultural experts can speak to cultural matters.

35 **Mr Spring:** Certainly.

36 **Ms Sweetman:** But I guess we'll expect an update soon.

37 **Mr Spring:** As soon as we can.

1 **Ms Sweetman:** Thank you. I would like to hear from the other planners about, based
2 on what we have here in front of us now, how you feel, from a planner lens, so
3 how this is sitting in terms of section 6F in particular; oh sorry, 6E, I'll get my
4 sections right, 6E and the policy documents that we need to consider in terms of
5 the Otago Regional Policy Statement and CODC plan, conservation management
6 strategy, conservation covenant. I'll start with you, Ms Allen.

7 **Ms Allen:** Yeah, I'm just trying to remember what 6E is.

8 **Ms Sweetman:** Relationship with Māori with their ancestral lands policy.

9 **Ms Allen:** So my observation of the hearings is that, particularly in landscape
10 terms and also in water terms, stream and wetland terms, there are unreconcilable
11 problems culturally in terms of 6E. So that, I think, goes to your decision. The
12 proposal which – the proposed conditions are for the advisory group are, I
13 suppose, relatively standard; but the issue that I usually have with them is how
14 workable are they, particularly when you've got a lot going on in an area and
15 relatively under-resourced in terms of capability and availability of people. I don't
16 have a huge amount of experience in this area but one of the very successful
17 projects I was involved in was a major port development in Napier; and, as part
18 of that, the applicant undertook to take on a person in the community, a Māori
19 advisor on the staff to just monitor the – it's a problem between being there on the
20 site all the time and watching and observing what goes on and having input into
21 very detailed decisions of the work that's undertaken, particularly I think in this
22 case where you've got a – it's probably quite offensive to be doing the mining
23 work, and particularly initially.

24 So cultural health was one of the issues in this project I'm talking about because
25 it also involved construction, removal of long riprap work and – I've forgotten the
26 word for it – just keeping the shipping lanes clear. And so it was going out into
27 the sea as well. But having an advisor on the staff working with people on a day-
28 to-day basis actually, and producing an annual cultural health report, did actually
29 manage to take a lot of the heat out of the concerns that tangata whenua had
30 locally. They were able to agree on that approach with the applicant in that case.
31 So that's perhaps something I could contribute to as an additional conditional
32 approach here. I've also said in my initial statement that there needs to be very
33 clear environmental management responsibility within the organisation,
34 particularly with 23 will say management plans to hold together. So that the
35 cultural health person could perhaps sit in under that role. So I haven't developed
36 it any further.

37 **Ms Sweetman:** That's fine, thank you, Ms Allen, yes. Ms Williams.

38 **Ms L Williams:** Thank you. Yeah, so there are, in our joint witness statement, we did
39 agree that there are issues that haven't been resolved in terms of, and potential
40 inconsistencies with section 6E and 7A I think we had listed. We would normally

1 refer to mana whenua to speak to these points and get their feedback on that. I
2 think that's important in this process; and so whether that should be ongoing
3 consultation with the, the applicant should have ongoing consultation with mana
4 whenua, and I certainly agree in terms of the iwi liaison group condition, it's very
5 broad. There's many examples where, through ongoing consultation, iwi would
6 have input into management plans that they feel are relevant. There's lots of
7 examples of that in other consent decisions. So yes, I would encourage the
8 applicant to have a look at that. Thanks.

9 **Ms Sweetman:** Thank you.

10 **Ms Rodgers:** Ordinarily, I would have expected there to be a partnership type
11 arrangement in terms of developing these conditions, or any matters relating to
12 mana whenua. I'm not sure if that has happened in terms of the drafting of these
13 conditions, if mana whenua has had input to them. Sorry, I may have missed that.
14 But I think in terms of mana whenua, it needs to speak for mana whenua, and I'd
15 like the idea of the liaison person or some kind of, yeah, some kind of
16 representation in terms of that could be an appointee or a member of one of the
17 Rūnanga but that's not for me or us to decide. That is actually for mana whenua
18 to decide what that looks like and the level of their involvement and what they
19 want to do. So I guess that's probably all I have to say.

20 **Ms Sweetman:** Ms McDonald.

21 **Ms McDonald:** Thank you. I agree with the comments of my colleagues across this
22 desk divide. But I'd also just note that we have read or heard evidence from
23 Mr Ellison and Dr Ra, Ms Watkin and Mr Dale; and we do have a cultural impact
24 assessment and that is equivalent or, in some cases, more information that we
25 might have in a typical resource consent application; and I absolutely
26 acknowledge that I'm not a cultural expert but the evidence that I've read indicates
27 to me that potential effects on cultural values are significantly adverse and, in
28 some cases, unable to be mitigated; and, again in my reading, the CIA indicates
29 particular concern about kai tiaki taka which is a 7A matter, and I again agree with
30 my colleagues across the room about section 6C presenting an issue in your
31 decision-making. I'm not sure that I've seen comment from Kā Rūnaka on the
32 iwi advisory condition. Sorry if I've missed that somewhere in reading. So I'm
33 not sure of their views on that in particular, but I would say my reading of those
34 conditions, I'm not entirely sure to what extent the consent holder would be bound
35 by any recommendations of that group at this point in time. Thank you, that's
36 probably it.

37 **Ms Sweetman:** Ms Chrisp.

38 **Mr Chrisp:** Thank you, Commissioner. Just picking up on the last point first, it is
39 intended that it is an advisory group so if you had a situation where the consent
40 holder was bound by anything this group said and had to do it, you'd effectively

1 have – you’d be affording a power of veto or you’d be handing over control of
2 the company to someone else. So the directors would be in breach of their duties.
3 So it is purposely set up as an advisory group.

4 **Mr Muir:** And your lawyers might even say that you have created a set of shadow
5 directors.

6 **Mr Chrisp:** Yeah. I think, you know, it needs to be understood this has been
7 advanced in good faith and the intention is that it will be exercised in good faith.
8 And this condition was in the conditions when we lodged the application. It’s
9 been provided to Kā Rūnaka. I can say that, you know, as Mr Spring has revealed,
10 there are ongoing discussions with Kā Rūnaka on a regular basis with a view to
11 addressing every one of the issues that have been discussed in terms of the last 10,
12 15 minutes. So I can’t say much more than that because I’m directly involved in
13 it, and obviously those discussions are on a without prejudice basis at the moment.
14 So we have to let them roll through, and I’m hopeful, as is often the case, that on
15 the steps of the court as it were at the last moment, you’ll hopefully have
16 something that solves all your problems in this regard. That’s my aspiration.
17 We’ll see what happens.

18 **Mr Kensington:** Mr Chrisp, just picking up on something that Ms Rodgers said
19 earlier, this is a pretty important aspect of the application and I would, you know,
20 ordinarily I would have thought something of this importance might have delayed
21 lodgement of an application, for example, until that information was squared away
22 and you had confidence on how to proceed. In your mind, what are the key issues
23 that are holding things up here, and will they be resolved in time for us to make a
24 decision with confidence?

25 **Mr Chrisp:** Yeah, well, Sir, that is exactly what happened. The application was
26 delayed and delayed and delayed; and we were going to be lodging this application
27 on the 15th of April. But I became involved in the project about six or eight
28 months prior to that, back in 2024; and it was purposely delayed so that we could
29 get the cultural impact assessment. As it turned out, as it transpired, we received
30 an unendorsed draft which was very helpful because that set out the values that
31 were of importance to Kā Rūnaka; and so that was able to assist us with when we
32 were undertaking our policy analysis that was, you know, of which there is a lot
33 of documentation on that. And I think as I’ve previous said, not today, but the
34 final CIA did not change in that regard; those values were still the same. The final
35 version included more detail in the appendices and things like that which, as I said
36 before, a lot of which relates to involvement of tangata whenua in various stages
37 of the management of the mine and the processes and things like that. So this set
38 of conditions was effectively pre-empted that expectation that that would occur in
39 any event; and my expectation is that it will be fleshed out as hopefully Mr Springs
40 gets to the point where we [inaudible (nose-blowing) 01:31:32].

1 **Mr Kensington:** I don't think you've really answered the question. You haven't really
2 kind of nailed what are the outstanding issues that we're waiting to be resolved.
3 Would it be better to ask Mr Spring, do you think?

4 **Mr Chrisp:** Well, it might be but it's, yeah, yeah. You're going to have more chance
5 with Mr Spring because he's the one doing that work.

6 **Mr Kensington:** And I guess are the conditions fit for purpose to address those issues
7 that are outstanding. We don't know. Maybe, Mr Spring, is there anything you
8 would like to add to that, or do you want to keep your powder dry for now sort
9 of?

10 **Mr Spring:** Only to say that those discussions are ongoing and they are between the
11 parties.

12 **Mr Muir:** Right.

13 **Mr Spring:** I'm really, it's up to both of us stepping forward to be able to form a
14 panel, tangible steps forward.

15 **Mr Kensington:** Do you think you - - -

16 **Mr Spring:** Rather than me talking where I see that, and it just gets into this whole
17 issue as per one of my statement of evidence acknowledged that there was media
18 twisting things out of shape and causing offence to Kā Rūnaka.

19 **Mr Kensington:** Do you think you've got a good handle on what the issues are
20 yourself?

21 **Mr Spring:** Yes, I do.

22 **Mr Kensington:** You do, okay, thank you.

23 **Mr Muir:** Cross-examination on this subject? No. Thank you.

24 **Ms Sweetman:** Our overall recommendation.

25 **Mr Muir:** Do we want to go there?

26 **Ms Sweetman:** I don't know.

27 **Mr Muir:** Why not.

28 **Ms Sweetman:** Okay. We can do that.

29 **Mr Muir:** Yes, it's like speed dating. That's what is being proposed by
30 Ms Sweetman, a quick-fire round on the subject of overall recommendation.

31 **Mr Chrisp:** Can we go last?

32 **Mr Muir:** Yours might be quite predictable.

33 **Mr Chrisp:** It's not the answer, it's the why.

34 **Mr Muir:** We'll start with you.

1 **OVERALL RECOMMENDATION**

2 **Mr Chrisp:** Oh, so it's me. I thought you were looking at Ms Allen. Sir, just
3 caveating with the fact that there is water to go under the bridge in terms of the
4 conditions, we've kicked the management plans for touch, all but one, and so
5 that's down the track, although we will be trying to tickle them up, you know,
6 obviously as best we can right throughout the process and while everyone's
7 attention is focused on them and get those into good shape. I genuinely believe
8 that this is a case of this application meets the statutory purpose in Fast-track Act.
9 But the way I look at it is that if this one doesn't, then most of the other ones
10 probably can't either. This has by far and away some of the biggest benefits in
11 terms of economic benefit into a region. It's big benefits to the Central
12 Government in terms of taxes and royalties. I know there's argument about that
13 but either way when you, either way you look at it, they're large numbers. So I
14 think that the statutory purpose of the Act is met, I mean, arguably it was met
15 when it went onto the schedule. Obviously your key statutory test is, are there
16 adverse effects, individually or cumulatively, that are of such a magnitude that
17 they outweigh the benefits of the project such that the consent should be declined.
18 I am of the view that once that water goes under the bridge that we get the
19 conditions into a sufficiently robust state where they are certain. Everyone –
20 there's a higher buy-in in terms of the outcomes to be achieved and that they are
21 appropriately wrapped up in enforceable conditions. My view is that you should
22 be in a position of relative comfort in terms of being able to grant a consent to this
23 proposal and, as I said before, I'm optimistic that Kā Rūnaka and the company
24 will come to some, hopefully come to some arrangement whereby they're not
25 opposing the grant of consent. So all that together, I think that it meets the
26 statutory purpose of the Act.

27 I guess the other key thing is that all of those matters that are concerning all of us
28 in terms of matters that are raised in the Resource Management Act and other
29 legislation, those are matters to have regard to. The greatest weight is to be placed
30 on the purpose of the FTA; and one of the other key things is that the criteria for
31 the decline of consent relates to effects, not policy. Obviously the policy informs
32 your assessment of effects and that's a relevant consideration. But being contrary
33 to a policy or as many as you like is not a basis upon which to decline consent, in
34 my understanding of the legislation. I'll probably leave it at that.

35 **Mr Kensington:** If I may jump in. So you're saying that you acknowledge there are
36 impacts, adverse impacts - - -

37 **Mr Chrisp:** Yes.

38 **Mr Kensington:** - - - but you're saying that cumulatively they don't outweigh the
39 benefits?

40 **Mr Chrisp:** Correct.

1 **Mr Kensington:** Yes.

2 **Mr Chrisp:** And it is acknowledged some of those effects are significant. I mean,
3 I'm not in a position to argue with those technical experts. They've told you that
4 some of those effects are significant. They have got to the limit of their ability to
5 address those effects. From a planning point of view, I've bolted on additional
6 measures to address some of those matters and those are matters for you to
7 consider and to weigh in the overall assessment. But I think that you get to a point
8 where, yeah, the benefits are so great that it weighs in favour of the approval.

9 **Mr Kensington:** Thank you.

10 **Mr Muir:** Thank you. Ms McDonald.

11 **Ms Rodgers:** Oh, Nikolai doesn't get a turn?

12 **Mr Berry:** No, I agree with Mr Chrisp, nothing to add further.

13 **Ms McDonald:** Thank you. This is a mean question for the end of the day. And I would
14 also just start with a small caveat that I have not undertaken any analysis of matters
15 or associated decision-making criteria for aspects that sit solely within the CODC
16 or DOC or Heritage New Zealand jurisdictions. So lighting, noise, roading,
17 heritage, conservation covenants, etcetera. However, to the extent that it assists,
18 I can step through some thoughts. I would note that if this application were put
19 forward for consideration under the RMA and if I were preparing a 42A report,
20 my recommendation would be that the application be declined. This is because
21 of the significant adverse effects on various aspects of the environment; inability
22 to comply with the effects management hierarchy as set out in the NPS IB, and
23 the requirement therefore to avoid the activity, which would be the mining
24 activity; preclusion on granting consent under section 45D, part 6 of freshwater
25 NES; inconsistency with large parts of the proposed RPS that give effect to those
26 national policy statements; inconsistency with part 2 of the RMA. I do
27 acknowledge this is not the RMA and the test is different. But, in my view, we
28 have a situation where there are significant adverse effects and substantial
29 inconsistency with national and regional policy direction which, in my view, is
30 inconsistency with those provisions is an important issue going to your decision,
31 particularly in the case where those inconsistencies are directly tied to effects,
32 which I believe they are. I genuinely do not know how to determine whether those
33 are out of proportion to the benefits, I'm sorry, which I do understand to be
34 exclusively economic in nature. But I would just finally just add that as per our
35 section 53 comments, RC's comments, I do consider that the purpose of the Act
36 would be met by delivering this project, and that follows on from the advice that
37 we received from Dr Lees in terms of the regional and national economic benefits.
38 Thank you.

39 **Ms Sweetman:** Thank you. I know it's a nasty question. Okay.

1 **Ms Rodgers:** I think numerous experts have indicated that there are significant
2 adverse impacts, largely not quantified in terms of that economic calculation, so I
3 don't envy the panel's job there in trying to work through the proportionality test.
4 Council, the CODC's economic expert is of the view that there are regional
5 benefits rather than national benefits. I think that it will be, yeah, just in terms of
6 the fact that those impacts are quantified, I think that's challenging in terms of that
7 overall decision. I agree with Ms McDonald that under the RMA that it would
8 not pass, with the recommendation – my recommendation would be decline. But
9 this isn't an RMA process. That said, they have regard to the RMA provisions,
10 you know, I think – I don't probably, I don't know if I want to, want to go any
11 further than that but I do think the significant, so the impacts in some areas in
12 particular in terms of ecological landscape and heritage are significant. And I'm
13 not sure how you weigh that up against the economic benefits in terms of the
14 mining activity itself. So that's probably not very helpful for you. But –

15 **Mr Muir:** Or you're sitting on the fence?

16 **Ms Rodgers:** I, yeah.

17 **Mr Muir:** Yes.

18 **Ms Rodgers:** Yeah.

19 **Mr Muir:** Ms Williams.

20 **Ms L Williams:** I think, so I agree mostly with my colleagues that, yeah, the experts
21 have identified that there are significant adverse effects and, as Ms Rodgers said,
22 that aren't quantified, there are still questions about the scale of those effects; and
23 there will be residual effects that, there will be some residual effects that aren't
24 compensated or offsetted for. And as noted in the joint witness statement, there's
25 inconsistencies with part 2 in terms of section 6C which is matters of national
26 importance; these are sort of the bottom lines in the NPS IB objectives, no net
27 overall loss cannot be met. While I acknowledge there will be some gains and
28 positive effects, some of these are uncertain due to the trial experimental options
29 proposed for some of the ecological matters; and yes, obviously that has to be
30 weighed up against the economic benefits of the project. I do find it quite helpful
31 to reflect on some of the previous fast-track decisions and comments on the
32 purpose of the Act and, if you don't mind, I'll read this out from the *Enterprise*
33 *Miramar* decision. So: "While the greatest weight is to be placed on the purpose
34 of the Fast-track Act, we must be careful not to rely sole on that purpose at the
35 expense of due consideration of the other matters listed in clause 17. Clause 17
36 requires the panel to consider the matters on an individual basis prior to standing
37 back and conducting an overall weighting in accordance with the specified
38 direction. Environmental effects do not become less than minor simply because
39 of the purpose of the Fast-track Act. What changes is the weight to be placed on

1 those more than minor effects. They may be outweighed by the purpose of the
2 Act or they may not". So, yeah, that's - - -

3 **Mr Muir:** Very clear.

4 **Ms L Williams:** - - - consideration for that?

5 ? Ms Williams - - -

6 **Ms L Williams:** What's that?

7 ? Do you have the citation for - - -

8 **Ms Williams:** *Enterprise Miramar*. But it was repeated in the decision for
9 *Contact Energy: Manawa Energy* fast-track decision on the hydro consent. In that
10 case, that one was approved but, yeah, they reflected on that, those comments.

11 ? Thank you.

12 **Mr Muir:** I'm sure Ms Thomson will dig it out for us. And, Ms Allen.

13 **Ms Allen:** I've never been asked by a panel what decision they should actually
14 make. I'm usually told not to tell them what decision to make.

15 **Ms Sweetman:** I guess overall recommendation was more in terms of your side of the
16 fence - - -

17 **Ms Allen:** Right.

18 **Ms Sweetman:** - - - rather than our side of the fence.

19 **Ms Allen:** Right. So looking at the purpose of the FTP and the decision criteria, I
20 think you're still short of some information. From my perspective and having
21 read a lot and listened, the actual and potential effects are significant; and I
22 mention potential effects because there's a lot of uncertainty still about what can
23 be achieved by conditions and some of the work that has to be done is still in the
24 experimental stage. Well, I would say it will be experimental as it proceeds if
25 consent is granted. So policy's important; and, again from my perspective, there's
26 a lot of elements of the proposed activity that are inconsistent with, and contrary
27 to policy at national, regional and local level. But I recognise that that cannot be
28 the only basis for your decision, so that turns it back onto effects. I'm
29 unconvinced about the national or regional benefits from the proposal. That, they
30 can only be in terms of dollar value; and I think, as some of the economists pointed
31 out, the community won't, isn't left with any asset or piece of infrastructure or
32 any benefits behind.

33 **Mr Muir:** Well, they might. There was a recognition of the economists that the
34 national benefits, to the extent that they flow to taxation and royalty, that in a
35 regional assessment, coming back now to a regional level, you would have to give
36 credit for around 17 per cent of that flowing back into notionally the regional
37 environment, which might pop up in terms of a new hospital in Cromwell or it

1 might not. I mean, it's not at that level of specificity. But you have to accept that
2 17 per cent of the population of the country live in the area and that it's fair - - -

3 **Ms Allen:** Yes.

4 **Mr Muir:** - - - to do that.

5 **Ms Allen:** Yes. So I'm trying to separate the dollar value from a physical asset.

6 **Mr Muir:** Yes. probably that's correct.

7 **Ms Allen:** I'm not denying that the money might flow back into the community as
8 well.

9 **Mr Muir:** Yes.

10 **Ms Allen:** But sort of some benefit - - -

11 **Mr Muir:** You mean in terms of like constructing Clyde Dam or something,
12 something that goes on.

13 **Ms Allen:** Yes.

14 **Mr Muir:** [Inaudible 01:49:55].

15 **Ms Allen:** That's right; and that's actually different from somebody at national
16 level recognising a need that should be filled in this local community.

17 **Mr Muir:** Yes; and the economists spent quite a bit of time on this yesterday/

18 **Ms Allen:** Yes. So from my, in my opinion, there are good reasons to decline the
19 consents. And perhaps if I could just add there's a level of detail that the other
20 planners have said, all of which I've agreed with, having not actually said it
21 myself.

22 **Mr Muir:** Yeah. Yes, we'll obviously permit cross-examination. Mr Randal, did
23 you have something on this, did you? No.

24 **Mr Randal:** No Sir, thank you.

25 **Ms Williams:** Sir, I don't have a matter of cross-examination; I have a matter of
26 clarification.

27 **Mr Muir:** Yes.

28 **Ms Williams:** If that would assist. So the *Enterprise Miramar* decision - - -

29 **Mr Muir:** Could you just speak up a little bit, thanks.

30 **Ms Williams:** Certainly, sorry. The *Enterprise Miramar* decision which Ms Williams
31 referred to, that is referenced in the memorandum on weighting of relevant matters
32 to be taken into account, which is appendix J of the section 51 covering report
33 which was provided by the Department of Conservation; and it's addressed at
34 paragraph 14 on. It's referencing the decision of *Enterprise Miramar Peninsula*
35 *Incorporated v Wellington City Council*. That's a Court of Appeal decision,

1 reference [2018] NZCA 541. That related to the Housing Accords and Special
2 Housing Areas Act 2013, but it discusses legislatively directed weighting, and so
3 that's the relevance to your decision here.

4 **Mr Muir:** Thank you, Ms Williams. Any other matter?

5 **Ms Gepp:** I've just got one question, Sir, if that's alright.

6 **Mr Muir:** Yes.

7 **Ms Gepp:** Just a question to Mr Chrisp: whether you've given any consideration
8 to what sort of impact would be sufficiently significant to outweigh the benefits?

9 **Mr Chrisp:** Certainly if you were going to cause the extinction of a species would
10 be a matter that I would've thought might, might be tipping you over the edge,
11 you know.

12 **Mr Muir:** Could I suggest if you were to, because there's realistic possibility of
13 contamination of the aquifers.

14 **Mr Chrisp:** Yes, if that was a strong, yes, that absolutely, yes, yes, yeah. Yeah, as I
15 said earlier today, I, yeah, yeah, that, you know, I acknowledge that the seepage
16 and structural integrity of the [inaudible 01:53:38] dam is, in my opinion, the
17 number one issue associated with any goldmine and if you can get that right, then
18 that's the number one issue, and the rest is, can be dealt with. It's often necessary
19 to know a net loss position, but certainly, it's like, as Mr Usher's said to us, that
20 even, you know, there'll be as many lizards there in 35 years as there are now,
21 irrespective of what we do, for example.

22 **Ms Gepp:** Perhaps, I said one more. Just a point of clarification, you'd accept that
23 whether inconsistency with policy is a matter that can count against approval is a,
24 that's a legal question of interpretation of sections 85(3), (4) and (5) isn't it?

25 **Mr Chrisp:** Yeah, absolutely.

26 **Ms Gepp:** Thank you.

27 **Mr Randal:** I just had a very short question.

28 **Mr Muir:** Yes.

29 **Mr Randal:** Thank you, Sir. Just, you know, the observation, you've said more than
30 once that is it seepage and structural integrity is the number one issue for this
31 proposal. Would you accept that section 6 doesn't give priority, section 6 RMA
32 to, it doesn't seem that light. So section 6E, 6B, 6C are all important. There's no
33 – one doesn't get paramountcy. Is that fair?

34 **Mr Chrisp:** Oh, in terms of those legislative imperatives, they, yeah, I agree that
35 they don't have, none of those paramountcy over each other. I'm not coming to
36 that conclusion about the importance of seepage in mine and structural integrity
37 of the tailing stand from a policy or legislative type. I'm coming at that from, that

1 is the number one potential adverse effect that would have, you know, of the low,
2 low probability, greatest potential impact type of thing. And so that's why I see it
3 as the number one issue.

4 **Mr Randal:** But that doesn't suggest your approach to weighting is at odds with a
5 more orthodox approach to those section 6 considerations because why would you
6 allow a trade-off, for example, of ONL values as long as you've dealt with
7 structural integrity and seepage. It doesn't - - -

8 **Mr Chrisp:** No, I'm not saying you don't consider those other things. You have to
9 consider those other things. But I'm just saying that the number one issue that is
10 prevalent with every gold mining operation of this nature, same thing happened
11 to Waihi. It is the tailing stand. It's the bit that the community has the greatest
12 fear about. It's the bit that caused the most anxiety, and it's the issue that is the,
13 it's this longevity piece we've been discussing; and the plants will grow back, the
14 animals will breed. There's all sorts of things that will happen over time. But that
15 is the one that, in my mind, is the number one issue, leaving aside any legislative
16 or policy type consideration.

17 **Mr Randal:** Right. So in the planning evidence you've given to the panel and your
18 recommendation you've just made, that's where you've given number one priority
19 to as distinct from the other considerations we just mentioned in section 6?

20 **Mr Chrisp:** That's my highest – that's what I think is the most important single issue
21 to be addressed, and then other things beyond that, that's not to say they're not
22 important, they are important, particularly, and those are matters to have regard
23 to, particularly with the question of, you know, the fundamental essence of the
24 decision that the panel has to make about are any effects so significant as to
25 outweigh the benefits. That, as I see, is the most important aspect of the potential
26 magnitude of effect that could arise in a permanent or the sort of long-term sense.
27 So that's where, or I see that as the number one issue associated with the proposal.

28 **Mr Randal:** Yes, alright, thank you, Sir.

29 **Mr Muir:** Thank you. Any other questions?

30 **?** No Sir.

31 **Mr Muir:** Right. I said that I'd round back at the end of the day and ask if there
32 were any issues that any of the experts considered we needed to traverse while we
33 were all together in the same room and had not. Anything else? Well, I know that
34 I speak on behalf of the panel in regarding this as another, yet another extremely
35 valuable session. We've had an opportunity at various touchpoints during the day
36 to comment on the quality again of the experts who appeared before us today, and
37 the value of this type of concurrent hearing. I know that we are slight outliers in
38 the context of FTAA applications in conducting them, but we consider that only
39 through this sort of mechanism would we be able to properly interrogate and get

1 a better understanding of this and we certainly have made significant – I can only
2 speak for myself, I suppose, but significant strides in my understanding of where
3 the pressure points are in this application over the last two weeks, and today has
4 contributed in no small way to that process. Thank you all very much indeed, and
5 I wish you a good evening. Safe travels back to your respective bases. Thank
6 you.

7 **Ms Sweetman:** You've got a bit of work over the next few days, Mr Chrisp and
8 Mr Berry.

9 **Mr Muir:** Yes, you've got some work over the next few days.

10 **Mr Chrisp:** Is there still a hearing tomorrow at 2 o'clock?

11 **Mr Muir:** Yes, we do. We do have a hearing afternoon. I'm sure Mr Berry, like
12 all good juniors, you'll be working until three in the morning.
13

14 **Hearing adjourned**