

Before an Expert Consenting Panel

Under

Fast Track Approvals Act 2024

And

In the Matter

an application for approvals
by Matakanui Gold Limited to
establish, operate, rehabilitate
and ultimately close an open pit and
underground gold mining operation
known as the Bendigo-Ophir Gold
Project

Closing Legal Submissions on behalf of **Matakanui Gold Limited**

Dated: 14 September 2026

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INTRODUCTION

1. These closing submissions are filed on behalf of Matakanui Gold Limited (**Matakanui Gold**) in accordance with Minute 47 in relation to its application for approvals under the Fast-track Approvals Act 2024 (**FTA**) for the Bendigo-Ophir Gold Project (**Project**).
2. As directed in Minute 48, our closing submissions do not repeat the matters addressed in our previous legal submissions¹ or matters on which the Panel has received advice from Ms Carruthers KC. For completeness the topics which we understand the Panel has received legal advice on are:²
 - (a) To what extent, if any, does the FTA change the decision-making framework for projects with substantial regional or national benefits?
 - (b) Is approval precluded by Section 7 of the FTA?
 - (c) How is the word “*solely*” and the phrase “*a provision*” to be interpreted in Section 85(4) of the FTA?
 - (d) Is there an issue as to scope?
 - (e) How should the Panel approach the proposed revocation of the conservation covenant?
 - (f) Can the Panel grant a water right in excess of 6 years?
3. These submissions address the legal considerations that have arisen since the April 2026 hearing.³ In relation to each key legal topic, we reference relevant conditions from the 14 September version of the condition set filed with these closing legal submissions.
4. Matakanui Gold’s response to comments received on 7 September 2026 is provided in three parts:
 - (a) Part One: Legal submissions.
 - (b) Part Two: Technical responses to comments.
 - (c) Part Three: Condition set dated 14 September 2026.

¹ Legal Overview on behalf of Matakanui Gold Limited, 31 October 2025 and Legal Submissions on behalf of Matakanui Gold Limited, 17 April 2026.

² Minute 39 at [11].

³ Legal Overview on behalf of Matakanui Gold Limited, 31 October 2025 and Legal Submissions on behalf of Matakanui Gold Limited, 17 April 2026.

5. Counsel for Matakanui Gold can provide unredacted versions of the redacted documents to Counsel and their economic experts on a similar basis as the previous arrangement (once confidentiality undertakings are provided).

EXPERT EVIDENCE BEFORE THE PANEL

6. Since the application was lodged with the Environmental Protection Authority (**EPA**) on 31 October 2025, a range of processes have been undertaken through the Panel proceedings that have strengthened the evidential record and ensured all necessary information is before the Panel. In particular:
 - (a) Comments received from invited parties on 10 April 2026.
 - (b) Matakanui Gold's response to comments provided on 17 April 2026.
 - (c) Hearing held at Ōtākou Marae on 28 April 2026.
 - (d) Hearing held in Cromwell on 29 – 30 April 2026.
 - (e) Expert witness conferencing took place between 8 May 2026 - 15 June 2026, followed by reconvened landscape conferencing on 19 August 2026.
 - (f) Hearings held in Wellington between 9 June – 19 June 2026.
7. In accordance with the FTA statutory framework, Matakanui Gold has provided responses to the Panel's requests for further information. We submit that this process has provided valuable additional assessment and opinion to increase certainty in the management of effects. As a result, the evidential record before the Panel has been progressively strengthened and enhanced.
8. Matakanui Gold has committed throughout the application and subsequent FTA process to ensuring that the Panel is equipped with all required information to make an informed decision.
9. Taken together these steps have produced a robust, comprehensive, and thoroughly tested evidential foundation on which the Panel can confidently undertake its assessment and make its decision.

ECONOMIC BENEFITS

10. The Project's economic benefits are a central aspect of the Panel's consideration given the proportionality test in Section 85.
11. Having reviewed all evidence before the Panel and the comments received on 7 September 2026, Mr Patterson's conclusions on the Project's economic benefits

remain unchanged.⁴ Our previous legal submissions address why the Panel can have confidence that the Project's economic benefits are substantial, have not been overstated and have been calculated using appropriate methodologies consistent with the FTA framework and we do not repeat these here.

12. Since our earlier submissions, the Panel has received independent tax advice which provides further confidence that the Project's benefits are substantial.⁵
13. We submit that evidence before the Panel provides certainty on the scale and robustness of the Project's benefits by:
 - (a) Demonstrating that the methodology used to calculate the benefits is consistent with the FTA framework and the methodology accepted in previous FTA decisions.
 - (b) Independent peer reviewers from Central Otago District Council (**CODC**) and Otago Regional Council (**ORC**) accepting the substantial nature of the Project's benefits.
 - (c) The Panel's independent tax advice validating the tax assumptions in Matakanui Gold's evidence.
 - (d) Matakanui Gold's evidence adopting a base case gold price that is conservative.
 - (e) Sensitivity testing of all worst-case scenario factors occurring simultaneously still retaining substantial Project NPV of \$197 million.
14. Minute 50 of the Panel sought Matakanui Gold's advice as to the quantum and terms, particularly anticipated rates, of the debt financing currently being pursued.⁶ Matakanui Gold's response to Minute 50 provides anticipated total financing costs that has been indicated by prospective lenders on a commercially confidential basis.⁷ Mr Patterson has also provided a response incorporating the average total to return to lenders over the life of the Project. Mr Patterson concludes that the effect of gearing at levels contemplated by prospective lenders is negligible in the context of the overall economic analysis, changing the effective tax rate by less 0.25% from the 28% rate adopted in his reports.⁸ Mr Patterson's conclusions provide the Panel with assurance that the inclusion of debt financing does not materially alter the findings of the economic assessments.

⁴ Statement of Benje Patterson, 8 September 2026 at [23].

⁵ Bendigo-Ophir Gold Project, Tax Advice, Robin Oliver 17 August 2026.

⁶ Minute 50 of the Expert Panel, 9 September 2026 at [5].

⁷ Matakanui Gold Limited Response to Minute 50, 14 September 2026.

⁸ Statement of Benje Patterson, 8 September 2026 at [12].

15. The discretion to decline approvals under Section 85(3) provides that a Panel *may* decline an approval where adverse impacts are sufficiently significant to be out of proportion to the Project's regional or national benefits. This has been described by the Southland Windfarm Panel as a deliberately high threshold which requires a strong presumption in favour of enabling beneficial projects.⁹ The proportionality aspect of Section 85(3), means that the more significant the benefits of a project, the more significant the adverse impacts must be before the discretion to decline can arise.¹⁰
16. The evidence before the Panel from multiple economic experts demonstrates that the Project will generate substantial regional and national benefits. In our submission the extent of the Project's benefits places it among the most economically significant to have been considered under the FTA to date and is compelling evidence against any exercise of the Panel's discretion to decline the approvals under Section 85(3).

CULTURAL EFFECTS

17. Key legal considerations already the subject of legal submissions and the hearing at Ōtākou Marae in relation to cultural effects have been:
 - (a) the cultural effects of the Project; and
 - (b) whether the Project is in breach of Section 7 of the FTA.
18. These key considerations have been reiterated in the comments of Kā Rūnaka responding to the response to Request for Information 11 (**RFI 11**). The response of Kā Rūnaka concludes that the cultural and environmental effects of the Project cannot be addressed by conditions and management plans¹¹ and that the lack of provision for substantive involvement of Kā Rūnaka is inconsistent with rakatirataka and existing Treaty settlement obligations.¹²
19. These submissions respond to the RFI 11 response provided by Kā Rūnaka in September 2026 and do not repeat our earlier submissions on these points.

Ongoing Engagement

20. Matakanui Gold remains committed to maintaining an ongoing and constructive relationship with Kā Rūnaka through continued engagement and collaboration.

⁹ *Record of Decision of the Expert Consenting Panel, Southland Windfarm, 9 March 2026* at [60] – [61].

¹⁰ *Record of Decision of the Expert Consenting Panel, Southland Windfarm, 9 March 2026* at [60].

¹¹ Kā Rūnaka response to RFI 11 and Conditions, Sandra McIntyre, 7 September 2026 at [11] and Memorandum of Counsel, 21 August 2026 at [4].

¹² Kā Rūnaka response to RFI 11 and Conditions, Edward Ellison 7 September 2026 at [3].

21. Since the inception of the Project, Matakanui Gold has undertaken extensive and genuine engagement with Kā Rūnaka and has sought to understand and respond to concerns raised. The engagement with Kā Rūnaka since November 2017 is addressed in Mr Spring's evidence dated 22 May 2026 and is not repeated here.
22. Since the hearing at Ōtākou Marae engagement has continued as summarised below:
 - (a) In response to concerns raised by Kā Rūnaka at Ōtākou Marae on the need for intergenerational funding, Matakanui Gold proposed the establishment of the Matakinui Trust (**Trust**), a long term land stewardship entity with enduring environmental and cultural objectives.¹³ The consent conditions require Kā Rūnaka participation in the governance of the Trust through the appointment of trustees and development of the Trust Deed.¹⁴ From Matakanui Gold's perspective this ensures an ongoing intergenerational role for Kā Rūnaka in shaping and overseeing the Trust's environmental and cultural outcomes beyond the operational life of the Project.
 - (b) Kā Rūnaka participated in conditions workshops held in July and August 2026. During the workshops Kā Rūnaka proposed a suite of endorsed Mana Whenua conditions which were accepted by Matakanui Gold in full with the exception of an agreed name change to the Governance Group that is provided for in the conditions.¹⁵
 - (c) While it is the position of Kā Rūnaka that the conditions do not address concerns about the effects of the Project, Kā Rūnaka has endorsed the Mana Whenua conditions as providing more appropriately for an ongoing role of Mana Whenua in management of te taiao in the area affected by the Project.¹⁶
23. In our submission, engagement has continued to be constructive and genuine following the hearing at Ōtākou Marae and has resulted in tangible agreed outcomes that are reflected in the conditions.
24. While the parties continue to hold differing views on whether the cultural effects of the Project can ultimately be addressed through conditions, the conditions package before the Panel:
 - (a) reflects a significant degree of collaboration and agreement from both Kā Rūnaka and Matakanui Gold; and

¹³ Response to RFI 7, 12 June 2026 and Response to RFI 11 Question 12 – 16.

¹⁴ D.03 Schedule One – Common Conditions to the CODC and ORC Consents at C154.

¹⁵ Kā Rūnaka response to RFI 11 and Conditions, Sandra McIntyre, 7 September 2026 at [12].

¹⁶ Kā Rūnaka response to RFI 11 and Conditions, Sandra McIntyre, 7 September 2026 at [18].

- (b) provides for an ongoing role for Kā Rūnaka in the management of te taiao and the stewardship of environmental and cultural outcomes associated with the Project.

Cultural Effects

25. From a legal perspective, only tangata whenua has the authority to determine and speak to the cultural effects of an activity¹⁷ and Matakanui Gold does not dispute the effects raised by Kā Rūnaka. However, this does not amount to a right of veto.¹⁸ Judicial authority is clear that an applicant for resource consent is required to put forward how it has sought to address the identified effects and the decision maker is then able to carefully weigh up the evidence before it.¹⁹
26. In doing so the Courts have recognised that in some cases projects can still proceed if effects are appropriately managed.²⁰ We submit that the evidential record before the Panel demonstrates that this is the case here. While the assessment of cultural effects is a matter for Kā Rūnaka, Matakanui Gold has engaged genuinely and constructively with these concerns. The conditions before the Panel establish a framework for ongoing engagement with, and involvement by, Kā Rūnaka over the life of the Project.

Treaty Settlement Obligations

27. The position of Kā Rūnaka is that the Project is inconsistent with fundamental Treaty settlement obligations and that the lack of provision for substantive involvement of Kā Rūnaka is inconsistent with rakatirataka.²¹
28. Acknowledging that the Panel has received independent legal advice on this matter, we briefly address below the legal points raised by Kā Rūnaka in its response to RFI 11.
29. In our submission the key matter for the Panel's determination relates to the legal interpretation of the Ngāi Tahu Claims Settlement Act 1998 (**Settlement Act**). We do not (and would not) dispute the explanations provided by Kā Rūnaka on the historical context and factual content of the Settlement Act.
30. For the reasons that follow, we submit that the obligations within the apology in the Settlement Act do not extend to Matakanui Gold but rather are Crown obligations, and do not extend to requiring specific forms of consultation. This is distinct to other

¹⁷ *Ngawaka v Ngāti Rehua-Ngātiwaki Ki Aotea Trust Board* [2021] NZHC 291 at [57] – [59].

¹⁸ *Te Korowai o Ngaruahine Trust v Hiringa Energy Limited* [2022] NZHC 2810.

¹⁹ *Wakatu v Tasman District Council* [2012] NZEnvC 75, [2012] NZRMA 363.

²⁰ *Te Runanga o Ngai Te Rangi Iwi Trust v Bay of Plenty Regional Council* [2011] NZEnvC 402.

²¹ Memorandum of Counsel, 21 August 2026 at [4] and Kā Rūnaka response to RFI 11 and Conditions, Edward Ellison 7 September 2026 at [3].

obligations set out in the Settlement Act that can (and do) apply to entities beyond the Crown.

31. The provisions on rakatirataka which sit in the recorded apology in the Settlement Act constitute an acknowledgement by the Crown that Kāi Tahu holds rakatirataka within the Kāi Tahu tākiwa. There are no other provisions within the Settlement Act that discuss rakatirataka or obligations in relation to rakatirataka.
32. The statements made within the apology do not extend to imposing obligations on third parties, such as Matakanui Gold, to recognise or give effect to Kāi Tahu rakatirataka. This is because the language used in the apology of the Settlement Act regarding rakatirataka is one of recognition and historical acknowledgement, rather than a source of operative duties imposing any actions to be taken by Matakanui Gold.
33. Despite this we submit that the consultation and engagement undertaken by Matakanui Gold discussed in paragraphs 20 – 21 above has provided Kā Rūnaka with an opportunity to exercise rakatirataka and that this will continue throughout the life of the Project as set out in the conditions before the Panel.
34. The focus of Section 7 of the FTA is on ensuring compliance with express obligations arising under existing Treaty settlements. In our submission this captures obligations expressly set out in the Treaty settlements relating to all parties, rather than broader considerations concerning the recognition and implementation of the rights and interests provided for in the Settlement Act.
35. In relation to that point, we submit that:
 - (a) the obligations within the apology in the Settlement Act do not extend to Matakanui Gold but rather are Crown obligations; and
 - (b) the obligations within the apology do not extend to requiring particular forms of consultation or particular timeframes for consultation which are not expressly stated within the relevant obligation.
36. Overall, we submit that there is no legal basis to decline approvals for the Project on the basis of Section 7 of the FTA.

WATER BASELINE AND EFFECTS

Overview

37. A key legal consideration throughout the Panel process has been the adequacy of the baseline information and degree of certainty regarding water effects. Related to

this matter is the position of some parties that reliance on adaptive management for water effects is not justified.²²

38. In our submission the material now before the Panel demonstrates that the baseline water environment is sufficiently understood, and there is appropriate confidence that potential effects can be effectively detected, monitored and managed through the proposed mitigation, monitoring and adaptive management framework.
39. The adaptive management approach for managing water effects through the use of management plans will ensure any unforeseen circumstances are detected early and responded to appropriately and efficiently. We submit that the Panel can be confident that the adaptive management proposal is appropriate, satisfies the requirements identified by the Supreme Court in *Sustain Our Sounds v New Zealand King Salmon Limited*²³ and is a well-established and accepted approach to managing environmental effects.
40. Adaptive management has become increasingly accepted as an effects management mechanism in New Zealand with the Environment Court increasingly relying on adaptive management as appropriate and beneficial in the New Zealand mining context.²⁴ As identified by the Environment Court it would be unreasonable to expect an applicant such as Matakanui Gold to anticipate and research all hypotheses that may occur during the course of the application process.²⁵
41. Legislation does not prescribe what an adaptive management approach must contain. This has been set out by various Courts and decision makers over the past few decades and is now regarded as settled law. In *Sustain our Sounds Inc v New Zealand King Salmon Limited* the Supreme Court held that an adaptive management approach must provide for a minimum criteria of information and specific requirements for it to be considered appropriate by a decision-maker.²⁶ It is not a suck it and see approach.²⁷

²² Environmental Defence Society: Supplementary Evidence of Leanne Morgan at [19] and Memorandum of Counsel at [17]. Otago Fish and Game: Statement of Kathryn McArthur at [64]

²³ *Sustain Our Sounds Incorporated v New Zealand King Salmon Limited* [2014] NZSC 40.

²⁴ *West Coast Environmental Network Incorporated v West Coast Regional Council* [2013] NZEnvC 253; *Biodiversity Defence Society Incorporated v Solid Energy New Zealand Limited* [2013] NZEnvC 195.

²⁵ *Crest Energy Limited v Northland Regional Council* NZEnvC Auckland A132/09, 22 December 2009 at [228].

²⁶ *Sustain Our Sounds Incorporated v New Zealand King Salmon Limited* [2014] NZSC 40

²⁷ *Sustain Our Sounds Incorporated v New Zealand King Salmon Limited* [2014] NZSC 40, at [125].

42. An important part of the test identified by the Supreme Court is the ability for an adaptive management regime to deal with risk and uncertainty.²⁸ In applying that test the Supreme Court considered the following factors:
- (a) there would be good baseline information about the receiving environment;
 - (b) the conditions provide for effective monitoring of adverse effects using appropriate indicators;
 - (c) thresholds are set to trigger remedial action before the effects become overly damaging; and
 - (d) effects that might arise can be remedied before they become irreversible.

Certainty

43. We have previously provided the Panel with a Memorandum of Counsel addressing why the technical investigations undertaken since 2023 and lodged with the substantive application provide a robust evidential basis for understanding the nature, scale, significance and management of all potential water effects.²⁹ We do not repeat that here.
44. Since then, the technical assessments accompanying Matakanui Gold's response to RFI 11 has provided additional assessment and analysis that further strengthens those assessments and provides greater certainty on the conclusions reached in the existing groundwater effects assessments.
45. In particular we submit that the additional investigations, technical assessments and modelling submitted in response to RFI 11 collectively strengthen the evidential foundation for assessing groundwater effects. They provide further confirmation of the nature, scale and significance of potential groundwater effects and reinforce confidence in the effectiveness of the proposed management measures.
46. In particular, the RFI 11 response on water³⁰ achieves this by further refining and validating the conclusions reached in the existing effects assessments, including:
- (a) The response to Question 1 of RFI 11 includes additional water quality and ecological information from Ms Palich and Dr Boothroyd providing further baseline information on the existing water quality and ecological condition of the downstream receiving environments including Bendigo Creek and the

²⁸ *Sustain Our Sounds Incorporated v New Zealand King Salmon Limited* [2014] NZSC 40, at [133].

²⁹ Memorandum of Counsel on behalf of Matakanui Gold Limited responding to Minute 29, 22 June 2026.

³⁰ Request for Information 11, Questions 1 - 9.

Lindis River.³¹ This establishes a clear baseline for the downstream receiving environment against which any future changes in water quality or ecological condition can be measured through monthly compliance and performance monitoring enabling any effects attributable to the Project to be identified.³²

- (b) The response to Question 2 includes additional hydrogeological field investigations and updated 3D groundwater modelling from Kōmanawa Solutions Limited (**KSL**) that provides further certainty on groundwater flow behaviour, seepage pathways and the effectiveness of the proposed seepage collection systems.³³ The additional investigations confirm that the groundwater flow of interest is concentrated in shallow systems where seepage is detectable as opposed to deeper schist systems.³⁴ It builds on the improved understanding of the Project Site's (**Site**) hydrogeology and the conceptual model underpinning the substantive application. The 3D groundwater model assesses the potential for uncaptured seepage from key mine infrastructure including the Tailings Storage Facility (**TSF**) and Engineered Landforms (**ELF**)³⁵ and demonstrates that it is unlikely substantial seepage will be lost to the deep schist groundwater system without detection.³⁶ In response to the additional investigation Matakanui Gold proposed a new consent condition in the 28 August 2026 conditions set requiring the installation of a secondary seepage capture system prior to the first discharge of tailings to the TSF to provide an additional layer of seepage management and monitoring.³⁷ This provides the Panel with confidence that in the event seepage bypasses the collection systems it will remain in the shallow groundwater system where it can be identified through the monitoring network.³⁸ KSL have provided a response to EDS' feedback on the model which identified a discrepancy in the calibration dataset.³⁹ KSL's response acknowledges the calibration data error but concludes that the implications of the error did not impact the dipping or groundwater level

³¹ RFI 11 - Question 1a - Water - Downstream Catchment Baseline Water Quality and FI 11 - Question 1b - Water - Lindis River and Bendigo Creek Freshwater Ecology Survey.

³² RFI 11 - Question 5 - Water - Bendigo-Ophir Gold Project - Assessment of Environmental Effects at page 3.

³³ RFI 11 - Question 2a - Water - BOGP Groundwater Site Investigation Memorandum (Hydro Geochem Group, 2026) and RFI 11 - Question 2b and 2c - Water - Updated Groundwater Modelling for Bendigo Ophir Gold Deposit (Kōmanawa Solutions Ltd, 2026).

³⁴ RFI 11 - Question 2a - Water - BOGP Groundwater Site Investigation Memorandum (Hydro Geochem Group, 2026).

³⁵ RFI 11 - Question 2b and 2c - Water - Updated Groundwater Modelling for Bendigo Ophir Gold Deposit (Kōmanawa Solutions Ltd, 2026).

³⁶ RFI 11 - Question 5 - Water - Bendigo-Ophir Gold Project - Assessment of Environmental Effects (Hydro Geochem Group et al., 2026).

³⁷ D.04 - Schedule Two - General Conditions for ORC Consents (28 August 2026 at Condition 70).

³⁸ RFI 11 - Question 5 - Water - Bendigo-Ophir Gold Project - Assessment of Environmental Effects (Hydro Geochem Group et al., 2026).

³⁹ Response to Responses on Bendigo-Ophir Gold Project Fast-track Approval RFI 11, Kōmanawa Solutions Limited, 14 September 2026 at Section 5.

surveys which KSL considers are a more accurate representation of the system.⁴⁰ KSL outlines that the original deep model optimisation provided a good fit to both the dipping and groundwater level surveys and conclude that the model remains a good representation of the system.⁴¹

- (c) The response to Question 3 of RFI 11 by Dr Weber provided an updated operational phase contaminant load water balance model that assesses Site wide water management and predicted water quality at compliance monitoring locations.⁴² The updated model builds on the model lodged with the substantive application by modelling daily Site performance across 200 potential climate scenarios over the 14 year operational phase.⁴³ With the addition of daily modelling for the operational phase, the Panel now has before it a comprehensive model of predicted water quality outcomes across all stages of mine life. The modelling predicts that water quality at surface water compliance site RS03 is expected to remain within the proposed compliance limits throughout the operational phase. While the modelling predicts that active treatment may be required for certain contaminants during the later stages of the Project the assessment concludes that these effects can be effectively managed through the proposed management framework.⁴⁴ This provides the Panel with confidence that the Project's water quality effects are understood and that the proposed management framework is capable of effectively responding to effects.
- (d) The response to Question 6 of RFI 11 from Mr Rekker provides the results of an aquifer pump test for the Bendigo aquifer that was undertaken over a longer period of time than the pump test supporting the substantive application.⁴⁵ As the aquifer test was not able to be maintained at the previously proposed 110L/s, the conditions of consent have been amended to reflect the tested pumping rate of 97L/s.⁴⁶ The aquifer pump test results confirmed the findings of earlier assessments and concluded that there are no material changes to the conclusions of the original effects assessment.⁴⁷

⁴⁰ Response to Responses on Bendigo-Ophir Gold Project Fast-track Approval RFI 11, Kōmanawa Solutions Limited, 14 September 2026 at Section 5.

⁴¹ Response to Responses on Bendigo-Ophir Gold Project Fast-track Approval RFI 11, Kōmanawa Solutions Limited, 14 September 2026 at Section 5.

⁴² RFI 11 - Question 3 a,b,c - Water - Water Balance Load Mode.

⁴³ RFI 11 – Question 3(a), (b) and (c) – Water – Operational Phase Site Wide Water and Load Balance Model (Mine Waste Management, 2026).

⁴⁴ RFI 11 – Question 3(a), (b) and (c) – Water – Operational Phase Site Wide Water and Load Balance Model (Mine Waste Management, 2026).

⁴⁵ RFI 11 – Question 6 – Water – Report on Compliant Aquifer Test at BOGP Water Supply Bore Field (Kōmanawa Solutions Ltd, 2026).

⁴⁶ Assessment of Groundwater User Drawdown Effects in Surrounding Bendigo Aquifer, Kōmanawa Solutions Limited at page 1.

⁴⁷ BOGP FTAA Application Processing - RFI-11; Responses to RFI Responses by Other Parties, Kōmanawa Solutions Limited at [6.1.2].

47. These additional investigations and assessments submitted in response to RFI 11 provide further assurance regarding the baseline environment, anticipated effects and that the adaptive management approach proposed by Matakanui Gold for water related effects is appropriate. We submit they also provide the Panel greater confidence that the proposal satisfies the requirements for adaptive management established by the Supreme Court.⁴⁸

Adaptive Management Criteria

48. Adaptive management is very common in projects in New Zealand approved under the Resource Management Act 1991 (**RMA**). It is an essential tool in enabling the approval of projects prior to detailed design.
49. We submit that the Panel can be confident that the proposed adaptive management approach satisfies the vital part of Supreme Court's test identified in paragraph 42 above as:
- (a) A substantial amount of baseline information has been gathered through technical assessments about the receiving water environment, and it is well understood.
 - (i) Surface water quality data has been collected from September 2022 until March 2026 and is ongoing at RS03 and SC01.⁴⁹ Experts for ORC consider the baseline surface water quality data at RS03 and SC01 is appropriate for baseline condition assessment. The surface water baseline dataset has been strengthened through the additional water quality monitoring undertaken in response to RFI 11 as outlined above.
 - (ii) The groundwater baseline investigations summarised in our Memorandum of Counsel dated 22 June 2026 have been further supplemented by the RFI 11 response as discussed at paragraph 46 above. Collectively, these technical assessments and investigations provide a robust understanding of the baseline receiving environment on which the proposed adaptive management approach can be implemented.
 - (b) The proposed conditions demonstrate a clear ability to manage effects through monitoring and enforceable thresholds, triggers and responses.

⁴⁸ *Sustain Our Sounds Incorporated v New Zealand King Salmon Company Limited* [2024] NZSC 40.

⁴⁹ Bendigo-Ophir Gold Project - Geochemistry, Water Quality, Water Management, Freshwater Ecology Joint Witness Statement at [19].

- (i) The conditions proposed by Matakanui Gold propose a comprehensive monitoring network at a number of surface water and ground water locations. Compliance parameters and limits in the conditions have been set based on technical assessment and have been tested and refined throughout the Panel process.⁵⁰ The surface water limits are set using the species protection guidelines from ANZG 2018 and the groundwater compliance limits are set to align with the New Zealand Drinking Water Standards.⁵¹ The consent conditions require a series of responses if limits are breached or triggered at performance monitoring locations.
- (ii) Surface water performance monitoring sites are proposed at key operational infrastructure locations including seepage collection points at the ELF's and TSF, pit sumps, sediment and retention ponds and treatment systems.⁵² Surface water compliance monitoring sites are proposed at SC01 and RS03:⁵³
 - (A) SC01 located in Shepherds Creek downstream of the Site and all mining operations and pits.
 - (B) RS03 located in Rise and Shine Creek downstream of all mining operations and pits.
- (iii) Continuous monitoring at SC01, RS03 and CC01 must be undertaken to measure flow, electrical conductivity and turbidity.⁵⁴
- (iv) Groundwater performance monitoring locations are proposed, and two compliance groundwater monitoring locations are proposed at:
 - (A) GW01 to monitor groundwater quality and levels in the Shepherds Creek Alluvium.⁵⁵
 - (B) GW24 at the Bendigo Aquifer.
- (c) The conditions require remedial action before effects become damaging.

⁵⁰ D.04 - Schedule Two - General Conditions for ORC Consents at C20.

⁵¹ D.04 - Schedule Two - General Conditions for ORC Consents at Attachment 5.

⁵² G.01 Water Management Plan clean version (22 June 2026).

⁵³ RFI 11 - Question 1 - 9 - Water - Bendigo-Ophir Gold Project Water Resources Impact Assessment Summary and D.04 - Schedule Two - General Conditions for ORC Consents at C27.

⁵⁴ D.04 - Schedule Two - General Conditions for ORC Consents at C28.

⁵⁵ G.01 Water Management Plan clean version (22 June 2026) and D.04 - Schedule Two - General Conditions for ORC Consents at C31.

- (i) The conditions require that where performance monitoring indicates an increasing trend defined responses must be implemented to ensure a compliance limit is not breached.⁵⁶
 - (ii) Performance monitoring locations for both surface and groundwater are located upstream of compliance sites ensuring emerging effects are identified well before compliance limits are reached.
 - (iii) The responses when increasing trends are identified are defined in the conditions⁵⁷ and Water Management Plan and require actions such as increasing water storage capacity, installing the active water treatment plant, increased performance monitoring and sludge disposal to an offsite facility.⁵⁸
 - (d) Effects that might arise can be remedied before they become irreversible.
 - (i) The extensive monitoring network and defined responses will ensure any water quality effects are detected, investigated and managed at an early stage before any effect becomes irreversible.
50. In terms of managing potential effects, to provide further assurance to the Panel regarding seepage detection and capture Matakanui Gold has proposed additional conditions for mine circuit water seepage in the D.04 ORC conditions. The conditions require the following actions:
- (a) Condition 21: Prior to the commencement of mining operations Matakanui Gold must engage a suitably qualified and experienced person to develop a process, including suitable triggers and responses, to manage any mine circuit water seepage that bypasses mine waste storage facilities.
 - (b) Condition 22: The groundwater and surface water triggers derived under Condition 21 must be in the Water Management Plan at all times. Any changes to the process in Condition 21, including the triggers or management actions, must be included in the Water Management Plan and certified by ORC prior to implementation.
 - (c) Condition 24: During construction of the TSF a primary mine circuit water seepage collection must be installed that includes the minimum requirements in Condition 24.

⁵⁶ G.01 Water Management Plan clean version (22 June 2026) and D.04 – Schedule Two – General Conditions for ORC Consents at Condition 30.

⁵⁷ D.04 – Schedule Two – General Conditions for ORC Consents at Condition 30 and G.01 Water Management Plan clean version (22 June 2026).

- (d) Condition 25: Prior to the first discharge of tailings to the TSF the consent holder must the install secondary mine circuit water seepage interception measures identified in Condition 25 immediately downstream of the Shepherds Seepage Collection Sump and upstream of the Shepherds Silt Pond.
 - (e) Condition 26: If the primary and secondary seepage interception measures, and other measures implemented under Condition 21(f) are exhausted and mine circuit water seepage continues to be detected Matakanui Gold must install any necessary infrastructure/seepage collection systems at the locations identified in Condition 26. These measures must ensure that all mine circuit water seepage is captured and returned to the TSF or treated by the Active or Passive Water Treatment Plant. Examples of suitable infrastructure/seepage collection systems include a pump and treat system or a sheet pile wall down to unweathered bedrock across the width of the affected valley.
 - (f) Condition 19 of D.02 requires that following the construction of the Passive Water Treatment System that the Active Water Treatment Plant is retained in a working and well maintained state for a minimum of two years prior to being decommissioned.
51. We submit the Supreme Court's criteria for adaptive management is aligned with the approach proposed. A substantial body of baseline information has been gathered through detailed technical assessments resulting in a well-informed understanding of the baseline receiving environment. The additional investigations, technical assessments and modelling undertaken in response to RFI 11 further strengthen that evidential foundation and provide further certainty regarding the nature, scale and significance of potential groundwater effects.
52. The extensive monitoring network, defined trigger levels and management responses provide the framework to ensure that any water quality effects are identified, investigated and addressed at an early stage.
53. Accordingly, we submit that the Project is supported by a robust adaptive management framework that the evidence demonstrates is capable of effectively managing any remaining uncertainty.

Water Quantity

54. Feedback received in response to RFI 11 raise concerns that that the Project will reduce the availability of groundwater to downstream users.⁵⁹
55. Mr Rekker has provided a response to this feedback and concludes that the aquifer test results confirmed the findings of earlier assessments that there are no material changes to the conclusions of the original effects assessment.⁶⁰ Those conclusions were:⁶¹
- (a) Drawdown effects by an operational Matakanui Gold borefield in the location of the test production bore would have discernible effects on the operating bores within 1.6 kilometres of the Matakanui Gold borefield.
 - (b) However, the assessed drawdown in the context of self-induced and natural bore water level fluctuations would not interfere with the bore operation of surrounding bores after allowing for a significant margin of safety.
56. In our submission the proposed conditions provide assurance that should any unanticipated drawdown effects arise there is a clear and appropriate response framework in place. The conditions require that within 30 working days after the commencement of consent Matakanui Gold must invite bore owners within a one-kilometre radius of Matakanui Gold's Bendigo Aquifer bore to provide information on:⁶²
- (a) Location and depth of the bore;
 - (b) Standing depth to water;
 - (c) Consented rate and volume of water take (including any seasonal variations);
 - (d) A description of the physical infrastructure associated with the take (e.g. submersible pump, surface pump, any water conveyance infrastructure etc.); and
 - (e) A copy of any resource consents (where applicable).

⁵⁹ Environmental Defence Society: Supplementary Evidence of Leanne Morgan, Canyon Vineyard and the Thomson Gorge Road Residents and Hanan Family.

⁶⁰ BOGP FTAA Application Processing - RFI-11; Responses to RFI Responses by Other Parties, Kōmanawa Solutions Limited at [6.1.2].

⁶¹ B.02 - Kōmanawa Solutions Limited - Bendigo Groundwater Bore Take Effects Assessment (Kōmanawa 2025a) at Section 7.

⁶² D.02 Otago Regional Council Consents and Conditions at Condition 9.

57. Once this information has been provided, if the bore owner advises Matakanui Gold that they are unable to access their full consented or permitted allocation of groundwater Matakanui Gold must undertake the response defined in Condition 10 which includes:⁶³
- (a) Commissioning an independent hydrogeological assessment to verify the alleged issues with accessing groundwater allocation and determining whether the reduction is caused by Matakanui Gold's Bendigo Aquifer take. This assessment must be provided to the affected bore owner and ORC within 20 working days. In response to feedback received on 7 September 2026 Matakanui Gold has amended the timeframe for this report from 40 working days to 20 working days.
 - (b) Should the independent conclude the issues with accessing the allocated groundwater are attributable to Matakanui Gold's take, an alternative water supply must be provided by Matakanui Gold that is equivalent to the confirmed shortfall until defined steps in the conditions have been completed.
 - (c) These steps include investigating and implementing the most practicable and effective remedial option to ensure that the bore owner can continue to access and abstract water at the rate and volume that they were prior to notification of the reported drawdown, taking into account any preferences of the bore owner of the solution to be implemented. These solutions may include providing a replacement water supply with equal or better water quality and a high level of reliability where there is an elevated risk of interruption to a bore water supply that cannot be resolved by other means.
58. We submit that these conditions provide assurance to the Panel that bore owners within a defined radius of Matakanui Gold's take will retain access to their consented water rights, even if drawdown effects arise.

APPROPRIATE SCALE FOR ASSESSMENT OF EFFECTS ON THE OUTSTANDING NATURAL LANDSCAPE

59. A consideration throughout the Panel process was the appropriate scale at which effects on the Outstanding Natural Landscape (**ONL**) should be addressed.⁶⁴

⁶³ D.02 Otago Regional Council Consents and Conditions at Condition 10.

⁶⁴ The different expert opinions on the appropriate landscape scales are recorded in the Joint Statement of Expert Witnesses: Landscape Architecture 18, 27 and 28 May at [20] – [23] a map visually showing the scales is attached as Appendix A to the Reconvened Landscape Architecture Joint Witness Statement, 8 June 2026.

Judicial authority is clear that the scale at which a landscape is assessed has significant implications on the outcome of a landscape assessment.

60. The High Court has relevantly held that it is important the scale of the landscape is credible and must not be diced up into too small components.⁶⁵ The scale of reference to be adopted in a landscape assessment is to be driven by the provisions of the RMA and the direction in the relevant District Plan.⁶⁶
61. The Court has previously found that a landscape assessment was invalid as the assessment in question considered a landscape unit that was too confined.⁶⁷ In that case the Court stated that inappropriately confined landscape assessments result in an assessment of highly localised visual change in a highly localised landscape environment as opposed to a true landscape assessment.⁶⁸
62. Mr Girvan's assessment of effects on the ONL follows this judicial guidance and uses the specific reasons for the ONL's recognition in the Central Otago District Plan (**District Plan**) as a starting point for the scale of the landscape assessment. The specific reasons for recognition of the ONL in the District Plan are:⁶⁹

The mountain range forms part of the backdrop to the Manuherikia Valley to the east and the Upper Clutha Valley to the west and is a memorable feature of the Central Otago landscape. The crest is an extensive summit plateau extending from Haehaeata / Leaning Rock northwards, distinctive rock tors are visible on the skyline.

63. Mr Girvan has distinguished between localised effects and effects on the broader Dunstan Mountains ONL. Mr Girvan's position is that:
 - (a) Effects on the wider Dunstan Mountains ONL are moderate during operations and low-moderate at closure.⁷⁰
 - (b) When considered at a more localised site scale the effects on the ONL will be high during operations with enduring effects remaining at closure.⁷¹
64. In our submission the differing conclusions reached by the landscape architects are largely attributable to the assessment scale adopted, with different outcomes arising dependent on the scale at which effects on the ONL have been assessed.

⁶⁵ *Clearwater Mussels v Marlborough District Council* [2018] NZEnvC 088 at [175].

⁶⁶ *Save Wanaka Lakefront Reserve Incorporated v Queenstown Lakes District Council* [2017] NZEnvC 88 at [229].

⁶⁷ *Ohau Protection Society Incorporated v Waitaki District Council* [2018] NZEnvC 243

⁶⁸ *Ohau Protection Society Incorporated v Waitaki District Council* [2018] NZEnvC 243 at [110].

⁶⁹ Central Otago District Plan, Schedule 19.6.2.

⁷⁰ Statement of Evidence of Rhys Girvan, Section 53 Response, 17 April 2026.

⁷¹ Joint Witness Statement, Landscape, 8 June 2026.

65. We submit that the conclusions of Mr Girvan should be preferred by the Panel as his assessment is consistent with judicial authority requiring landscape effects to be assessed at the appropriate scale. By considering and distinguishing between effects experienced at a localised scale and the wider Dunstan Mountains ONL, Mr Girvan has undertaken a balanced and proportionate assessment of the Project's overall landscape effects.

ARCHAEOLOGICAL AUTHORITY – HERITAGE NEW ZEALAND POUHERE TAONGA

66. Heritage New Zealand Pouhere Taonga's (HNZPT) feedback on the response to RFI 11 and the conditions maintains its position that archaeological authority should be declined.⁷² However, they still have not undertaken the full assessment of relevant considerations required under Clause 4 of Schedule 8 in the FTA.
67. Clause 4 of Schedule 8 identifies the matters that must be taken into account when a Panel is considering an application for an archaeological authority. These matters include the purpose of the FTA and the relevant provisions of the HNZPT Act. Importantly, the Panel is required to give the greatest weight to the purpose of the FTA.⁷³
68. HNZPT's position is that it is not responsible for determining whether an archaeological authority is consistent with the purpose of the FTA and has not addressed that statutory consideration in its assessment.⁷⁴
69. We submit that it is inappropriate for HNZPT to reach a conclusion on whether to decline the authority without applying the full statutory test required in the FTA particularly when the limb of the test that was not considered is the purpose of the FTA, which must be given the greatest weight.⁷⁵
70. The technical evidence provided on behalf of Matakanui Gold demonstrates that the heritage effects of the Project can be appropriately managed through the proposed blasting vibration management framework, archaeological authority recording requirements and the proposed consent conditions. We submit that it is appropriate for the Panel to grant the archaeological authority and approve Dr Woods as the approved person⁷⁶, as proposed.
71. The evidence before it provides the Panel with a high degree of confidence that Dr Woods has the skill, competency and capability required for approval under Section

⁷² Heritage New Zealand Pouhere Taonga Response to Minute 48, 7 September 2026.

⁷³ Fast-track Approvals Act 2024, Clause 4(1)(a) Schedule 8.

⁷⁴ HNZPT Section 51 Report, 25-03-2026 at [22]

⁷⁵ Fast-track Approvals Act 2024, Clause 4(1)(a) Schedule 8.

⁷⁶ Heritage New Zealand Pouhere Taonga Act 2014, Section 45.

45 of the Heritage New Zealand Pouhere Taonga Act 2014 (**HNZPT Act**), supported by 15 years of extensive archaeological experience and professional practice.⁷⁷

72. Matakanui Gold is seeking that the Panel certify the Archaeological and Heritage Management Plan (**AHMP**). HNZPT's position in its September feedback is that:⁷⁸

- (a) there is no statutory basis in the FTA for the Panel to certify the AHMP and previous Panels have declined to certify management plans; and
- (b) the AHMP is not capable of certification in its current form.

73. We disagree.

74. While HNZPT is correct that other Panels have considered it inappropriate to certify management plans on the facts of those projects, the FTA does not explicitly specify who is required to certify management plans, and a Panel has discretion in this regard.⁷⁹ The Panel is to exercise any discretion in a manner consistent with the purpose and principles of the FTA.⁸⁰

75. We submit the AHMP can be distinguished from earlier Panel decisions that have declined to certify management plans as:⁸¹

- (a) The AHMP is in final form and reflects ten months of consultation and workshoping with HNZPT and the parties' heritage experts. It is not a draft plan requiring further development following the Panel's decision. As set out in Dr Woods' response HNZPT has had numerous opportunities throughout the development and refinement of the AHMP to provide specific and targeted feedback but has not engaged substantially with the content of the AHMP.⁸²
- (b) It is common practice for archaeological management plans to be submitted with and certified as part of an archaeological authority application.⁸³
- (c) In addition to Dr Woods' technical assessment and evidence before the Panel, HNZPT's comments and advice to the Panel clearly sets out its

⁷⁷ Memorandum from Heritage Properties Limited, 10 September 2026 at page 2 and B.34B Heritage Assessment

⁷⁸ HNZPT Memo in response to Minute 48 at [8] – [16].

⁷⁹ *Record of Decision of the Expert Consenting Panel, Hananui Aquaculture Project, 10 August 2026* at [299].

⁸⁰ *Record of Decision of the Expert Consenting Panel, Hananui Aquaculture Project, 10 August 2026* at [299].

⁸¹ Memorandum from Heritage Properties Limited, 10 September 2026 at page 2.

⁸² Memorandum from Heritage Properties Limited, 10 September 2026 at page 2.

⁸³ Memorandum from Heritage Properties Limited, 10 September 2026 at page 2.

requirements for archaeological management plans and research strategies providing the Panel with clear criteria to certify the AHMP against.⁸⁴

76. In these circumstances we submit the Panel should exercise its discretion to certify the AHMP. Certification by the Panel gives effect to the purpose of the FTA by facilitating delivery of the Project, avoiding unnecessary further process and ensuring robust archaeological management measures are in place from the outset.

TERRESTRIAL ECOLOGY

Cushionfields and Spring Annuals

77. A key focus of the Panel proceeding has been the effects of the Project on cushionfield habitats and spring annuals. It is not disputed by Matakanui Gold's expert ecologists that the Project will result in residual effects on cushionfields.⁸⁵ The evidence is clear that scientific knowledge and research on these species is limited, and no long-term studies to date demonstrate outcomes from relocation or planning programmes.⁸⁶
78. Ongoing technical surveys⁸⁷ have substantially increased the knowledge on populations of spring annuals and have identified larger and more widespread populations across a broader range of habitats than was previously understood. This has significantly increased the area over which management interventions can be trialled.⁸⁸ A more extensive survey is planned for 2026, including areas of Ardour Station that have not previously been surveyed and is expected to further improve understanding of the distribution, abundance and spatial extent of spring annuals.
79. We submit that Matakanui Gold's effects management response for spring annuals represents an appropriate and legally defensible approach. Matakanui Gold proposes:
- (a) With the exception of an initial 2.7 hectare early disturbance area, delay mining of the majority of the CIT pit until it has been confirmed that spring annuals are either sufficiently present elsewhere or have been successfully propagated.⁸⁹ The CIT pit footprint contains the highest densities of spring annual habitat within the Project footprint, meaning that effects on these key

⁸⁴Memorandum from Heritage Properties Limited, 10 September 2026 at page 2

⁸⁵ Statement of Evidence of Dr Matt Baber, 17 April 2026 at [25].

⁸⁶ Statement of Evidence of Dr Robyn Simcock, 17 April 2026.

⁸⁷ RMA Ecology Ltd. October 2025. *Bendigo-Ophir Gold Project Vegetation Values Assessment* (Document B.13) included the results of the 2024 spring annuals survey and Walker S, Brownstein G, Simcock R, 2025. *Results of a survey of spring annual herb species on Bendigo and Ardour Stations, 2025 (updated)*. Bioeconomy Science Institute, Manaaki Whenua-Landcare Research Contract Report 2526-0088. 42pp. Prepared for Matakanui Gold Limited.

⁸⁸ Statement of Evidence of Dr Robyn Simcock, 17 April 2026.

⁸⁹ D.03, Schedule One, Common Conditions to the CODC and ORC Consents (28 August 2026) at C129.

populations cannot occur until the criteria in the conditions have been achieved.

- (b) To implement the Applied Research Programme (**ARP**) to guide the conservation management, rehabilitation and expansion of cushionfield ecosystems. The implementation of the ARP is intended to reduce uncertainty and provide updated research indicators for these species. Dr Simcock's expert opinion is that the 2025 spring annual survey, which identified substantially more populations of the species, has increased confidence in the feasibility of the ARP.⁹⁰
80. Dr Simcock has refined the success criteria for the rehabilitation of cushionfields in the ARP which is required to be implemented by the conditions⁹¹ in light of the 2025 survey results and included a suite of corrective actions and contingency triggers in the event the success criteria are not achieved.⁹² If spring annual success criteria in the ARP and conditions are not achieved, CIT pit will not be mined, avoiding effects on the highest densities of spring annuals in the Project area.
81. We submit that the proposal is founded on the best available knowledge, extensive expert assessment, and a comprehensive management framework. It adopts a precautionary and adaptive approach to managing ecological effects while recognising the current limitations of the scientific knowledge. The proposal represents an appropriate and proportionate response to a complex ecological issue.
82. Matakanui Gold's evidence acknowledges that residual effects on cushionfields are expected to be "*very high*".⁹³ While successful implementation of the ARP is expected to lessen the scale of residual effect it will not balance it entirely.⁹⁴ Matakanui Gold's commitment to delay mining the majority of CIT pit is an appropriate avoidance and minimisation measure as it will avoid direct effects on the most significant known population of spring annuals within the Site until it has been demonstrated that the species is present elsewhere or has been successfully propagated.
83. The requirement in conditions to delay mining of the majority of the CIT pit until the criteria on identification or propagation has been satisfied is legally valid and does not frustrate the grant of approvals. It is well established RMA case law that a condition that defers the opportunity for an applicant to embark on a consented activity is lawful and valid, even when the specified event is not wholly within the

⁹⁰ Statement of Evidence of Dr Robyn Simcock, 17 April 2026 at [31].

⁹¹ D.03 - Schedule One - Common Conditions to the CODC and ORC Consent at C123.

⁹² Response to RFI 11 Question 11.

⁹³ B.08 Alliance Ecology Consulting Assessment of Ecological Effects (10-03-2026).

⁹⁴ B.08 Alliance Ecology Consulting Assessment of Ecological Effects (10-03-2026).

control of the applicant.⁹⁵ Mining of the CIT pit is scheduled to occur towards the end of mine life to enable the ARP to be implemented.

84. We do not consider the evidence regarding residual effects on spring annuals justifies a decline of the approvals as has been suggested by other parties. The discretion to decline approvals arises only where adverse effects are sufficiently significant to be out of proportion to a project's benefits.⁹⁶ This requires a proportionality assessment of the extent of the Project's regional and national benefits weighed against its adverse effects. As recognised by the Southland Windfarm Panel, the more significant the benefits of a project, the more significant the adverse impacts must be before the discretion to decline can arise.⁹⁷
85. Having regard to the Project's substantial regional and national benefits we submit that the residual effects on spring annuals are not sufficiently significant to be out of proportion to those benefits. The FTA requires the Panel to undertake an evaluative judgment as to whether the residual impacts after the conditions and effects management measures are taken into account are out of proportion to the benefits. In our submission that threshold is not met here.

Spring Annual Compensation

86. If the success criteria in the ARP haven't been achieved at passive closure and are considered unlikely to be achieved by the Peer Review Panel and the Councils, MGL must:⁹⁸
 - (a) establish alternative rehabilitation objectives for areas where cushionfield rehabilitation has not been successful and rehabilitate the areas for an alternative vegetation type; and
 - (b) identify land that contains cushionfield habitat outside of the BOGP Consent Area and Ecological Rehabilitation and Enhancement Area and implement an appropriate legal mechanism to protect the cushionfield habitat in perpetuity.
87. Environmental Defence Society (**EDS**) states the following concerns with this condition:

⁹⁵ *Director-General of Conservation v Marlborough District Council* [2004] 3 NZLR 127 at [23] and *Westfield (NZ) Limited v Hamilton City Council* [2004] 10 ELRNZ 271 at [56].

⁹⁶ Fast-track Approvals Act 2024, Section 85(3)(b).

⁹⁷ *Record of Decision of the Expert Consenting Panel, Southland Windfarm, 9 March 2026* at [60].

⁹⁸ D.03 – Schedule One – Common Conditions to the CODC and ORC Consents at Condition C128.

- (a) It is uncertain because land has not been identified within scope of the proposal that is available for this purpose and has been assessed as suitable.
 - (b) It relies on future third party (landowner) agreement and may require regulatory approval.
88. We disagree with EDS's submission that the condition is invalid. We say the condition is within the scope of the application and does not require any further regulatory approvals to be implemented.
89. The condition forms part of a broader effects management package for spring annuals and serves an additional purpose as the final effects management response in the event the cushionfield rehabilitation is not successful. If the success criteria in the ARP are unable to be achieved by passive closure, Matakanui Gold remains legally obligated to identify land containing cushionfield habitat and secure its protection in perpetuity. The condition provides an enforceable backstop that further addresses residual effects and is an additional positive component of the overall effects management package.
90. In terms of scope, if these spring annual compensation actions were triggered, this would remain within the scope of the Project as they would not be a material change to character of effects beyond those assessed in the substantive application.
91. We disagree with EDS that the protection of habitat in perpetuity would require future regulatory approval. It is anticipated that permanent protection would be secured through a covenant that restricts future activities impacting the habitat. This can be registered independently of consenting processes and is not dependent on obtaining future regulatory approval.

Lizards

92. Matakanui Gold and their experts heard and carefully considered the evidence presented during the Panel hearing, including concerns expressed by the Panel about the feasibility and effectiveness of the large-scale salvage and relocation approach originally proposed.⁹⁹ As outlined in Matakanui Gold's response to RFI 11 the approach has been refined with the key elements being:
- (a) replacement of the Ardgour Sanctuary with the larger Battery Hill Sanctuary;
 - and

⁹⁹ Request for Information 11 Letter, Question 10 and [12 June 2026 and Ecology](#) Hearing Transcript, 12 June 2026.

- (b) focusing management actions on the targeted salvage and relocation of Kowarau Gecko and Southern Grass Skink as the species with the highest conservation significance.
93. The effects management approach now proposed will generate better outcomes for lizards than originally proposed as it:¹⁰⁰
- (a) provides a larger pest free sanctuary area overall;
 - (b) includes suitable habitat for relocated southern grass skink which was not provided for in the Ardour or Bendigo Sanctuaries; and
 - (c) proposes to release salvaged lizards into the predator free sanctuaries as opposed to the Ardour Restoration Area which is expected to improve the likelihood of survival.
94. The comments received from ORC and Kā Rūnaka also acknowledge that the effects management approach will result in better outcomes for the salvaged lizards than previously proposed.¹⁰¹ While the refined proposal will not materially reduce the magnitude of net loss with residual effects on lizards remaining high it does achieve better outcomes.¹⁰²
95. In terms of baseline, surveys involving approximately 620 in person hours searching for lizards identified three lizard species within the Site: the Southern Grass Skink, Kowarau Gecko, and McCann's Skink.
96. As stated earlier, it is not disputed that the Project will have residual effects on lizards. Matakanui Gold's ecological experts have assessed those effects on a conservative basis, assuming the complete loss of the lizard population within the Direct Disturbance Footprint (**DDF**) and no success from proposed salvage and relocation measures.
97. However, we submit that the expert ecological evidence does not support a conclusion that Project will result in the extinction or long-term loss of the species. The species identified on the Site have been consistently recorded in all surveyed locations in the wider landscape and population numbers outside of the Ecological Study Area are estimated to be hundreds of times greater than those within the DDF.¹⁰³ Dr Baber concludes that lizards will naturally recolonise the rehabilitated mine surface and will reach predevelopment abundance by year 35.¹⁰⁴ In the

¹⁰⁰ RFI 11 Response, Question 10.

¹⁰¹ Memorandum of Counsel for Otago Regional Council, 7 September 2026 at [14] and Statement of Evidence of Matthew Dale, 7 September 2026 at [14].

¹⁰² RFI 11 Response, Question 10.

¹⁰³ B.15A RMA Ecology Lizard Values Assessment.

¹⁰⁴ B.08 Alliance Ecology Consulting Assessment of Ecological Effects (10-03-2026).

predator free sanctuaries where mammalian predators are removed, Dr Baber expects lizard populations to increase threefold over the same period.¹⁰⁵

98. In our submission, reaching a pre-mining level of effect at a 35-year time is a valid and important matter for the Panel's consideration under the FTA framework when considering the overall impact on lizards.

Wildlife Act 1953

99. The Department of Conservation's (**DOC**) legal submissions on the RFI 11 response conclude that the approval sought under the Wildlife Act 1953 (**Wildlife Act**) and Matakanui Gold's updated lizard proposal put forward in response to RFI 11 does not avoid, minimise or remedy adverse impacts on lizards and is inconsistent with the purpose of the Wildlife Act.
100. We disagree with DOC's feedback on RFI 11 that the effects management approach for lizards fails to avoid, minimise or remedy effects on lizards.¹⁰⁶ Matakanui Gold has taken and proposes actions to avoid and minimise effects on lizards to the extent practicable by:¹⁰⁷
- (a) refining stockpile and infrastructure locations to minimise impacts on rocky outcrops that provide habitat for lizards;
 - (b) minimising the footprint of infrastructure and pit walls to minimise the extent of disturbance;
 - (c) salvaging lizards in high value habitat during warmer months when they are easier to detect and their chances of survival when relocated are highest; and
 - (d) relocating lizards to pest free sanctuaries.
101. The conditions secure the implementation of rehabilitation measures across all available areas within the DDF (approximately 480 hectares).¹⁰⁸ Particularly relevant remediation measures for lizards include:¹⁰⁹
- (a) creating at least one rocky outcrop/scattered rock complex per hectare of DDF to provide high value habitat for lizards and selected Threatened or At-Risk invertebrates; and

¹⁰⁵ B.08 Alliance Ecology Consulting Assessment of Ecological Effects (10-03-2026).

¹⁰⁶ Legal Submissions for Director-General of Conservation, 7 September 2026 at [28].

¹⁰⁷ B.08 Alliance Ecology Consulting Assessment of Ecological Effects (10-03-2026)

¹⁰⁸ D.03 - Schedule One - Common Conditions to the CODC and ORC Consents at C42, C72, C73 and C97

¹⁰⁹ B.08 Alliance Ecology Consulting Assessment of Ecological Effects (10-03-2026)

- (b) providing suitable lizard and invertebrate habitat by using plant species that are known to support Threatened and At-Risk invertebrates where this is feasible.
102. We agree with DOC that the purpose of the Wildlife Act is the protection of wild animals but do not agree that the effects management response fails to give effect to that purpose. While the Project cannot entirely avoid effects associated with the activity, the conditions require a coordinated package of measures directed at protecting lizards and improving habitat values to the greatest extent practicable. In that context, it cannot reasonably be characterised as failing to give effect to the protective purpose of the Wildlife Act.¹¹⁰
103. As outlined in our earlier legal submissions, the Wildlife (Authorisations) Amendment Act 2025 has amended the focus for authorities for incidental killing from the protection of individual animals to the protection of both individual and populations of wildlife.¹¹¹
104. When these factors are considered, we submit that the Wildlife Approval sought meets the test for approval in Schedule 7 of the FTA, which requires the greatest weight to be given to the purpose of the FTA.¹¹² The structure of Section 85 explicitly allows for residual adverse effects to remain provided they are not sufficiently significant to be out of proportion to the regional or national benefits of a project.¹¹³ As outlined in paragraph 97 above, Dr Baber's assessment concludes that lizards will naturally recolonise the rehabilitated mine surface and will reach predevelopment abundance by year 35.¹¹⁴
105. The proposed effects management approach represents an effects-based and proportionate response incorporating the measures that ecological experts consider achievable and effective, acknowledges that residual effects will remain, and strikes an appropriate balance between management those effects and the significant regional and national benefits of the Project.
106. In this context we submit that the residual effects are not so significant as to be out of proportion to the benefits of the Project.

¹¹⁰ D.03 - Schedule One - Common Conditions to the CODC and ORC Consents at C42.

¹¹¹ Wildlife (Authorisations) Amendment Act 2025, Section 3 and Wildlife Act 1953 Sections 53A – 53C.

¹¹² Fast-track Approvals Act 2024, Clause 5 Schedule 7.

¹¹³ Fast-track Approvals Act, Section 85(3).

¹¹⁴ B.08 Alliance Ecology Consulting Assessment of Ecological Effects (10-03-2026).

Biodiversity and Heritage Enhancement Fund - Lizards

107. DOC's legal submissions state there is no certainty that the Biodiversity and Heritage Enhancement Fund (**Fund**) will be spent on lizard related work.¹¹⁵
108. We disagree. The conditions explicitly record a purpose of the Fund as being to identify and fund projects and activities that will protect and enhance threatened or at risk species (including lizards) or ecosystems in the Dunstan Ecological District.¹¹⁶ The conditions require that the Annual Monitoring and Compliance Report must provide a summary identifying a description of the projects and/or activities that have been implemented by the Fund and the ecological and heritage benefits that have been achieved or are expected to be achieved.¹¹⁷
109. We submit the explicit reference in the conditions in addition to the reporting requirements provides certainty that Fund resources will be directed towards lizard related work. The High Court has held that when a decision maker imposes conditions it is entitled to assume that the applicant will comply with them, nothing could ever be approved if consent authorities had to work on the contrary assumption, that conditions wouldn't be complied with.¹¹⁸
110. Matakanui Gold have previously discussed with DOC the option of DOC, potentially in conjunction with Kā Rūnaka, assuming responsibility for managing the Fund and determining how the funds are spent. While this option has been raised and considered to date DOC has not agreed to this approach.

Scope of Battery Hill Sanctuary

111. Legal submissions from Sustainable Tarras have argued that replacing the Ardgour Sanctuary with the proposed Battery Hill Sanctuary is out of scope and the effects of the Battery Hill proposal haven't been assessed. We have previously provided legal submissions as part of the response to RFI 11 outlining why the Battery Hill Sanctuary falls within the scope of the substantive application.¹¹⁹
112. We do not repeat that advice here but reiterate our conclusion that the proposed Battery Hill Sanctuary falls within the scope of the substantive application and is within the Panel's jurisdiction to consider.
113. It has been confirmed by the Courts that amendments to consent applications may be made up until the closing of a hearing if they are within the scope defined by the

¹¹⁵ Legal Submissions for Director-General of Conservation, 7 September 2026 at [35].

¹¹⁶ D.03 – Schedule One – Common Conditions to the CODC and ORC Consents, at C135.

¹¹⁷ D.03 - Schedule One - Common Conditions to the CODC and ORC Consents at C14 and C135.

¹¹⁸ *88 The Strand Limited v Auckland City Council* [2002] NZRMA 475 at [19] and *Barry v Auckland City Council* [1975] 2NZLR 646 CA at [651].

¹¹⁹ Battery Hill Sanctuary - Scope Considerations, Lane Neave, 17 August 2026.

original application.¹²⁰ It must be considered whether the activity for which consent is sought, as ultimately proposed, is significantly different in its scope or ambit from than that originally applied for in terms of:¹²¹

- (a) whether the amended activity has a greater scale or intensity; or
- (b) has altered character or effects from what was originally applied for.

114. In the FTA context, consideration should also be given to whether additional parties would have been invited to comment under Section 53 if the activity as ultimately proposed had been put forward at the beginning.¹²²

115. The Supreme Court has also relevantly held that a party may amend its application during the course of a hearing, but it may not do so to an extent that the matter before it becomes in substance a different application.¹²³ For the reasons set out below we disagree with Sustainable Tarras' 7 September feedback that the proposed Battery Hill Sanctuary falls outside the scope of the substantive application:

- (a) The effects of the Battery Hill Sanctuary have been assessed as it is proposed within areas already subject to comprehensive ecological, landscape, heritage, and other technical assessments. It does not introduce a new activity or new category of effects but rather provides an alternative location for an effects management measure within the broader Project Site. Dr Woods confirms that the sanctuary footprint has been the subject of extensive heritage investigations over several decades and that the effects associated with the fence alignment fall within the scope of the existing heritage assessments.¹²⁴
- (b) It does not result in a material change to character or effects as the Battery Hill Sanctuary sits within the existing BOGP Consent Area and does not expand the Project's spatial footprint.
- (c) Expert ecologists consider it will deliver improved lizard outcomes while remaining within the assessed effects envelope resulting in a reduction in adverse effects generated by the Project.
- (d) It does not result in new activities or consent triggers beyond those included in the substantive application.

¹²⁰ *Darroch v Whangarei District Council* A018/93 1 March 1993.

¹²¹ *Atkins v Napier City Council* [2009] NZRMA 429 (HC).

¹²² *Atkins v Napier City Council* [2009] NZRMA 429 (HC).

¹²³ *Waitakere City Council v Estate Homes Limited* [2006] NZSC 112, [2007] NZLR 149 at [29].

¹²⁴ Response of Heritage Properties Limited, 10 September 2026.

- (e) No additional parties would have been invited to comment under Section 53 of the FTA had the Battery Hill Sanctuary formed part of the application at the time the Panel issued invitations to comment. While the Battery Hill Sanctuary is more visually prominent than the Ardgour Sanctuary, we submit that the visual effects are not materially greater as:
 - (i) it will be viewed entirely within the context of an active mining landscape and will not be perceived as an isolated feature; and
 - (ii) it will be located further away from potential viewers reducing its scale and prominence.
- (f) The Schedule 2 Project listing is broadly defined in terms of both activities and location. The Battery Hill Sanctuary is directly connected to the Project's establishment, operation and remediation and is within the geographic area identified in Schedule 2. The amendment is within of activities and geography contemplated by Schedule 2.

Inconsistency with Planning Documents

- 116. Comments received from the parties on 7 September 2026 raise aspects of the Project that are considered to be inconsistent with National planning documents.¹²⁵
- 117. With regards to ecological effects, extensive effort has been made to align the offsetting and compensation package with the principles and limits in the National Policy Statement for Indigenous Biodiversity (**NPS-IB**) and National Policy Statement for Freshwater Management (**NPS-FM**). While consistency with limits is not achievable for a small number of species and habitat, we submit this is not material to the application when applying the statutory tests in the FTA. In particular:
 - (a) Consideration of the NPS-IB and NPS-FM are relevant to the Panel's decision making under the FTA but an inability to meet bottom lines in the NPS-IB and NPS-FM policies does not preclude approval under the FTA.¹²⁶
 - (b) Decisions of earlier FTA Panels have determined there are no bottom lines of the kind applied in *King Salmon*.¹²⁷ This is because planning objectives and policies do not play as critical a role in relation to resource consent applications as they would under the RMA.

¹²⁵ Shay McDonald Planning Memorandum 7 September 2026, DOC feedback on conditions 7 September 2026.

¹²⁶ Fast-track Approvals Act 2024, Schedule 5 Clause 17(4).

¹²⁷ Waihi North, Ayrburn Screen Hub, Sunfield and Ryans Road.

118. We submit that inconsistency with planning documents is not determinative under the FTA. While planning instruments remain a relevant consideration, the FTA expressly requires the Panel to undertake a broader proportionality exercise that balances the purpose of the FTA, including the facilitation of infrastructure and development projects and their regional and national benefits, against any adverse effects. Accordingly, policies that might operate as "*bottom lines*" in an RMA context do not mandate refusal under the FTA, and inconsistency with particular policies must be assessed as part of the overall evaluative exercise rather than treated as decisive factors.

TAILINGS STORAGE FACILITY

Compliance with the Global Industry Standard on Tailings Management

119. Sustainable Tarras' comments in response to RFI 11 reference the report released by the Parliamentary Commissioner for the Environment (**PCE**) on 9 September 2026 on managing the environmental risks of mining (**PCE Report**).¹²⁸ The PCE Report addresses the Global Industry Standard on Tailings Management (**GISTM**) which has been a relevant consideration throughout the Panel proceeding and whether the TSF needs to comply with these.
120. This matter has been comprehensively addressed in the evidence on behalf of Matakanui Gold¹²⁹ which we submit provides the Panel with confidence that the TSF does not need to separately comply with GISTM as:
- (a) New Zealand's regulatory framework and in particular the New Zealand Dam Safety Guidelines (2024) which operate under the Building Act 2004 is comprehensive and in respect of key design parameters impose more conservative design criteria than the GISTM.¹³⁰ Matakanui Gold's evidence is that the New Zealand requirements covering the design, construction and post construction safety of dams are world class.¹³¹
 - (b) Unlike the GISTM which is a voluntary industry standard, the comprehensive requirements in the New Zealand regulatory framework are embedded in statute, enforceable and impose penalties for non-compliance.¹³²

¹²⁸ Sustainable Tarras Memorandum of Counsel, 7 September 2026 at [8].

¹²⁹ Statement of Evidence of Dr Trevor Matuschka, 17 April 2026 and Response to RFI 4 - Geology, Geotech and Engineering.

¹³⁰ RFI 4 - Geology, Geotech and Engineering at [103].

¹³¹ Statement of Evidence of Dr Trevor Matuschka, 17 April 2026 at [56].

¹³² Statement of Evidence of Dr Trevor Matuschka, 17 April 2026 at [16].

- (c) Matakanui Gold's experts have identified specific items in GISTM not already covered by New Zealand's regulatory framework and Matakanui Gold has voluntarily adopted these in the Tailings Management Plan or have addressed these criteria through evidence and technical assessment.¹³³
121. The PCE Report supports the evidence for Matakanui Gold that the TSF does not separately need to comply with GISTM. Relevantly the PCE Report identifies:
- (a) Global standards and frameworks offer valuable reference points however "*off the shelf*" adoption in New Zealand is unlikely to be sufficient. Effective integration in New Zealand requires tailoring the local geology, hydrology, climate and governance structures along with alignment with legislation and consent processes.¹³⁴
 - (b) Global standards and guidelines function best as supporting tools for regulators and industry, rather than standalone regulatory instruments, providing a benchmark for risk informed adaptive decision making throughout the mine life cycle.¹³⁵
122. The Panel can be confident that separate compliance with GISTM is not necessary. The evidence for Matakanui Gold is clear that the TSF will be subject to a comprehensive, mandatory and enforceable regulatory regime that in key respects exceeds GISTM requirements.
123. In our submission requiring separate compliance with GISTM would duplicate the existing regulatory requirements and would be unnecessarily onerous without delivering corresponding improvement in safety, environmental performance or risk management outcomes.

ARDGOUR RISE AND STATE HIGHWAY 8 INFRASTRUCTURE

124. CODC's legal response to RFI 11 notes that a section of Ardgour Rise traverses land administered by DOC. CODC's legal response states that while it understands progress has been made in relation to the concession required from DOC that CODC is not aware that a separate process required to legalise and vest the section of Ardgour Rise crossing DOC administered land in CODC has been agreed or resolved.¹³⁶

¹³³ RFI 4 - Geology, Geotech and Engineering at [107].

¹³⁴ Environmental risks Associated with Mining: Regulatory Frameworks and Key Risk Drivers, Okane 2026 at page 25.

¹³⁵ Environmental risks Associated with Mining: Regulatory Frameworks and Key Risk Drivers, Okane 2026 at page 25.

¹³⁶ Memorandum of Counsel for Central Otago District Council, 7 September 2026 at [12].

125. Minute 51 of the Expert Panel has identified DOC's feedback on the 28 August 2026 version of conditions relating the need for more time for the vesting processes (potentially including rights of first refusal) for:
- (a) vesting the portion of Ardgour Rise that traverses the Ardgour Conservation Area with CODC; and
 - (b) vesting the State Highway 8 (**SH8**) infrastructure upgrades with the New Zealand Transport Agency (**NZTA**).
126. We address that feedback, and the related matters raised in Minute 51 below.
127. The substantive application as lodged on 31 October 2025 sought concessions for Ardgour Rise and the SH8 upgrades for a duration of 30 years.¹³⁷
128. Since lodgement, there has been general support expressed for the vesting process.
- (a) DOC's Section 51 Report, dated March 2026, subsequently stated a preference for Ardgour Rise to be vested in CODC and the SH8 upgrades to be vested in NZTA, as the respective road controlling authorities.¹³⁸ The Section 51 Report identified that DOC's preferred approach was a short term easement to facilitate the activity in the short term and enable the necessary transfer to the road controlling authorities.¹³⁹
 - (b) In relation to CODC's role in that vesting process, and as set out in earlier legal submissions, a Deed as to Road Stopping and Alternative Route has been entered into between Matakanui Gold and CODC.¹⁴⁰ A key provision of the Deed is that as soon as the alternative route is ready for use by the public it will be subdivided and vested in the landowner (CODC) in the usual way.
129. In response to that feedback and support from DOC and CODC, in March 2026 Matakanui Gold reduced the term of the requested concession from 30 years to 5 years to enable the works, then vesting to take place.¹⁴¹
130. However, in response to DOC's feedback received on 7 September 2026 and the points subsequently raised in Minute 51, Matakanui Gold now seeks a 30-year concession term for Ardgour Rise and the SH8 upgrades as originally sought. While the vesting processing is still proposed, this extended concession term provides further assurance that public access to the Dunstan Mountains will be maintained,

¹³⁷ A.15 - Section 8 - Fast-Track Approvals Act 2024 Requirements at page 511.

¹³⁸ DOC Section 51(2)(a) Report - Concessions, 25-03-2026.

¹³⁹ DOC Section 51(2)(a) Report - Concessions, 25-03-2026 at Table 1.

¹⁴⁰ Legal Submissions on behalf of Matakanui Gold Limited, 17 April 2026 at [168].

¹⁴¹ Statement of Evidence of Mark Chrisp, Response to Comments, 17 April 2026, at [29] - [30].

and adequate time is provided to progress that vesting (and any rights of first refusal notice). If at the conclusion of this 30-year concession vesting had not taken place, a further concession would be required to be sought by the consent holder.

131. The proposed conditions provide certainty that a public access route to the Dunstan Mountains will be available and that a generous period of time is available to progress the proposed vesting including any potential rights of first refusal process. In the event a further concession is required from DOC after 30 years, that will be the responsibility of the consent holder to obtain to ensure the continued public access of Ardgour Rise as required by Condition 69.
132. In relation to the SH8 upgrades a 30-year concession duration as original sought provides similar comfort as to a suitable time period to progress the necessary vesting process. This vesting would likely be required with or without the Project given the existing inconsistencies between the current formed alignment of the road and the legal road reserve.
133. Lastly, in response to the legal submissions filed by CODC on whether the version 5 alignment plans form part of the Ardgour Rise proposal Matakanui Gold confirms that the version 5 plan set does form part of the proposal and is referenced in Condition 70.¹⁴²

SOCIAL IMPACT

134. The parties' comments on the RFI 11 response raise concerns that the Social Impact Assessment (**SIA**) and Addendum provided in Matakanui Gold's RFI 11 response is inadequate for the Panel to rely on.¹⁴³
135. The FTA requires that an assessment of effects addresses any effect on people in the neighbourhood and if relevant the wider community, including any social, economic or cultural effects.¹⁴⁴ The FTA does not prescribe a methodology on how these effects must be addressed or explicitly require a standalone social impact assessment.
136. While Matakanui Gold has provided the Panel with a standalone SIA and Addendum in its RFI 11 response, we reiterate our earlier submission that the Substantive Application comprehensively considered and addressed social effects through a suite of technical assessments rather than relying on a standalone document.

¹⁴² Memorandum of Counsel for Central Otago District Council, 7 September 2026 at [10].

¹⁴³ Statement of Suze Keith on behalf of Sustainable Tarras Canyon and TGR Response to Panel, Simon Gibbard and Nicola Mulvena - 2 September, Bruce and Sandra Calder, 9 September 2026.

¹⁴⁴ Fast-track Approvals Act 2024, Schedule 5 Clause 7(a).

137. The SIA Addendum provided in response to RFI 11 provides further assurance that the Panel has a robust evidential basis on which to assess the Project's social impacts. The Addendum confirms the conclusions reached in the earlier assessments that social effects have been appropriately identified, evaluated and can be effectively managed through the proposed management measures.¹⁴⁵
138. Matakanui Gold's pre lodgement community engagement is summarised in our Legal Overview filed with the Substantive Application.¹⁴⁶ This engagement is extensive has continued post lodgement with 83 engagement activities carried out between lodgement and June 2026, 70 community drop in sessions and 50 presentations to the community and business groups.¹⁴⁷ Beyond this engagement the Panel has received and heard social impact evidence through Section 53 comments, hearing presentations, expert evidence, and responses to RFIs. Collectively we submit this material provides the Panel with a detailed understanding of the social effects of the Project from both technical experts and affected community members and demonstrates that those effects have been comprehensively identified and assessed.
139. In our submission, the Panel has the information necessary to confidently assess the Project's social effects and the effectiveness of the proposed management measures.

Effects on Property Values

140. Parties' 7 September feedback raises concerns about the impact of the Project on property values.¹⁴⁸
141. Judicial authority is clear that financial effects on property values are not a relevant matter for decision making on a resource consent application.¹⁴⁹
142. The Environment Court has consistently treated claims of diminished property values with caution on the recognition that property value concerns are often approached from a subjective point of view¹⁵⁰, are speculative¹⁵¹ and of limited assistance to the decision maker.¹⁵²

¹⁴⁵ D.03 – Schedule One – Common Conditions to the CODC and ORC Consents Conditions C6 – C14, C29 – C34.

¹⁴⁶ Legal Overview, 31 October 2025 at [37] – [43].

¹⁴⁷ RFI 11 - Question 21b, c and 22 - Social - BOGP Social Impact Assessment Addendum (JAL, July 2026)

¹⁴⁸ Statement of Suze Keith on behalf of Sustainable Tarras, Dr. Claire Fletcher-Flinn and Professor Geoff Kearsley, Canyon and TGR Response to Panel, Bruce and Sandra Calder, Simon Gibbard and Nicola Mulvena.

¹⁴⁹ *North Canterbury Gas Ltd v Waimakariri District Council* EnvC A217/02; *Wilson v Dunedin City Council* [2011] NZEnvC 164; and *Tram Lease Ltd v Auckland Transport* [2015] NZEnvC 137 at [57]

¹⁵⁰ *Hudson v New Plymouth District Council* W/138/95, Environment Court Wellington.

¹⁵¹ *Tram Lease Ltd v Auckland Transport* [2015] NZEnvC 137 at [60].

¹⁵² *North Canterbury Gas Ltd v Waimakariri District Council* [2002] ELHNZ 464 at [86].

143. For these reasons the focus of previous Court decisions has been on the direct effects on the environment rather than any market response to those effects, recognising that property values are not always a reliable indicator of environmental impact.¹⁵³
144. Consistent with this judicial authority we submit that the Panel should place primary weight on the technical evidence before it on the nature and extent of the Project's effects, and the effectiveness of the proposed management measures.

Insurance

145. The legal submissions on behalf of Trevathan Family seek that the Trust holds specific named insurance policy in respect of their property.¹⁵⁴
146. In our submission the evidence before the Panel provides comfort that this is not required. The bonding experts agree that the risk component within the bond is sufficient to cover low probability, high consequence impacts.¹⁵⁵ The bonding experts further agreed that an appropriately calculated and annually reviewed bond, as is proposed by Matakanui Gold, will reflect the costs associated with all credible risks associated with failure of any element of the mine.¹⁵⁶
147. Should the regulators agree that post closure obligations can be transferred to the Trust,¹⁵⁷ the conditions require the Trust must take out reasonable insurance cover against relevant and insurable risks.¹⁵⁸
148. As discussed in the section on bonding below, the bond relates to the resource consent obligations it sits within and will continue to be held by the Councils as a separate financial assurance mechanism regardless of who owns the land or who holds the resource consents. This means the bond will remain in place until the Councils are satisfied it is appropriate to release it.¹⁵⁹ At the point the bond is released ongoing financial assurance of risk to property will continue to be provided through the funds provided by the Trust and the insurance policy that the Trust is required to hold.¹⁶⁰
149. We submit that at all times throughout mine life, including post closure, the proposed conditions provide a comprehensive framework for financial assurance that relevant risks are appropriately covered. In these circumstances a requirement for the Trust

¹⁵³ *Tram Lease Ltd v Auckland Transport* [2015] NZEnvC 137 at [58].

¹⁵⁴ Memorandum of Counsel on behalf of the Trevathan Family, 7 September 2026 at [16].

¹⁵⁵ Joint Witness Statement Bonds, 29 May 2026 at [45].

¹⁵⁶ Joint Witness Statement Bonds, 29 May 2026 at [23].

¹⁵⁷ D.03 Schedule One – Common Conditions to the CODC and ORC Consents at C153.

¹⁵⁸ D.03 Schedule One – Common Conditions to the CODC and ORC Consents at C152.

¹⁵⁹ D.03 Schedule One – Common Conditions to the CODC and ORC Consents at C150.

¹⁶⁰ D.03 Schedule One – Common Conditions to the CODC and ORC Consents at C152.

to hold separate named insurance policies for individual landowners is not necessary and would duplicate the obligations already existing in the conditions.

Compliance Reporting

150. As discussed in paragraph 119 above Sustainable Tarras' comments in response to RFI 11 reference the PCE Report.¹⁶¹
151. The PCE Report identifies that while information about environmental performance is a matter of public record in New Zealand an interested member of the public would need to submit a bespoke request in order to access this information. It is the view of the PCE that proactively making this sort of information available on a regular basis would help to foster accountability and public trust in the sector.¹⁶² The PCE Report identifies the consent conditions for the Waihi North project, which require the most recent compliance monitoring reports to be published on the consent holder's website, as an example of a measure that can foster accountability, transparency and public confidence in the monitoring and compliance regime.¹⁶³
152. The conditions proposed by Matakanui Gold include the requirement that management plans and the Annual Monitoring and Compliance Report must be made publicly available on Matakanui Gold's website.¹⁶⁴ This is consistent with the PCE's opinion that environmental performance information be proactively disclosed to promote transparency, accountability and public trust in mining activities.

Community Liaison Group

153. Sustainable Tarras' comments on the 28 August 2026 conditions sought a suite of amendments on the Community Liaison Group conditions. Matakanui Gold has considered the suggested amendments and accepted several of them. In some instances, these amendments were considered to be overly onerous and have not been accepted.¹⁶⁵
154. We submit this demonstrates Matakanui Gold's commitment to ensuring social impacts are appropriately addressed while also ensuring that the Community Liaison Group framework remains effective, practical and targeted to the effects being managed.

¹⁶¹ Sustainable Tarras Memorandum of Counsel, 7 September 2026 at [8].

¹⁶² Parliamentary Commissioner for the Environment, Managing the Environmental Risks of Mining, September 2026 at page 15.

¹⁶³ Parliamentary Commissioner for the Environment, Managing the Environmental Risks of Mining, September 2026 at page 15.

¹⁶⁴ D.03 - Schedule One - Common Conditions to the CODC and ORC Consents at C28.

¹⁶⁵ D.03 - Schedule One - Common Conditions to the CODC and ORC Resource Consents at C9.

BOND

155. The conditions establish an integrated framework under which the bond is the primary financial mechanism to provide assurance that sufficient funds are always available to the regulators throughout mine life in the event that Matakanui Gold cannot carry out its obligations.¹⁶⁶ In our submission this provides absolute certainty that the long term environmental obligations will be met with no risk of those costs falling on the regulators or the community.
156. Several commenters have addressed the bond in the 7 September 2026 feedback and Mr Lane provides a response to these comments.¹⁶⁷ We address the key legal points for the Panel's consideration below.
157. The purpose of the bond is to ensure that, at all times throughout the life of the Project, sufficient funds are available to the regulators to undertake any obligations required under the consent conditions should the regulators be required to do so.¹⁶⁸
158. As such the bond covers all closure and post closure activities required by the consent conditions. Importantly the amount of the bond is not affected by whether these activities are undertaken by Matakanui Gold, the Trust or any other party.¹⁶⁹ In particular, the following common CODC and ORC conditions require:¹⁷⁰
- (a) Condition 141 requires the bond to secure the completion of rehabilitation, active closure and ongoing post closure obligations until closure objectives Condition 137 are achieved.
 - (b) Condition 142 requires the bond to be in a form approved by the Councils.
 - (c) Condition 143 requires the bond to be registered on the relevant records of title.
 - (d) Condition 145 requires the annual bond calculation to take into account the Mine Closure Plan, remaining ecological outcomes, cultural obligations and the extent to which funds are held for the Trust.

¹⁶⁶ Malcom Lane Response to Supplementary Statements, 10 September 2026 at [3].

¹⁶⁷ Malcom Lane Response to Supplementary Statements, 10 September 2026

¹⁶⁸ Malcom Lane Response to Supplementary Statements, 10 September 2026 at page 1.

¹⁶⁹ Malcom Lane Response to Supplementary Statements, 10 September 2026 at page 2.

¹⁷⁰ D.03 Schedule One – Common Conditions to the CODC and ORC Consents C141 – C145.

- (e) Condition 150 requires that the Council must only release the remaining bond when:
 - (i) the objectives and outcomes in the Mine Closure Plan have been completed and/or achieved; and
 - (ii) the Trust has been established in accordance with Condition 152.
159. Importantly as Mr Lane explains the bond is not a fixed sum that can be determined in advance of approvals being granted. It is subject to an annual review and recalculation throughout the life of the Project, the resource consents and if required beyond the expiry of the resource consents.¹⁷¹ The key test that will be addressed by each annual bond recalculation is what would it cost a third party at that point in time to close and rehabilitate the Site in accordance with the current Mine Closure Plan.
160. The Mine Closure Plan must be updated every three years¹⁷² which ensures that the bond is an accurate reflection of the costs of closure and rehabilitation. This provides comfort that at all times bond reflects the likely cost that would be incurred by a third party to undertake all required closure and post closure activities.
161. This is a standard and tested approach that has been applied to mining projects in New Zealand since 1999.¹⁷³ The bond conditions proposed by Matakanui Gold have been developed consistently with that established framework and are considered appropriate and effective by Mr Lane who considers their suitability is demonstrated by 27 years of practical application across the New Zealand mining sector since the modern approach to mine bonding was first introduced.¹⁷⁴

MATAKINUI TRUST

162. With approval from the regulators,¹⁷⁵ the Trust is the proposed long-term mechanism to become responsible for the Land and Project's environmental obligations once mine closure criteria is achieved.
163. Prior to the expiry of the consents the conditions require that Matakanui Gold must transfer the land identified in Condition 155 to the Trust.¹⁷⁶

¹⁷¹ D.03 Schedule One – Common Conditions to the CODC and ORC Consents at C145.

¹⁷² D.03 Schedule One – Common Conditions to the CODC and ORC Consents at C136.

¹⁷³ Statement of Evidence of Malcom Lane, 17 April 2026 at [20].

¹⁷⁴ Statement of Evidence of Malcom Lane, 17 April 2026 at [25].

¹⁷⁵ D.03 Schedule One – Common Conditions to the CODC and ORC Consents at C153.

¹⁷⁶ D.03 Schedule One – Common Conditions to the CODC and ORC Consents at C153.

164. Approval from the regulators is required before any obligations are transferred to the Trust.¹⁷⁷
165. The functions and responsibilities of the Trust are set out in Condition 152 of the common CODC and ORC conditions and broadly require:
- (a) monitoring and maintaining the TSF and ELF's;
 - (b) maintaining pest control programmes;
 - (c) maintaining predator sanctuaries;
 - (d) maintaining ecological outcomes achieved under the rehabilitation and restoration plans;
 - (e) maintaining public access;
 - (f) carrying out cultural monitoring and reporting; and
 - (g) managing cultural outcomes.
166. Condition 152 of the common CODC and ORC requires that Matakanui Gold must establish the Trust at Year 6 of gold production and accumulating funds. This is achieved by Matakanui Gold making annual payments of \$5 million until a maximum of \$50 million is held by the Trust.¹⁷⁸
167. The feedback provided by parties on 7 September has largely focused on this \$50 million fund that is proposed for the Trust. The proposed \$50 million funding commitment has been volunteered to provide the Panel and community with a high degree of certainty that, upon any transfer of responsibility, the Trust will have an immediate and substantial pool of funds available to commence its functions. However, this figure should not be viewed in isolation and is only one component of the broader post bonding closure mechanism which we discuss below.
168. As outlined at paragraph 164 above any transfer of land and resource consents to the Trust can only occur with the written approval of CODC, ORC and DOC and any transfer to the Trust is ultimately the decision of the regulators.¹⁷⁹
169. The feedback received on 7 September 2026 suggests that the funding for the Trust is capped at \$50 million. This is not the case.

¹⁷⁷ D.03 Schedule One – Common Conditions to the CODC and ORC Consents at C153.

¹⁷⁸ D.03 Schedule One – Common Conditions to the CODC and ORC Consents at C157.

¹⁷⁹ D.03 Schedule One – Common Conditions to the CODC and ORC Consents at C153.

170. Should the regulators approve the transfer and if at the time the transfer happens the annual bond calculation¹⁸⁰ shows the cost of post closure obligations are more than the \$50 million held by the Trust, Condition 157(b) is clear that Matakanui Gold must provide additional funding to the Trust to meet the shortfall.
171. If the regulators do not approve the transfer the post closure obligations remain with Matakanui Gold. These would already be captured by the bond quantum held by the Councils.
172. As such, the Trust is a separate and distinct mechanism to the bond. However, there are interactions between the two mechanisms.
173. The bond (which follows the resource consent obligations it sits within) will continue to be held by the Councils as a separate financial assurance mechanism regardless of who owns the land and who holds the resource consents. The interrelationship is due to each annual bond calculation taking into account the extent of funds held by the Trust¹⁸¹ ensuring that an adequate level of financial assurance is held at all times.
174. Condition 150 requires that the bond can only be released when the Councils are satisfied that:
- (a) the objectives and outcomes in the Mine Closure Plan have been completed and/or achieved; and
 - (b) the Trust has been established.
175. In summary therefore, at all times, the regulators retain control through the bond requirements and any approval required for the transfer of obligations to the Trust, ensuring that post-closure obligations remain appropriately funded.
176. The approach of establishing a trust to monitor and maintain a rehabilitated mine site in perpetuity is not novel. OceanaGold's Martha Trust at Waihi North is an example of the same approach. The PCE Report explicitly identified the existing practice at Waihi North where a trust has been established and tasked with monitoring and managing the site in perpetuity (funded through an endowment from the mining company), as offering a practical way forward for post closure stewardship and managing residual environmental risks after closure.¹⁸²

¹⁸⁰ D.03 Schedule One – Common Conditions to the CODC and ORC Consents at C23.

¹⁸¹ D.03 Schedule One – Common Conditions to the CODC and ORC Consents at C145(f).

¹⁸² Parliamentary Commissioner for the Environment, Managing the Environmental Risks of Mining, September 2026 at page 15.

177. We submit that the Panel can have confidence in the robustness of Matakanui Gold's Trust proposal. The proposed framework ensures that post closure obligations will remain appropriately funded and that at all times the Councils retain financial assurance to secure the delivery of those obligations.

Parties Comments

178. EDS submits that Condition 157 is invalid and uncertain because it relies on the assurance of Matakanui Gold to provide any funding shortfall identified at the time responsibility for the Site and associated obligations is transferred to the Trust.
179. We disagree. Condition 157 imposes a clear, certain and enforceable obligation that the Trust must be adequately funded before any post closure responsibilities are transferred to it. The condition expressly contemplates that the funding required at the time of transfer will be informed by the then current bond calculation, which will reflect the current costs associated with the obligations and is subject to regulatory review and approval. The obligations triggering that funding shortfall would already be captured in the calculations for the bond.
180. The condition establishes a clear and enforceable requirement that if there is an identified shortfall between the \$50 million accumulated in the Trust and bond calculation, that Matakanui Gold must provide additional funding to address the shortfall.
181. Any funding shortfall identified at the time of approved transfer is not a new or uncaptured liability. The shortfall would be the difference between the amount already held by the Trust and the amount required under the then-current bond calculation. That required amount would have already been identified by the annual bond review calculation and would be secured by the bond held by the Councils.¹⁸³
182. This is because the costs reflected in the bond calculation are already incorporated into the bond held by the Councils.¹⁸⁴ As a result, the obligation to address any shortfall is tied to an amount that has already been identified through the financial assurance framework and secured through the bonding regime.
183. The amount of any additional funding is not left to discretion but is determined through the annual bond calculation and review process, which is subject to regulatory oversight and approval. Given this we submit that Condition 157 provides a clear, objective, and enforceable framework that ensures the Trust will be adequately funded to meet its post closure obligations prior to any transfer of responsibility.

¹⁸³ D.03 Schedule One – Common Conditions to the CODC and ORC Consents at C145(f).

¹⁸⁴ D.03 Schedule One – Common Conditions to the CODC and ORC Consents at C145(f).

PARTIAL REVOCATION OF THE CONSERVATION COVENANT

Legal Test

184. The Bendigo Conservation Covenant (**BCC**) covers approximately 7,963 hectares in the Dunstan Mountains. Matakanui Gold seeks partial revocation of the BCC over 804 hectares of that total area (approximately 11.5% of the total BCC). Of the 804 hectares sought to be revoked approximately 252 hectares will be impacted by mining operations with the remaining area part of the ecological restoration and habitat enhancement areas.¹⁸⁵ Evidence on behalf of Matakanui Gold concludes that the land within the BCC was considered, at the time it was established, to be of lower significance than the areas that were transferred into the public conservation estate.¹⁸⁶
185. DOC emphasises the Panel's ability to set conditions relating to the land use on the amendment or revocation of a conservation covenant.¹⁸⁷
186. The statutory test that must be applied by the Panel is set out in Clause 45 of Schedule 6 and requires the Panel to take the following into account, giving the greatest weight to (a):¹⁸⁸
- (a) the purpose of the FTA;
 - (b) the purpose of the BCC and the conservation values of the land concern; and
 - (c) whether the amendment or revocation will comprise the values of regional, national or international significance.
187. We agree with DOC that the Panel may then set conditions including:¹⁸⁹
- (a) in the case of a revocation of a covenant, the protection by the applicant of equivalent land outside the area of the covenant; or
 - (b) in the case of a variation, the carrying out by the applicant of works to enhance conservation values on land remaining within the covenant.
188. Technical assessments prepared for Matakanui Gold have comprehensively assessed the overarching objectives of the BCC and acknowledge they are

¹⁸⁵ Supplementary Evidence of David Norton, Ian Boothroyd and Rhys Girvan, 12 August 2026 at [10].

¹⁸⁶ Supplementary Evidence of Emeritus Professor David Norton, Ian Boothroyd and Rhys Girvan, 12 August 2026.

¹⁸⁷ Legal Submissions for Director-General of Conservation, 7 September 2026.

¹⁸⁸ Fast-track Approvals Act 2024, Schedule 6 Clause 45.

¹⁸⁹ Fast-track Approvals Act 2024, Schedule 6 Clause 46.

significant.¹⁹⁰ The technical assessments have considered the values in the context of the wider BCC and conclude that that there will be some unavoidable localised loss of values but that the overall representativeness and function of the BCC will be maintained.¹⁹¹

189. Relevantly, the objectives of the BCC are:

- (a) Protecting and enhancing the natural character of the land with particular regard to the natural functioning of ecosystems and to the native flora and fauna in their diverse communities and dynamic inter relationships with their earth substrate and water courses and the atmosphere.
- (b) Protecting the land as an area representative of a significant part of the ecological character of the Dunstan Ecological District referred to in the draft survey report for the Protected Natural Areas Programme for the Lindis, Pisa and Dunstan Ecological Districts.
- (c) Maintaining the landscape values of the land as referred to in the “*Application for exchange of property rights*” submitted to the Commissioner of Crown Lands.
- (d) Maintaining the historic values of the land as referred to in “*The rich fields of Bendigo*” by Jill Hamel February 1993.

190. Overall, we submit that when considered against both the scale of the original BCC landholding, and the conditions of consent which secure delivery of the proposed mitigation, offsetting, and compensation measures, the values sought to be protected by the BCC will not be compromised in the context of the overall wider area and the BCC objectives will continue to be reflected across this area.

Values of Regional, National or International Significance

191. In response to RFI 11 experts on behalf of Matakanui Gold have concluded that the partial revocation of the BCC will not compromise landscape, heritage or freshwater values of regional, national or international significance.¹⁹² With the exception of spring annuals Professor Norton concludes that the Project will not affect terrestrial ecological values across the remainder of the BCC which are regionally significant.

¹⁹⁰ Supplementary Evidence of Rhys Girvan, 17 July 2026, Supplementary Evidence of Emeritus Professor David Norton, Ian Boothroyd and Rhys Girvan, 12 August 2026, Statement of Evidence of Emeritus Professor David Norton, 17 April 2026, Statement of Evidence of Noami Woods, 17 April 2026.

¹⁹¹ Legal Submissions on behalf of Matakanui Gold Limited, 17 April 2026 at [129].

¹⁹² Supplementary Evidence of Emeritus Professor David Norton, Ian Boothroyd and Rhys Girvan, 12 August 2026.

192. Having regard to the Project's substantial regional and national benefits, we submit that the effects on the values of spring annuals arising from the partial revocation of the BCC are not sufficiently significant to be out of proportion to those benefits.
193. The effects management measures proposed are intended to avoid, minimise and mitigate impacts on spring annuals and may reduce the extent and significance of effects that are anticipated. In our submission when those measures are considered, remaining impacts are not sufficiently significant to be out of proportion to the Project's benefits.
194. Applying the relevant statutory weighting test in Clause 45 of Schedule 6, we submit that the proposed partial revocation of the BCC can be appropriately granted by the Panel as:
- (a) The partial revocation is required to facilitate the delivery of the Project. This limb of the statutory weighting test must be given the greatest weight by the Panel.
 - (b) The conditions ensure that effects on the most significant spring annual populations within the CIT pit footprint cannot occur until further populations have been identified.
 - (c) The evidence demonstrates that spring annual populations are more extensive and widespread than previously understood, with further survey work expected to improve that understanding. As a result, the proportion of the overall known population affected by the revocation may ultimately be smaller than currently anticipated.
 - (d) The residual effects after the implementation of the effects management measures which will be secured through a new covenant covering a substantially larger area, are not sufficiently significant to be out of proportion to the benefits of the Project.

Conditions Regarding the Conservation Covenant

195. Clause 46(2) of Schedule 6 provides the Panel with discretion to set conditions on the amendment or revocation of a conservation covenant under the FTA. The comments by DOC raise concern that Matakanui Gold:
- (a) Have not identified any conditions relating to the use of land which might be imposed on the revocation of the BCC.¹⁹³

¹⁹³ Legal Submissions for Director-General of Conservation, 7 September 2026 at [45].

- (b) The Fund and maintenance of public access to the Bendigo Conservation Area conditions are offered on an Augier basis.¹⁹⁴

196. We address those two points below.

Use of Land Conditions

197. We disagree that Matakanui Gold has not offered conditions relating to the use of land which are relevant to the revocation of the BCC. To the contrary, we submit that the proposed revocation is accompanied by a suite of conditions and obligations that not only replace the protections currently provided by the BCC but also require more extensive actions to be undertaken to maintain the land. These proposed conditions are enforceable by the Councils and address DOC's concerns that if conditions on the partial revocation of the BCC are imposed outside of resource consents there will be no compliance framework.¹⁹⁵

198. The conditions require the following actions to be undertaken:

- (a) Ecological rehabilitation must be undertaken across approximately 2,219 hectares.¹⁹⁶ The rehabilitation measures are secured by a comprehensive framework of objectives, goals, performance criteria and measurable targets against which success must be demonstrated. These requirements are secured within enforceable consent conditions and management plans that must be certified by the regulators.
- (b) Before mining operations cease Matakanui Gold must register covenants providing legal protection in perpetuity over the ecological rehabilitation areas.¹⁹⁷ The covenants must specify the environmental outcomes set out in Condition 134 and relevantly include:
 - (i) the ongoing maintenance of the landscape and ecological values including the enhanced state of some of those values as a result of the implementation of conditions;
 - (ii) monitoring and maintenance of residual structures including the TSF, ELF's and water treatment systems to ensure they remain in a stable rehabilitated state;
 - (iii) exclusion of domestic livestock except where beneficial for ecological values;

¹⁹⁴ Legal Submissions for Director-General of Conservation, 7 September 2026 at [45] – [46].

¹⁹⁵ Legal Submissions for Director-General of Conservation, 7 September 2026 at [44].

¹⁹⁶ D.03 – Schedule One – Common Conditions to the CODC and ORC Consents, Condition C130.

¹⁹⁷ D.03 – Schedule One – Common Conditions to the CODC and ORC Consents, Condition C134.

- (iv) protection of archaeological sites and heritage landscape;
 - (v) outcomes of the Cultural Health Programme; and
 - (vi) public access as shown on the Landscape Closure Plan.
- (c) Matakanui Gold must provide annual funding of \$1,000,000 (excl GST) for a maximum of 10 years for the Biodiversity and Heritage Enhancement Committee to undertake activities that:¹⁹⁸
- (i) enhance heritage values within Central Otago outside of the Project Site;
 - (ii) fund projects and activities that will protect and enhance threatened or at-risk species or ecosystems outside the Project Site within the Dunstan Ecological District.
199. The proposed covenant will cover the vast majority of the area of the BCC to be revoked, together with more than 1,200 hectares of additional land, resulting in a significantly larger protected area overall.¹⁹⁹ The proposed covenant is not limited to preserving the status quo and requires specified environmental outcomes to be achieved and imposes ongoing active management obligations on the covenantor.
200. This should be contrasted with the BCC which largely prevents acts on the land and requires the control of rabbits, vermin and gorse as far as practicable. In our submission the proposed covenant protects a significantly larger area, requires active management and the achievement of defined outcomes with clear objectives and success criteria.
201. In these circumstances we submit that the Panel does not need to exercise its discretion to impose additional conditions relating to the use of land which are relevant to the revocation of the BCC. This proposed revocation is already accompanied by a suite of legally enforceable consent conditions and covenant obligations. Imposing additional conditions would be overly onerous as the proposed conditions already provide a comprehensive and proportionate response to the effects on the revocation of the BCC. We submit that imposing further conditions would be more onerous what is reasonably necessary to address the effects of the revocation of the BCC and would duplicate obligations already secured through the conditions.²⁰⁰

¹⁹⁸ D.03 – Schedule One – Common Conditions to the CODC and ORC Consents, Condition C135.

¹⁹⁹ Statement of Evidence of Mark Chrisp, 17 April 2026 at [45].

²⁰⁰ Fast-track Approvals Act 2024, Section 83.

Augier Conditions

202. DOC's legal submissions identify that Matakanui Gold has offered the Fund and maintenance of public access to the Bendigo Conservation Area conditions are on an *Augier* basis.²⁰¹ DOC's concern with this is:
- (a) By offering the conditions on an *Augier* basis Matakanui Gold is implying these conditions are not directly connected to an adverse effect of the activity on the environment which can be addressed as a condition of the resource consents.
203. It is not disputed that Matakanui Gold is expressly offering conditions on an *Augier* basis. An *Augier* condition is one that is volunteered by an applicant that would otherwise be *ultra vires* for a decision maker to impose. *Augier* conditions are a commonly used and the legal basis for them is settled law. The Environment Court 2023 Practice Note expressly recognises the use of *Augier* conditions and requires that conditions offered on that basis be explicitly recorded as such in the conditions themselves.²⁰²
204. We disagree with DOC that by volunteering the condition on an *Augier* basis Matakanui Gold is implying the condition is not directly connected to an adverse effect.
205. *Augier* conditions can lawfully be treated as addressing the effects a proposal. The Homestead Bay FTA decision treated an *Augier* condition relating to the donation of housing to a housing trust as a positive effect of the Project. In the RMA context the Environment Court in *Meridian Energy Limited v Canterbury Regional Council*²⁰³ accepted a compensation package offered on an *Augier* basis as contributing to the management of the projects effects. Ultimately the Court in *Meridian* found that when considered alongside the other proposed conditions, the compensation package formed part of a comprehensive framework for addressing and managing the effects of Meridian's project.
206. We submit that treating *Augier* conditions as positive effects or benefits of a project is consistent with the purpose and decision-making framework of the FTA.
207. The Fund is proposed in addition to Matakanui Gold's offsetting and compensation package and is an additional positive effect of the Project. It will provide annual funding of \$1,000,000 (excl GST) for each year of gold production for up to 10 years

²⁰¹ Legal Submissions for Director-General of Conservation, 7 September 2026 at [45] – [46].

²⁰² Environment Court Practice Note 2023 at 10.4(e)(xi).

²⁰³ *Meridian Energy Limited v Canterbury Regional Council* [2026] NZEnvC 140.

to support the protection of threatened or at risk species or ecosystems within the Dunstan Ecological District and to enhance heritage values within Central Otago.

VALIDITY OF CONDITIONS

208. The legal submissions of EDS argue that particular conditions proposed by Matakanui Gold are not legally valid. EDS considers that various conditions are invalid on the basis that they are:²⁰⁴
- (a) uncertain and as such can't be relied on by the Panel in its Section 85(3) assessment;
 - (b) rely on future third party agreement;
 - (c) require regulatory approvals; or
 - (d) do not meet the requirements for adaptive management.
209. There is a substantial volume of case law which addresses the validity of conditions. The leading case in this regard is *Newbury District Council v Secretary of State for the Environment*²⁰⁵ which establishes that conditions must:
- (a) be for a resource management purpose not an ulterior one;
 - (b) fairly and reasonably relate to the consented development; and
 - (c) not be so unreasonable that a reasonable planning authority could not have approved it.
210. These principles have been consistently applied in Panel decisions under the FTA.²⁰⁶ Matakanui Gold has carefully considered these legal principles in the development of its proposed conditions, and it is submitted that these tests are met by the conditions dated 14 September 2026.
211. We have provided a response to EDS' submissions on why particular conditions are not considered valid at paragraphs 87 – 91 above.

²⁰⁴ Memorandum of Counsel for Environmental Defence Society Inc, 8 September 2026.

²⁰⁵ *Newbury District Council v Secretary of State for the Environment* [1980] 1 ALL ER 731.

²⁰⁶ Green Steel, Drury Metro, Takatimu North Link, Mahinerangi Wind Farm, Sunfield, Ryans Road Industrial, Kings Quarry, Ashbourne, Downtown Carpark, Tekapo Power Scheme, Lake Pukaki Hydro, Haldon Solar, Hananui Aquaculture, Arataki, Maitahi Village, Point Mission Bay, Waitakere District Court, Homestead Bay.

Section 83

212. The Panel's discretion to set conditions²⁰⁷ under the FTA is limited by the directive in Section 83 that conditions must not be more onerous than necessary.²⁰⁸
213. The FTA represents a deliberate departure from the approach taken under the RMA. In determining appropriate the conditions, the Panel is required to determine:²⁰⁹
- (a) whether a particular condition is legally available with reference to the established RMA tests; and
 - (b) whether the condition represents the least onerous and the most appropriate mechanism for addressing the relevant adverse effects while still giving effect to the purpose of the FTA.
214. We submit that the conditions filed by Matakanui Gold on 14 September 2026 satisfy the requirements set out above. Where Matakanui Gold has not agreed to a condition proposed by other parties (and has therefore not included it in the 14 September 2026 condition set) it is because Matakanui Gold considers the condition to be overly onerous and disproportionate to the effects being addressed or otherwise inconsistent with the purpose of the FTA.
215. Our response to particular feedback on conditions is provided below.

Noise Measurement Locations

216. CODC's feedback on the 28 August 2026 conditions is that noise limits prescribed in the conditions should apply to any future dwellings built near the Project site. Matakanui Gold's position is that the operational noise limit proposed in the conditions should apply to any existing dwelling that exists at the commencement date of the consents.

²⁰⁷ Fast-track Approvals Act 2024, Schedule 5 Clause 17, Schedule 7 Clause 5, Schedule 6 Clause 7, Schedule 8 Clause 4 and Schedule 11 Clause 7.

²⁰⁸ Fast-track Approvals Act 2024, Section 83.

²⁰⁹ Record of Decision of the Expert Consenting Panel, Pound Road Industrial Development, 1 May 2026 at [201].

217. It is well established that environment to be considered for resource consent matters is the “*legal receiving environment*”. The legal receiving environment includes:²¹⁰

- (a) the Project Site and the surrounding area both as it exists including any permitted and consented activities being conducted; and
- (b) as it could potentially exist in the future, including:
 - (i) modification by permitted activities; and
 - (ii) unimplemented resource consents that are likely to be implemented.

(Hawthorn)

218. The Hawthorn line of case law has recently been considered by the Environment Court who held that the case law developed post Hawthorn collectively supports the view that a real world analysis of the future environment is required.²¹¹ The Court held that to do otherwise would be nonsensical and it cannot be the case that an applicant is required to consider every possible future activity in the receiving environment.²¹²

219. In our submission extending the requirement to comply with the noise limits to any dwelling that may be built in the future is overly onerous as it creates an uncertain compliance obligation, goes beyond the District Plan requirement to comply with the applicable noise limit at the boundary of any dwelling²¹³ and considers effects outside legal receiving environment.

220. Under CODC’s proposal third-party decisions regarding the location of future dwellings could progressively increase the constraints on an established mining operation, notwithstanding that the activities remain unchanged. This would give rise to inappropriate reverse sensitivity effects by exposing Matakanui Gold, as an existing and lawfully established land use, to increasing operational restrictions, complaints, and potential legal challenge from subsequently established sensitive activities.

221. CODC’s concern is directed at the potential effects of the Project on possible future activities. In our submission that is not a matter relevant to the Panel’s assessment of the Project which is concerned with the effects of the Project on the receiving environment as it currently exists, including activities that are lawfully established or

²¹⁰ Hawthorn Estates v Queenstown Lakes District Council [2006] NZRMA 424 at [84].

²¹¹ Meridian Energy Ltd v Tararua District Council [2025] NZEnvC 44 at [59] – [60].

²¹² Meridian Energy Ltd v Tararua District Council [2025] NZEnvC 44 at [60].

²¹³ Central Otago District Plan, Rule 4.7.6E.

can be undertaken as of right. Potential effects on future activities that have not been consented, and which cannot be undertaken as of right,²¹⁴ do not form part of the receiving environment.²¹⁵

222. As set out by the Court of Appeal in *Dye v Auckland Regional Council*:²¹⁶

[42]... As with gateway (a), we consider para (a) of s104(1) is concerned with the impact of the particular activity on the environment. It is not concerned with the effect which allowing the activity might have on the fate of subsequent applications for resource consents....

223. The Court of Appeal in *Dye* went on to hold that there is no obligation for consent authorities to consider what other parties may seek to do in the future in unspecified places and ways when considering whether or not to grant a consent.²¹⁷

224. It would be overly onerous to require Matakanui Gold to comply with noise limits at dwellings that are neither consented or constructed at the time the Panel is setting conditions and do not form part of the receiving environment which effects of a proposal must be assessed against.

225. The operational noise conditions appropriately manage the operational noise effects of the Project and are supported by expert acoustic assessment.²¹⁸ The evidence concludes that the condition limits comply with the District Plan limits and will appropriately address the Project's operational noise. As such we submit that the effects have been appropriately addressed through the proposed condition framework, and there is no evidential basis for imposing additional or more restrictive noise limits for dwellings that are not within the legal receiving environment for assessing effects. Such requirements would be unnecessarily onerous and disproportionate to the effects identified.

Land Use Consent Term and Water Permit Duration

226. CODC's feedback on the 28 August 2026 conditions states that all mining activities authorised by the land use consent until the active closure phase be subject to a 16 year consent term.²¹⁹ Matakanui Gold seeks an unlimited term for its land use consents as provided for by the RMA.

²¹⁴ Thomson Gorge Road is included in the Rural Resource Area zone where residential activity (and a residential building platform) requires a restricted discretionary activity resource consent under Rule 4.7.3(vii).

²¹⁵ *West Coast Environmental Network Inc v West Coast Regional Council* [2013] NZEnvC 42 at [49], *Queenstown Lakes District Council v Hawthorn Estate Limited* CA45/05 12 June 2006 at [53].

²¹⁶ *Dye v Auckland Regional Council* CA86/01 26 July 2001

²¹⁷ *Dye v Auckland Regional Council* CA86/01 26 July 2001 at [49].

²¹⁸ D.01 CODC Land Use Consent and Conditions (28 August 2026) Condition C13 and Statement of Evidence of Jon Farren, 17 April 2026.

²¹⁹ Comprised of approximately two year site establishment/construction period and an approximately 14 year gold production period.

227. EDS consider that the duration of the permit to take groundwater should not extend beyond mine operations.²²⁰ Matakanui Gold seeks a water permit duration of 35 years to ensure the permit aligns with the duration of other approvals sought.

Response to Central Otago District Council

228. A duration cap on the land use duration is unnecessarily onerous as it arbitrarily constrains the duration of the consents without any clear effects-based justification. The practical consequence of a limited duration is that if Matakanui Gold requires additional time beyond the 16 years, even for a short period as a result of unforeseen delays, it would be required to undertake a further consenting process despite the underlying effects of the Project remaining unchanged. Such an outcome would create unnecessary cost, delay and regulatory uncertainty. It could also interrupt or risk the continuation of the Project and the delivery of its associated benefits while a further consenting process is undertaken despite there being no change to the underlying effects.

Response to Environmental Defence Society

229. With regard to the ground water take, water is required beyond active mining operations to support the rehabilitation of mined areas and the implementation of long-term ecological restoration and enhancement measures.²²¹ Imposing an arbitrary duration limit on the water permits risks undermining the successful completion of these environmental outcomes, despite the fact that the associated effects of water use would remain unchanged and subject to existing consent controls.
230. In our submission, there is no effects-based justification for imposing a 16-year term on the land use consent or limiting the duration of the water permit to the period of active mining operations. This would not address any identified adverse effect and would instead impose a significant and unnecessary constraint on the Project, contrary to the facilitative purpose of the FTA.
231. The technical evidence demonstrates that the Project's effects can be appropriately managed through the proposed consent conditions with the duration of the consent having no bearing on the effectiveness of those measures.

²²⁰ Memorandum of Counsel for Environmental Defence Society Inc, 8 September 2026 at [6].

²²¹ D.02 - Otago Regional Council Consents and Conditions at page 12.

PROPORTIONALITY ASSESSMENT – SECTION 85(3)

232. The proportionality assessment in Section 85(3) is a key legal consideration for the Panel. As the Panel is aware, Section 85(3) provides for a discretion to decline an approval if it concludes that:
- (a) there are one or more adverse impacts associated with a project; and
 - (b) those adverse impacts are sufficiently significant to be out of proportion to a project's regional or national benefits, even after accounting for conditions a Panel may impose or modifications an applicant agrees to in order to avoid, remedy, mitigate, offset or compensate for those impacts.
233. Section 85(4) prevents a Panel from treating an impact as meeting the threshold in Section 85(3)(b) solely on the basis that the impact is inconsistent with or contrary to a specified Act or any other document the Panel must take into account.
234. We have previously addressed Section 85 in detail in our earlier legal submissions,²²² at paragraphs 96 to 99 of the legal overview provided with the substantive application dated 31 October 2025 and at paragraphs 46 to 57 of our legal submissions provided in response to comments dated 17 April 2026.
235. The decision making framework in the FTA is fundamentally different to the RMA and reflects a deliberate departure from traditional RMA processes. The structure of Section 85 explicitly allows for residual adverse effects to remain provided they are not sufficiently significant to be out of proportion to the regional or national benefits of a project. Section 85(3) imposes a deliberately high threshold to decline an approval.²²³
236. We submit that the monetary benefits of the Project, make it one of the most economically significant FTA projects considered to date. The Project clearly delivers benefits which are regionally and nationally significant.
237. The technical assessments and evidence provided on behalf of Matakanui Gold throughout the FTA process do not dispute that some impacts will remain following mine closure and that it is not possible to avoid all impacts. However, the assessments and evidence demonstrate that the effects management framework proposed will robustly avoid, remedy, and mitigate adverse effects, such that remaining residual effects are appropriately responded to in the context of the Project as a whole when considered against the FTA framework.

²²² Legal Overview on behalf of Matakanui Gold Limited, 31 October 2025 at [96] –[99] and Legal Submissions on behalf of Matakanui Gold Limited, 17 April 2026 at [46] – [57].

²²³ *Record of Decision of the Expert Consenting Panel*, Southland Windfarm, 9 March 2026, at [60]-[61].

238. Use of the term “*out of proportion*” requires an evidential finding that adverse impacts must substantially outweigh and exceed the national and regional benefits unlocked by a project before decline is warranted under Section 85. The comparison under Section 85(3) is therefore not limited to whether the costs outweigh the benefits but requires a broader assessment of both qualitative and quantitative matters.
239. In our submission the threshold for decline under Section 85(3) is not met in relation to any approval sought for the Project.

WEIGHTING

240. The FTA’s departure from traditional RMA processes is also reflected in the weighting exercises in the schedules of the FTA for each of the relevant approvals. In all instances the FTA requires that greatest weight is given to the purpose of the FTA in decision making.
241. We have addressed weighting in detail in our previous legal submissions.²²⁴
242. As the Panel is aware, Section 81 requires it to grant or decline each approval sought in accordance with the processes set out in the schedule relevant to that approval type. The decision-making processes in the schedules relevant to the Project application require the Panel to take into account specific matters relevant to those approval types but, in all instances, to give the greatest weight to the purpose of the FTA which is “*to facilitate the delivery of infrastructure and development projects with significant regional or national benefits*”.²²⁵
243. As the purpose of the FTA is to be prioritised in decision making,²²⁶ this results in a legislative regime that may support the grant of a resource consent or another approval where the traditional RMA process would not.
244. In applying the overall weighting exercise to the Project, by considering the decision making framework set out in the relevant schedules for each approval sought (as addressed in detail throughout our legal overview and previous legal submissions) but giving the purpose of the FTA the greatest weight, we submit that the Project should be approved. As addressed above, the Project will have significant national and regional benefits, the effects management framework is robust and any residual effects have been appropriately responded to.

²²⁴ Legal Overview on behalf of Matakānui Gold Limited, 31 October 2025 at [57] – [66] and Legal Submissions on behalf of Matakānui Gold Limited, 17 April 2026 at [35] – [57].

²²⁵ Fast-track Approvals Act 2024, Section 3.

²²⁶ Record of Decision of the Expert Consenting Panel, Maitahi Village, 18 September 2025 at [66].

245. Accordingly, we submit the Project meets the purpose of the FTA and the legal tests for approval.

CONCLUSION

246. For the reasons set out in these submissions, we submit that the Panel can have certainty that the effects of the Project are understood and that the proposed management framework is robust and capable of effectively addressing those effects.
247. The evidential record before the Panel has been tested and progressively strengthened through the Panel process which has ensured that all necessary information is before the Panel.
248. The Project's economic benefits have been thoroughly tested throughout the Panel process including independent peer review and sensitivity testing against a range of worst-case scenarios occurring simultaneously.
249. This demonstrates the scale of the Project's benefits and places it among the most economically significant to have been considered under the FTA to date. This is compelling evidence against any exercise of the Panel's discretion to decline the approvals under Section 85(3).
250. The conditions filed by Matakani Gold on 14 September 2026 represent a comprehensive, enforceable and legally valid package that provide a clear framework for managing effects. The conditions are supported by a bonding regime that will ensure sufficient funds are available at all times to the regulators should they be required. The establishment of the Trust provides an enduring mechanism for post closure obligations providing certainty that the Project's long-term obligations will continue to be met beyond the life of the Project. Taken together these measures provide the Panel with confidence that the obligations will be fully funded, effectively implemented and maintained beyond the operational life of the Project.
251. Having regard to the scale of the Project's benefits the residual adverse effects do not outweigh the benefits that it will deliver. The evidence before the Panel demonstrates that these effects are understood and will be comprehensively managed through the proposed conditions.

252. When the effects management response is taken into account the residual effects are not sufficiently significant to be out of proportion to the Project's significant benefits. Applying the FTA's statutory weighting exercise and giving greatest weight to the facilitative purpose, we submit that the approvals sought should be granted.

Dated this 14th day of September 2026

A handwritten signature in blue ink, appearing to read 'Joshua Leckie' or 'Mia Turner', is positioned above the printed name.

Joshua Leckie / Mia Turner
Counsel for Matakanui Gold Limited