To: Bendigo-Ophir Gold Project Panel
Via: Environmental Protection Authority: bendigoftaa@fasttrack.govt.nz; substantive@fasttrack.govt.nz; contact@fasttrack.govt.nz and delivered in person to Stewart Dawson's Corner, 366 Lambton Quay, Wellington.

Sustainable Tarras Legal Comments on the Bendigo-Ophir Gold Project

Contents

Introduction and summary of key legal and factual issues

1. Sustainable Tarras Incorporated is a local community group, established in 2020, with the objective "to engage with residents of Central Otago and wider New Zealand on sustainability issues affecting our region, to inform and stimulate discussion and represent significant public interests affecting sustainability in the Upper Clutha region". Sustainable Tarras thanks the Panel for the opportunity to comment on the Bendigo-Ophir Gold Project.

2. The Central Otago district is cherished by locals and highly valued by visitors. All New Zealanders have an interest in the protection of its outstanding landscapes, recreational opportunities, waterbodies and ecosystems. This is borne out by the extent of interest in and opposition to the Bendigo-Ophir Gold Project ("BOGP" or "Project"): some 9264 people have signed up to our opt in Sustainable Tarras' email list confirming their opposition to this project, with approximately 31% of these people currently living in the Central Otago area.[1]

3. The Project has no, or at most minimal, benefits. Its economic benefits are vastly inflated and do not withstand even cursory scrutiny. Its employment benefits are similarly illusory. In contrast, the project's adverse impacts are overwhelming. The intergenerational risks of establishing a Tailings Storage Facility ("TSF") in this vulnerable environment, where consequences of dam failure have been modelled by the applicant as "High" due to its potential risks to life, community infrastructure and the environment,[2] are sufficient by themselves to outweigh any putative benefits. Yet that is only one of this Project's many significant risks and adverse impacts. Other adverse impacts include destruction of heritage features and part of an outstanding natural landscape, degradation of night sky values, loss of wetlands and river extent, high risks of groundwater contamination, very significant impacts on native flora and fauna (with highly dubious restoration and offsetting proposals) and air quality impacts, along with their consequential effects on people, the community and the district's social and economic wellbeing. When considered in comparison to the extent of the project's benefits, as required by the proportionality assessment under s 85(3) of the Fast-track Approvals Act 2024 ("FTAA"), the adverse impacts clearly and comprehensively outweigh the benefits.[3]

4. Whilst we fully acknowledge that this is not a formal part of the current application, we would nevertheless like to bring to the panel's attention a broader context within which this application needs to be seen. Mining licences that are currently in place or

[1] Sustainable Tarras statement at 2.
[2] B.21 Shepherds TSF Report, Appendix A, p 103
[3] A table summarising the adverse impacts and benefits is provided at the end of these comments.

under evaluation by NZPAM as the administering agency cover large swathes of Otago.[4] This Matakanui Gold Ltd (MGL) application, being the first of likely many subsequent new gold mining applications to be submitted and evaluated, sets certain precedents and expectations,[5] and therefore a most thorough and detailed evaluation is of the utmost importance to NZ.

5. We also note the Panel's Request for Information to MGL on 1 April 2026. We support the Panel in this RFI process and specifically the need for additional in depth questions to many aspects of the application. In our own expert evidence, legal commentary and statement, we have raised many of the same topics and questions with corresponding evidence included.

6. Several key issues of fact and law arise from MGL's application. Sustainable Tarras requests that the Panel give particular consideration to the following:

    a. The extent of the project's benefits:

        Economic impact is materially overstated

        i. Expert evidence confirms that the Project's annualised direct economic impact is at most $90 million,[6] not $362,500,000.[7] The difference is due to the applicant's adoption of an implausibly high gold price,[8] compounded by other errors and omissions in the economic impact assessment.

        ii. Claimed impacts are not the same as benefits. Project costs are not benefits, and theoretical maximum impacts derived from multipliers are unsound.[9]

        iii. The applicant's analysis acknowledges but does not account for economic disbenefits and fails to allow for residual environmental, health, productive land, water contamination and TSF failure risks.[10]

        iv. Economic benefits are minimal at the regional level and non-existent at the national level.[11]

---

[4] https://gis.nzpam.govt.nz/permitwebmaps/?commodity=minerals

[5] https://businessdesk.co.nz/article/markets/ko-gold-has-eye-on-central-otago-as-new-west-african-gold-belt#:~:text=KO%20Gold%20is%20a%20Canadian%2Dlisted%20junior%20miner,one%20of%20the%20world's%20largest%20gold%2Dproducing%20regions.

[6] Statement of Richard Meade at 11.6.

[7] Annualised figure derived from the Applicant's claimed direct economic impact of $5.8 billion over 16 years.

[8] Meade at 85.1 and 88; Statement of Edward Miller at 17 - 34

[9] Meade at 11.7.

[10] Meade at 11.8 – 11.9

[11] Meade at 11.11

v. Any systematic, transparent and comprehensive assessment of the Project's benefits requires a full cost-benefit analysis ("CBA"), not economic impact analysis ("EIA") as provided.[12]

vi. A comparison of well-established New Zealand mining towns with similar communities elsewhere demonstrates that mining towns do not differ in their wealth and income from other similar sized towns, and that the established towns are much poorer than Cromwell's is already. The assumption that Cromwell's median income will benefit from the addition of the BOGM is unsound.[13]

Employment benefits are overstated

vii. In assessing employment benefits, the applicant makes no allowance for employees' opportunity costs, the Otago region's low unemployment rate,[14] or the likely need for fly in, fly out ("FIFO") workers.[15]

Economic disbenefits

viii. The Project's economic disbenefits include increased costs for other industries due to competition for skilled labour, materials or accommodation[16] and impacts on tourism – currently a key economic driver to Central Otago's economy[17] - and other industries dependent on the region's landscapes and environments (wine makers, fruit growers).[18] The Project does not fit with the community's shared vision for improved economic prosperity.[19]

Benefits cannot be realised

ix. The claimed benefits cannot be realised due to additional approvals needed by the applicant under the Overseas Investment Act and Local Government Act.

b. The Project's adverse impacts on the environment, people, and communities are very significant:

Tailings, engineered land forms and pits

i. The Project involves excessive production of waste rock, with significant consequential impacts including increased risk of water contamination.[20] The tailings disposal option chosen by MGL is the

[12] Meade at 13
[13] Statement of James Harris, p 1.
[14] Meade at 73 - 76
[15] Meade at 79 - 85
[16] Meade at 149.
[17] James Higham statement at 13-16, Meade at 150 – 153.
[18] Higham at 16.
[19] As recorded in the Tarras Community Plan and other community plans and strategies discussed below.
[20] Statement of Dr Steven Emerman at 14.

riskiest option available in terms of dam failure, uncontrolled liquefaction and long-term water contamination,[21] does not meet global industry standards for flood design,[22] and lacks critical information on tailings chemical stability.[23] Controls proposed to manage long-term contaminant leachate risks to surface water and groundwater are inadequate.[24] The risks and implications of mining-induced seismicity have not been addressed.[25] Closure criteria are vague and long-term ownership and responsibility for risks and ongoing effects of the TSF, engineered land forms ("ELF") and other infrastructure are unspecified.

Hazardous substances and installations

ii. Information regarding hazardous substances and installations is lacking, including with respect to cyanide and arsenic, to the point that it is not possible to assess whether potentially significant impacts from toxic hazardous substances will be properly managed.[26]

Heritage

iii. The applicant's heritage impact assessment is woefully poor – starting with inadequate survey, then applying a methodology that fails to consider the contribution of individual heritage features to the wider heritage landscape.[27] There appears to be limited or no archaeological assessment in relation to the Willow Management concession despite numerous recorded mining features and huts along Bendigo Creek which could be destroyed or damaged.[28] The Project's impacts on heritage will be significant.[29]

Landscape

iv. The Project will have significant adverse landscape effects that have been materially misrepresented as a result of the applicant's landscape assessment methodology.[30] The scale and character of landform modification mean that the Shepherds Creek and Rise and Shine Creek catchments would fail to qualify as an outstanding natural landscape post-mining.[31]

---

[21] Statement of Professor Bernd Lottermoser at pp 5, 8, 11, 21.
[22] Lottermoser at pp 5, 10, 18, 23
[23] Lottermoser at 5, 6, 12, 13.
[24] Emerman at 36; Statement of Kathryn McArthur for Fish & Game; Statements of Dr Leanne Morgan and Dr Jenny Webster-Brown for Environmental Defence Society Inc.
[25] Statement of Dr Alex McAlpine at 3.b) p10.
[26] Lottermoser at pp 16.
[27] Statement of Matt Sole at 22 - 31
[28] Sole at 39.
[29] Sole at 45.
[30] Statement of Bridget Gilbert at Section 3 Landscape Assessment Methodology.
[31] Gilbert at 2.9 and 7.4

Dark sky and lighting

v. The Panel does not have the information it needs to assess the Project's dark sky impacts. Comparison with the Macraes mine light dome indicates these impacts could be significant.[32] Lighting effects remain uncertain and potentially significant. The Project cannot yet demonstrate compliance with District Plan spill limits.[33]

Air quality

vi. The applicant's assessment of air quality effects is not credible, when compared to dust impacts from Macraes mine. The assessment lacks consideration of specific local conditions.[34]

Noise

vii. Noise effects are uncertain with the applicant belatedly determining that it requires consent for construction and operational noise and blasting. Blasting noise will impact residents and visitors' amenity.

Recreation

viii. Increasing tourism revenue and numbers of cyclists will be impacted by the poor replacement route proposed for Thomson Gorge Road and change from natural wilderness environment to industrial and mining activities.

Transport

ix. The Project presents significant transport safety, access, and amenity concerns for the local community which require improvements to the transport network if the Project is approved.

Social impacts

x. MGL has not provided sufficient information about the social impacts of the Project: despite commissioning a social impact assessment (which was prepared and submitted to MGL),[35] this has not been provided to the Panel. Information provided by commenters supports a finding that social impacts will be significantly adverse.

Conditions and management plans

xi. Proposed conditions and draft management plans are not capable of adequately managing many of the effects outlined above. Closure and bond conditions, lack of conditions requiring insurance, and management plan conditions are particular issues.

[32] Statement of Dr Bryan Boyle at 32 - 39
[33] Statement of Marc Simpson at 54 - 59 and 69.
[34] Sustainable Tarras statement at 20 - 27
[35] Sustainable Tarras statement at 95, 101, Table 3, 3.6.

c. Other considerations relevant to the RMA approvals count against granting the approvals. The application is contrary to directive RMA policy and plan provisions[36] and to relevant community plans.[37] The Panel should place significant weight on MGL's poor compliance history.[38] The Panel has inadequate information to determine the application.[39] There is a statutory 6 year limit on consents to take water in the Otago region[40] which the application does not comply with. The Project will cause significant adverse effects on aquatic life which would prevent it being granted consent if the application were made under the RMA.[41] The application is contrary to ss 6 and 7 RMA and to the RMA's sustainable management purpose.[42]

d. With respect to the concessions sought, the applicant seeks concessions (easements) in favour of third parties, which is not a concession that may be sought under the FTAA.

e. The scale of impacts on lizards is very high, significant and unprecedented. The true extent of effects is unknown due to inaccuracies and the misrepresentation of data on lizard species. DOC considers that the activities as currently proposed are not consistent with the purpose of the Wildlife Act.

f. The partial revocation of the Conservation Covenant is fundamentally contrary to the purpose of the Conservation Covenant and will compromise regionally, nationally and internationally significant values.[43] The No weight should be placed on the proposed CODC Covenant, which is not sought by CODC and does not protect conservation values in the same manner as the Conservation Covenant.

7. The matters in paragraph 4 are adverse impacts that should be given significant weight by the Panel in undertaking the s 85(3) "proportionality assessment". The long-term (and in some cases permanent) character of the Project's impacts, in comparison to the very short-term nature of any benefits, reinforces this. With the exception of traffic effects, which could be addressed through infrastructure upgrades, the impacts described above are largely unable to be mitigated by the imposition of conditions. The adverse impacts are sufficiently significant to be out of proportion to the project's regional or national benefits (taking into account conditions and modifications to avoid, remedy, mitigate, offset, or compensate for impacts), such that approval should be declined under s 85(3) FTAA.

---

[36] Section 104(1)(b) RMA
[37] Relevant under section 104(1)(c) RMA
[38] Section 104(2EA) RMA
[39] Section 104(6) RMA
[40] Section 127B RMA
[41] Section 107 RMA
[42] Section 5 RMA
[43] DOC s 51 report at DOC Section 51 Report 2(b) Conservation Covenant Report, Sole at 32, 52, Gilbert at 2.2, 2.14-2.17, 3.26-3.30, 6.5, 7.1.b), and Section 9 Effects in relation to Bendigo Conservation Covenant.

8. While not an issue for Sustainable Tarras to address, the project's consistency with obligations arising under the Ngāi Tahu Treaty settlement and whether the application can be approved under s 85(1)(b) and s 7 FTAA will also be an important consideration for the Panel.

The law

9. Legal propositions relevant to the Panel's assessment of the approvals sought by BOGL are briefly addressed below:

    a. The application was lodged on 31 October 2025 and deemed complete on 21 November 2025. This means that some amendments made by the Fast-Track Approvals Amendment Act 2025 apply, [44] however the applicable provisions do not appear to have any substantive implications for the Panel's consideration of this project. The Amendment Act's provisions do not otherwise apply.[45]

    b. In applying the decision-making criteria in s 81 FTAA to each of the approvals sought by MGL, the Panel is required to first separately consider each of the relevant considerations in the applicable clauses[46], uninfluenced by the purpose of the FTAA, before secondly weighing those factors in accordance with the prescribed hierarchy. That approach is supported by the Court of Appeal's decision in *Enterprise Miramar Peninsula Incorporated v Wellington City Council.*[47] In *Enterprise Miramar* the Court of Appeal considered the correct interpretation and application of the decision-making criteria in the Housing Accords and Special Housing Area Act 2013. Although the weighting hierarchy was different in that statute, the decision-making provision was the same in that it required decision-makers to take into account a list of matters and then weigh them in accordance with statutory direction about how the weighting exercise should be undertaken. That approach has been applied in the majority of other FTAA Panel decisions to date.[48]

    c. When assessing any of the approvals sought, the Panel must give the greatest weight to the purpose of the FTAA.[49] The purpose of the FTAA is to

[44] New ss 60 and 62-66 (suspension of processing), s 81 (decisions) and s 84A (conditions relating to infrastructure) apply per cl 6(2)(b) of Schedule 1 FTAA. The amendments to s 81(aaa) and (aab) are not relevant because the project is not a referred project and there is no relevant Government policy statement. New cl 20 of Sch 11 FTAA also applies but is not presently relevant. New ss 68A and 68B (reducing scope of substantive application) and new s 88 (issue, service and publication of decision documents) apply from 31 March 2026 per cl 6(2)(c) Sch 1.

[45] With the exception of the provisions listed in fn 5, cl 6 of Sch 1 FTAA (transitional provision) provides that the FTAA as in force immediately before the first commencement date, continues to apply in respect of an application lodged before the first commencement date (17 December 2025).

[46] Section 81(2)(b) and (3)

[47] *Enterprise Miramar Peninsula Incorporated v Wellington City Council* [2018] NZCA 541 at [52]-[53], [59]

[48] Including Bledisloe Wharf, Waihi North and Milldale and the Taranaki VTM draft decision. Although the Panel that decided the Maitahi Village Project did not consider *Enterprise Miramar* of assistance, it followed substantively the same approach.

[49] FTAA, Sch 5 cl 17 and analogous provisions for other approval types.

facilitate the delivery of infrastructure and development projects with significant regional or national benefits.[50] When taking the purpose of the FTAA into account under an applicable clause, the panel must consider "the extent of the project's regional or national benefits."[51] This is a factual question based on evidence and informed by judgment. The extent of regional benefits is context-dependent: what constitutes a significant benefit may differ from one region to the next. Importantly, the Panel should not accept the project's benefits on the basis it is listed in the FTAA, or based on the applicant's assertions. The Panel needs to reach its own conclusion on whether the project has significant benefits, and their extent. [52]

d. The Panel must decline an approval if any of the mandatory decline factors in ss 85(1) and (2) apply. With respect to assessing consistency with Treaty settlements:

    i. Treaty settlements are intended to operate in a practical and enduring way. They are not limited to compliance with individual clauses but include an obligation on the Crown to ensure that settlement redress is not undermined in practice.[53]

    ii. The Crown's obligations are implemented, in the FTAA context, through the mandatory decline requirement. If the Panel finds that the Project would undermine settlement redress, it must decline the approvals.[54]

e. The Panel may decline an approval if, in complying with s 81(2), the panel forms the view that there are 1 or more adverse impacts in relation to the approval sought; and those adverse impacts are sufficiently significant to be out of proportion to the project's regional or national benefits that the panel has considered under section 81(4), even after taking into account any conditions that the panel may set in relation to those adverse impacts; and any conditions or modifications that the applicant may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those adverse impacts (the "proportionality assessment"). [55] Relevant to the Panel's application of the proportionality assessment:

    i. Adverse impact means "any matter considered by the panel in complying with section 81(2) that weighs against granting the

[50] Section 3 FTAA
[51] S 81(4) FTAA
[52] E.g. Taranaki VTM draft decision at 83; Maitahi Village decision at [85]-[86].
[53] *Te Ohu Kaimoana Trustee Ltd v Attorney-General* [2025] NZHC 657 at [194].
[54] Section 85(1)(b) and s 7(1) FTAA. The question of whether a panel is a a 'person exercising a judicial power or performing a judicial function or duty' when deciding a substantive application was considered in the Taranaki VTM draft decision. If a panel is exercising a judicial power or performing a judicial function or duty, s 7(1) FTAA would not apply to it. The Taranaki VTM Panel was satisfied that the s 7(2) exclusion does not apply, and that panels are bound by s 7(1): Taranaki VTM draft decision at [218]-[226].
so, s 7(1) will not apply to panel decisions.
[55] Section 85(3) FTAA

approval."[56] That is a wider concept than an "adverse effect". It includes any matter that the panel must weigh, which includes, by way of example, inconsistency with a provision of the RMA or the National Policy Statement for Indigenous Biodiversity.

ii. A panel may not form the view that an adverse impact meets that threshold "solely on the basis that the adverse impact is inconsistent with or contrary to a provision of a specified Act or any other document that a panel must take into account or otherwise consider in complying with section 81(2)".[57] The word "solely" (common meaning "only; completely"[58]) is important. A panel may form the view that the proportionality assessment is met due to a combination of inconsistencies with provisions or documents, or due to a combination of those inconsistencies and the project's adverse effects. The Taranaki VTM panel said:[59]

> The Panel accepts that no adverse impact may be held to be out of proportion to the benefits of the project if the only basis for reaching that conclusion is that the impact is inconsistent with or contrary to a specified Act or other document the panel is required to take into account. That is not to say that the panel may not have regard to inconsistency with or breach of a relevant legislative provision or document; just that the inconsistency or breach may not be the only reason for holding the adverse impact to be disproportionate.

iii. With respect to the phrase "out of proportion", the Taranaki VTM panel said:[60]

> … the Panel found the framing by South Taranaki District Council – that 'out of proportion' means that the identified adverse impacts (after mitigation by any consent conditions or modifications) are larger, worse, or more important than the benefit – to be useful.

The Project has no (or minimal) benefits

10. MGL has vastly overstated the extent of the project's benefits, and has failed to properly account for economic dis-benefits. These matters are addressed in the expert reports of Dr Richard Meade, Dr Geoffrey Bertram, Mr Edward Miller and Mr James Harris. Dr Meade concludes that the Project's annualised direct economic impact is at most $90 million,[61] not $362,500,000,[62] and that the Project's impacts are

[56] Section 85(5) FTAA
[57] Section 85(4) FTAA.
[58] Collins New Zealand Dictionary, First Ed 2017.
[59] At [241].
[60] At [247]. See also the Waihi Panel decision, Part M at [12].
[61] Statement of Richard Meade at 11.6.
[62] Annualised figure derived from the Applicant's claimed direct economic impact of $5.8 billion over 16 years.

modest at the regional level, and inconsequential at the national level - for reasons summarised below.

11. *Double counting:* The Project's claimed total direct economic impacts of $5.8 billion over 16 years is overstated by a double count of $216 million, so should have been $5.6 billion.

12. *No Present Value discount:* MGL has not discounted future impacts to their present value. Converting to present value (PV) gives total direct economic impacts of $3.3 billion or $317 million annualised.

13. *Economic impact hinges on implausibly high gold price:* MGL's claimed economic impact is based on an implausibly high gold price (US$3,138/Oz) which is assumed to be sustained, year on year, for 16 years. While gold prices are currently at record highs, it is entirely unrealistic to expect that figure to be sustained given the extreme variability in gold prices.[63]

14. Benje Patterson has simply adopted a price from Santana Minerals' Pre-Feasibility Study - and specifically the average spot price in the three months to 15 June 2025 of US$3,318/Oz,[64] rather than the base case figure of US$2,220/Oz. Benje Patterson provides no justification for adopting the spot price.

15. Dr Meade adopts US$2,220/Oz as the "maximum plausible sustained gold price" over the Project's expected life. That figure is Santana Minerals' Updated Pre-Feasibility Study "robust base case" price.[65]

16. The base case, which is derived from the 3–5-year trailing average, is still optimistic in that it "captures only the recent period of exceptional strength and cannot reliably predict a commodity cycle that typically spans decades".[66] Hence it is the *maximum* plausible sustained price that could credibly be used to assess revenue over 16 years.

17. It is notable that the Waihi North panel regarded the gold price assumption used by the applicant Oceana Gold's economist of US$2,000 as appropriate in that case.[67] Oceana Gold's economist did not use the spot price. His gold price was arrived at by taking into account the then-spot price, the CIBX Commodity Price Forecast, the 5 year average (all > $2,000) and the 10 and 20 year averages (both < $2,000).[68]

18. Dr Meade's use of the base case (US$2,220/Oz) is well justified and is within the realms of the gold price figure adopted by the Waihi North panel, and should be preferred.

---

[63] Miller provides additional geopolitical context for the current high gold prices at 17 - 34.

[64] B.01 Benje Paterson report, Table 1; Meade at 40.

[65] https://app.sharelinktechnologies.com/announcement-preview/asx/05b84413e2e2d74381b2c279e3ca5dda

[66] Miller at 50.

[67] Waihi North Panel decision at [828]

[68] Waihi North Panel decision at [823] – [828]

19. *No accounting for benefits that flow overseas*: Dr Bertram provides evidence on the distribution of income (contribution to GDP) across extractive industries. For gold mining, gross profit is higher and wage share/purchase of goods and services lower, meaning benefits to the New Zealand economy are dependent on whether profits accrue locally. MGL's analysis incorrectly attributes all Project direct economic impacts to New Zealanders and does not account for the applicant's 60% overseas shareholders,[69] or for a proportion of non-New Zealand employees.[70] Accounting for those matters significantly reduces the Project's economic impacts to New Zealand.[71] Contributions to other countries' GDP are not relevant to "significant regional or national benefits" under the FTAA.

20. *Direct economic impact significantly less than claimed:* Correcting for Benje Patterson's failed assumptions, Dr Meade arrives at $90 million as the Project's annualised direct economic impact – a reduction of 72% from the appellant's claimed economic impact.[72]

21. *Net economic impact:* MGL's economic impact is overstated:

    a. The use of multipliers is not sound, nor supported by Treasury, because it inflates claimed economic impacts.[73] Dr Bertram notes that Benje Patterson acknowledges that its multiplier-effect estimates are "theoretical maxima"[74] – but this is not matched by any statement about what the theoretical minima might be.

    b. Project costs are mischaracterised by MGL as benefits. CBA measures the net benefits of a project, being the total incremental benefits less the total incremental costs (including opportunity costs, and both indirect costs and benefits as well as direct ones), appropriately adjusted for time and risk, and allowing for distributional impacts. By contrast, EIA (as used by Benje Patterson) purports to measure the economic impacts of a project, not its benefits (and hence not its contribution to social wellbeing) per se – including by treating project costs as benefits even if national wellbeing could be improved by allocating fewer resources elsewhere.[75]

    c. Any purported regional or national benefits should be assessed as net benefits with any economic disbenefits deducted – not gross benefits as assessed by Benje Patterson. It is not clear whether the Project's assessed benefits represent a net gain to the Otago region, because impacts such as displacement of economic activity and cost to other regions have not been considered:[76]

[69] Meade at 68 - 71
[70] Meade at 79 – 85
[71] Meade Figure 12
[72] Meade at 86 - 89
[73] Meade at 94 - 101
[74] Benje Patterson, pp 15 and 17
[75] Meade at 102 - 108
[76] Meade at 109 - 111

i. Competition for skilled labour, materials, or accommodation may result in increased costs for other firms (including for wine or fruit exporters and tourism operators) and households.[77]

ii. The Project's environmental impacts that are incompatible with the unique regional identity on which other economic activities such as tourism, fruit and wine growing and creative industries. Tourism is a major contributor to the economy of Central Otago, and a key economic driver. Dr Higham describes the very important contribution that landscape values, protection of the natural environment, maintaining the character of small towns and strong community identity make, both to residents' quality of life and as a tourist drawcard. Dr Boyle outlines the Bendigo-Tarras area's important night sky values and the growing importance of astrotourism.[78]

iii. The Project risks undermining the credibility of the 100% Pure New Zealand brand, and New Zealand's global reputation as a tourism destination. The Central Otago and the Queenstown Lakes landscapes are an integral part of New Zealand's 100% Pure international brand and Tourism New Zealand's regional tourism marketing campaigns. There are many overseas examples of long-term environmental or reputational damage from mining directly impacting tourism.[79]

d. The Project's environmental, health and productive land impacts have not been accounted for.[80]

e. Long-term management requirements associated with very high potential impact long-term environmental risks (mine-impacted water treatment and TSF performance), and their associated costs, have not been comprehensively identified or assessed.[81] This risks "highly material future Project-related costs being socialised to future generations post mine closure"[82] as occurred at Stockton in 2024, when taxpayers paid more to remedy the mine's impacts than mining as a sector paid in royalties.[83]

22. *Wrong comparators:* The Project's claimed GDP and employment impacts have not been compared with their national-level counterparts, and have been inappropriately compared with sub-regional GDP and employment.[84] The FTAA is concerned only with benefits that are nationally or regionally significant. $90 million annualised Project impact represents 0.5% of Otago region GDP and 0.02% of

[77] Meade at 74 - 78
[78] Boyle at 22
[79] Higham at 69 - 105
[80] Meade at 156 - 174
[81] Meade at 175 - 181
[82] Meade at 181; Lottermoser at Section 3 and 4
[83] Meade at 180.3
[84] Meade at 182 - 188

national GDP (without accounting for disbenefits / adverse effects which would further reduce those figures). This represents "a fraction of" Otago region GDPs annual percentage change in GDP[85] – in other words, it would not register. At the national level:[86]

> Adjusting the BP Report's Table 6 (which includes flow-on Project impacts for both Otago and the rest of New Zealand) pro rata based on $90 million instead of $359.7 million results in total annual Project benefits being just 0.03% of 2024 national GDP, which remains essentially rounding error (i.e. whether or not the Project proceeds makes no material impact on national-level GDP).

23. *Corporate tax and royalties overestimated*: Mr Miller explains that MGL's corporate tax and royalty payments are likely to be significantly lower than MGL's projections, due to the impact of inflated pre-tax profit margins,[87] use of high discount rates[88] and the effect of accelerated depreciation rules.[89]

24. *Economic projections assume Santana owns and operates:* Dr Bertram explains that Santana Minerals is what is known as a "junior explorer", set up to undertake speculative exploration of mining areas that have not attracted the involvement of major transnational operators, or that have been abandoned by them. The junior-explorer business model is to identify an area of mineral interest, raise funds from speculative investors to finance a programme of exploration and evaluation, and see whether a possible mining development can be identified. If not, the investment is written off (entered as an "impairment" on the books) and the company's investors wear the loss if the impairment cannot be reversed by later success.

25. The economic projections set out in Santana's application documents assume that Santana itself finances, develops, owns and operates the mine and processing plant, and that the current ownership mix, including New Zealand shareholdings, holds good when the mine comes into production. In the event that a large overseas mining corporation is brought into the picture, whether in a joint venture or by outright sale, economic outcomes could vary significantly.

26. *Long-term economic prosperity from gold mining is illusory:* Mr Harris' statement provides a useful sense check on the claims of economic prosperity built on gold mining. He demonstrates that in established mining towns, long term mining has not produced long-term wealth.[90] The three open cast gold mining support towns he analysed – Waihi, Palmerston and Reefton – show a consistent pattern: incomes are low, deprivation is high by New Zealand standards, and up to 150 years of mining has not produced sustained local wealth. In short, they are no different from similar small, isolated rural towns in New Zealand. Cromwell, by contrast, is a prosperous

[85] Meade at 184 - 185
[86] Meade at 186
[87] Miller at 36
[88] Miller at 42 - 44
[89] Miller at 45
[90] Harris p 3

and growing regional centre. Adding mining jobs to Cromwell is not likely to raise the average income of people or prosperity for the town, and housing costs in Cromwell are over twice the cost of housing in Waihi and Palmerston. [91]

27. *Contextualising the benefits and disbenefits: the Community's vision for economic prosperity:* Four non-statutory plans are particularly relevant to the Panel's consideration of the Project's benefits, because they express the community's vision for how this particular region can increase its economic prosperity, and what it needs to protect in order to do so.

28. The Tarras Community Plan adopted a vision for Tarras that is captured in the following statement:

> Tarras is a strong, thriving community that is a great place to live, work and visit, set in an outstanding environment.

29. It seeks that the economic vitality of Tarras "is strong, built on great farming, quality produce and products, with a vibrant country village". That vitality is expressed as depending on the area's recreational opportunities, historic values, landscapes and dark skies. As the closest settlement to the application site, the Tarras community's views as to how the area should develop economically should be given significant weight. [92]

30. Central Otago District Council adopted the following 50 year vision statement in *Central Otago – Our Place in the World:*[93]

> The state of wellbeing in Central Otago is grounded in respect for and protection of the natural environment. This is the foundation upon which all else depends. While the productive capacity of the natural environment is a core driver of economic prosperity, the recreational and aesthetic value of a healthy natural environment is also valued as fundamental to well-being and the way of life in Central Otago.

31. The Central Otago Destination Management Plan is a strategic framework to guide the sustainable growth of tourism. It was commissioned by the Central Otago District Council and developed collaboratively with stakeholders. Protection of the natural environment and landscapes, and maintenance of the region's small town character and strong community identity are elevated as priorities.

32. Central Otago's unique landscapes and other points of difference are recognised and prioritised as drivers of economic wellbeing in the Central Otago Economic Development Strategy 2025-2035:

> Increasing economic prosperity will depend on how fully Central Otago embodies and champions our World of Difference regional identity values.

33. The Bendigo Goldmine is noted in the Economic Development Strategy as one of several large projects that represent a transformative opportunity but with the

[91] Harris p 4
[92] Ms Batchelar's statement describes the development of the Tarras Community Plan.
[93] Dr Higham provides further discussion of these three plans in his statement.

caution that "these developments, should they proceed, have the potential to drive substantial growth, but careful consideration and management is essential to deliver long-term, sustainable benefits".

34. Overall, those plans express a community vision for prosperity built on Central Otago's points of difference. The Project damages the values that make Central Otago special, and which underpin its economic success.

35. *Other approvals required*: It is also important for the Panel to consider whether the project's benefits can even be realised. Here, there are significant impediments for which the FTAA does not provide a workaround:

    a. The application site contains Council-owned roads (Shepherds Creek paper road and Thomson Gorge Road). CODC has given its "without prejudice" approval as landowner, but these roads will need to be formally stopped under the Local Government Act 1974. The outcome of that process is uncertain.

    b. MGL requires ownership of parts of Bendigo Station and Ardgour Station to implement the project. As the land is "farm land" in terms of the Overseas Investment Act, the Stations were required to be offered for acquisition on the open market to New Zealanders before MGL could enter into an agreement to purchase the stations,[94] which did not happen in the case of Ardgour Station.

36. In summary:

    a. MGL's claimed economic benefits are built on a house of cards. Unrealistic assumptions are built into every stage of Benje Patterson's analysis (which in some instances is not analysis at all, but rather just the adoption of the Applicant's numbers). As Dr Meade has found, the Project's impacts are modest at the regional level, and inconsequential at the national level.

    b. The community has clearly and consistently expressed a vision of economic prosperity built on the region's points of difference – its unique landscapes, unspoilt natural environment and small town charm. The Project is not consistent with that vision and will damage the attributes that are crucial to this district's economic prosperity.

    c. The applicant requires additional approvals which may mean its claimed economic benefits cannot be realised.

Significant adverse impacts

37. Adverse impacts are any matter considered by the panel in complying with s 81(2) FTAA that weighs against granting the approval. The Project's adverse impacts are overwhelming.

[94] Section 16(1)(f) Overseas Investment Act 2005

RMA provisions that direct decision-making

38. The relevant "provisions of the RMA that direct decision-making" for resource consent applications include s 104, s 107 and Part 2 (ss 5, 6, and 7).

Section 104 considerations

39. Section 104 requires a consent authority to have regard to: (a) any actual and potential effects on the environment of allowing the activity, (ab) positive effects to offset or compensate for adverse effects, (b) any relevant provision of a national, regional or district planning instrument, and (c) any other matter that the consent authority considers relevant and reasonably necessary to determine the application. Under s 104(2EA), a consent authority may have regard to any previous or current abatement notices, enforcement orders, infringement notices, or convictions under the RMA received by the applicant. Under s 104(6), a consent authority may decline an application for a resource consent on the grounds that it has inadequate information to determine the application.

Actual and potential effects on the environment of allowing the activity

40. In many instances, MGL's assessment of effects is incomplete, uncertain, or wrong. Effects are addressed below, and in Sustainable Tarras' supporting technical reports.

Capability to implement the approvals

41. In considering the Project's adverse impacts and proposed conditions, it is important to keep in mind that Santana has never, since its establishment in 2013, constructed or operated a gold mine, nor a processing plant. The complexities of both the mining operation and successful management of effects require more than simply an extensive suite of well-crafted and detailed conditions prepared by consultants. In a resource consent appeal hearing before the Environment Court (where this application would undoubtedly be heard, were it not being progressed under the FTAA), it would be normal practice for an applicant's environmental manager and other key operational staff to give evidence on how the activities would be implemented, and for testing of the practical implementability of actions set out in management plans (including whether there is consistency across plans). It is not possible to assess this in the FTAA context, which increases the potential for environmental risks.

Waste rock and tailings management is wasteful, presents intergenerational risks, and ignores international industry practice

42. Dr Emerman has reviewed the application materials relating to waste rock production, and advises that the Project involves excessive production of waste rock. The stripping ratio of 15.2 is "probably … the highest stripping ratio for an individual mine in the history of open-pit mining".[95] This leads to excessive fuel consumption, excessive greenhouse gas emissions, excessive risk of induced seismicity, excessive

[95] Emerman at 14.

permanent alienation of land, and excessive risk of contamination of surface water and groundwater.

43. Professor Lottermoser's review of MGL's approach to tailings management demonstrates that:

    a. MGL has not considered other options for tailings disposal and has chosen the riskiest option for tailings disposal in terms of dam failure, uncontrolled liquefaction and long-term water contamination.

    b. MGL incorrectly states that "the design criteria for flood and earthquake load conditions required by the NZDSG for a High PIC dam equal or exceed the design requirements for a High consequence TSF in the [Global Industry Standard for Tailings Management (GISTM)]". MGL's flood design criteria are much less than the relevant GISTM flood design criteria.

    c. MGL does not present any information on the density, mineralogy, geochemistry, texture, hardness and grain size of future tailings that are to be placed into the TSF. MGL has not performed a chemical stability/metalliferous drainage analysis of its tailings and does not consider industry best practices and alternative approaches to minimise leaching of contaminants from the TSF.

44. Professor Lottermoser and Dr Emerman agree that the proposed TSF does not meet best practice relevant international industry standards and guidelines.

45. The controls proposed by MGL are not adequate to prevent surface water and groundwater contamination from acid or neutral mine drainage and metal leaching from the waste rock and tailings. A comparison of international sulfide-ore deposit mines demonstrates that surface water and groundwater contamination has been universal in such mines, even with controls similar to those proposed to be employed at the Project. The only controls that are proposed for the Bendigo-Ophir Project are seepage collection systems, and the environmental pollution from the Faro Mine Complex, Myra Falls Mine, and McArthur River Mine have all been related to failures and inadequacies in the seepage collection systems.[96]

46. MGL's geotechnical assessments have not assessed the risks and implications of mining-induced seismicity, despite the Open Pit and Underground Mining Geotechnical Assessment[97] including mining-induced seismicity in a list of risks and uncertainties related to open pit and underground mining.

47. Dr McAlpine's statement explains that mining-induced seismicity differs from natural earthquakes in that it typically results in unexpected and sudden ground disturbances within, or very close to, the footprint of the mine itself. Such disturbances are capable of producing:[98]

[96] Emerman at 36.
[97] B.28 Peter O'Bryan & Associates Geotechnical Assessment Open Pit and Underground Mining - Rise and Shine Deposit, July 2025
[98] Alex McAlpine statement at 1.b) p5.

a. rock falls and damage to ground supports and foundations;

b. damage to fill bulkheads and potential liquefaction of fill mass; and

c. damage to vital infrastructure such as tailing storage facilities; water dams and weirs; mine service and ventilation shafts; towers and winders; and rupture of tanks and bins in process plants.

48. Sustainable Tarras relies on the reports by Dr Jenny Webster-Brown, Dr Leanne Morgan (EDS) and Kate McArthur (Fish & Game) as to:

a. the specific inadequacies in MGL's contaminant treatment proposals; and

b. the significant contamination risks and associated water quality impacts that the TSF presents.

49. Operational mining is anticipated to span just 14 years. However, active treatment of contaminants from the TSF is predicted to be required for approximately 50 years post-mining (and "model uncertainties may require a longer period of active treatment"[99]), with a further "many decades" of passive treatment.[100] Maintenance, repair, monitoring and testing will be required throughout that time.[101] Report B.06 states that "performance monitoring will be required for the treatment of mine impacted water in the active- and post- closure phases and to also confirm when treatment is not required (i.e., treatment is not required to achieve water quality objectives)".

50. The B.06 Mine Impacted Water report refers to that water treatment happening "post-closure".[102] B.40 Mine Closure Plan includes a completion criterion that "monitoring indicates that residual contamination is within acceptable parameters". B.40 Mine Closure Plan assumes that the TSF estimated closure date is Year 11 – Year 13, and that at this stage "water quality and hydrological function meet agreed parameters".[103] This means that:

a. The residual contamination "acceptable parameters" (that are yet to be set) will be set well short of the level at which mine-impacted water treatment is complete (assuming it can be completed); and

b. The closure criteria will be met, and MGL will be able to relinquish its obligations for the TSF's contaminant discharges, decades before the need for treatment ends.

51. Who will take responsibility for the ongoing treatment of contaminants from the TSF after MGL's obligations end? Why would any entity take that liability on? These

[99] B.06 Mine Waste Management Limited Mine Impacted Water Overview Report MWM 2025 at 5.3
[100] B.06 at 5.1.
[101] Report B.06 states that performance monitoring will be required for the treatment of mine impacted water in the active- and post- closure phases and to also confirm when treatment is not required (i.e., treatment is not required to achieve water quality objectives)
[102] Ibid, at 5.1
[103] B.40 Mine Closure Plan at 9.3.2

questions are left unanswered by MGL. In all likelihood, this means either that the Crown or local authorities will have to step in, or the environment will bear the risk.

52. The B.28 Geotechnical Assessment addresses the impacts of natural seismicity and its implications for pit slope stability but does not further discuss mining-induced seismicity.

Hazardous substances and installations – inadequate information and management

53. The substantive application does not include any detail on the chemical processes and design of the processing plant; only general overviews are provided with detailed plans presumably to be applied for under a separate land use and/or building consent later.

54. The information requirements for resource consent applications under the FTAA include:[104]

> b) if the activity includes the use of hazardous installations, an assessment of any risks to the environment that are likely to arise from such use.

55. The processing plant will extract gold from ores using Carbon-In-Leach technology which uses cyanidation techniques. From Pre Feasibility Study documentation, Sustainable Tarras understands the daily cyanide quantities consumed and required to be replenished to be around 2000kg. Each of the six CIL cyanide tanks are mentioned to hold approximately 1000m^3 of solution each, which would correspond to an approximate tank size of 12-15m in diameter and 8-10m height. Despite these significant quantities and tank sizes there is no mention in the application about the risks associated with the transportation from Dunedin, storage and use, and risk to both environment, workers and the community (eg. in a major earthquake, flood or landslide).[105]

56. Whilst there is superficial mention of a cyanide destruction process, there is no detail on the amounts of cyanide converted into ammonia, how much ammonia will be dispelled via air (there is mention of a "stack" associated with the cyanide destruction facility), and the impacts to the environment, workforce and community of such ammonia air discharge in a narrowly contained valley. The application also fails to explicitly evaluate the risk of a catastrophic cyanide tank failure (no modelled disaster scenarios provided on this risk) and the valley in effect becoming a restricted or confined space for workers.[106]

57. Dr Lottermoser describes the serious environmental pollution caused by cyanide. The risks and impacts of cyanide on the environment, community and workforce are virtually impossible to determine because of these information gaps.[107]

---

[104] Clause 6 of Sch 5 FTAA
[105] Sustainable Tarras statement at 28 - 30, and Allan 18 - 19
[106] Ibid
[107] Lottermoser at 4.3

58. Tailings management also refers to soluble arsenic removal.[108] While "cyanide destruction tanks" are shown on the general map of the Shepherds site[109], the plan does not show the arsenic removal plant and the application materials do not say how soluble arsenic removal will be achieved (arsenic removal uses completely different approaches to cyanide removal).[110]

59. The Hazardous Substances Environmental Management Plan (G.21) does not address these matters in any detail – it references cyanide once and does not refer to arsenic at all. It provides for an Emergency Management Plan (EMP) setting out the requirements for any emergency at BOGP, and associated Trigger Action Response Plans (TARPS) in case of emergency, to be developed at some point in the future. It says that:

> From an environmental standpoint, the EMP aims to prevent, contain and mitigate any unplanned release that could harm land, water, air, or ecosystems. Quick and effective action is critical to minimise environmental damage and should be attended to as soon as critical health and safety hazards have been addressed (i.e. danger to human life).

60. Whether the Project effectively manages hazardous substances is a critical issue which should inform the overall operational site design and not something that can be left to a later stage.

Heritage effects

61. The applicant's archaeological surveys were designed to identify features that might be impacted by *exploration drilling* and are entirely inadequate to support approvals for open cast mining. The applicant's methodology then fails to assess the site's heritage values, rather it focuses on discrete heritage features, devoid of context. This approach is legally incorrect: the RMA definition of "historic heritage" is not limited to specific sites or features; it includes "surroundings associated with the natural and physical resources", The Heritage New Zealand Pouhere Taonga Act concept of "historical and cultural heritage" is also broader than specific sites. As a result of its approach, the applicant has failed to properly assess heritage values:[111]

> The assessment is detailed in respect of the archaeological sites and history sequences consisting of mana whenua and gold mining within the project footprint but largely fails to acknowledge the collective value of the Rise & Shine heritage systems and its relationship and its significant contribution to wider Bendigo Basin and Dunstan Range heritage landscapes.

62. Significant features have been missed altogether:[112]

> … two sequences of pack track exist but remain un-surveyed and are not recorded:
>
> a. a 3km section associated with the early carriageway formation and 1898 surveyed Bendigo Matakanui Road G41/782 …; and

[108] Section 3.9.1.2, p. 159
[109] Figure 3-12, p. 161
[110] Lottermoser p 16.
[111] Matt Sole statement at 30
[112] Sole at 35 – 37. Additional missed features are discussed at 38 - 41

> b. a near 1km section leading from Rise & Shine valley up to near the Saddle summit which would have linked to the wagon track built by the Rise & Shine syndicate to service supplies from Bendigo Creek O'Donnell's Store and Butchery built in 1866 and Goodall's Hotel which catered for the needs of miners and locals right on up to 1907, long after hard rock mining towns Welsh Town and Logan Town had ceased ….
>
> …
>
> The pack track is significant because it evidences very early use, before dray roads and wagon tracks. It would have enabled some of the earliest use of saddle pass area. Its omission from the report is a significant oversight.

63. There has been limited or no archaeological assessment in relation to the willow management concession, despite numerous recorded mining features and mining huts along Bendigo Creek.

64. The applicant's effects assessment is unsound. There is an "unresolved tension" where the Application states that the Project's heritage value is *high* overall and acknowledges major impacts from the project and yet downplays "destruction", emphasises low individual site value, stresses better examples elsewhere, or highlights high-value areas outside the footprint.[113]

65. Mr Sole's opinion, which should be preferred, is that the impacts on heritage will be significant, considering:[114]

    a. The complete destruction of sites and values within the mining footprint;

    b. The work proposed to repurpose or change sites and values outside the mining footprint;

    c. The impacts of the above on the heritage values of the area at a landscape-scale.

Landscape effects

66. The Project site is located within the Dunstan Mountains ONL. Protection of outstanding natural landscapes (ONL) from inappropriate development is a matter of national importance under s 6(b) RMA.

67. Ms Gilbert has prepared a landscape assessment on behalf of Sustainable Tarras. Her opinions are that:

    a. There are fundamental issues with Boffa Miskell's (BML) assessment methodology including "site scale" assessment, gaps in the description and evaluation of the landscape, reliance on mitigation or rehabilitation strategies that are misrepresented , experimental or of questionable viability.

    b. The existing landscape values of the relevant landscape rate towards the higher end of the spectrum.

[113] Sole at 44
[114] Sole at 45

c. The Project will have effects of differing magnitude depending on the stage of development, with significant effects at some times and from some viewpoints.

d. The Project will adversely impact on identified landscape values of the Dunstan Mountains ONL. The scale and character of landform modification mean that the Shepherds Creek and Rise and Shine Creek catchments would fail to qualify as an outstanding natural landscape post-mining. This:

> … speaks to the significant and transformative nature of the development with respect to adverse landscape related effects, effectively cutting a swathe of industrial-scale disturbance through the middle of the more natural Dunstan Mountains sequence.

e. Proposed condition C34, which sets a primary objective of enabling the modified mined landscape to be integrated into the Dunstan Mountains ONL, is not achievable.

68. The inspirational qualities of the Dunstan Mountains for a wide range of artists, and examples of the painters, composers, poets, film producers, choreographers, sculptors and visual artists who have drawn on its qualities for their work, are described in Mr O'Brien's statement.[115]

69. The importance of the district's landscapes to residents, the tourism industry, and for winegrowers is addressed by Mr Higham.[116]

70. In a district that trades (in the broadest possible sense of that word) on its landscapes, these are very significant impacts that should weigh heavily in the Panel's proportionality assessment.

Dark sky effects

71. Professor Boyle describes the Bendigo-Tarras region as one of the most important and unique areas globally for the public's appreciation of the night sky. The astrotourism business globally is estimated to be worth between USD$1-2 billion annually, growing at 10% per annum,[117] giving an indication of the value people place on finite and diminishing dark skies.

72. The B.31 Cosgrove Exterior Lighting Report does not assess the quantitative impact of the mine on sky brightness. As a result, the Panel does not have the information it needs to assess the mine's impacts on dark sky values. Given the lack of quantitative data, Professor Boyle has not sought to directly assess the mine's dark sky impacts, however he provides contextual evidence as to the light dome from the Macraes mine and comments that if such a light dome were to be indicative for this project too, the area of measurable impact would include the Tarras and Bendigo communities.

[115] Gregory O'Brien Statement
[116] Higham statement at 22 - 28
[117] Statement of Professor Brian Boyle

73. Mr Simpson's report describes a lighting simulation undertaken to replicate mining operations proposed at Bendigo and assist in the evaluation of potential effects. When scaled to the lighting outputs of full mining operations—including heavy machinery, construction lighting, fixed plant illumination, and operational safety lighting—the cumulative effects would be considerably greater than those observed during the trial. Mr Simpson concludes that lighting effects remain uncertain and potentially significant, and that the project cannot yet demonstrate compliance with District Plan spill limits.[118] Ms Allen also identifies that the applicant appears to have overlooked the exterior lighting rule under 4.7.6 Standards in the Rural Resource Area Zone, which are designed to minimise light spill at night.[119] This has implications for the project's landscape, visual amenity and ecological effects.

Air quality effects

74. Sustainable Tarras' statement sets out the following dust-related concerns: [120]

    a. The data used to assess wind conditions at the Project site - local knowledge suggests the site experiences significantly stronger wind than would be indicated from Lake Clearview wind direction and strength data.

    b. The air quality experts' minimal consideration of the different constitution of rock mining dust (milled and generated by blasting and haul roads) to dust generated by non-mining activity, with little reference to PM2.5 particles (Respirable Crystalline Silica - RCS- is mentioned but not specifically reflected in the management plan nor pre-application ORC correspondence), despite silica dust being a key feature.

    c. Comparison with dust events at Macraes mine suggests dust will be much more significant than the applicant predicts.

    d. Impacts of dust on flora and fauna within adjacent conservation areas is lacking.

    e. Details on sources of dust with specific relevance to this gold mine (open pit blasting, ROM pad, haul roads, tailings dam) appear to only be superficially covered.

75. Proposed tailings dust control measures are not industry best practice and have failed in similar settings in New Zealand.[121] According to the Water Management Plan,[122] water from sediment ponds may be used for dust suppression. This proposal is not supported by water quality limits to ensure contaminated water is not dispersed across the site.

[118] Simpson at 54, 59, 61-62, 69.
[119] Sylvia Allen statement at 37 .
[120] Sustainable Tarras at 18.
[121] Lottermoser at p5, 11.
[122] G.01 page 23

76. The application has only scant mention of air discharges from the dore gold smelting furnace (B.33 para 6.1), which include silicon dioxide emissions.[123]

77. These issues raise serious concerns about management of air quality impacts on people and the environment.

Biodiversity effects

78. Geoff Rogers considers the applicants proposal for ecological restoration of the Direct Disturbance Footprint (DDF) is unfeasible, with low confidence in the rehabilitation models and timeframes. Examples such as the 220ha short tussock grassland require in the order of 2,200,000 tussocks at the rate of 110,000 per annum for 20 years; beyond any known nursery production, out-planting and compounding maintenance capability. These proposed rehabilitated surfaces are then in turn relied on in the landscape evidence of Boffa Miskell. Further, DOC in their Section 51 Report;

a. Notes the evidence provided to date for lizards does not demonstrate that rehabilitation of the Direct Disturbance Footprint will recreate suitable habitats for all three lizard species within the anticipated timeframe. Similarly, the proposed salvage and release framework remains technically uncertain.

b. For vegetation, assesses the majority of the site as ecologically significant, and that the proposed mitigations are inconsistent with mitigation hierarchy and policy direction under the National Policy Statement for Indigenous Biodiversity.

c. Have reservations as the proposed mitigation for invertebrates are experimental with low probability of ecological benefit,

Noise effects

79. MGL's Substantive Application[124] and MGL's RMA Rules Assessment stated that resource consent is not required for construction and operational noise or blasting activities.

80. In response to a further information request from CODC,[125] MGL now confirms that the following additional rules are triggered, giving rise to the need for a Land Use Consent in relation to noise and vibration activities under the CODP:

a. A Land Use Consent as a restricted discretionary activity for operational noise that will exceed the relevant permitted operational noise standards in Rule 4.7.6.E of the District Plan (Standard 4.7.6.E relates to noise within the notional boundary of a dwelling).

[123] Sustainable Tarras at 30.
[124] Section 4.2.3
[125] Dated 23 January 2026

b. A Land Use Consent as a restricted discretionary activity for construction noise that will exceed the relevant permitted construction noise standards in Rule 12.7.4.ii of the District Plan (Rule 12.7.4.ii relates to construction noise).

c. A Land Use Consent as a discretionary activity for blasting activities that will exceed the relevant permitted blasting standards in Rule 12.7.4.iv of the District Plan.

81. The Marshall Day (2025) report stated that the large distances between primary noise sources and sensitive receivers, combined with the natural screening effects provided by the terrain, mean that noise levels associated with the Project will comply with the standard at the closest residential receivers. The application updates say that operational noise will exceed the relevant permitted operational noise standards in 4.7.6.E, but no further details are provided.

82. Marshall Day (2025) notes that construction noise was not assessed in accordance with the standard listed in Rule 12.7.4.ii. on the basis that the standard is outdated and has been superseded by new best-practice standards. However, the Application considered that compliance with this rule was achieved as Marshall Day (2025) used the following new standard: NZS 6803: 1999 Acoustics - Construction Noise. Marshall Day (2025) confirmed that all construction activities are predicted to comfortably comply with the applicable noise limits in NZS 6803: 1999 Acoustics - Construction Noise and, in addition, no construction noise will occur in an urban area. The Updates now state that construction noise will exceed the relevant permitted construction noise standards in Rule 12.7.4.ii of the District Plan, but provide no further explanation or assessment of this issue.

83. Marshall Day (2025) confirmed that any blasting associated with the Project would comfortably comply with the limits in Rule 12.7.4.iv given the large separation distances between the project site and any sensitive receivers. The Updates now state that blasting activities will exceed the relevant permitted blasting standards in Rule 12.7.4.iv, but no further details are provided.

84. Marshall Day (2025) is premised on compliance with those rules. There is no assessment of noise effects that takes into account the non-compliances that have now been identified.

85. Sustainable Tarras is concerned that noise effects will be significant for people living near the mine or using the recreation areas near the mine, and that their amenity will be reduced as a result.

Social effects

86. Social effects include those arising directly from the Project (such as construction impacts, noise and visual impacts), employment impacts and community wellbeing impacts.[126]

[126] *Meridian Energy Ltd v Tararua District Council* [2025] NZEnvC 44. Stress and social division arising from the consenting process itself are not relevant (at [307] and [316]).

87. MGL commissioned the consultancy GHD to prepare a social impact assessment in 2024-2025. GHD interviewed potentially affected residents including Sustainable Tarras members. GHD's report was sent to Santana.[127] However, it has not been submitted as part of the substantive application nor provided to the participants. The logical inference is that GHD identified social impacts that MGL does not wish the Panel to be aware of.

88. Professor Higham's survey of Central Otago residents (2023-2024) investigated local Central Otago residents' perspectives on lifestyle, climate change, infrastructure and growth, tourism, and air travel. The survey revealed that the qualities of life that residents most valued were derived from 'Landscapes' and undisturbed 'Natural beauty'. "Availability of work near where I live" and "work opportunities" were ranked as much less important. The survey provides important evidence of Central Otago residents' perspectives on what contributes more to their wellbeing, and how their wellbeing is impacted by activities that degrade or destroy the features that contribute to their quality of life.

89. In *Shirley Primary School v Christchurch City Council*, the Environment Court discussed the admissibility and reliability of survey evidence, noting that the criteria set out in *Imperial Group plc v Philip Morris Ltd* are useful benchmarks for assessing the reliability and admissibility of surveys produced to the Environment Court.[128] The Higham survey meets the relevant criteria, and the Panel can place weight on its findings.

90. Sustainable Tarras submits that:

    a. MGL has not provided sufficient information about the social impacts of the Project.

    b. Information provided by commenters supports a finding that social impacts will be significantly adverse.

Transport effects

91. Mr Martineau's statement identifies issues with the assessment in the Integrated Transport Assessment[129] which combine to present significant safety, access, and

[127] The relevant correspondence is attached to Mr van der Mark's statement.

[128] 1. The interviewees must be selected so as to represent a relevant cross-section of the public; 2.The size must be statistically significant; 3. It must be conducted fairly; 4. All the surveys carried out must be disclosed including the number carried out, how they were conducted, and the totality of the persons involved; 5.
The totality of the answers given must be disclosed and made available to the defendant; 6. The questions must not be leading nor should they lead the person answering into a field of speculation he would never have embarked upon had the question not been put; 7. The exact answers and not some abbreviated form must be recorded; 8. The instructions to the interviewers as to how to carry out the survey must be disclosed; and
9. Where the answers are coded for computer input, the coding instructions must be disclosed: *Shirley Primary School v Christchurch City Council* [1998] ELHNZ 472 at 138 citing *Imperial Group Plc v Philip Morris Ltd* [1984] RPC 293 at 294

[129] B.30 ITA Stantec Integrated Transport Assessment

amenity concerns for the local community, and makes recommendations for transport network improvements if the Project is approved:

a. It is necessary to upgrade the one-lane bridge on SH8 next to the Ardgour Road intersection as mitigation for increased traffic volumes and resultant reduced efficiency of traffic crossing the bridge.

b. Lack of analysis of options to manage traffic at the intersection of Ardgour Road and Thomson Gorge Road.

c. Lack of information in the ITA about the form, gradient, speed environment or safety standards for the replacement Ardgour Rise Route, with information included in the Recreation Assessment[130] suggesting the new Route would be significantly steeper than the existing route, with the need to traverse challenging topography and environmentally sensitive land.

d. Significant increase in the volume of traffic and heavy vehicles on Ardgour Road, with no consideration of impacts on vulnerable road users (horse riders, cyclists). He recommends widening Ardgour Road from 5.5 to 6.5 m.

- *Any relevant provision of a national, regional or district planning instrument*

92. Interpretation and consideration of planning provisions under s 104 has been addressed in the *King Salmon, Port Otago, RJ Davidson and East-West Link* decisions.[131] Together those decisions are authority for the following propositions:

a. Directive policies, such as policies requiring particular environmental impacts to be avoided, have greater potency than other non- or less directive policies.[132] Policies that provide for use and development, through terms such as "ensure", "require" and "recognise," can also be directive, depending on how those terms are used in the policy.[133]

b. "Avoid" means "not allow" or "prevent the occurrence of".[134] However, prohibition of minor or transitory effects is not likely to be necessary.[135] The standard is protection from material harm. The concepts of mitigation and remedy may serve to meet the "avoid" standard by bringing the level of harm down so that material harm is avoided. Decision-makers must either be satisfied there will be no material harm or alternatively be satisfied that conditions can be imposed that mean material harm will be avoided; or any harm will be mitigated so that the harm is no longer material; or any harm will be remedied within a reasonable timeframe so that, taking into account

[130] B.39 Rob Greenaway and Associates Recreation Assessment
[131] *King Salmon*, above n 34; *RJ Davidson Family Trust v Marlborough District Council* [2018] NZLR 283 (CA); *Port Otago Ltd v Environmental Defence Society Inc* [2023] ELHNZ 245; *Royal Forest and Bird Protection Society of NZ Inc v New Zealand Transport Agency* [2024] NZSC 26.
[132] *East-West Link* at [72]; *King Salmon* at [129] and [152].
[133] *Port Otago* at [28] and [69]
[134] *King Salmon* at [93]
[135] *King Salmon* at [145]

the whole period harm subsists, overall the harm is not material.[136] However, an applicant can only "avoid" effects using offsetting if the relevant adverse effect can be avoided in fact: it is plainly not correct to suggest that unrelated environmental benefits could be offered up to avoid other adverse environmental effects.[137]

c. In applying s 104(1)(b), the consent authority must undertake a fair appraisal of the objectives and policies read as a whole. Isolating and de-contextualising individual provisions in a manner that does not fairly reflect the broad intent of the drafters must be avoided. Attention must be paid to the relevant objectives and policies both on their own terms and as they relate to one another in the overall policy statement or plan. Relevant objectives and policies cannot "simply be put in a blender with the possible effect that stronger policies are weakened and weaker policies strengthened". The s 104 duty to "have regard to" relevant provisions of planning instruments does not invest consent authorities with a broad discretion to "give genuine attention and thought" to directive policies, only to then refuse to apply them.[138] A relevant plan provision is not properly had regard to if it is simply considered for the purpose of putting it to one side.[139]

d. There may be instances where policies pull in different directions. This is likely to occur infrequently, and an apparent conflict may resolve if close attention is paid to the words used.[140] Where directive policies conflict, a "structured analysis" should be adopted. The appropriate balance between the directive policies depends on the particular circumstances, considered against the values inherent in the various objectives and policies. All relevant factors must be considered to assess which of the conflicting policies should prevail in the particular circumstances of the case.[141]

93. A planning report by Sylvia Allan (resource management planner) is attached. Key planning issues identified by Ms Allan include:

a. People familiar with the District Plan and its limitations, based on community values and informed by expert advice through the plan development and statutory processes, would not expect approval of the proposed gold mine which so profoundly exceeds the permitted baseline applying both in the Rural Resource Area and the parts of that area identified as ONL and SAL.[142]

---

[136] *Port Otago* at [65]-[66], applying *Trans-Tasman Resources* [2021] NZSC 127, at [252] per Glazebrook J, [292]—[293] per Williams J and [309]—[311] per Winkelmann CJ and [5]—[6] of the summary.
[137] *East-West Link* at [176]-[178]
[138] *East-West Link* at [72], [79], [80], [167] and fn. 157, at [169].
[139] *RJ Davidson* (CA) at [73]
[140] *King Salmon* at [129]
[141] *Port Otago* at [77] – [81]
[142] Allan statement at 34

b. The proposed mining activity is contrary to the recognition of the ONL in the District Plan and does not meet the associated policy imperative to "avoid" the adverse effect of inappropriate use and development. It is thus also inconsistent with the operative and proposed Otago RPSs and does not meet the requirements of RMA section 6(b) to avoid inappropriate use and development.

c. District Plan key Objectives and Policies for the Rural Resource Area and Back Country Amenity Values are not met.[143]

d. Policy 4.4.8 requires that the effects associated with some activities, including the generation of odour, dusts, wastes and hazardous substances, and the use and/or storage of hazardous goods or substances do not significantly adversely affect the amenity values of neighbouring properties or the safe and efficient operation of the roading network. Associated rules limit amounts of hazardous substances and dangerous goods that can be stored. The hazardous elements of the mining activity will further detract from the quality of rural character and amenity in the vicinity of the project area and are therefore inconsistent with policy that seeks to maintain rural amenity values and character. [144]

e. The proposal's impacts on waterbodies is inconsistent with National Policy for Freshwater Management 2020 policies for rivers and wetlands.[145]

f. The proposal does not meet "limits to offsetting" and "limits to compensation" in the National Policy Statement for Indigenous Biodiversity, which leads to a policy direction to avoid the activity. The Project is contrary to that policy.[146]

94. Policy 10A.2.2 (consent duration for water takes) is primarily relevant to setting conditions and so is addressed below at para 111,112.[147]

Any other matter that the consent authority considers relevant and reasonably necessary to determine the application

95. The Tarras and Central Otago plans discussed at paragraphs 27 to 34 are relevant and reasonably necessary to determine the application's economic and social effects, and the Panel should have regard to them under s 104(c) RMA.

[143] Allan at 54 - 61
[144] Allan at 69 - 70
[145] Allan at 71 - 83
[146] Allan at 89
[147] When approving Policy 10A.2.2, the Environment Court observed that "The policy on duration for permits covered by Policy 10A.2.2 is very directive" (Re Otago Regional Council [2021] NZEnvC 164 at [273])

Any previous or current abatement notices, enforcement orders, infringement notices, or convictions under the RMA received by the applicant

96. MGL has breached the RMA on at least two occasions since starting work at the application site.[148] The first, a base camp established on Bendigo Loop Rd with 30 workers processing drill samples in an unconsented facility[149], resulted in a formal warning. In the second instance, a communications tower was installed on Battery Hill within an Outstanding Natural Landscape, contrary to Rule 4.7.6L of the District Plan. CODC issued an abatement notice in respect of this breach on 6 March 2026.

97. The ability for consent authorities to take into account non-compliance was only recently added to the RMA (in mid-2025)[150] as part of a package of changes intended to improve regulatory compliance. It reflects Parliament's intention that RMA compliance is taken seriously and that there are meaningful consequences for non-compliance.

98. In considering the weight to place on MGL's breaches, the following matters are relevant:

    a. MGL is not a well-established mining company with a history of well-managed operations. Its parent company Santana Minerals Ltd was established in 2013 and has never constructed or operated a gold mine, tailings dam, or processing plant. It has no relevant previous experience.[151]

    b. The communications tower was erected on a mapped Outstanding Natural Landscape, in breach of a very clear rule controlling new structures, excavations and land disturbance.

    c. Likewise, the operating of a geological survey and base camp in a Rural Resource Area for some 4 years with 30 workers was in clear breach of the Central Otago District Plan.

    d. MGL's application is a "high trust" model. It seeks approval for a project that will make permanent changes to a very sensitive environment on the basis that future compliance with a vast suite of conditions and management plans will be effective at keeping structures safe and mitigating or remedying adverse effects. For some effects (e.g. rare vegetation), the proposed mitigation is unproven and highly risky. For other risks and effects (e.g. dam safety, contaminant leaching), management obligations must continue in perpetuity.

[148] Sustainable Tarras statement at 57.

[149] https://centralapp.nz/NewsStory/bendigo-mining-company-breaches-district-plan/687f24a7fdaea9002eb54f77#top

[150] Clause 36 of the Resource Management (Consenting and Other System Changes) Amendment Bill 2025

[151] This is further addressed in Geoff Bertram's report at Section 6.

99. In those circumstances, the fact that MGL has already breached a clear Plan rule raises significant concern that it will not comply with the multiplicity of complex requirements set out in consent conditions, and suggests that the Panel should place significant weight on this matter.

100. MGL is also in breach of various other legal requirements discussed in Sustainable Tarras' statement.[152]

Inadequate information to determine the application

101. Under the RMA, inadequacy of information is a ground for declining an application. While not a standalone ground for declining under the FTAA, inadequacy of information is a matter that weighs against approval and so should be treated as an adverse impact in the s 85(3) proportionality assessment. Instances where information is inadequate have been addressed above, in Ms Allen's planning evidence, and in Sustainable Tarras' expert evidence.

Section 107 RMA: discharges unconsentable under the RMA

102. Section 107 RMA prevents a consent authority granting a discharge permit to discharge a contaminant to water or land (in circumstances where it may enter water), if the discharge would have any of the effects listed in s 107(1)(e) – (g).[153] The Panel does not have any evidence on which the Panel can be satisfied that the Project will not cause significant adverse effects on aquatic life from discharges of cyanide or arsenic - which have not been described or assessed by MGL.[154]

Project is contrary to Part 2 RMA

103. Relevant Part 2 RMA provisions are ss 5, 6 and 7 (s 8 is excluded). Section 5(1) identifies the RMA's purpose: to promote sustainable management. "Promote" reflects the RMA's forward looking and management focus.[155] Sustainable management is defined as "managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while:

    a. sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

    b. safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

    c. avoiding, remedying, or mitigating any adverse effects of activities on the environment."

[152] Sustainable Tarras statement at 57.
[153] There are limited exceptions in s 107(2) and (2A) which are not presently relevant.
[154] Sustainable Tarras also relies on the statements by Kate McArthur and Dr Jenny Webster-Brown as to other effects on aquatic life.
[155] *EDS v New Zealand King Salmon* [2014] NZSC 38 at [21]

104. The word "environment" is broadly defined and includes ecosystems, people, communities, amenity values and more.[156] The term "amenity values" is itself widely defined[157] to mean "those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes".

105. Section 5 "states a guiding principle which is intended to be applied by those performing functions under the RMA". The word "avoid" in (c) has its ordinary meaning of "not allowing" or "preventing the occurrence of". The word "while" means the definition should be read as an integrated whole: sub-paras (a), (b) and (c) means must be observed in the course of the management referred to in the opening part of the definition (so "while" means "at the same time as"). The use of the words "protection" and "avoiding" contemplate that particular environments (places) may need to be protected from adverse effects in order to implement the policy of sustainable management. Sustainable management involves protection of the environment as well as its use and development.[158]

106. The Project's economic benefits are minimal and short-term. Those benefits are achieved in a way that is not consistent with people's social wellbeing, or their health and safety. The potential of natural and physical resources to meet reasonably foreseeable needs of future generations is not sustained, and life-supporting capacity is not safeguarded. Future generations will not benefit from the Project, yet they will bear the long-term legacy of its destructive impacts on the district's landscapes, night sky and waterbodies. Many of the Project's effects are not properly identified, let alone avoided, remedied or mitigated. The Project is not consistent with the Act's sustainable management purpose.

107. Section 5 is given further elaboration by sections 6 and 7.[159] Section 6 requires functionaries to recognise and provide for matters of national importance. Where s 6 refers to protection from inappropriate development, "inappropriateness" is assessed by reference to what it is that is sought to be protected.[160] Of particular relevance are:[161]

    a. *Section 6(a): the preservation of the natural character of wetlands, lakes, rivers and their margins and their protection from inappropriate development.*

       The natural character of Shepherds Creek, Rise and Shine Creek and their tributaries are somewhat modified by past land uses but still retain natural character, which will be impacted by the Project (particularly in the short – medium term).

[156] Section 2 RMA
[157] *EDS v King Salmon* at [23]
[158] *EDS v King Salmon* at [24]
[159] *EDS v King Salmon* at [25]
[160] *EDS v King Salmon* at [101]
[161] Kā Rūnaka may also consider s 6(e) to be particularly relevant.

b. *Section 6(b): the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development*.

The Project does not protect the landscape, and the site post-mining would fail to qualify as an outstanding natural landscape. This permanent loss of a landscape that contributes to the district's uniqueness is the antithesis of protection, making the Project clearly "inappropriate development".

c. Section 6(c): the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.

The project will destroy highly Threatened plant communities and fauna habitat, contrary to s 6(c). Outcomes of restoration and offsetting/compensation are highly uncertain.

d. Section 6(h): the protection of historic heritage from inappropriate subdivision, use, and development.

Bendigo Station has high heritage values, and the Project will result in the destruction of seventeen identified heritage features, which NZHP acknowledges is a major impact. NZHP has not adequately identified the site's historic heritage so it is likely that additional sites will be impacted. The Project will have significant adverse effects on historic heritage. The Project fails to protect historic heritage from inappropriate development, in circumstances where that heritage is a major feature of regional identity.

108. Section 7 identifies matters that the Panel must have particular regard to. Relevantly:

a. *Section 7(b): The efficient use and development of natural and physical resources*.

"Efficiency" brings into question comparison with the existing situation and, in appropriate cases, a comparison with other developments.[162] The Project is highly inefficient in: the choice of open-cast mining method, the exceedingly high stripping ratio (waste rock to ore), the lack of extraction of other minerals for use, and the choice of aboveground tailings storage. Those inefficiencies bring significant increased environmental costs.

b. Section 7(c): the maintenance and enhancement of amenity values:

Amenity landscape values[163] will not be maintained. Rural amenity will be impacted by noise (which is now accepted not to meet Central Otago District

[162] *Nelson Intermediate School v Transit NZ* (2004) 10 ELRNZ 369 (EnvC)

[163] Outside areas mapped as ONL. The Environment Court has confirmed that all of the non-ONF/L landscape in Queenstown-Lakes District that is rural qualifies as amenity landscape in terms of s7(c). There is no reason why non-ONF/L parts of Central Otago that sit within the relevant landscape would be any different.

Plan limits) and dust. Recreational opportunities including access to the Come in TIme Battery will be lost.

c. *Section 7(d): Intrinsic values of ecosystems:*

"Intrinsic values", in relation to ecosystems, means those aspects of ecosystems and their constituent parts which have value in their own right, including (a) their biological and genetic diversity; and (b) the essential characteristics that determine an ecosystem's integrity, form, functioning, and resilience. The Project's vegetation ecosystems are unusual, including "dynamically unstable" cushion plant vegetation and spring annual herbs that occur in areas of "extreme environmental stress and/or land use disturbance that selects for much bare ground". Lizard populations include several threatened species. Restoration outcomes are highly uncertain.

d. *Section 7(f): Maintenance and enhancement of the quality of the environment:*

The TSF contaminant discharges will continue to degrade the quality of the environment long after MGL has finished mining and relinquished its responsibilities to the site. The Project does not maintain, let alone enhance, the quality of the environment.

e. *Section 7(g): Any finite characteristics of natural and physical resources:*

Of particular relevance are the Dunstan Mountains ONL, dark sky values, highly threatened plant and animal communities and historic features that will be impacted or destroyed by the Project.

109. The Project is contrary to, ss 5, 6 and 7 RMA – these adverse impacts must be weighed heavily in the Panel's proportionality assessment.

Clause 18 of Schedule 5 FTAA: conditions

110. This section of Sustainable Tarras' comments does not address the draft consent conditions in detail, but provides general observations on the adequacy of the proposed condition set for the Panel's consideration, should it decide to grant the approvals.

111. When setting conditions on a consent, the provisions of Parts 6, 9, and 10 of the RMA that are relevant to setting conditions on a resource consent apply to the panel, subject to all necessary modifications.[164] Section 108 RMA provides a broad discretion to impose conditions. Section 108AA requires that conditions are either agreed by the applicant, or directly connected to an adverse effect or an applicable district or regional rule or national environmental standard, or that conditions relate to administrative matters that are essential for the efficient implementation of the relevant resource consent.

[164] Clause 18 Sch 5 FTAA

112. Section 108A provides in a *non-exclusive* way for the types of long-term effects that can be secured by bond conditions. Bond conditions can continue after the expiry of the consent to secure ongoing performance. Conditions requiring the consent holder to obtain public liability insurance may also be imposed.[165]

Section 127B RMA

113. Section 127B RMA is particularly relevant to setting conditions for this application. It provides that the duration of a water permit authorising the taking or use of water granted on and after the commencement date under the Regional Plan: Water for Otago must not exceed 6 years.[166] MGL seeks approval to take water for 35 years and submits that s 127B does not preclude the Panel from granting the approvals sought under the FTAA for a period of more than six years.[167]

114. Sustainable Tarras submits that is legally wrong for the following reasons:

a. Section 127B was included in the RMA on 21 August 2025 by the Resource Management (Consenting and Other System Changes) Amendment Act 2025. It contains specified exclusions,[168] none of which are relevant. The FTAA excludes the application of some RMA provisions (such as s 104D RMA) and could have excluded s 127B but does not.

b. The duration of a consent is a matter that goes to consent conditions. Section 127B is therefore relevant under cl 18 of Sch 5. The Panel is required to undertake the weighting in cl 17 "when considering a consent application, including conditions in accordance with cls 18 and 19". That does not mean that the Panel weighs the RMA condition-setting provisions. The Panel is required to "apply" the RMA condition-setting provisions and cannot avoid the effect of those provisions through the weighing in cl 17.

c. The six year duration was not only intended to "discourage investment" as MGL submits[169] (it would be highly unusual for a resource management provision to be focussed on investment, rather than sustainable management). Section 127B was enacted to extend the effect of regional policy (Policy 10A.2.2) approved by the Environment Court in 2021 as part of Plan Change 7 to the Otago Land and Water Plan.[170] Plan Change 7 was prepared to address "significant resource management issues"[171] following a

[165] For an example see *Royal Forest and Bird Protection Society Inc v Whakatane District Council* [2012] NZEnvC 38, at condition 62
[166] Section 127B(1) RMA
[167] Substantive Application at 236 and Legal covering letter
[168] Section 127B(2) RMA
[169] Substantive Application at 236.
[170] Policy 10A.2.2 Otago Regional Plan: Water was approved by the Environment Court in *Re Otago Regional Council* [2021] NZEnvC 164 (the Plan Change 7 decision).
[171] *Re Otago Regional Council* at [320]

central government review of freshwater management in Otago[172] which found that the operative regional plan was not fit for purpose to manage freshwater sustainably.[173] Policy 10A.2.2 was the primary focus of the Court's decision. The Court accepted that determining consents on a case-by-case basis and effectively locking in long-term allocations prior to the preparation of a sustainable freshwater planning framework risked pre-empting appropriate freshwater outcomes meeting the requirements of the National Policy Statement for Freshwater Management.[174] In approving Policy 10A.2.2, the Court rejected a range of exceptions to the policy sought by parties to Plan Change 7 (e.g. for new community water supplies,[175] dewatering takes for mining[176] suction gold dredging, and mining[177]). The Court allowed only one exception (replacement of deemed permits for existing hydro-electricity schemes[178]).

d. It is therefore not "directly contrary to the purpose of the [FTAA]", as MGL submits. While the purpose of the FTAA is to "facilitate" development, that does not mean that approvals must always be granted.[179] The requirement to "apply" RMA provisions on consent conditions is part of the scheme of the Act that implements that purpose.

Certainty of conditions

115. Conditions must be certain. When setting conditions, a decision-maker can delegate the administrative task of ensuring standards are met to a third party. However, conditions must not unlawfully delegate the making of substantive decisions. This principle is particularly relevant to conditions providing for management plans to be certified at a later point. Conditions must identify the performance standards and limits that are to be met and the management plan then identifies how those standards are to be achieved.[180] The objectives and standards set for management plans in conditions must ensure that it is possible to certify that the management plans (including subsequent revisions of the management plans) achieve the specified standards.

---

[172] "A Review of the Otago Regional Council's Planning and Regulatory Functions" (2019), initiated by the Minister for the Environment under ss 24A-24C RMA

[173] *Re Otago Regional Council* at [1]-[2], [26]

[174] *Re Otago Regional Council* at [74]

[175] At [388]

[176] At [190]

[177] In Annexure 7: Decisions on Submissions

[178] At [429]

[179] In its draft decision on the Taranaki VTM project, the Panel said that "facilitate" means "the process by which [a project] might be approved is an easier process, and one that makes the granting of approval more likely".

[180] *Re Canterbury Cricket Association Inc* [2013] NZEnvC 184 at [125]. See also *Wellington Fish and Game Council v Manawatu-Wanganui Regional Council* [2017] NZEnvC 37 at [175].

116. In order to avoid an unlawful delegation the question of how effects are to be managed must be addressed as part of the Panel's consent decision, not by officials certifying a plan. The Environment Court in *Remediation (NZ) Limited v Taranaki Regional Council*[181] emphasised the importance of being vigilant against inappropriate deferral of decisions which safeguard the environment and held that the objectives and parameters to be met must be set in conditions of consent and not left to management plans. In *CJ Industries v Tasman District Council*[182] the Environment Court similarly emphasised that it is important that conditions explicitly state clear performance standards (as opposed to leaving these to be determined at a later date); and that where expert certification is required, the condition must state clear parameters and specified standards in relation to this.

117. These are administrative law concepts[183], not RMA-specific requirements, so they also apply to approvals granted under the FTAA. These concepts have been applied in other FTAA decisions: for example the Maitahi Village Panel said that a condition may authorise a person to certify that a condition of consent has been complied with or otherwise settle a detail of that condition, subject to the requirement that the basis for any exercise of a power of certification must be clearly set out with the parameters for certification expressly stated in the relevant conditions.[184]

118. Many of MGL's proposed conditions relating to management plans do not meet the required standard, because they do not provide clear environmental objectives that must be met or set the performance standards and limits that management plans must achieve. In particular, the Mine Closure Plan objectives[185] use vague terms such as "safety hazards have been *appropriately* managed, and *effective* controls are in place", "*Key* heritage values have been protected …", "Contamination caused by the operation is *appropriately remediated or managed*" and so on.

119. The Management Plans themselves also leave critical parameters to be developed at a later stage, in circumstances where the Panel needs to be satisfied that those parameters are appropriate to manage environmental risks and effects. For example, the G.01 Water Management Plan deals with sources of water used for dust suppression. It provides that management processes will be developed to ensure the use of pit sump water for dust suppression is suitable, including *defining what water quality is deemed appropriate*.

120. MGL's proposed conditions provide for management plans to be certified by the Panel. That is not appropriate. There is no power under the FTAA for the Panel to certify management plans. The Waihi North Panel rejected the applicant's proposed conditions providing for management plans to be approved by the Panel in favour of

[181] *Remediation (NZ) Limited v Taranaki Regional Council* [2024] NZEnvC 213 at 27, and 466-467.
[182] *CJ Industries Limited v Tasman District Council* [2025] NZEnvC 213 at [343]
[183] *Turner v Allison* [1971] NZLR 833 (CA).
[184] At 684.
[185] D.03 Common Condition C51.

the orthodox approach where management plans are submitted to the relevant council for assessment and certification.[186]

121. Any management plans that are relevant to the Minister of Conservation's functions (i.e. which apply to the wildlife permit, concessions or complex freshwater fisheries approval) should be certified by the Minister or delegate in addition to the relevant local authority.[187] Similarly, a role for Heritage NZ should be provided in the certification of any management plans that are relevant to heritage features.

122. Certification conditions must require certification by a suitably qualified and experienced person, engaged by the relevant local authority, at the consent holder's cost.

Ability to implement conditions

123. The Environment Court's decision in *Remediation (NZ) Ltd v Taranaki Regional Council*[188] contains a comprehensive analysis of how the Court should approach questions of achievability or implementability of consent conditions. If there is evidence that consent conditions may not be achievable, the Court is not required to assume that the applicant will adhere to the conditions.[189] That is highly relevant to the Panel's consideration of proffered conditions to "enable the modified mined landscape to be re-integrated into the Dunstan Mountains Outstanding Natural Landscape", and its reliance on untested or unfeasible restoration methods for rehabilitation of cushionfield vegetation, re-creation of lizard and rare plant habitat, the re-establishment and maintenance of millions of plants to create 220 ha of tussockland and 230 ha of scrubland, and the control of pest plants and mammals over the 2000+ha area of the Ardgour Restoration Area and Mine Regeneration Zones.

Mine closure conditions

124. The Mine Closure Plan condition provides for MGL to relinquish tenure and associated obligations.[190] This raises serious unresolved questions about who is left with the responsibility for the tailings storage facility in the long-term.

125. The Maitahi Village Panel considered this issue in the context of a contaminated landfill that was approved in that decision. It required the applicant to identify a mechanism to ensure responsibilities were maintained in perpetuity (e.g. consent notice, land covenant, or other legal instrument registered on the title), with proof of

[186] Waihi North Panel decision, Part E at [7]-[8]. The Waihi North decision is under appeal to the High Court. One ground of appeal concerns the management plan conditions (alleged failure to specify objectives and parameters). The appeal does not relate to the certification entity.
[187] This issue was considered by the Waihi North panel, who concluded it was appropriate for DOC to have a certifying role for management plans pertaining to the conservation estate on the basis that this would enable DOC to manage elements of the management plans which fall within DOC's expertise and align with its statutory functions (Part N at [81]).
[188] *Remediation (NZ) Ltd v Taranaki Regional Council* [2024] NZEnvC 213
[189] At [207] and [487]-[488], distinguishing *88 The Strand Limited v Auckland City Council* [2002] NZRMA 475 at [19]
[190] D.03 Combined Conditions C48.j

implementation of that mechanism to be provided to Council's Monitoring Officer.[191] It required that mechanism to be in place *prior* to placement of contaminated material into the landfill.

126. Should the Panel decide that approvals can be granted, Sustainable Tarras considers that the intended legal instruments to secure ongoing ownership and legal and financial responsibility for the permanent TSF and ELFs should be made available now, as it seems highly improbable (in the *Remediation (NZ)* sense) that conditions requiring this in future can be achieved.

Bond and insurance

127. The matters to be covered by MGL's proposed bond are expressed in general terms in condition C51. Condition C55 provides for the bond to be fixed annually by a suitably qualified and experienced independent assessor recommended by the Consent Holder and approved by the Councils, taking into account documents that include the methodology set out in the Lane Associates Limited report. [192]

128. The way in which the requirements of this condition have been interpreted in Lane Associates bond assumptions gives cause for concern that the bond will be insufficient. Lane Associates assessment is incomplete in terms of coverage (it does not cover the 2000 hectare Mine Regeneration Zone and Ardgour Restoration Area, and does not include contingency funds nor a liability component), and only maps out the bond until year 11, despite obligations (such as ecological restoration and contaminant treatment) extending well beyond year 11. Issues with the bond assumptions are further described in Sustainable Tarras' statement.

129. If the approvals are granted, a condition requiring public indemnity insurance should be imposed in addition to the bond requirement. The condition should require MGL to enter into a policy that would cover damage to the environment and local residents from unforeseen effects (such as from catastrophic tailings dam failure). Such conditions are lawful, and have been imposed in other cases. Particularly detailed insurance conditions were imposed in *Eyre Community Environmental Safety Society Inc*[193], the Environment Court's final decision on consents for a large irrigation dam.

Concessions

Considerations not addressed by the applicant's legal overview

130. When considering an application for a concession, including conditions, the panel must take into account the matters in cl 7 of Sch 6 FTAA. It is important to note that MGL's Legal Overview[194] does not cover all of the relevant considerations. It omits reference to two mandatory relevant considerations:

[191] Maitahi Village decision at 807.
[192] B.44 Lane Associates Limited Bond Introduction
[193] *Eyre Community Environmental Safety Society Inc v Canterbury Regional Council* [2020] NZEnvC 138, [2020] ELHNZ 202, conditions 82 - 89
[194] A.02B Legal Overview at [75]

a. the purpose for which the land is held,[195]

b. any conservation management strategies or conservation management plans that have been co-authored, authored, or approved by a Treaty settlement entity; and the views of the entity referred to in subsubparagraph (A) on the proposed concession;[196]

and one discretionary consideration:

c. any policy statement or management plan of the Crown (other than a strategy or plan referred to in paragraph (a)(vii).

Concessions in favour of third parties

131. MGL seeks concessions in favour of third parties:

a. A concession (easement in favour of Central Otago District Council (CODC) as a public right-of-way) for activities occurring within the Ardgour Rise Concession Area; and

b. A concession (easement in favour of NZTA and CODC) for activities occurring in the SH8 Concession Area.

c. Several new concessions added on 10 March 2026, including a concession in favour of Chorus.

132. In each of the concession documents, MGL is listed as the concessionaire (i.e. the grantee) but not the entity in whose favour the concessions are sought (i.e. the entity who will benefit from the concession). NZTA, CODC and Chorus, the entities in whose favour the concessions are sought, are the entities entitled to benefit from the concessions but are not listed concessionaires and will therefore not be bound by the conditions of the concessions.

133. DOC's completeness comments said:

> DOC's interpretation of the FTAA is that only the 'authorised person', in this application Matakanui Gold Limited, is eligible to apply and be granted approvals for concessions under the FTAA. It is noted the applicant has included New Zealand Transport Agency (NZTA) and Central Otago District Council (CODC) as proposed concession holders. Whilst an approval may be able to be transferred to these parties post decision, DOC notes that this will need to occur outside the FTAA. DOC has also been unable to locate in the application documents where 'approval' has been provided by NZTA/CODC for concessions proposed in their favour.

134. Sustainable Tarras submits that the applications for concessions in favour of third parties are unlawful. The Conservation Act statutory scheme strongly indicates that a concession in the form of an easement must be granted to, and held by, the person entitled to the benefit of that easement (the concessionaire). The applicant and concessionaire should be the same person or entity. It does not provide for

[195] Clause 7(1)(a)(vi) of Sch 6 FTAA
[196] Clause 7(1)(a)(vii) of Sch 6 FTAA

concessions to be applied for by an entity other than the person entitled to the benefit of the easement. Under the FTAA an applicant may apply for a "concession that would otherwise be applied for" under the Conservation Act.[197] If, as Sustainable Tarras submits, a concession may not be sought in favour of a third party under the Conservation Act, then equally it cannot be sought under the FTAA.

135. A concession is a lease, licence, permit, or easement granted under Part 3B of the Conservation Act.[198] Section 17R in Part 3B provides that "any person may apply to the Minister for a concession to conduct an activity in a conservation area"[199] and s 17Q provides that the Minister "may grant a concession … in respect of any activity."[200] In granting any concession, the Minister may impose such conditions as considered appropriate.[201]

136. "Easement" is not defined[202] but it is generally understood to be an interest in land capable of being registered on the title, enabling one person (the dominant tenement) to use the land of another (the servient tenement) in a specified way. Easements may also be 'in gross' (not attaching to a dominant tenement).[203]

137. Concessions in the form of easements in gross, granted under the Conservation Act, confer a benefit on a person (or entity) in respect of conservation land. They may come with duties and responsibilities (in the form of conditions) like the restoration of the land or the payment of compensation for any adverse effects.[204] The benefit of easements in gross over private land may be assigned.[205] This general position is modified under the Conservation Act whereby the consent of the Minister is required for any transfer, sublease, assignment, mortgage or other disposition of the concessionaire's interest.[206]

138. Concessions are held by 'concessionaires', relevantly defined in the Conservation Act as a person who is the "grantee of an easement".[207] "Grantee" is not defined in the Conservation Act, but the Land Transfer Act 2017 defines "grantee" in relation to an easement as "the person entitled to the benefit of the easement".[208] The "concessionaire" in relation to a concession in the form of an easement in gross is "the person entitled to benefit from the easement", being the person in whose favour the easement is sought. Therefore, the concessionaire and the entity in whose favour a concession is sought must be the same entity. It is conceivable that

[197] FTAA, s 42(4)(e) and sch 6 cl 1
[198] Conservation Act, s 2
[199] Conservation Act, s 17R
[200] Conservation Act, s 17Q
[201] Conservation Act, s 17X
[202] Either in the Conservation Act or in the Property Law Act 2007 or Land Transfer Act 2017
[203] Property Law Act 2007, s 291
[204] Conservation Act, ss 17X(d) and (i)
[205] Property Law Act 2007, s 291(4)
[206] Conservation Act, s 17ZE; *Federated Mountain Clubs of New Zealand Inc v Griffin Creek Hydro Ltd* [2023] NZHC 2917, at [107]
[207] Conservation Act, s 2
[208] Land Transfer Act 2017, s 107

there could be multiple beneficiaries of a concession in the form of an easement[209] but in such instances, following the interpretation above, those beneficiaries should be joint concessionaires.

139. The Conservation Act does not explicitly state whether the person or entity entitled to benefit from the easement (i.e. the concessionaire) must be the applicant, or whether the concessionaire can be a third party. However, the statutory scheme strongly indicates an intention that the applicant be the concessionaire. This is clear from the information requirements and the matters the Minister must consider. The Act does not require a concession application to specify the intended concessionaire (it is assumed that the applicant is the concessionaire). Concession applications must include, and the Minister considering an application must have regard to, the following:[210]

    a. a description of the potential effects of the proposed activity and of any actions that the "applicant proposes to take" to avoid, remedy, or mitigate any adverse effects of the proposed activity;[211] and

    b. relevant information "relating to *the applicant*", including any information "relevant to *the applicant's ability to carry out the proposed activity*".[212]

140. The general principle (established by a long line of case law[213]) that resource consent conditions cannot bind third parties is also a relevant consideration.[214] If concessions are sought and approved in favour of third parties (who are not the applicant or the concessionaire), rights and responsibilities will be imposed (for example, in respect of site management) on those third parties which may be similarly difficult to enforce, as the third party is not required to abide by the conditions of the concession.

141. This issue is reflected in DOC's completeness feedback:

> Ardgour Rise will be vested to CODC for operation and maintenance after completion. DOC notes lack of evidence of consultation outcomes with CODC or Chorus and absence of detail on financial guarantees or enforcement mechanisms for restoration obligations. For the purposes of completeness, evaluation reflects a borderline level of sufficiency.

---

[209] As the High Court in *Hexton Holdings Ltd v MacLaurin* HC Gisborne CIV-2006-417-92, 19 December 2008 stated at [131], an easement in gross is a property right, an incorporeal hereditament, which can be held as tenants in common in equal shares (or for that matter as joint tenants), in the same way as any land or interest in land can be held in shares.

[210] Conservation Act, s 17U(1)(d)

[211] Conservation Act, s 17S(c), largely mirrored in cl 3(1)(g)(ii) of sch 6 FTAA

[212] Conservation Act, s 17S(f), largely mirrored in cl 3(1)(i) of sch 6 FTAA

[213] *Smith Developments Ltd v Christchurch City Council* C 068/08, at [17]; *Skyline Enterprises Ltd v Queenstown Lakes District Council* [2017] NZEnvC 124, at [58] and *Allied Asphalt Ltd v Bay of Plenty Regional Council* [2024] NZEnvC 247, at [160].

[214] *Jones v Taupō District Council* [2025] NZEnvC 388, at [33]-[35]; and at [46], for clarity, the Court noted that "the determination of the *vires* of any consent condition must be considered within its particular set of facts. The circumstances in this instance are unusual and may not arise again. Accordingly, caution should be exercised in extending the determinations made in this decision to other situations."

142. The easement concessions sought "in favour of" CODC and NZTA do not properly fall within the category of concessions that "would otherwise be applied for" under the Conservation Act, and cannot therefore be sought and obtained under the FTAA.

Part 3B of the Conservation Act, and other relevant provisions of the Conservation Act that direct decision making in relation to Part 3B

143. MGL has provided high level commentary on Project's effects but has not specifically assessed effects of the concessions sought. There should be a more detailed assessment of the impacts of the Ardgour Rise concession and the Willow Management concession, in particular.

Purpose for which the land is held

144. MGL has not assessed the Project's consistency with the purpose for which the conservation areas are held. The Ardgour Conservation Area is held for conservation purposes[215], where "conservation" is defined as "the preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations".[216] The proposed Ardgour Rise concession does not preserve or protect natural and historic resources and is inconsistent with the purpose for which this Area is held.

145. There is insufficient information to understand whether the proposed water monitoring concession and proposed willows management concession are consistent with the purpose for which the Bendigo Historic Reserve is held under s 18 Reserves Act. The proposed Come In Time concession is not consistent with the purpose for which the Bendigo Historic Reserve is held.

Reserves Act approval (Conservation Covenant partial revocation)

146. When considering an application for an amendment or a revocation of a conservation covenant[217], including conditions, the panel must take into account the purpose of the FTAA, the purpose of the covenant and the conservation values of the land concerned, and whether the amendment or revocation will compromise values of regional, national, or international significance.[218]

147. The Conservation Covenant was placed on the land as an outcome of tenure review of the formerly Crown-owned Bendigo Station. Tenure review was a voluntary process whereby a pastoral lease was divided into freehold land for the leaseholder, and land returned to the Crown (without the lease encumbrance). Generally, it involved areas with higher conservation, heritage or recreation values being returned to the Crown or protected through mechanisms like covenants, and more modified areas with lower conservation values being freeholded. Tenure review

[215] Section 7 Conservation Act
[216] Section 3 Conservation Act
[217] MGL refers to an "uplift" but this is not a term used in the legislation.
[218] FTAA, Sch 6

involved a negotiated exchange of interests, in which the leaseholder benefited from holding the land "freed from the management constraints … resulting from its tenure under reviewable instrument" while also "enabling the protection of significant inherent values of reviewable land".[219] As a result of tenure review, extensive areas that were formerly Crown-owned pastoral lease land were transferred to the leaseholders as freehold title. At Bendigo Station, approximately 1920 ha was returned to the Crown (subject to a grazing lease), approximately 1372 ha was allocated to DOC with no provisions for grazing, and 7992 ha was disposed of to the lessees, subject to conservation covenants in some areas, as shown in Figure 1:

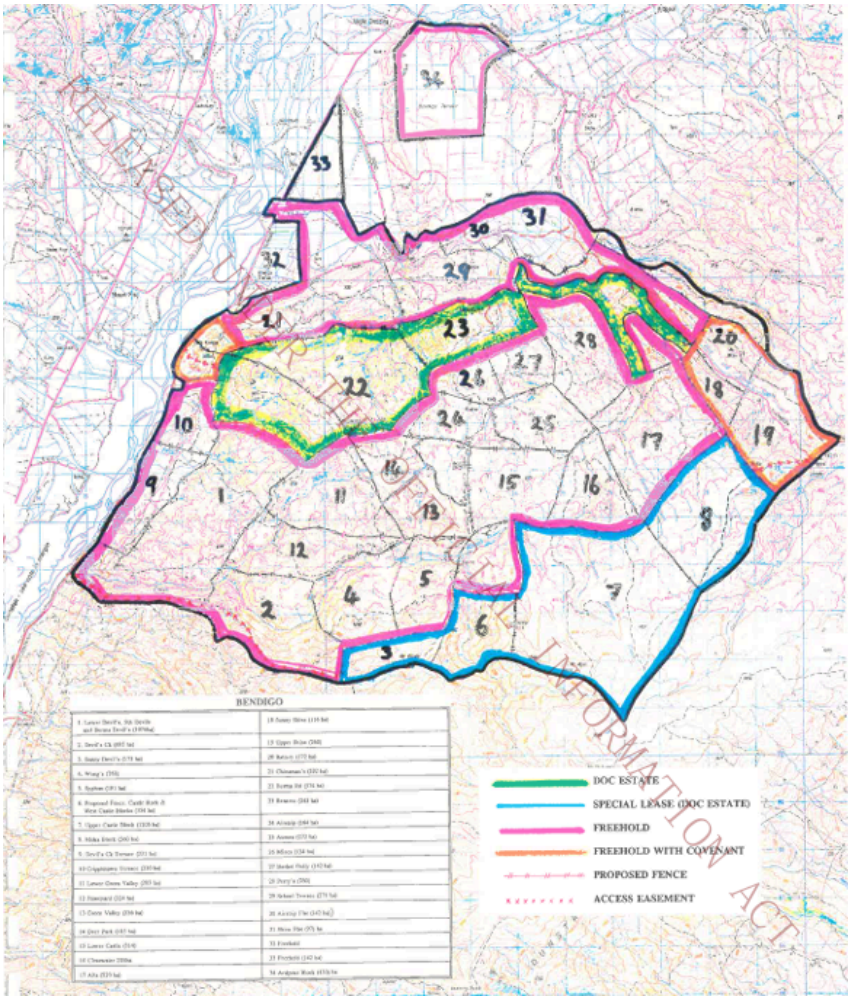


Figure 1: Bendigo Station tenure review - distribution of land tenures

148. This enabled freeholded areas to be more intensively farmed (including through irrigation of the lowlands, which was not authorised as of right on pastoral leases), presumably generating a greater return for the landowners. The "quid pro quo" of the leaseholders obtaining that "free from encumbrance" interest enabling more diversified and profitable use of part of the land was the protection of those areas that were returned to the Crown or covenanted.

[219] These phrases were used to describe the objectives of tenure review in the Crown Pastoral Land Act 1998 (s 24) until its repeal in 2022. The Bendigo Station tenure review occurred as an administrative process under the Land Act 1948 but the intention was essentially the same.

149. The purpose of the Conservation Covenant can be taken from its statutory purpose under s 77 Reserves Act and from the Covenant's conservation objectives. Section 77 provides that:

> (1) The Minister, any local authority, or any other body approved by the Minister, if satisfied that any private land or any Crown land held under Crown lease should be managed so as to **preserve the natural environment, or landscape amenity, or wildlife or freshwater-life or marine-life habitat, or historical value**, and that the particular purpose or purposes can be achieved without acquiring the ownership of the land, or, as the case may be, of the lessee's interest in the land, for a reserve, may treat and agree with the owner or lessee for a covenant to provide for the management of that land in a manner that will achieve the particular purpose or purposes of conservation:
>
> ....
>
> (2) Any covenant under this section may be in perpetuity or for any specific term.

150. The Conservation Covenant objectives are:[220]

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 as referred to in the draft survey report for the Protected Natural Areas Programme for the Lindis Pisa and Dunstan Ecological Districts dated February 1987.

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.

151. The Conservation Covenant expressly prohibits prospecting or mining for minerals, coal or other deposit on or under the land.[221]

152. MGL's conclusion is that "the values sought to be protected by the Conservation Covenant will not be compromised in the context of the overall wider area". However, that is not what the Covenant requires or what the FTAA asks. The pertinent questions are whether the partial Covenant revocation is consistent with the purpose of the Covenant, and whether it will compromise values of regional, national, or international significance.

[220] Clause C.
[221] Clause 3.

153. MGL's analysis of the consistency of the Covenant revocation with the purpose of the Covenant is premised on an incorrect interpretation of the Reserves Act and the Covenant, incomplete, and not supported by evidence:

a. MGL's analysis relies on the extent of the Conservation Covenant remaining outside the area to be revoked. This is an irrelevant consideration. The Covenant area was delineated as part of the tenure review process and its purpose is to protect and preserve *all* of the covenanted area. "Protection", in relation to a natural or historic resource, means "its maintenance, so far as is practicable, in its current state, but includes (a) its restoration to some former state; and (b) its augmentation, enhancement, or expansion".[222] "Preservation" in relation to a resource, "means the maintenance, so far as is practicable, of its intrinsic values". An attempt to justify the impact of a particular proposal by reference to the wider, unaffected conservation area was rejected by the Court of Appeal in *Royal Forest and Bird Protection Society of New Zealand Inc v Minister of Conservation*[223] (which concerned revocation of the specially protected status of part of a conservation area to facilitate a land exchange). The Court found that:

> The whole concept of conservation is predicated upon maintenance of the status quo once land is found to meet the statutory requirements of protection and preservation.[224]
>
> …
>
> The 22-hectare land is but a small and peripheral component of a greater 94,000-hectare whole that … "consists of beautiful bush-covered ranges *with a range of recreation opportunities*" (emphasis added). It must be contrary to the conferral of specially protected status under the Act, which secures the land for the options of future generations, to then carve away discrete sections from the broader conservation park for individual assessment. … [T]o allow the Director-General's decision would be to permit the territorial erosion of former forest parks in a way which defeats the statutory presumption of preservation and protection[225]

This was upheld by the Supreme Court, which also observed that "augmentation" does not mean augmentation of the conservation area as a whole:

> … Protection of the resources in the subject land and not augmentation of the park as a whole is required in the management of the land under ss 19(1) and 18(5) [Conservation Act]. As the Court of Appeal majority pointed out, a revocation

[222] Section 2, Conservation Act
[223] *Royal Forest and Bird Protection Society of New Zealand Inc v Minister of Conservation* [2016] 3 NZLR 828 at [69]
[224] *Royal Forest & Bird* at [57]
[225] At [77]

> decision under s 18(7) is necessarily specific to protected land which is the subject of the revocation.[226]

b. The substantive application relies on Boffa Miskell's assessment of natural character and landscape values. Boffa Miskell's natural character assessment is in the RMA sense (which relates only to water bodies and their margins). Those natural character values are not protected and enhanced by the partial revocation. The Covenant appears to use the term natural character in a broader sense of the connectivity between the land, ecosystems and waterbodies. There is no assessment of whether the natural character values described in the Covenant are protected: clearly, they are not.

c. There is no specific analysis by Boffa Miskell of the landscape values of the land "as referred to in the Application for exchange of property rights." Ms Gilbert has assessed those landscape values. Her opinion is:[227]

> With respect to the Bendigo Conservation Covenant, for the reasons outlined in my discussion of landscape effects with respect to the relevant landscape and the Dunstan Mountain ONL, I do not consider that the BOGP will maintain the landscape values of the covenant area.
>
> More specifically in relation to stated landscape related outcomes for Thomsons Gorge, I do consider that the proposal will maintain the area in its present state, protect the landscape of upper Rise and Shine Creek, the historic gold mining cottages, dams, etc, and the silver tussock grassland.

The particular landscape values that must be maintained in their present state are not maintained by partially revoking the Covenant.

d. There is no specific assessment of the land "as an area representative of a significant part of the ecological character of the Dunstan Ecological District as referred to in the draft survey report for the Protected Natural Areas Programme for the Lindis Pisa and Dunstan Ecological Districts dated February 1987". Rather the ecological assessments focus on the current state of particular vegetation communities. Management of ecological effects relies largely on restoration, offsetting and compensation (with uncertain outcomes). That does not "protect the land" subject to the revocation.

e. The Covenant requires the maintenance of the historic values of the land as referred to in "The Rich Fields of Bendigo". This publication describes the significant array of transport related features, and historic alluvial and hard rock mining systems with associated occupation in the Rise and Shine Valley area. All of these sites/features are within the Covenanted area proposed to be revoked. While NZHP have appeared to have assessed these sites, it is only as individual sites/features and not in relation to their connection and contribution to wider heritage systems and heritage landscapes. A good

---

[226] *Hawke's Bay Regional Investment Company Ltd v Royal Forest and Bird Protection Society of New Zealand Inc* [2017] NZLR 1041 at [108]

[227] At 2.14 – 2.15

example is recorded site G41/277 which at face value appears to be one site, but in fact is a complex system covering alluvial mining by Rise and Shine Syndicate, hard rock prospecting and mining by five syndicates (Rise and Shine, Eureka, Jubilee, Bendigo Rise and Shine, and Shine Again), and features foundation structures relating to three stamper batteries with associated hard rock shafts (recently discovered), pits, adits (tunnels) mullock heaps, tramway & three water races dating from the 1870s to 1930s with direct connection to the Alta and Come in Time hard rock mining systems downstream. In the context of their associated heritage systems, these are significant component sites, which give context to the Battery Hill landmark above that will be destroyed. There can be no doubt that the Covenant revocation does not maintain the historic values identified in "The Rich Fields of Bendigo", and that it compromises heritage features that are regionally if not nationally important.[228]

154. The question of whether the revocation will compromise values of regional, national, or international significance is not addressed by MGL in any meaningful way, but again MGL relies on a comparison with the wider Covenant. "Compromise" is not a high bar. The Project impacts regionally, nationally and internationally significant ecological, heritage and landscape features in a manner that undeniably compromises those features.

155. The purpose of the Conservation Covenant and the Project's impact on values of regional, national, or international significance both weigh strongly against approval.

156. Proposed CODC land use condition 122 requires a covenant in a form to be approved by CODC and which provides legal protection in perpetuity of the offset and compensation areas. The covenant is to be in favour of CODC. A CODC covenant may be an appropriate mechanism to secure the proffered offsetting and compensation outcomes but it does not ameliorate the impact of the Covenant revocation. It appears that CODC does not support the proposed CODC Covenant, which raises questions as to whether it can even be implemented.[229] However, in case that should change, Sustainable Tarras addresses the adequacy of the proposed CODC Covenant below.

157. The CODC Covenant is a lower level of protection than the existing Conservation Covenant and could be varied or uplifted - given the applicant's proposal to 'uplift' the covenant in order to undertake mining in the BOGP site, there is nothing to stop it seeking to uplift the CODC Covenant in the future. This protection is insufficient to achieve the applicant's stated long-term protection outcome. The applicant has an active prospecting permit (60882) for these ecological areas. Given CODC's previous agreement to support Santana's mining endeavours,[230] it can be assumed CODC would agree to amend the CODC Covenant in future. If Santana's prospecting permit

[228] Sole at 32, 50.
[229] As stated in DOC's s 51 Report.
[230] Addressed in the Sustainable Tarras para 12 Appendix J.

is not acted upon, prospecting rights may be lost and granted to a new mining company who could similarly apply to vary or uplift the CODC.

Wildlife approval

158. "Wildlife approval" means a lawful authorisation for an act that would otherwise be an offence under the Wildlife Act, for instance, hunting, killing, buying or selling protected or partially protected wildlife. This includes disturbing wildlife, such as through salvage and translocation. In considering a Wildlife approval, the Panel must take into account the purpose of the FTAA, the purpose of the Wildlife Act and the effects of the project on the protected wildlife that is to be covered by the approval, and information and requirements relating to the protected wildlife that is to be covered by the approval.[231]

159. With respect to the phrase "the purpose of the Wildlife Act 1953 and the effects of the project on the protected wildlife that is to be covered by the approval" in cls 5 and 6 of Sch 7:

a. The Wildlife Act declares all wildlife to be subject to it,[232] and, except in the case of wildlife specified in Schedules 1—5, wildlife is absolutely protected throughout New Zealand. It is "the principal means by which wildlife in New Zealand, including many of its most endangered species, are protected" and it is the "fall-back protection mechanism in cases not specifically provided for by other legislation".[233] It is the "mainstay of statutory protection of animals in the environment'."[234]

b. The purpose of the Act is to protect wildlife.[235]

c. The Bledisloe panel applied that interpretation in context of cl 5(b) FTAA. It said:

> a. The Wildlife Act does not have a specific purpose section but it still has a purpose. Section 10, Legislation Act 2019, provides that "legislation must be construed in light of its purpose, and the word legislation is defined to include both the whole and any part of an Act. So, in cases of the kind we are now considering, the provision concerned must be interpreted to advance its own purpose." That provision is section 3: "the protection of wild animals".
>
> b. The wildlife to be covered by the approval is the kororā | little penguin, and accordingly it is the effects on that species that we must consider under this sub-clause.

160. The Wildlife approval is to catch, salvage and relocate hundreds of thousands of individual lizards, which would then be moved back into rehabilitated tussock and shrubland vegetation. A "net loss" outcome is expected for tussock skink, McCanns skink and Kawarau gecko, even after offset/compensation actions. While a net gain

[231] FTAA Sch 7
[232] Section 3 WA 1957
[233] *Shark Experience Ltd v PauaMAC5 Inc* [2019] NZSC 111, [2019] 1 NZLR 791 at [45].
[234] At [46]
[235] At [66]

is predicted for Otago skink, Grand skink and Jewelled gecko, this hinges on offsetting and compensation actions being effective, which is not an outcome anticipated by Dr Rogers. He comments that:

> Perhaps the most significant shortcoming of the plan is the uncertainty of rehabilitating extensive tussock and shrubland vegetation within a short timeframe of integrity sufficient to provide year round, multi-species (two skinks and a gecko) food resources. All the plan establishment uncertainties associated with this uncongenial environment make confident predictions of lizard reintroduction and survival impossible. In other words, achieving widespread and dense rehabilitated tussock and shrubland vegetation that can provide year round food resources for skinks and geckos has a very low achievement probability. Predicting outcomes for quality lizard habitat is further confounded by the absence of science models linking dryland vegetation composition with the provision of lizard food resources.

161. The outcome of the Wildlife approval must be considered highly uncertain, and therefore inconsistent with the protective purpose of the Wildlife Act. That consideration weighs heavily against approval.

Archaeological authorities

162. Sustainable Tarras relies on the s 51 report from Heritage New Zealand and Mr Sole's statement as indicating that all relevant considerations point strongly against granting the archaeological authorities.

Conclusion – the proportionality assessment

163. The following table sets out Sustainable Tarras' assessment of the extent of the Project's benefits and significance of adverse impacts, in terms of the s 85(3) proportionality assessment.

Benefits	
Type of benefit	*Extent of benefit*
Economic benefit	Minimal at regional level, negligible at national level
Employment benefit	It has not been established that there will be a benefit in terms of new employment
Adverse impacts	
Type of adverse impact	*Significance of adverse impact*
Waste rock and tailings management – intergenerational risks, inconsistency with international industry practice, risks to waterbodies	Extremely significant
Hazardous substances and installation risks	Extremely significant
Heritage effects	Significant
Landscape effects	Significant
Dark sky effects	Potentially significant
Air quality effects	Potentially significant
Noise effects	Moderate

Biodiversity effects	Significant
Social effects	Potentially significant
Transport effects	Likely able to be managed through conditions
Inconsistency with directive RMA policy	Significant
Inconsistency with community plans	Significant
Non-compliance	Significant
Section 107 RMA would prevent consent being granted under the RMA	Extremely significant
Inconsistency with ss 5, 6 and 7 RMA	Extremely significant
Concessions inconsistent with mandatory relevant considerations for assessing concessions	Significant
Conservation Covenant partial revocation inconsistent with mandatory relevant considerations for assessing revocations	Extremely significant
Wildlife approval inconsistent with mandatory relevant considerations for assessing revocations	Extremely significant
Archaeological authority inconsistent with mandatory relevant considerations for assessing revocations	Extremely significant

Procedural and other matters

Panel briefing

164. Sustainable Tarras appreciates the Panel's indication that it will invite commenters to a briefing and advises that it wishes to attend.

Expert conferencing

165. Sustainable Tarras requests that the Panel direct expert conferencing on the following topics:

a. Economics

b. Tailings management

c. Landscape

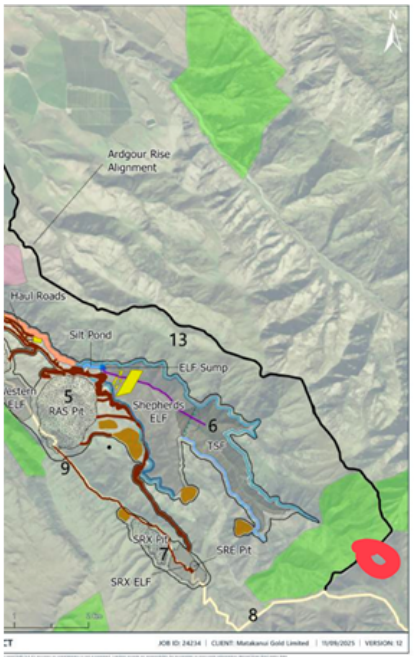
d. Ecology

e. Heritage

Site visit

166. Sustainable Tarras requests that Panel makes a additional site visits:

a. To view the application site from the point on the newly proposed Ardgour Rise track on a day with the prevailing NW wind (and future dust) direction, and which offers one of the best views of the mine project through the Shepherds Creek Valley from the proposed TSF (indicated in red below):

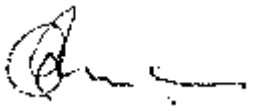


b. To view the application site from key vantage points at night time, with lighting simulations set up to represent mine lighting (as described in Mr Simpson's report).

c. To Macraes mine and its various major workings, including all tailings dams and surroundings – including what appear to be various active seepage locations, open pits and processing plant infrastructure, the water treatment facility, the dirty mine water collection sumps including "sump b" and the Tipperary tailings dam sump.

Legal issues hearing

167. Sustainable Tarras requests that the Panel convene a legal issues hearing, to enable counsel to address the disputed legal issues addressed in these comments and legal issues raised by other commenters.



Sally Gepp KC

Julian Miles KC

For Sustainable Tarras Inc

9 April 2026

Schedule 1: List of statements included with Sustainable Tarras comments

Expert statements and reports	
Economics	
1	Geoff Bertram
2	Richard Meade (2a and 2b)
3	Ed Miller
4	James Harris
Tourism	
5	James Higham
Cycling recreation	
6	Jonathan Kennett
Seismology	
7	Alex McAlpine
Waste rock	
8	Steve Emerman
Tailings management and TSF	
9	Bernd Lottermoser
Transport	
10	Peter Martineau
Terrestrial Ecology	
11	Geoffrey Rogers
Landscape and natural character	
12	Bridget Gilbert
Heritage	
13	Matt Sole
Lighting	
14	Marc Simpson
Dark Skies	
15	Brian Boyle
Planning	
16	Sylvia Allan
Non-expert statements	
17	Sustainable Tarras Comments
18	Bev Batchelar
19	Andrew Klahn
20	Suze Keith
21	Gregory O'Brien