Before an Expert Consenting Panel

Under the	Fast-track Approvals Act 2024
And	
In the Matter of	an application for approvals by Matakanui Gold Limited to establish, operate, rehabilitate and ultimately close an open pit and underground gold mining operation known as the Bendigo-Ophir Gold Project

Memorandum of Counsel on behalf of **Matakanui Gold Limited responding to Minute 29**

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MAY IT PLEASE THE EXPERT PANEL

Introduction

1. This Memorandum of Counsel is filed on behalf of Matakanui Gold Limited (**Matakanui Gold**) in response to Minute 29 of the Expert Panel.

2. Minute 29 addresses the following further groundwater workstreams that are proposed to be undertaken post decision:

   (a) cumulative drawdown assessment of the Bendigo Aquifer;

   (b) assessment of wetland hydrological function and sensitivity to drawdown;

   (c) transient water load balance modelling;

   (d) active water treatment design;

   (e) passive water treatment concept and design;

   (f) design of uncaptured seepage system;

   (g) hydrogeological investigations targeting information on shallow groundwater, hydrostratigraphic unit definition and hydraulic properties; and

   (h) 3D groundwater modelling of seepage collection systems.

   (together, **Further Workstreams**)

3. In relation to the Further Workstreams the Expert Panel requests a response from Matakanui Gold on:

   (a) how findings from new and updated assessments are proposed to be incorporated into detailed design;

   (b) how relevant regulatory authorities would engage with Matakanui Gold on these changes;

   (c) what the certification process of any such changes would entail;

   (d) what provisions in terms of the project development timeline would be necessary around the certification process; and

   (e) how the circumstances of the Bendigo-Ophir Gold Project (**Project**) compares to Trans-Tasman Resources (**TTR**).

4. This Memorandum of Counsel addresses paragraph (e) above and is provided as part of Matakanui Gold's response to Minute 29. It should be read alongside the:

   (a) joint expert response;

   (b) updated management plans; and

   (c) updated conditions.

Summary

5. Overall, we submit that the reasons for decline in the Taranaki VTM project (**Taranaki VTM**) relating to uncertainty of baseline information and deferred workstreams are distinguishable from the Project.

6. In summary, the key issues identified by the Expert Panel in issuing its draft decision to decline Taranaki VTM were:

   (a) Critical base line information for numerous areas[1] was considered by the Panel to "simply not exist".[2] The Panel was unable to understand the existing environment and assess effects appropriately as:[3]

      (i) It was uncertain whether the restored seabed would develop similar benthic community or provide the same stability and habitat functions.

      (ii) There was uncertainty about benthic recovery timeframes and the evidence did not support a conclusion of rapid recovery.

      (iii) Underwater noise modelling did not represent a realistic worst case scenario for total project noise. The lack of explicit modelling of a worst-case scenario meant the full range of potential effects on marine mammals and fish was insufficiently defined.

      (iv) There was no baseline underwater noise measurements and the information gap limited the Panel's ability to assess contributions to the existing soundscape.

      (v) Inadequate information on which the evaluate the full noise footprint, the scale and relevance of this noise.

[1] Sediment plume extent, underwater noise, benthic ecology, marine mammals and seabirds.
[2] Record of draft decision of the Expert Consenting Panel for Taranaki VTM, 4 February 2026 at [1818].
[3] Record of draft decision of the Expert Consenting Panel for Taranaki VTM, 4 February 2026 at [1802].

(vi) There was uncertainty regarding the sediment plume, including the scale and extent of sediment deposition as the modelling did not incorporate the best available information at the time of the decision. The Panel considered that the model calibration did not reflect good practice, resulting in uncertainty which was further compounded by the complexity of the receiving environment.

(vii) Uncertainty about whether the monitoring regime for underwater noise would adequately collect and analyse data to inform compliance decisions.

(viii) Uncertainty about whether key conditions could consistently be achieved in practice.

(ix) Information gaps on specific consequences to marine mammal species.

(x) Limited information was provided on noise sources and fish distribution effects.

(b) TTR's proposed pre-commencement monitoring programme sought to fill information gaps post consent which the Panel held amounted to deferring a substantive decision. The information gaps the Panel held the pre-commencement monitoring programme was seeking to fill related to:

(i) the suspended sediment control limit;

(ii) characterising infauna, epifauna, reef communities and sediment characteristics;

(iii) understanding abundance and distribution of marine mammals; and

(iv) use of the project area by seabirds.

(c) As a result of the deficiencies in the information in the Taranaki VTM application the Panel held that there was uncertainty about the magnitude and extent of the effects and whether the effects could be detected and managed through the proposed consent conditions.

7. We submit that the Project can be clearly distinguished from the TTR decision as:

(a) The substantive application for the Project is supported by technical reports and subsequent information that provide appropriate baseline information to demonstrate the ability to manage effects and determine the nature, scale and magnitude of potential effects.

(b) The Further Workstreams are not aimed at establishing the existence or scale of effects. They address implementation detail, along with the refinement and validation of already established assessments and management responses within a regime where there is certainty as to the potential effects and the options available to manage them.

(c) Conditions are proposed to manage identified risks with enforceable performance measures, compliance limits, monitoring and adaptive management responses built on existing baseline knowledge.

(d) These proposed adaptive management conditions meet the Supreme Court's test for adaptive management in *Sustain Our Sounds Inc v New Zealand King Salmon Company Ltd* (**Sustain Our Sounds**).[4]

(e) The Project does not seek approvals under the EEZA, and the legislative regimes that approvals are sought under have different information requirements to the EEZA.

Taranaki VTM Project

8. TTR sought marine consents and marine discharge consents under the under the Fast-track Approvals Act 2024 (**FTA**) that would otherwise be sought under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (**EEZA**).

9. This memorandum analyses the TTR Panel's decision to decline the application on the grounds of uncertainty and deferred workstreams and outlines why the reasons for the TTR Panel's decision do not apply to the Project.

10. The key concerns raised on these grounds in the Taranaki VTM decision were:

(a) That the Panel was unable to adequately understand the environment or have confidence in the nature of the effects assessment across all relevant areas.[5] This was because information for numerous areas, geomorphology and geotechnical impacts did "simply not exist".[6]

(b) The proposed pre-commencement monitoring programme would largely gather the data required to adequately understand the existing environment and enable the Taranaki VTM's effects to be predicted for critical environmental impacts.[7]

[4] *Sustain Our Sounds Inc v New Zealand King Salmon Company Limited* [2014] NZSC 40.
[5] Record of draft decision of the Expert Consenting Panel for Taranaki VTM, 4 February 2026 at [1818].
[6] Record of draft decision of the Expert Consenting Panel for Taranaki VTM, 4 February 2026 at [1818].
[7] Record of draft decision of the Expert Consenting Panel for Taranaki VTM, 4 February 2026 at [1820].

(c) The proposed pre commencement monitoring conditions were ultra vires as they effectively deferred the substantive decision as to the actual and potential effects of the Taranaki VTM to a subsequent time and process.[8] The Panel held that the pre-commencement monitoring could not be used to:[9]

(i) provide additional detail to clarify or better quantify effects; or

(ii) determine whether an effect would arise at all and the magnitude of the impact.

(d) The conditions proposed by TTR did not constitute an appropriate adaptive management approach as:[10]

(i) the Panel had no evidence before supporting the viability of an adaptive management approach for seabed recovery and noise generation;[11]

(ii) reliance on adaptive management and monitoring could not substitute an effect finding where detection confidence is low and credible, timely and effective operational responses were not clearly articulated; and[12]

(iii) the Panel did not have evidence before it to find that harm caused would be capable of being effectively reduced.[13]

11. Ultimately the Panel found that adaptive management was not appropriate for the Taranaki VTM project due to significant information gaps and resulting uncertainty about potential effects and the effectiveness of management measures.

[8] Record of draft decision of the Expert Consenting Panel for Taranaki VTM, 4 February 2026 at [1819] – [1820].
[9] Record of draft decision of the Expert Consenting Panel for Taranaki VTM, 4 February 2026 [1819].
[10] Record of draft decision of the Expert Consenting Panel for Taranaki VTM, 4 February 2026 [1812] – [1814].
[11] Record of draft decision of the Expert Consenting Panel for Taranaki VTM, 4 February 2026 [1804].
[12] Record of draft decision of the Expert Consenting Panel for Taranaki VTM, 4 February 2026 [1028].
[13] Record of draft decision of the Expert Consenting Panel for Taranaki VTM, 4 February 2026 [852].

The Bendigo Ophir Gold Project

12. For the reasons outlined below we submit that the Project is not comparable to Taranaki VTM as:

    (a) Expert assessments demonstrate there is appropriate information to understand the potential effects of the Project including:

        (i) Bendigo Aquifer drawdown.

        (ii) Wetland drawdown.

        (iii) Seepage.

        (iv) Water treatment.

        (v) Groundwater contamination.

    (b) Appropriate and well understood methods are available to manage the above effects, including through targeted and reliable monitoring locations and approaches and effects management measures such as primary, secondary and tertiary seepage collection systems and augmentation of wetlands.

    (c) Identifying and understanding the above effects of the Project has not been deferred to a post approval workstream and there is no reliance on post approval workstreams to determine their nature or extent. The technical assessments demonstrate there is sufficient baseline information available to ensure understanding about the environment and certainty that effects can be managed.

    (d) The technical assessments show how monitoring will be a key control mechanism to manage effects by providing early detection of effects and ensuring the trigger of pre-defined management responses if required.

13. Overall, we submit that the proposed conditions provide certainty of environmental outcomes by establishing a framework of controls, triggers, compliance standards, and certification processes. This framework manages residual uncertainty by requiring ongoing monitoring, achievement of defined limits and adaptive management where required.

14. In particular, as recommended by the technical experts, Matakanui Gold is required by the consent conditions to undertake:

    (a) Surface water compliance monitoring at the various surface water compliance monitoring sites shown in **Appendix 1** and achieve compliance with the surface water compliance parameters and limits that are secured by the conditions of consent.[14]

    (b) Groundwater compliance monitoring at the various groundwater compliance monitoring sites shown in **Appendix 1** and achieve compliance with the surface water compliance parameters and limits that are secured by the conditions of consent.[15]

    (c) A robust programme of groundwater and surface water performance monitoring at the various sites shown in **Appendix 1**. The purpose of the performance monitoring is for water treatment management purposes to ensure Matakanui Gold has necessary data and time to achieve compliance limits.

15. Collectively these requirements ensure environmental effects are measured against enforceable standards and ensure effects management responses are implemented if required.

Adequate Information and Certainty of Effects

16. As a result of technical assessment that has been undertaken since 2023 Matakanui Gold has robust information to understand the nature, scale and significance of the following effects:

    (a) Bendigo Aquifer drawdown.

    (b) Wetland drawdown.

    (c) Seepage.

    (d) Groundwater contamination.

[14] D.04 Schedule Two – General Conditions for Otago Regional Council Consents, Attachment Two.
[15] D.04 Schedule Two – General Conditions for Otago Regional Council Consents, Attachment Three.

17. The water related assessments undertaken by experts on behalf of Matakanui Gold have included:[16]

    (a) drilling investigations, particularly diamond core recovery, for the collection of lithological and geomechanical properties;

    (b) 70 test pits and 36 permeability tests across 8 drillholes;

    (c) installation of 33 vibrating wire pressure transducers across 11 drillhole strings at a number of depths from near surface to the gold bearing ore zone depth in the RAS pit footprint;

    (d) surveys of the groundwater level stabilised within all resource exploration holes across the Rise and Shine and Come In Time deposit areas;

    (e) packer permeability testing of two geotechnical diamond drilled holes across all Hydro Stratigraphic Units in the RAS deposit area;

    (f) long-term sampling of groundwater for characterisation water quality and/or hydrochemistry;

    (g) assessment and modelling of operational and closure water balance and surface water quality conditions;

    (h) 2D groundwater modelling to quantitatively evaluate the potential magnitude of seepage that could bypass engineered landform (**ELF**) primary seepage collection systems;

    (i) drilling, bore construction and hydraulic testing of a test production bore to determine the capacity for mining complex water supply; and

    (j) identification and assessment of the potential drawdown zone of influence as a result of dewatering mine voids (underground and open pits).

[16] B.03 – Kōmanawa Solutions Limited – Groundwater Existing Environment Assessment of Effects (2025b).

18. These assessments have provided the evidential basis for experts on behalf of Matakanui Gold to assess and understand the nature, scale and significance of potential effects and how to manage them including (of relevance to groundwater and hydrology):[17]

    (a) pit dewatering and groundwater level effects;

    (b) stream depletion;

    (c) groundwater seepage;

    (d) groundwater quality;

    (e) groundwater drawdown effects; and

    (f) effects on wetlands.

19. This can be distinguished from Taranaki VTM where the absence of critical information and limitations in the information before the Panel as set out in paragraph 10 above meant the Panel could not determine whether effects would arise at all or assess their scale or significance. Consequently, the Taranaki VTM Panel was unable to adequately understand the environment or have confidence in the nature of the effects assessment across all relevant areas.[18]

20. By contrast, the effects of the Project are known and understood. We submit that the Panel has before it sufficient and robust information to identify, characterise, and assess those effects with confidence as:

    (a) The experts have existing knowledge and experience of the nature of the Bendigo Aquifer in terms of groundwater parameters and projected groundwater level response.[19]

    (b) There is a baseline data set providing for the understanding of the hydrogeological setting with the project area and the likely changes to the groundwater system as a result of the Project.[20]

[17] K.01 - Kōmanawa Solutions Limited - Post Closure Impacts on the Ardgour Aquifer dated February 2025 (10 March 2026), B.02 Kōmanawa Solutions Limited Bendigo Groundwater Bore Take Effects Assessment (Kōmanawa 2025a), B.03 Kōmanawa Solutions Limited - Groundwater Existing Environment and Effects Assessment (Kōmanawa 2025b), B.04 Kōmanawa Solutions Limited Surface Water and Catchment Existing Environment Effects Assessment (Kōmanawa 2025c), Statement of Evidence of Ryan Burgess (Hydrogeology), 17 April 2026 and Statement of Evidence of Jens Rekker (Surface and Groundwater) 17 April 2026.
[18] Record of draft decision of the Expert Consenting Panel for Taranaki VTM, 4 February 2026 at [1818].
[19] Joint Expert Response, 22 June 2026 at [21].
[20] Joint Expert Response, 22 June 2026 at [125].

(c) The hydrological environment has been characterised and understood through expert assessment and has not been inferred or understood.

21. The technical assessments identify potential effects based on an established understanding of the environment. Given the above, the Panel is not being asked to predict effects in the absence of sufficient information or within an inadequately characterised environment as was the case in Taranaki VTM.

Certain Methods and Robust Monitoring

22. Understanding the nature, scale, and significance of potential effects has enabled the technical experts to design targeted management measures, supported by monitoring programmes that will enable early detection, and require responsive action if conditions change.

23. We submit this provides the Panel with comfort that Matakanui Gold and its technical advisors understand how potential surface and groundwater effects will be managed.

24. The technical experts have identified the Shepherds Engineered Landform (**ELF**) and Tailings Storage Facility (**TSF**) as the primary sources of contaminant loading.[21] The Shepherds ELF is proposed to store approximately 187 mt of waste rock out of a total project production 203.5 mt.[22]

25. The proposed compliance monitoring point SC01 in Shepherds Creek is located at the outlet of the Shepherds Creek catchment as the location:[23]

(a) represents the combined load of all upstream activities within the catchment; and

(b) reflects the cumulative impact of seepage and surface pathways.

26. Experts on behalf of MGL have established knowledge of the depth to groundwater upstream of SC01 in Shepherds Creek through a combination of targeted investigations and geotechnical work undertaken for the Project.[24]

27. As outlined in the joint expert response to the Panel's request for information, seepage capture is concentrated in Shepherds Valley as the hydrogeological

[21] B.06C Mine Waste Management Limited, Mine Impacted Water Overview Report Appendix I to O.
[22] B.27 Engineering Geology Limited, Shepherds, Western and Srex Engineered Landforms and Come in Time pit backfill at Table 2.
[23] B.06C Mine Waste Management Limited, Mine Impacted Water Overview Report Appendix I to O, page 63.
[24] B.03 – Kōmanawa Solutions Limited – Groundwater Existing Environment and Effects Assessment (Kōmanawa 2025b) dated 1 September 2025 and K.05 – Hydro Geochem Group – BOGP MWSF Seepage Risk Assessment (10 March 2026).

conditions (shallow depth to water table, constrained valley, upwards gradients in the valley bottom) upstream of SC01 is favourable for seepage collection. The geotechnical investigations have demonstrated that the seepage capture and treatment options can be appropriately established in the relatively shallow alluvium in Shepherds Valley. [25] The conceptual arrangement of mine waste storage facilities, seepage collection and monitoring along Shepherds Valley is shown in **Appendix 2.**

28. The actions proposed to manage seepage and groundwater contamination effects are:

(a) Primary seepage collection systems are integrated into the design of the mine waste storage facilities to intercept seepage and direct it to sumps for management.[26]

(b) While the 2D groundwater modelling indicates that seepage bypass is likely to be low with appropriate engineering design[27] it is proposed that if performance monitoring demonstrates primary systems are not adequately collecting seepage secondary systems will be deployed downstream of the primary seepage collection systems for each mine waste storage facilities. Secondary systems are proposed to include:

(i) shallow cut off interception drains;

(ii) deeper interception wells; or

(iii) low permeability cut off walls.

(c) Triggers and actions for implementation of secondary contingency seepage interception systems to respond to unrecovered seepage will be defined in condition 30 of D.04. Matakanui Gold supports the inclusion of seepage triggers as recommended by Otago Regional Council and the triggers and actions are proposed to be progressed further with the parties during condition workshopping.

(d) The trigger for installation of secondary contingency seepage interception systems will be driven by performance monitoring immediately downstream of primary seepage collection systems. Performance monitoring points will be located upstream of the compliance monitoring location SC01 to enable early detection of any uncaptured seepage before it can reach compliance

[25] K.05 – Hydro Geochem Group – BOGP MWSF Seepage Risk Assessment (10 March 2026).
[26] Joint Expert Response, 22 June 2026 at [72].
[27] Joint Expert Response, 22 June 2026 at [135].

monitoring points. The upstream placement helps to minimise risk by providing an opportunity for early detection and response.

(e) Experts on behalf of Matakanui Gold consider that increases in sulphate and nitrate loads are likely indicators of seepage migrating from the primary interception systems in the mine waste storage facilities.[28] Baseline monitoring indicates sulfate concentration in surface and groundwater to be approximately 15mg/L or less whereas seepage source terms would be expected to be 10 to 100 times greater providing a strong signal to allow enable early detection.[29] Accordingly there is an established understanding of the parameters that need to be monitored.

(f) In addition to the above measures Rise and Shine pit and the underground workings are expected to act as a large-scale depression in the fractured schist groundwater flow field and intercept uncaptured seepage.

(g) Following the joint conferencing and concurrent hearing process MGL proposes additional groundwater and surface monitoring and compliance sites to provide additional certainty that contamination and seepage effects can be managed. The locations of the proposed monitoring sites are shown in **Appendix 1** and we submit provides certainty that potential seepage pathways will be effectively managed.

(h) Additional surface water performance monitoring has been proposed for surface waters outside the Project area as shown in **Appendix 1**. Additional water quality performance monitoring sites are proposed for the Lindis River at the Otago Regional Council flow and State of Environment Site and the Bendigo Station flow site upstream of where Bendigo Creek begins infiltrating the underlying alluvium and ultimately the Bendigo aquifer. The monitoring within the wider environment is proposed to provide certainty that the applied water quality limits are effective.[30]

29. The overarching strategy of entirely managing seepage collection within the creek valley systems is grounded in the technical experts understanding and characterisation of the environment in the valleys. The conceptual arrangement of mine waste storage facilities, seepage collection and monitoring along Shepherds Valley is shown in **Appendix 2.**

[28] K.05 – Hydro Geochem Group, BOGP MWSF Seepage Risk Assessment (10 March 2026) at page 6.
[29] K.05 – Hydro Geochem Group, BOGP MWSF Seepage Risk Assessment (10 March 2026) at page 6. Joint Expert Response, 22 June 2026 at [10].
[30] Joint Expert Response, 22 June 2026 at [10].

30. The seepage collection strategy provides sufficient space and flexibility within the valleys to implement secondary seepage capture systems upstream of the creek infiltration points to intercept and manage uncaptured seepage before it reaches the aquifers. The proposed monitoring framework will provide early detection and allow for responsive and timely management actions.

31. We submit that Matakanui Gold's approach is consistent with Ms Avandiou's position at the hearing that residual uncertainty on contamination and seepage can be effectively managed through a robust monitoring framework incorporating appropriate trigger levels and responsive actions to mitigate risk. Matakanui Gold's approach is also consistent with judicial authority that has consistently recognised that the Resource Management Act 1991 is not a no-risk statute and does not require the elimination of all risk.[31]

32. The proposed monitoring and effects management methods can provide the Panel with comfort that the compliance limits at the aquifers which are aligned with drinking water quality standards will be met and avoid adverse effects on the downstream Bendigo and Ardgour aquifers.

33. For the reasons outlined below we submit this cannot be compared to the Taranaki VTM decision.

    (a) Primary production effects on phytoplankton in the water column, microphytobenthos on the seabed and macroalgae on rocky reefs could not be monitored and due to natural variability it wouldn't be possible to reliably measure actual effects of the Taranaki VTM on primary production.[32]

    (b) Monitoring was proposed in the wrong locations and no monitoring was proposed of aspects of the Taranaki VTM that were acknowledged to have material effects resulting in undetected degradation.[33]

    (c) Monitoring of some effects couldn't detect harm in time and by the time a statistically robust change would be able to be detected against high natural variability irreversible harm may have already occurred.[34]

    (d) Monitoring couldn't attribute cause to TTR and without this response triggers were not meaningful.[35]

[31] *Creswick Valley Residents Association Inc v Wellington City Council* [2015] NZEnvC 149 at [2]-[32].
[32] Record of draft decision of the Expert Consenting Panel for Taranaki VTM, 4 February 2026 at [985].
[33] Record of draft decision of the Expert Consenting Panel for Taranaki VTM, 4 February 2026 at [750], [901].
[34] Record of draft decision of the Expert Consenting Panel for Taranaki VTM, 4 February 2026 at [901].
[35]Record of draft decision of the Expert Consenting Panel for Taranaki VTM, 4 February 2026 at [901]

(e) Where limits existed no clear mitigation pathway was proposed if limits were breached.[36]

34. In contrast the Project proposes to minimise risk by locating performance monitoring as close as possible to the source of seepage. This enables early detection of uncaptured seepage with effects measured against defined trigger levels with defined responses required. The valley environment provides the opportunity for secondary seepage systems to be implemented if monitoring indicates they are required. This will be done upstream of the creek infiltration points into the aquifers and minimises the risk of undetected or irreversible impacts.

The Nature of the Further Workstreams

35. The Further Workstreams proposed by Matakanui Gold as part of the detailed design process do not determine whether effects will arise or whether those effects can be appropriately managed. Rather the Further Workstreams relate to implementation detail, the refinement and validation of already established models.[37] They are not necessary for understanding the Project's effects which have been comprehensively assessed and outlined in the substantive application and the experts consider the Further Workstreams are very unlikely to result in a change from the form of the mitigations proposed.[38]

36. In our submission this is not comparable to the Taranaki VTM pre commencement monitoring programme which was required to gather data and information to inform the fundamental understanding of the environment and whether effects would arise at all.

37. We submit that the Further Workstreams proposed by Mr Chrisp are appropriately able to take place post-approval for the following reasons:

(a) The nature and scale of the effects of the Project are known and understood. The Further Workstreams do not determine whether effects will arise and do not defer matters that go to the Panel's substantive decision making to a post approval decision.

(b) The proposed conditions include objective performance standards and mechanisms that will ensure effects will remain within the prescribed limits in Schedules 2 and 3 of the Otago Regional Council general conditions.

[36]Record of draft decision of the Expert Consenting Panel for Taranaki VTM, 4 February 2026 at [749].
[37] B.05 – Kōmanawa Solutions Limited – Groundwater Modelling Analysis (Kōmanawa 2025d).
[38] Joint Expert Response, 22 June 2026 at [13].

(c) ultimately, consent conditions are proposed with specific groundwater water quality compliance limits, defined monitoring locations and management plans.[39]

Relevant Legislative Regime

38. TTR sought FTA approvals for marine consents and marine discharge consents under the EEZA.

39. The EEZA requires a marine consent authority considering an application for marine consent to base its decision on the best available information and take into account any uncertainty of inadequacy of the information available.[40] The marine consent authority may refuse an application for a consent if it considers that it does not have adequate information to determine the application.[41]

40. The EEZA defines best available information as *"the best information that, in the particular circumstances, is available without unreasonable cost, effort, or time".*[42]

41. For the Taranaki VTM, the Expert Panel found that this standard was not met and that for information to understand the environmental values that could be impacted by the Taranaki VTM and the effects on those values *"simply does not exist".*[43]

42. The legislation the Project seeks approvals under does not contain a requirement for decisions to be made on the *"best available information"* as required under the EEZA.

43. The key requirements on information in relation to environmental effects are set out in the RMA. The RMA requires that an application must include information relating to the activity, including an assessment of the activity's effects on the environment and this information must be provided at a level of detail that is proportionate to the scale and significance of the effects that the activity may have on the environment.[44] This requirement is explicitly incorporated into the FTA.[45]

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[39] D.04 - Schedule Two - General Conditions for ORC Consents (31-10-2025).
[40] Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, Section 61(1). Relevant to fast-track decision making under Fast-track Approvals Act 2024, Schedule 10, Clause 6(1)(d).
[41] Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, Section 62(2). Relevant to fast-track decision making under Fast-track Approvals Act 2024, Schedule 10, Clause 6(1)(d).
[42] Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, Section 61(5). Relevant to fast-track decision making under Fast-track Approvals Act 2024, Schedule 10, Clause 6(1)(d).
[43] *Draft Decision of the Expert Consenting Panel,* Taranaki VTM, 4 February 2026 at [1818].
[44] Resource Management Act 1991, Section 88(2)(b) and (2AA) and Fast-track Approvals Act 20224, Schedule 5, Clause 17.
[45] Fast-track Approvals Act 20224, Schedule 5, Clause 17(1)(b).

44. The Environment Court has held that the information requirements in the RMA are subject to an implicit proportionality test in that the depth and breadth of the assessment should correspond to the scale and significance of the consequences in the particular context of the proposal.[46] What is a proportional assessment is to be reasonably and objectively assessed by the decision maker.[47] However, an applicant for a resource consent is not expected to try to anticipate and research all the hypotheses that may occur during the course of the application process.[48]

45. In *Mahuta v Waikato Regional Council,* the Environment Court recognised that complex and large-scale proposals will have an unavoidable tension between the applicant's wish to avoid the cost of detailed design until it is known whether consents will be granted and an opponent's desire to have full details so that any adverse effects can be identified and quantified.[49]

46. *Mahuta* concerned an application to expand a dairy factory and install a gas-fired cogeneration plant. The Court rejected an argument that the assessment of environment effects for the proposal was inadequate and accepted the applicant's approach of determining a detailed framework or *"envelope"* of environmental standards which would enable it to undertake detailed final technical and engineering design after consent had been granted.[50]

47. Consistent with this judicial authority, the Project application can be distinguished from Taranaki VTM as it provides sufficiently detailed and comprehensive information to understand the existing environment, assess the nature, scale, and significance of effects, and support an adaptive management approach.

Adaptive Management

48. A factor in the Expert Panel's decision making on the Taranaki VTM was the precautionary principle which is codified in the EEZA in Section 61(2). Section 61(2) of the EEZA requires the marine consent authority to favour caution and environmental protection where information before them is uncertain or inadequate.[51] Ultimately the Panel found that adaptive management was not appropriate for the Taranaki VTM project due to significant information gaps and resulting uncertainty about potential effects and the effectiveness of management measures.

[46] *Mawhinney v Auckland Council* [2017] NZEnvC 162 at [53].
[47] *Mawhinney v Auckland Council* [2017] NZEnvC 162 at [53].
[48] *Crest Energy Kaipara Limited v Northland Regional Council* NZEnvC Auckland, A132/09, 22 December 2009 at [228].
[49] *Mahuta v Waikato Regional Council* A91/98 at [56].
[50] *Mahuta v Waikato Regional Council* A91/98 at [49]-[69].
[51] Relevant to fast-track decision making under Fast-track Approvals Act 2024, Schedule 10, Clause 6(1)(d).

49. Matakanui Gold proposes an adaptive management approach which we submit is an appropriate and standard means for managing environment effects.

50. Consistent with the judicial authority of the Supreme Court in *Sustain Our Sounds*, we submit that there is sufficient and certain technical assessment information about the extent and nature of the potential effects of the Project. The Supreme Court has relevantly held that the assessment of whether an adaptive management approach is appropriate is dependent on a combination of the following factors:[52]

    (a) the extent of environmental risk (including the gravity of consequences if the risk is realised);

    (b) the importance of the activity;

    (c) the degree of uncertainty; and

    (d) the extent to which an adaptive management approach will sufficiently diminish the risk and uncertainty.

51. In contrast to Taranaki VTM we submit that that the Project meets the Supreme Court's test in *Sustain Our Sounds* for an adaptive management approach, including the preliminary requirement that there is an adequate evidential foundation to have reasonable assurance that the adaptive management approach will achieve its goals of reducing uncertainty and adequately managing any risk.[53] An adaptive management approach is appropriate for the following reasons:

    (a) There is robust understanding of the baseline environment relevant to the proposed effects management. Unlike Taranaki VTM where baseline information was not provided for some areas and uncertainty on the nature, extent and significance potential effects, the technical assessment for Matakanui Gold provides an understanding of the environment on which an adaptive management approach can be implemented.

    (b) Due to the deficiencies in the information provided to the Taranaki VTM Panel, they were unable to assess the magnitude or extent of effects or whether those effects could be managed through the conditions. In contrast there is no fundamental uncertainty as to the nature and potential effects of the Project. The effects are sufficiently understood through technical assessment such that they can be identified, monitored and responded to through management measures.

[52] *Sustain Our Sounds Inc v New Zealand King Salmon Company Limited* [2014] NZSC 40 at [129].
[53] *Sustain Our Sounds Incorporated v New Zealand King Salmon Limited* [2014] NZSC 40 at [125].

(c) The proposed conditions for the Project demonstrate a clear ability to manage effects through enforceable thresholds, triggers and responses.

(d) This is also distinguishable to Taranaki VTM where the Panel was uncertain that the monitoring proposed would be able to detect or manage effects.

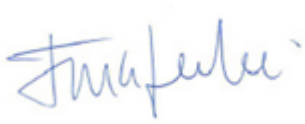
(e) In relation to the Project, the monitoring proposed by experts on behalf of Matakanui Gold will detect effects early and enable effective management responses before significant adverse effects occur.

(f) The residual uncertainty for the Project does not relate to whether effects can be managed but the most effective way to respond to effects within a regime where there is certainty as to the potential effects and the options available to manage them.

52. Overall, we submit that the Project does not get near the same uncertainty threshold that underpinned the Taranaki VTM decision. There is robust technical assessment that understands the environment, identifies the nature and scale of effects and appropriate effects management responses.

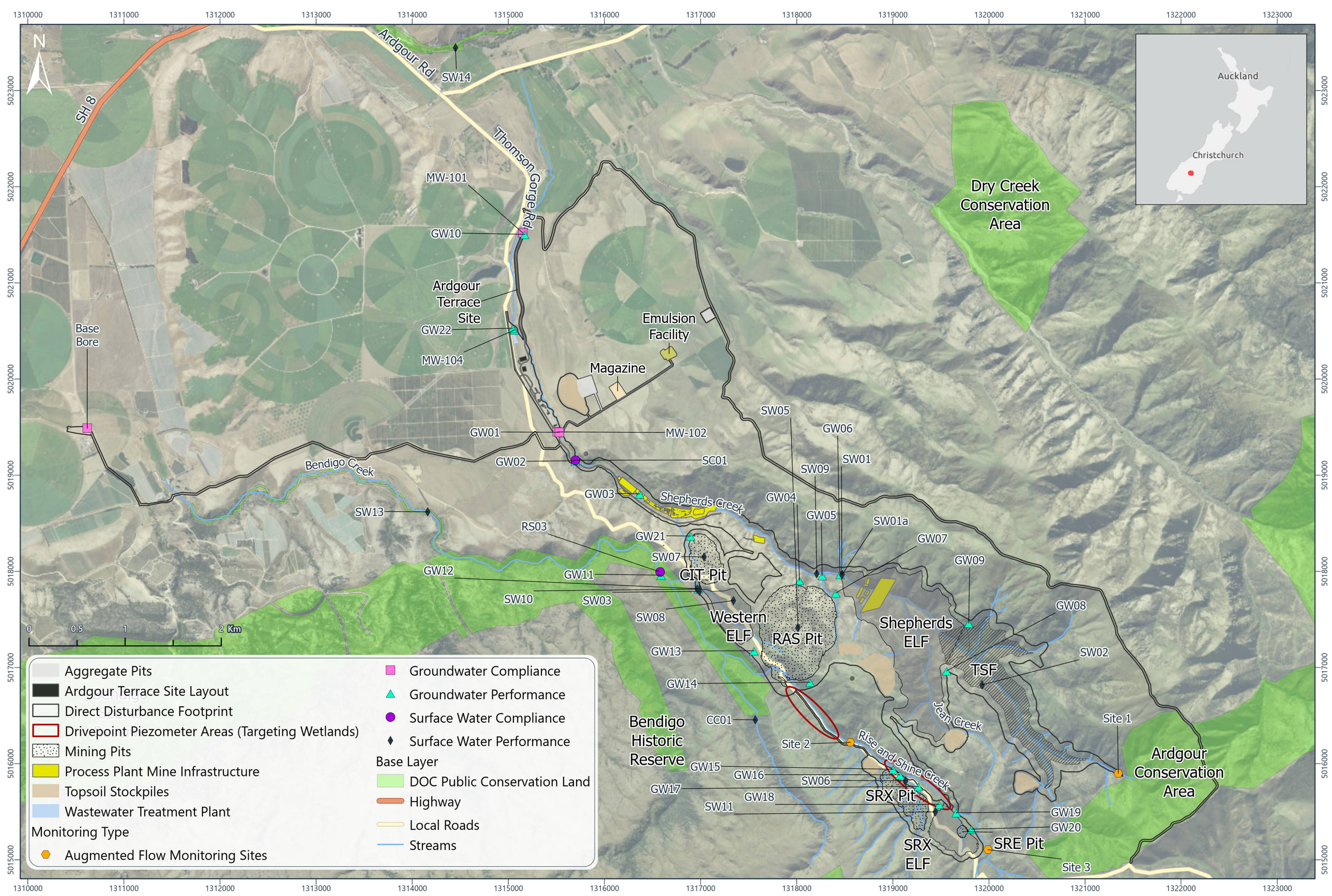
53. The Further Workstreams are not required to fill evidential gaps, they are to refine and implement an effects management framework with defined limits. In our submission the adaptive management proposal meets the Supreme Court threshold in *Sustain Our Sounds* and provides certainty that effects can be managed.

Dated 22 June 2026



Joshua Leckie / Charlotte Coyle / Mia Turner
Counsel for Matakanui Gold Limited

Appendix 1



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WATER MONITORING SITES - COMBINED

JOB ID: 24234 | CLIENT: Matakanui Gold Limited | 22/06/2026 | VERSION: 5

Appendix 2

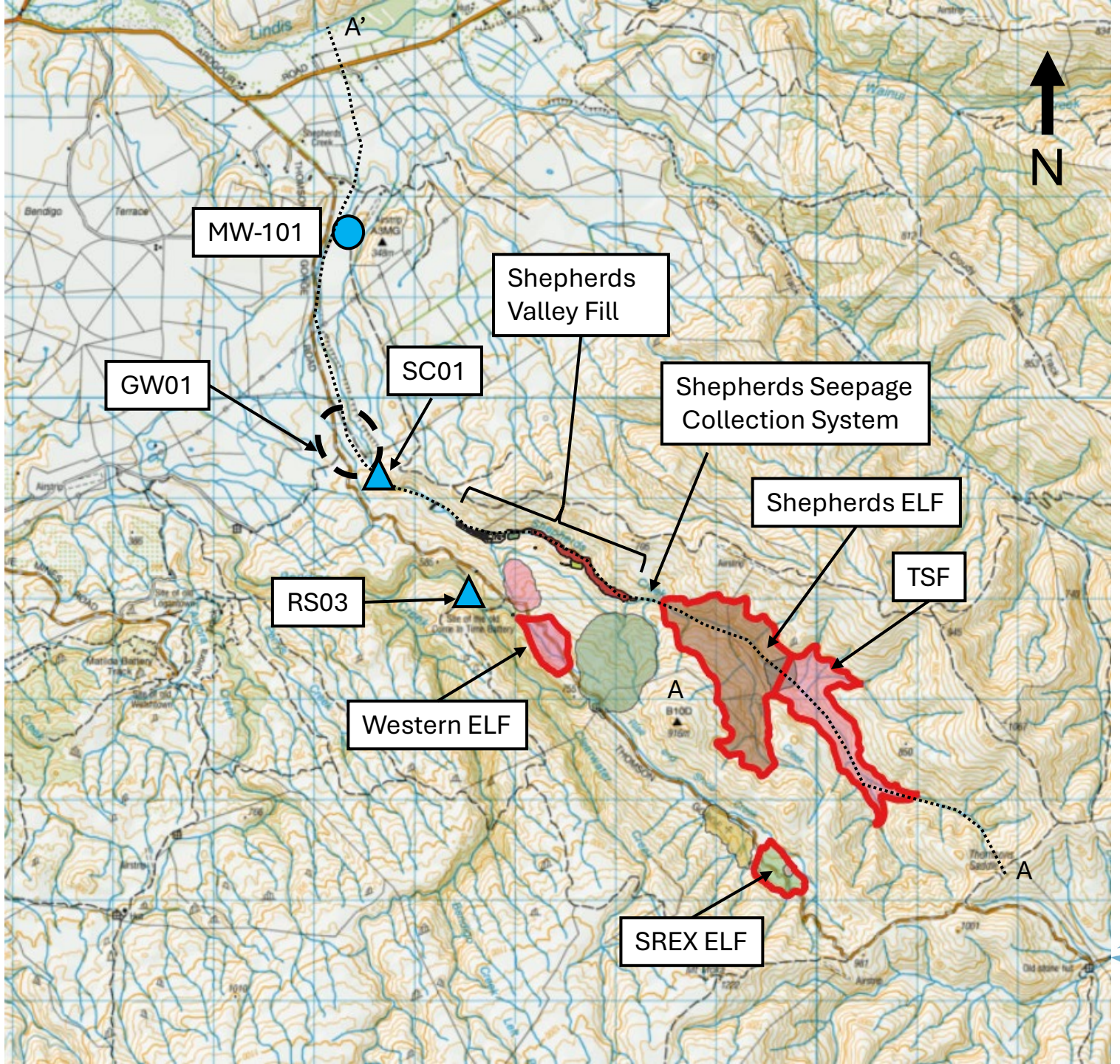

Figure 1

HYDRO GEOCHEM GROUP

GREENROAD GROUP

Shepherds Creek Valley Bottom Profile

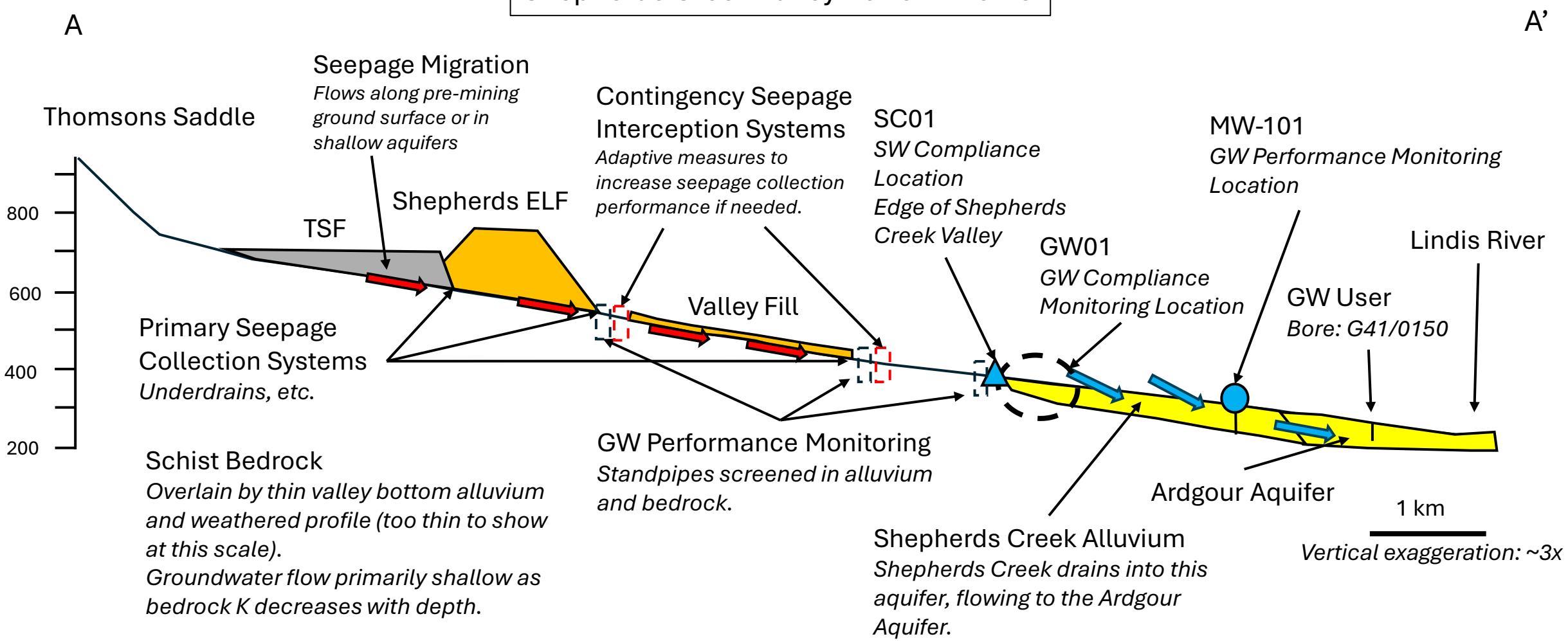

Figure 2

HYDRO GEOCHEM GROUP
GREENROAD GROUP