
MINUTE 46 OF THE EXPERT PANEL
Memoranda from Sustainable Tarras and Environmental Defence Society
Seeking Leave
Bendigo-Ophir Gold Project
[FTAA-2507-1089]
[19 August 2026]

[1] This Minute responds to Memoranda from Sustainable Tarras (ST) dated 14 August 2026 and Environmental Defence Society (EDS) dated 19 August 2026.

[2] Both Memoranda seek leave to file responses to new information provided by MGL in the context of RFIs issued by the Panel. In the case of ST, leave is sought to respond to bonding/economic information provided on 22 July (redacted) and 12 August (unredacted), as well as new information on lighting, dark skies, recreation, traffic, roads and heritage variously provided between 12 and 17 June. In the case of EDS, it seeks leave to respond to the bonding/economic information.

[3] In order to expedite processes, the Panel has already requested the EPA to advise ST and EDS that their requests have been granted on the terms sought. This will facilitate all such responses by 21 August. This Minute confirms that advice.

[4] Both memoranda also address the further extensive information sought in the Panel's RF11 – that filed by ST, in advance of MGL's response on 17 August and that by EDS, with the benefit of a preliminary review of that information.

[5] EDS notes that an additional approximately 600 pages of new evidence has

been filed in respect of water and ecotoxicity issues “much of which contains highly complex analysis and modelling”. From its own, admittedly brief, review of the material, the Panel accepts this description.

[6] ST notes that because of the suspension, MGL has had approximately two months to respond to RFI11 and that it fully expected the new information to be “very substantive” (e.g. in respect of groundwater) and some “entirely new” e.g. the 2025 Social Impact Assessment requested by the Panel. Having regard to the volume and significance of the material now received, the Panel accepts the accuracy of that prediction.

[7] EDS seeks leave to respond to the water and ecotoxicity material filed on 17 August and ST, although not seeking any specific direction at this stage, flags its concern that there are several issues it may wish to respond to and that natural justice considerations are in play.

[8] ST correctly notes that because the material has been provided in response to a Panel RFI (or substantively so in respect of the questions authored by Commissioner Johnson during the suspension period), s67(5) of the FTAA is engaged, with the result that parties/invitees “may not make further comments unless requested by the Panel”. However, the Panel considers it inconsistent with rights of fair process and natural justice to deny an opportunity for any party/invitee to respond to what is substantially new information. The Panel has the firm view that the information should in fact have been provided at the time of the initial application. It also agrees with EDS that the volume of material is such that a period of 15 working days is appropriate for any such responses. It is informed in that respect by the 20 working day time limit in s54(1).

[9] Accordingly, the Panel grants leave for any party/invitee to file comments in response to that filed by MGL on 17 August 2026 by Monday 7 September 2026.

[10] In turn, MGL must be given an opportunity to respond. By analogy with s55(2) of the FTAA, the Panel directs that any such response be filed within 5

working days of receipt of any comments, namely by Monday 14 September 2026.

[11] EDS identifies a subsidiary issue – its inability to meaningfully respond to the invitation to provide written comments on proposed water related conditions by the date specified (17 August), in circumstances where it did not receive the 600 pages of water related evidence until the same day. Again, we are sympathetic to EDS’s concerns. Although condition workshopping has been organised and managed outside formal FTAA processes and has not been subject to specific directions by the Panel, the Panel can, it considers, legitimately require that the final suite of proposed conditions (including identification of differences) reflects all relevant and fully informed input. It strongly encourages MGL to therefore make provision for party/invitee input into the water-related conditions based on the latest information it has provided. Anything less substantially detracts from the utility of the process.

[12] The Panel is also concerned, based on a preliminary review of the material most recently provided, that further amendments to conditions, beyond those already workshopped, may be contemplated in the updated conditions due to be provided to the Panel by 28 August 2026. If this is the case then it again undermines the intended objective of workshopping – to provide the Panel with a comprehensive, fully considered set of conditions which, to the extent MGL considers economically and otherwise feasible, captures input from all relevant stakeholders.

[13] The Panel has previously advised its intention to begin its deliberations this week in Wellington (20 and 21 August) and to continue these remotely and in person during the period 3-8 September, and thereafter as required within the statutory timeframe. Although there is some work it can do (particularly in sizing national or regional benefits and in assessment of bond provisions), ST is correct in suggesting that meaningful progress in assessment of many of the project’s potential impacts cannot be made while the evidential landscape is incomplete. This is especially so because of the interrelated nature of so many of the issues

which the application raises, e.g. the ecological implications of the water/toxicity evidence. On the timetable referenced above, the Panel would not consider itself sufficiently informed to make its assessment of impacts until after 14 September. This change in timeframe, necessary to allow fair process and natural justice, will unfortunately place the Panel in the position where it has, at most, two months to deliberate, decide on and prepare a draft decision in respect of what is quite possibly the most complex of the FTAA applications to date. The Panel does not believe that this was the intent of the Panel Convenor when setting the timeframe for this application, which would have been based on the Panel having been provided a complete application.

[14] Ultimately a solution to these concerns lies largely in the hands of the party responsible for their genesis - MGL. The Panel Chair is happy to convene a Conference if it is thought that might facilitate an outcome more acceptable to the Panel.

A handwritten signature in blue ink, appearing to read 'M. A. Muir', with a stylized flourish at the end.

Hon Matthew Muir KC

Bendigo-Ophir Gold Project Expert Panel Chair