

BEFORE THE EXPERT PANEL

FTAA-2507-1089

**UNDER
IN THE MATTER**

Fast-track Approvals Act 2024
of the Bendigo-Ophir Gold Project

**MEMORANDUM OF COUNSEL (RESPONSE TO MEMORANDUM
ADDRESSING MINUTE 46)**

Dated 26 August 2026

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TO THE EXPERT PANEL

1. This memorandum responds to the memorandum of counsel filed on behalf of Matakanui Gold Limited (**MGL**) dated 24 August 2026 which addresses Minute 46 of the Expert Panel, and also responds to the Panel's Minute 47 . In particular this memorandum addresses:
 - a. The comments made regarding Sustainable Tarras' approach to MGL's informal conditions workshops;
 - b. The request by MGL that the Panel issue directions for MGL to file closing legal submissions; and the subsequent timetable issued by the Panel (in Minute 47) which includes the filing of closing submissions.

Informal conditions workshops

2. The memorandum of counsel on behalf of MGL states at paragraph 10:

Matakanui Gold refutes any natural justice assertions by Sustainable Tarras and Environmental Defence Society on the basis they have not had opportunities to comment on conditions:

- (a) In response to concerns raised by Sustainable Tarras regarding the cost of its planning expert participating in workshoping Matakanui Gold offered to meet the costs associated with that expert's participation. This offer was not accepted by Sustainable Tarras and its planning expert elected not to participate in workshoping.
 - (b) As set out in paragraph 13 Matakanui Gold extended an invitation to all parties without expert planning witnesses to provide written feedback on the conditions in advance on the workshops. No written feedback from Environmental Defence Society was received by Matakanui Gold.
3. At no stage has MGL made an offer to Sustainable Tarras to meet the costs of its planning expert. This was mentioned in a memorandum to the Panel but not raised with Sustainable Tarras.
 4. MGL infers that Sustainable Tarras has raised natural justice issues in relation to its informal workshops. Sustainable Tarras' a memorandum of counsel dated 14 August raised concerns about procedural fairness with respect to the ability of commenting parties to respond to the new RFI 11 information in a timeframe that is capable of meaningfully influencing the Panel's deliberations. Those concerns were not in relation to workshops.
 5. Since MGL has referred to Sustainable Tarras' approach to MGL's informal workshops, it is important for Sustainable Tarras to clarify the reasons for its approach. Counsel for Sustainable Tarras advised MGL of its reasons for not participating in the workshops by email dated 17 July 2026. A copy of that email is **attached**. In summary those reasons were:
 - a. MGL's approach to this fast-track process, in particular the inadequacy of its application to support a project with such

complex and significant impacts on the environment and the community, has added a huge burden and greatly increased the time that Sustainable Tarras and its experts and counsel have needed to spend on the process.

- b. The workshops were not simply a planners' review of conditions but a more substantive multi-disciplinary process. While MGL has advised the Panel that it will cover the cost of Ms Allan's involvement it would not be fair to have her attend without the support of Sustainable Tarras' technical experts and counsel.
 - c. Sustainable Tarras prepared extensive comments on the application which unfortunately Mr Chrisp did not read (as he confirmed in response to questions during the Planning Hearing). It was unclear whether Sustainable Tarras' input to workshops would make any difference, given Mr Chrisp's dismissive approach to material that was carefully prepared and filed by Sustainable Tarras previously.
 - d. Having reviewed the Conditions Workshopping Tracker, Sustainable Tarras was concerned that topics had been siloed and treated as not dependent on RFI 11 responses or other information yet to come, when that information was very clearly relevant to the conditions in question (see attached email for examples given). The approach by MGL suggested that MGL had already predetermined the outcome of the assessments.
 - e. Sustainable Tarras were concerned that only entities with a planner had been invited to participate in this process (despite the workshops not being a planners-only process) and considered it unfair and contrary to natural justice for interested parties who have participated in this process in a meaningful way not to be participating.
 - f. In terms of timing, Sustainable Tarras were concerned about how any outputs would meaningfully inform the Panel's decision.
6. The issues identified in that email have largely proved to be justifiable concerns. Workshops have been held in advance of information being provided (or, in the case of water, the following day) and it remains unclear as to whether Sustainable Tarras' comments on social impacts have been read as there is no apparent consideration of its recommendations in the Social Impact Assessment addendum nor the new volunteered consent conditions.

Closing legal submissions

7. In the memorandum of counsel on behalf of MGL, directions were requested for MGL to file closing legal submissions alongside its evidential response to the parties feedback on RFI 11. Minute 47

includes the filing of closing legal submissions by MGL in the Panel's timetable through to final decision.

8. Sustainable Tarras opposes the panel granting leave to MGL to file closing legal submissions:

- a. Commenters have not had the opportunity to present comprehensive legal submissions. The Cromwell hearing was indicated to be an opportunity to brief the panel on each party's overall case, rather than a legal issues hearing. In Minute 6 the Panel said:

[6] In setting these time allocations [for the Cromwell hearing], the Panel emphasises that during the period May and early June, it intends to convene multiple expert conferences. It is intended that these conferences will be followed by expert "hot tub" Panel sessions, which the Panel considers best suited to its interrogation of competing expert evidence. **The Panel also intends to use different (and subsequent) processes to address what appear to be competing legal positions on some issues. The Panel has yet to decide whether that will involve a hearing (or hearings) and will advise in due course.**

Sustainable Tarras tailored its Cromwell presentation to the Panel's guidance that legal positions would be addressed in a different process, and to the time available. Sustainable Tarras was invited to present for a maximum of 35 minutes at the Crownwell hearing, and in this time it needed to address its overall case including expert evidence, key legal issues and its members' interests and concerns.

- b. MGL has already provided closing legal submissions, at the end of the Crownwell hearing (See transcript - Day 2 – Crownwell hearing transcript – 30 April 2026; pages 51 – 84, commencing under the heading "Mr Leckie's submissions in reply").
- c. No legal submissions were provided for in the subsequent expert evidence topic hearings.
- d. The Panel's Minute 39 reports on the receipt of legal advice from Counsel Assisting Bronwyn Carruthers KC, and states that the Panel (at that stage) did not consider any further hearing in relation to the legal issues was required having regard to:
 - i. The quality of the legal submissions which it had received from senior counsel engaged by all parties/invitees;
 - ii. The independent advice it has received; and
 - iii. The composition of the Panel.

Enabling closing submissions from MGL appears to run counter to the indication in Minute 39.

- e. MGL's provision of material subsequent to those hearings has been in response to the Panel's requests for information. In some cases, those responses have included legal submissions (e.g. on whether a condition imposing a covenant obligation on CODC can be imposed). There is nothing to be "closed" by way of further closing legal submissions.
9. Whilst Sustainable Tarras opposes the ability for MGL to file closing legal submissions, should this be allowed by the Panel then Sustainable Tarras seeks leave to file legal submissions on the key points in issue with its response to RFI 11.

MGL response to Minute 46

10. MGL infers that its application should be treated as complete because it was accepted by the EPA as complete. "Completeness" in terms of s 46 FTAA and sufficiency of information for a decision on a complex application for multiple approvals are legally separate and distinct concepts (as decided in the RMA context in *New Zealand King Salmon Company Ltd v Marlborough District Council* [2018] NZHC 1357 at [51]-[57]).
11. MGL says that the RFI 11 response "serves to provide greater certainty regarding the conclusions reached in the existing effects assessments, rather than introducing new assessment outputs or materially altering those conclusions". Sustainable Tarras disagrees, and will address this in its response to the new material.

26 August 2026



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