

Proposed Bendigo-Ophir Gold Project

Planning Issues Statement

Prepared for Sustainable Tarras Inc.

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Introduction

- 1 My name is Sylvia Jean Allan. I have a Bachelor of Science (Honours) Degree in physical geography and geology and a post-graduate Diploma in Town Planning. I am a Retired Fellow of the New Zealand Planning Institute (NZPI) and am a former President of that professional body. I have more than 55 years' experience as a planner in New Zealand and in the United Kingdom. I have been awarded both the first Nancy Northcroft Planning Practice Award by NZPI, and an NZPI Distinguished Service Award. I am experienced in most aspects of environmental planning.
- 2 For most of my career I have been an independent planning consultant, providing advice to clients ranging from large infrastructure providers such as the former ECNZ and Transpower to port companies and industries, to local authorities and central government departments and agencies, to community groups and individuals¹. I have also worked for and advised local government in New Zealand and the UK. For 12 years I was New Zealand leader of the planning section of international multi-disciplinary company, MWH Ltd (now Stantec), employing over 50 planners nation-wide. This included work on international projects.
- 3 My experience encompasses work on plan development, scoping and development of projects such as site and location choice, managing and undertaking assessment of effects on the environment, and preparation and management of resource consent and other applications. Specific areas of experience and research relate to climate change policy and natural hazard planning, multi-criteria analyses, and coastal planning. I have also assisted quarry developers and operators and major infrastructure providers over several decades. I am familiar with both preparing and critiquing application documentation for a wide range of clients. I have been involved in a wide range of proposals under

¹ For the past 15 years as director of the firm Allan Planning and Research Ltd, now in the process of winding up.

different processes under the Resource Management Act, the Public Works Act and the Local Government Act. I have familiarised myself with the provisions of the Fast-track Approvals Act 2024.

- 4 I have visited the area of the proposed Bendigo-Ophir Gold Project early in March 2026. This included viewing the site from State highways 6 and 8 and a number of private properties in evening light, and from Ardgour Road at night time, during the lighting simulation referred to in Mr Simpson's statement. I also viewed the site during the day from most of the view points identified by Boffa Miskell and closer views of the Ardour Terrace site and the mine site from adjacent public areas including Thomson Gorge Road and the Ardgour Conservation Area. I have read most of the documentation accompanying the application. I have also read other statements to be provided to the Panel by Sustainable Tarras. My statement does not provide a comprehensive analysis of the application. Rather, it is intended to assist the Panel by identifying key planning issues in relation to the Fast-track Approvals Act 2024, and aspects where the policy analysis accompanying the application is, in my opinion, incorrect.
- 5 I am familiar with the Code of Conduct for Expert Witnesses in the Environment Court (Section 9 of the Court's Practice Note 2023) and I agree to comply with this Code of Conduct. Except where I state that I am relying on information provided by another person, my comments are within my area of expertise. I have not omitted to consider material facts known to me that might detract from the opinions that I express in this statement.

Adequacy of Information Accompanying the Application

- 6 Despite the EPA's acceptance of the application as complete, in my opinion, based on my experience, there are a number of shortfalls in the documentation. I have identified those covered in the following paragraphs as significant and material to the consideration of the application.

Complete absence of an independent Social Impact Assessment (SIA)

- 7 The proposed project is a major one for the local and regional communities. The local and regional communities, and how their economic and social wellbeing will

be affected by the proposal, should be a component of the applicant's documentation for a project such as this, given the potential impacts.

- 8 A consent application made under the Fast-Track Approvals Act must include an assessment of the activity's effects on the environment.² The environment includes "people and communities"³ and s5 of the Resource Management Act 1991 (the RMA) requires the promotion of sustainable management of natural and physical resources. Therefore a key element of any inquiry into a major change in the environment to be brought about by a project that the District and Regional Plans do not provide for as of right, must be whether the "use or development" of the natural or physical resource proposed will "enable people and communities to provide for their social, economic, and cultural well-being and for their health and safety", as well as the extent to which any adverse effects are avoided remedied or mitigated.
- 9 The mining operation is likely to have profound effects on people and communities already in the vicinity⁴. Such effects may vary from loss of amenity values currently enjoyed, to economic impacts on existing businesses, to much wider potential impacts such as reduction in the attractiveness of the area as a tourism destination, or impacts on the availability of housing. While some actual and potential impacts can be evaluated through specific impact assessments, such as the noise, visual and traffic/transport impacts that have been undertaken for this project, many implications have been overlooked through the lack of a SIA.

² Clause 5(4) of Schedule 4.

³ RMA 1991, s2 interpretation: "*environment* includes – (a) ecosystems and their constituent parts, including people and communities; and (b) all natural and physical resources; and (c) amenity values; and (d) the social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) or which are affected by those matters.

⁴ Fig 11 of Boffa Miskell's Graphic Supplement shows the location of dwellings within approximately 10km of the "Site Boundary" – this shows an unusually intensive pattern of development for a NZ rural area distant from major settlements – one that is probably unique to NZ. This intensity of human activity and existing livelihood should have been pause for thought and in my opinion contributes to the justification of the need for an SIA. I understand a SIA is in progress for the proposed Lake Onslow Project, which is in a much more remote location.

- 10 SIAs involve a recognised methodology and are normally undertaken for a project of this scale. Both the International Association of Impact Assessors⁵ and the New Zealand Association of Impact Assessment provide advice and guidance for those undertaking social impact assessment. The World Bank and International Monetary Fund both have requirements for social impact assessment for any project they look at funding. Undertaking such an assessment is a requirement of good planning and normal environmental impact assessment practice whenever there is a local community likely to be affected.
- 11 In my opinion, without the further information that a SIA would yield, it is not possible to draw accurate conclusions in terms of s 104 and s5 of the RMA. I also consider it unlikely that the Panel will be able to adequately undertake its responsibilities under s 81, clause 17 of Sch 5, and s s87(2)(a)(iii) and (iv) (principal issues in contention and main findings) without the additional information that a SIA would provide.
- 12 While a record of consultation and engagement undertaken by the applicant has been provided, consultation and engagement does not substitute for undertaking an SIA, and the record does not provide the information that would be expected from an SIA.
- 13 I note that the A.02B Legal Overview includes a reference to “Socio-Economic Baseline Assessment at [4.3]” -footnote 2, but this does not appear to have been provided. Also, the list of contents in the substantive application part A.09A Existing Environment lists “The socio-economic context” as one of the details it provides in 2.1. However, there is no such section. I understand from Sustainable Tarras that the applicant commissioned a social and economic baseline assessment, which was completed. The Panel may wish to request that document. That would not, however, comprise a full SIA.

⁵ <https://www.nzaia.org.nz/socialimpactassessment.html>

Adequacy of landscape analysis and particularly the simulations

- 14 I share the concerns of Ms Gilbert about the quality of the landscape analysis provided by the applicant⁶. From two days observations in the field (March 2026) the light on the landscape clearly varies considerably over time. This variability no doubt contributed to the identification of the Dunstan Ranges as an ONL. The applicant's simulations are based on photographs which appear very flat, with little definition of the detailed components of the landscape which at times can appear very pronounced.
- 15 I acknowledge that visual simulations give only a guide to visual change and require further expert evaluation. Nevertheless, the limitation of the simulations provides only two states of change "during operations" and "at closure", without specification of the years of change shown in each (during production, according to the Boffa description, includes years 3-11, and completion could be any stage from 11 – 30 years). This does not provide the detail that I would expect would be required, for example, for a quarry application where normally stage-by-stage simulations are presented. The resultant blurring of change is, in my opinion, inadequate. Specific simulations relating to specific years should be required.
- 16 Because of the importance of the district's landscapes for visitors, I would have expected an assessment of the visual impacts of the mining operation for those flying into Queenstown.
- 17 Given the specific location of the proposed mine site and the need for 24-hour lighting, I would also have expected some night-time simulations and an assessment of lighting impacts.

Hazardous facilities

- 18 Schedule 5, cl 6(1)(b) which sets out information requirements for applications under the Fast-track Applications Act states "if the activity includes the use of hazardous installations, an assessment of any risks to the environment that are

⁶ See Landscape Review – Bendigo-Ophir Gold Project, March 2026

likely to arise from such use”. The proposed mining operation should be considered a hazardous installation because of the variety and extent of hazardous substances stored and used on site, and the nature of the industrial processing and ancillary activities involved.

19 Tables 3.4, 3.5 and 3.6 in the application documentation set out the volumes of hazardous substances stored in three different locations, some of which are used widely across the site. While there is mention of containment systems such as bunding in the documentation, there does not appear to be any assessment of the risks associated with the storage and use of these substances. Given the location within the Cromwell Basin, the relative density of the rural population, the productive rural activities nearby, the values of the natural environment within and surrounding the site, and the high on-site workforce, I would have expected a comprehensive assessment of the risks associated with the hazardous installation, including its hazardous substances and the associated industrial activities.

Other Preliminary Matters

Consideration of alternatives

20 When extensive discharge permits⁷ are involved, there can be reason to consider alternatives for the whole project. No information has been provided on alternative methods of mineral extraction, such as underground mining only, which would have lesser discharges and much reduced impacts on the environment, including the ONL. Similarly, other sources of gold may be found in the district or elsewhere in the South Island. The necessity to develop this resource is, in my opinion, a matter which relates to the extent of its benefits and also applies to this application due to its discharge requirements. The matter of “functional need” is raised in section 3.3 of the application documentation in relation to the loss of river and wetland extent and values, and to biodiversity, and restated under

⁷ Contaminant discharges associated with this proposal include contaminated water (silt-laden and any other contaminants), the materials forming the ELF's due to their propensity to leach, and tailings. Cl 6 of Sch 5 of the Fast-track Approvals Act requires any possible alternative methods of discharge to be described.

several headings in part 8 of the documentation. I return to this later in paragraphs 74 to 76.

- 21 Other experts advising Sustainable Tarras have raised issues with the lack of consideration of alternatives for parts of the project, particularly in relation to the choice of open pit mining, and management of tailings⁸. Where actual or potential effects on the environment are likely to be significant, in my opinion alternatives should always be fully explored.

Ability to seek water permits with a duration greater than 6 years

- 22 In part 4 of the applicant's documentation, under 4.2.2⁹, the limitation of the maximum 6-year term of any water permit which can be granted within the Otago Region under s127B of the RMA¹⁰ is noted. However, the document proposes that "the panel is not precluded from granting the approvals sought under the Act for a period longer than 6 years". It is my understanding that s127B was enacted to give further effect to an Environment Court decision on the Otago Land and Water Plan. This is a matter for legal submissions.

Activities sought to be consented within BOGP Consent Area

- 23 The application documentation in section 3.7 requests consent for additional exploration activities, including access roads, drilling pad and sumps and minor earthworks and vegetation clearance within the Project Site and BOGP area. I note both of these boundaries include the two proposed Sanctuary Areas – Bendigo and Ardgour – which are intended to be established with fence construction in years 1 to 3 of the project timetable. It is important that these two areas are not damaged before they are fenced and managed as proposed.

⁸ See statement of Dr Lottermoser for Sustainable Tarras.

⁹ Page 236.

¹⁰ Introduced in 2025.

Road closures

- 24 The application envisages the closure of part of Thomson Gorge Road (between Matilda Rise and the Saddle on that road) and its replacement by a new road named Ardgour Rise. The Thomson Gorge Road alignment is shown as within the CIT, RAS, SRX and SRE pits, and the SRX and Western ELFs. A paper road in the lower Shepherds Valley is also intended to be closed and the land used as part of the project site area. The closure of Thomson Gorge Road is subject to processes under the Local Government Act 1974, Schedule 10, and for the paper road a process under s 116 of the Public Works Act 1981.
- 25 These processes are outside the Fast-track Approvals Act 2024. In my opinion, this should have been clarified in the application.

Provisions of Statutory Instruments and Policy Analysis

“Permitted baseline” evaluation

- 26 As the starting point for any assessment of the effects of a proposal or project on the environment, it is usual for applicants to describe the “existing environment” while taking into account the “permitted baseline”. This approach has been confirmed in planning case law for many years¹¹. I find it a useful approach, particularly when controversial projects are involved, because it is a way of exploring and understanding the types and extents of change that a community and individuals may expect in their local area. Many plans now include a range of controlled activities, where activities are enabled (and cannot be declined) but are subject to a level of scrutiny and are usually subject to particular conditions intended to minimize potential adverse effects – a judgement call needs to be made on the extent to which these form part of the permitted baseline.
- 27 The District Plan, a statutory RMA document developed and modified through participatory processes, gives a picture, through rules associated with zoning and

¹¹ *Bayley v Manukau City Council* [1999] 1 NZLR 558

overlays¹², explanatory material and stated objectives and policies, as to the extent of change likely to be experienced in an area in the future¹³. That is not to say that more extensive change cannot be achieved, but this is done through consent processes and managed by the local authority through the RMA and the applicable subsidiary statutory framework which applies.

28 No one reading the operative Central Otago District Plan could possibly envisage the extent of change to be wrought by the proposed gold mine, if it is approved. The proposed mining development is a very major departure from the zoning and overlay framework within which it is proposed to be located and has the potential to undermine many of the values expressed in the District Plan¹⁴.

29 The BOGP Consent Area (which includes the Project Site) lies on the north-eastern edge of the Cromwell Basin. The whole of the wider area is zoned as Rural Resource Area¹⁵. The flat central part of the basin is flanked by prominent ranges where the Rural Resource Area is overlaid by an Outstanding Natural Landscape (ONL) notation. The flatter parts of the valley have extensive areas where the Rural Resource Area is overlaid by Significant Amenity Landscape (SAL) notations or Outstanding Natural Feature notations (ONF). Areas notated as of Significant Natural Value are found extensively both within ONLs, SALs and elsewhere within the Rural Resource Area, including on flatter parts of the Basin.

30 The basic description of the Rural Resource Area zone in the operative District Plan is as follows:

“The Rural Resource Area comprises the rural environment of the District.... The amenity values of the rural environment are dominated by Central Otago’s unique, semi-arid landscape of broad basins separated by low mountain ranges with sparse vegetation, covered in tussock grassland and exotic pasture, and broken by schist rock outcrops. This landscape retains a high natural character and has significant scenic

¹² Zoning is primarily land-use based whereas overlays indicate particular constraints which modify the usual landuse activities.

¹³ Regional Plans also contribute to the permitted baseline for the range of natural resources they manage, but are less determinative as they have less control over landuses – i.e. a water permit granted under a Regional Plan may result in more intensive agricultural or horticultural use, but if the additional water was to result in a shift to a manufacturing activity, the landuse change would be confirmed through the District Plan

¹⁴ Although representing District-wide values for rural areas, these values are also now expressed in the Tarras Community Plan 2023 - <https://www.centralotagonz.com/assets/Documents/Community-Plans/Tarras-Community-Plan.pdf>

¹⁵ This is the predominant zoning in the district.

values and some of it is identified in this District Plan as an outstanding natural landscape or outstanding natural feature. These values can be enhanced by human made elements which include orchards and vineyards; homesteads accompanied by stands of trees (often poplars); remnant stone cottages; small irrigation and stock water dams and water races; energy generation facilities; and shelter belts of trees. Former mining sites also give the District a distinctive character.....It is apparent that the character of the landscape is an important element in making Central Otago an attractive place to live in and to visit. For many people it is the reason they reside and recreate here, and that became particularly apparent during the community consultation phase of the Rural Study which was carried out in 2005 and 2006.”¹⁶

31 The permitted baseline for the Rural Resource Area is established by the existing activities plus change that can happen under the permitted activity rules, including some judgement acknowledging the changes enabled by controlled activities. In the Cromwell Basin the picture that emerges from a brief analysis of these rules is that, outside areas with overlays:

- Existing community and scheduled activities¹⁷ are permitted and can be expanded as controlled activities.
- The provisions generally facilitate farming/horticultural activities and enable changes in those activities, subject to specified standards (such a noise, building location and height, access and traffic generation)
- New residential activities are subject to control over design and appearance, but only one per CT is enabled as a controlled activity (they are not permitted activities and a subdivision will generally be needed before a new house can be consented).
- Only in identified localized areas is subdivision a controlled activity (throughout most of the Rural Resource Area new subdivision is a discretionary activity (subject to an average 8ha lot size)).

¹⁶ Although this is now an old investigation the values are likely to have intensified rather than softened. This is evidenced by, for example, relatively recent plan changes which have introduced guidelines for heritage precincts and enabled areas to be identified as dark sky reserves, including the first such reserve.

¹⁷ These activities are included in Schedule 19.3 of the District Plan and include named community facilities, travellers' accommodation, hydro schemes, gravel pits, irrigation dams,

- Small retailing (including winery off-licences) of goods ancillary to rural production, and of crafts, are controlled activities subject to access, parking and a range of controls on e.g. signage and storage.
- Extraction earthworks are limited to 2000m² in area or 3000m³ per site.
- Other activities which can meet all the relevant standards are permitted (because the standards are quite limiting, including those relating to traffic generation and access, this apparently generous provision does not enable other types of activities at more than very small scale).

31 In other words, with the exception of productive rural uses where considerable changes as to the actual type and intensity of production may take place without RMA intervention, the District Plan indicates that change will be minor and its impacts carefully controlled¹⁸.

32 Additional rules apply within the overlay areas as follows:

- within SAL Areas (this includes the Ardgour Terrace Site part of the BOGP Consent Area) buildings must be less than 7.5m in height but otherwise rules are the same as elsewhere in the Rural Resource Area.
- within any area identified as an ONL no new structures and buildings other than post and wire fences are allowed (buildings must be less than 6m in height); there shall be no new roads, tracks, landings or utility service lines; previously cultivated areas can be cultivated, but no new areas can be cultivated; no more than 50m² or 20m³ of ground can be excavated (or 1 ha over 5 years); woodlots, production forestry and shelter belts cannot be established; and land may not be subdivided (except for the purpose of creating reserves or conservation areas).

33 These additional rules, particularly those relating to ONLs, mean that virtually all change requires consent as a fully discretionary activity. Consents are subject to consideration through the District Plan's specific policy framework for ONLs which

¹⁸ Where consents are required, the Rural Resource Area's policy framework is heavily focused on managing change in a way that maintains the qualities and characteristics that are noted in the description in paragraph 30 above.

is designed to protect these areas from inappropriate subdivision, use and development.

34 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.

Assessment of consents needed

35 I have reviewed the contents of sections 4 and 8 of the application documentation, which identify consents needed under the District and Regional Plans and relevant National Environmental Standards. Section 8 also provides a policy analysis of the various relevant documents.

36 Section 4 identifies the provisions that cause the need for consents, and I am generally in agreement with these. I note that the applicant has subsequently¹⁹ acknowledged that consents are also needed for construction and operational noise and for blasting activities, as they do not meet the District Plan requirements. Although no explanation for this change in status has been provided, it was clear from the original documentation that the applicant considered that meeting the standards proposed by its consultants provided a better standard and made it immune from the need to meet current District Plan requirements²⁰.

37 I agree that the provisions of the unnumbered Lighting section of the District Plan (added through a recent plan change) does not apply to the project. However, the applicant appears to have overlooked the following rule under 4.7.6 Standards in the Rural Resource Area Zone:

o. Exterior Lighting in Rural Resource Area (5)

Breach: Discretionary activity see Rule 4.7.4.i

Exterior lighting on buildings shall be fixed, no higher than 1 metre above finished ground level, capped, filtered or pointed downwards and screened so as to reduce lux spill.

There shall be no lighting of vehicle accessways within any sites.

¹⁹ Memorandum, Mitchell Daysh to EPA, dated 10th March 2026, Updated Application Documents, 01.

²⁰ See analysis of Rule 12.7.4, p 23 and 24 of Part H of the application documentation.

It is likely that most buildings will need to be well lit for safety and security reasons, and also that site roads, which will function as vehicle accessways, will be well lit for the same reason²¹. The mobile rigs and lighting proposed do not come under this rule. The permitted standards for lighting are clearly designed to minimise light spill at night and are unlikely to meet the needs for lighting for mining activities where people both live and work in a 24-hour operational environment.

38 I also understand that the communications tower erected on the high feature of Battery Point within the site on Bendigo Station is being dismantled due to it not being a permitted activity and also requiring DoC approval. Although it is explained that consent will be sought separately from the current fast-track process, the tower does form part of the project and its effects are integral and should be taken into account at this stage.

39 From the range and diversity of consents needed, it is apparent that this is a very substantial project, not anticipated by the applicable Regional or District Plans, with significant implications and a wide range of adverse effects, varying from those that are localised, temporary and reversible to those that are permanent and irreversible. Amongst the potential adverse effects are risks of low probability but high potential impact due to the introduction of an extractive activity with noxious and hazardous elements into an area comprising a complex matrix of natural values and existing activities.

General Comment – Regional Policy Statement and District and Regional Plans

40 While national instruments identify and seek to meet national outcomes, a Regional Policy Statement and Regional and District Plans can be seen as the expression of their devolved development processes²², identifying regional and local issues facing natural and physical environments and endeavouring to address and manage the issues. District and regional plans are required to give effect to policies as identified in the regional policy statement. I now comment on

²¹ The applicant's Cosgroves Report refers to access roads not being lit, relying on headlights only, but it is not clear if that includes the Shepherds Valley Service Corridor.

²² While also giving effect to matters of national importance and national instruments under the RMA.

the following policy areas which I consider the project to be highly inconsistent with:

- The protection of outstanding landscape values
- The protection of rural character and amenity
- Water management
- Indigenous biodiversity management

Protection of Outstanding Natural Landscapes - RPS

41 The protection of outstanding natural landscapes from inappropriate subdivision, use, and development is a s6 matter of national importance under the RMA. This is reflected in both the operative and proposed Regional Policy Statements (2019 and 2021). While both are current, the 2021 version updates and supersedes the 2019 version.

42 The operative RPS (2019) has a number of provisions relevant to the recognition and protection of landscapes and other natural resources. Objective 3.1 is that “The values (including intrinsic values) of ecosystems and natural resources are recognised and maintained, or enhanced where degraded”. This sets up Policy 3.1.11, which provides criteria for recognition and allocates the responsibility for recognition and protection to District Plans. Objective 3.2 is that “Otago's significant and highly valued natural resources are identified and protected, or enhanced where degraded”²³. Once identified, under Policy 3.2.3, outstanding landscapes must be protected, enhanced or restored by maintaining the values that contribute to the outstanding landscape being outstanding, avoiding, remedying or mitigating other adverse effects and encouraging enhancement of the areas and values that contribute to the significance of those areas.

²³ The Issues statement which this Objective relates to is: “Otago has significant and highly valued natural resources.....which all have intrinsic value and help to create the region's identity and support the region's wellbeing. These highly valued resources can become degraded if they are not adequately protected from inappropriate subdivision, use and development, and so deserve a greater degree of recognition. Resource degradation can adversely affect the social, cultural and economic wellbeing of people and communities”.

43 The proposed RPS (2021) provides an updated and more nuanced set of policies and provisions²⁴. These are ably explained in the Natural Features and Landscapes chapter of the RPS and recognise both Outstanding Natural Landscapes protected directly under RMA sec6(b), and slightly lesser Highly Valued Natural landscapes which must be managed in accordance with s7 of the RMA. These latter landscapes are described as having a greater capacity to accommodate landuse change and development.

44 NFL-O1, the relevant objective, is “The areas and values of Otago’s outstanding *natural features and landscapes* are identified, and the use and development of Otago’s *natural and physical resources* results in the protection of them from inappropriate *subdivision*, use and development.” The consequent Policy NLF-P1 requires identification in accordance with the approach set out in an Appendix to the RPS, and Policy NLF-P2 states:

“NFL-P2 – Protection of outstanding natural features and landscapes

Protect outstanding natural features and landscapes from inappropriate *subdivision*, use and development by:

- (1) maintaining the values that contribute to the natural feature or landscape being considered outstanding, even if those values are not themselves outstanding,
- (2) avoiding, remedying or mitigating other adverse *effects*; and
- (3) managing the adverse *effects* of *infrastructure* on the values of outstanding natural features and landscapes in accordance with EIT-INF-P13 and EIT-INT-Px.²⁵

45 I note that the operative RPS also contains Objective 5.4 “Adverse effects of using and enjoying Otago’s natural and physical resources are minimised”. Under this objective, a specific policy, Policy 5.4.8 relates to adverse effects from mineral and petroleum exploration, extraction and processing. This policy prioritises avoiding such activities in areas of outstanding landscape values, and if it is not practicable to avoid locating in such areas because of the “functional needs” of the exploration, extraction and processing, adverse effects on the values that contribute to the outstanding nature of the natural landscape must be avoided.

²⁴ Interestingly, amongst the 10 major issues facing the Otago Region is *SRMR-110 – Economic and domestic activities in Otago use natural resources but do not always properly account for the environmental stresses or the future impacts they cause*

²⁵ 3 applies to infrastructure as defined in the RPS and specifies a hierarchical approach for most infrastructure and specific provisions for the National Grid.

- 46 There are also requirements under this policy to further reduce unavoidable adverse effects by staging development and progressive rehabilitation, and to apply a precautionary approach (including adaptive management where appropriate) to assessing the effects of the activity, where there is scientific uncertainty, and potentially significant or irreversible adverse effects.
- 47 A note under this policy says that, where there is a conflict, Policy 5.4.8 prevails over policies under Objective 3.2. In my opinion, this note is not an impediment to the application of both policies when the proposed development is considered under the operative RPS. Policy 5.4.8's approach of minimising adverse effects through a hierarchy of, firstly, avoiding locating in an ONL, and then, secondly, avoiding adverse effects on the values that make an area outstanding, are, in my opinion, consistent with "maintaining" those values. Policy 5.4.8 acknowledges that there may be a "functional need" for extraction activities to occur in the locations that they are found, but this is not to say that in all circumstances that "functional need" test will be met by a particular project. For example, a very large open cast mine with its associated developments of waste rock storage, on-site processing and tailings disposal, such as that proposed, may not be able to prove it is needed. This could be the case, particularly if it was seen to have inadequate benefits or if its extraction or processing methods were significantly adverse or could be undertaken in another way which would have lesser adverse effects.
- 48 The proposed RPS does not include any similar provisions relating to minerals development, but it does incorporate a similar hierarchical approach to the development of infrastructure, including nationally and regionally significant infrastructure. I interpret that to mean that minerals development no longer has specific recognition as a "special" type of land use or development under the Otago RPS.

Discussion on Outstanding Natural Landscapes (ONL)

- 49 The Dunstan Range has been identified as an area of Outstanding Natural Landscape in the Central Otago District Plan, so is subject to a protection policy at regional level²⁶.
- 50 It is also subject to a specific objective and policy in the Central Otago District Plan. Objective 4.3.2 is “to protect the District’s outstanding natural landscapes from the adverse effects of inappropriate subdivision, use and development.” The related Policy 4.4.1 repeats the intended protection, with the explanation that: “There are activities that have the potential to compromise the values of these areas. In these circumstances resource consents will be required to enable a thorough environmental impact assessment to take place. This assessment must include recognition of the fact that people and communities often utilise these areas to provide for their social, economic and cultural wellbeing.”
- 51 The Central Otago District Plan includes a brief description for each of the ONLs, but more detail on the values that make the Dunstan Range outstanding are set out in Ms Gilbert’s review report and include strong physical, perceptual and associative values. Ms Gilbert finds that the landscape into which the proposed gold mine will be inserted has outstanding values, which are at the higher end of the spectrum applied by expert landscape architects.²⁷ Her assessment sets out the basis for her opinion that the location, scale and nature of the project does not achieve the RMA policy imperatives for the ONL. She explains that the extent of landform modification which will be brought about should the project go ahead will mean that the Shepherds Creek and Rise and Shine Creek catchments would no longer be sufficiently natural to be part of the ONL.

²⁶ Under the operative RPS, this extended to enhancement and restoration. I note that the proposed RPS introduces the concept of landscape capacity when areas are likely to experience growth pressure, and requires territorial authorities to include a statement of that capacity. That has not yet been completed for the Central Otago District Plan.

²⁷ Te Tangi a te Manu (TTaM), NZILA 2022. The work undertaken by Ms Gilbert provides a resource to the District that is otherwise not available.

52 I agree that 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.

53 In relation to landscape values, I do not agree with statements in the overall conclusions, p444 and p460 of the application documentation, that the proposed activities are being undertaken in a way that is consistent with the operative and proposed RPS, or in relation to the Central Otago District Plan that the “values of the overall Dunstan Mountains ONL will be protected from adverse landscape effects of the BOGP”.

The protection and maintenance of rural character and amenity values

54 The protection of rural character and amenity values is not directly an RPS matter, although I note that within the District Plan’s Rural Resource Area in the vicinity of the proposed mining activity and contributing to that character and amenity, are

- areas of Significant Amenity Landscape (within and adjacent to the BOGP Consent Area) which are within the scope of the Highly Valued Natural Landscapes and must be managed in accordance with s7 of the RMA under the ONF section of the proposed RPS; and
- Significant Natural Value Area areas (adjacent to the BOGP Consent Area) which give expression to RPS Ecosystem and Historic Heritage objectives of the RPS and are both RMA s6 matters.

55 The District Plan includes key Objectives and Policies in the Rural Resource Area which are relevant to the protection and maintenance of rural character and amenity values. Objective 4.3.3 is “To maintain and where practicable enhance rural amenity values created by the open space, landscape, natural character and built environment values of the District’s rural environment, and to maintain the open natural character of the hills and ranges.”

56 Policy 4.4.2 flows from this and is:

“To manage the effects of land use activities and subdivision to ensure that adverse effects on the open space, landscape, natural character and amenity values of the rural environment are avoided, remedied or mitigated through:

- a. The design and location of structures and works, particularly in respect of the open natural character of hills and ranges, skylines, prominent places and natural features,
- b. Development which is compatible with the surrounding environment including the amenity values of adjoining properties,
- c. The ability to adequately dispose of effluent on site,
- d. Controlling the generation of noise in back country areas,
- e. The location of tree planting, particularly in respect of landscape values, natural features and ecological values,
- f. ...
- g. Encouraging the location and design of buildings to maintain the open natural character of hills and ranges without compromising the landscape and amenity values of prominent hillsides and terraces.
- h. ...”

The associated explanation includes that “The open space and natural character of the rural environment is also seen as a significant resource of the District. These values are capable of being compromised by commercial, industrial and/or residential forms of development not traditionally found in a rural context.”

57 Policy 4.4.14 relates to Back Country Amenity Values, and is:

“To ensure that activities avoid, remedy or mitigate adverse effects on the open space, landscape, historic, natural character, natural quiet and amenity values of [on?] the quality and range of recreational opportunities available in the District’s back country and/or remote areas.”

Because the BOGP Consent Area is largely on the elevated slopes that surround the Cromwell Basin and only accessible by unsealed narrow roads reducing to narrow tracks, in my opinion it forms part of the District’s back country. The Historic Reserve nearby which appears well-visited, and the connection through Thomson Gorge Road to Lauder, suggests that this policy also applies.

58 As explained in paragraphs 26 to 34 of this statement, the District Plan manages most landuse change and development in the Rural Resource Area so that the objective above can be achieved. The objective seeks to maintain and where practicable enhance the rural amenity values of the area, including its natural character and recreational values.

59 The proposed mining activity introduces an industrial scale activity (use and development) into a largely natural area with associated built development, landscape modification, visual impact, noise, lighting, vibration from blasting, dust, and traffic generation. The activity will be operated on a 24 hour a day basis.

- 60 A number of the standards in the District Plan will be able to be achieved due to the distance between the activity and the nearest properties where the effect is measured. However, it is acknowledged that, for example, blasting standards will require that access to parts of the Bendigo Historic Reserve will need to be limited at times of blasting at the CIT pit to ensure the necessary 500m separation. Blasting is also involved in widening the west side of Thomsons Valley and for aggregate extraction at the two aggregate pits, one of which is very close to the Ardgour Rise alignment, so may also impact on the use of the road²⁸.
- 61 Some of the effects may meet the standards but will nevertheless have adverse cumulative effects on the amenity and quality of the rural character as experienced by people over a wide area, due to the enclosed form of and population dispersal over the Cromwell Basin. The ongoing noise from excavation and placement of material, and sorting and processing of ore may technically meet District Plan standards, but will form a permanent low-level background rumbling noise in the wider rural area which is currently quiet, although there may be periods of noise associated with current rural activities (including bird scaring, frost management and harvesting noise). Similarly, site and activity lighting may technically meet the requirements of the District Plan but will nevertheless leak into the wider atmosphere as a permanent visible glow as described in the statement of Mr Boyle for Sustainable Tarras.
- 62 Dust is likely to be an issue at times, given the dry climate of the area and the nature of excavations and formation of the ELF's. While dust on roads can be managed by water carts, the large areas of open unconsolidated area likely to occur under normal operation are not readily amenable to dust suppression in my experience. Dust emissions are also likely to be associated with blasting. While this may not be experienced as a direct effect on people (other than those on site, who can take protective measures) visible dust clouds are not currently a part of the rural area's character and will most likely be perceived as adverse.

²⁸ An effect not identified in the documentation.

- 63 The increased traffic from the 24 hour mining activity which includes travel to and from work (average employment of 357 people and peak of 529, of which up to 60 people are accommodated on site and will come and go from the site itself), and transport associated with deliveries will also modify the rural character of the area.
- 64 Informal recreational use of the area in the vicinity of the mine will include exposure to the adverse effects described above, in proximity to the site boundary and particularly during its establishment and operational stages. In the longer term, the permanent mine-related features of the excavated pits with their local lakes and the ELFs with their engineered shapes will be adversely apparent to discerning visitors to the area. Recreational use has specific policy recognition in the District Plan.
- 65 The proposed mine is very different from what could be expected in the Rural Resource Area in this part of Central Otago given its present character and typical (or by reference to the policy's explanation - traditional) forms and types of development. In terms of the applicable policy which requires avoiding, remedying and mitigating, I acknowledge that the applicant has included provisions to remedy and mitigate some of the more obvious adverse effects.
- 66 While the mine is in its development phase and operational – a period of approximately 14 years as proposed – the effects noted above will be most apparent. While some adverse effects will cease at the cessation of mining operations, other irrevocable changes to landforms involve adverse effects such as on natural character and landscape values which cannot, in my opinion, be adequately mitigated or remedied while still achieving the objective to “maintain and where practicable enhance” rural amenity values.
- 67 In my opinion, in the short, medium and long terms the proposed mining activity is inconsistent with policy which seeks to maintain and retain rural character and amenity values. In reaching this conclusion, I am aware of the relatively recent High Court case which interpreted the objective and policies which seek to maintain and enhance the rural amenity values through the District Plan - *Canyon Vineyard Ltd v Central Otago District Council* [2022] NZHC 2458. That case

considered a subdivision and development proposal which was much more in accordance with the rural character and amenity values in close proximity to the proposed mining activity. I agree that “maintain” does not mean no change in a rural area (as explained in my earlier description of the permitted baseline – paragraphs 26 to 34). My conclusion is based on the extent and nature of the change which is of a very large extractive and industrial type of activity and well beyond what could be anticipated to gain consent within the framework provided by the District Plan.

- 68 One less apparent aspect of rural character is the perception of risk associated with a hazardous facility in a rural area. I have noted earlier (paragraph 19) the lack of a risk assessment associated with the storage and use of substantial hazardous substances and complex industrial processes in the application. The desire for industrial activities to locate in rural areas is one of the issues which is identified for the Rural Resource Area in the District Plan. Amongst the associated adverse effects identified from such activities is the use and storage of hazardous substances²⁹.
- 69 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 good that can be stored.
- 70 In my opinion, 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.

²⁹ Clause 4.2.16.

Water and discharge aspects

- 71 Water and discharges management across two catchments is required for the mining operation. The extent of the site and the implications of the mining operation are indicated by the types and variety of consents needed. The significant modifications in surface topography are indicated by the landuse consents sought for disturbance, alteration and reclamation of approximately 10km of existing river (creek) bed³⁰ and disturbance of just over 3 ha of existing dispersed wetland. There will also be extensive dewatering involved, use of water on-site for a range of purposes, including water extracted from the existing and proposed borefield in the Bendigo aquifer some 6.5 km distant from the Project Site³¹, water treatment and discharges, culverting, and creation of new channels, a wetland and pit lakes in the open pits.
- 72 The consents needed are under the National Environmental Standard for Freshwater (NESF) set out in part 4.2.7 of the application documentation, and the Otago Regional Plan for Water set out in part 4.2.4. I generally agree with the outline of the consents needed and that, bundled, they are fully discretionary activities.
- 73 The policy framework includes RMA s6(a) which seeks to preserve the natural character of rivers and their margins and to protect them from inappropriate use and development; a range of relevant policies in the National Policy Statement for Freshwater Management 2020 (NPSFW), and policy in the Otago Regional Plan for Water.
- 74 The NESF specifically recognises the purpose of mineral extraction as requiring evaluation as a discretionary activity when disturbing wetlands, vegetation or land near to wetlands or using or affecting water within or near to a wetland, and when taking or discharging water in the vicinity of a wetland (Rule 45D) rather than under the catch-all status of non-complying activities under Rule 50. The rule includes

³⁰ Because of the low rainfall in the area, most of these natural watercourses are ephemeral. Nevertheless they have specific ecological values which are not readily duplicated – see Waterways Consulting Report, B17 of application documentation.

³¹ Part of the water take is required for augmentation to ensure that downstream water permit holders are able to access sufficient water (i.e. their full consented surface water take) during the life of the project.

specific considerations before a consent can be granted – namely that the decision-maker is satisfied that the mineral extraction will provide significant national or regional benefits, that there is a functional or operational need for the activity in that location, and that the effects management hierarchy has been applied³². The term “functional need” is described in the NPSFW as the need for a “proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment”.

75 These first two tests go to the heart of the proposal. Regardless of the applicant’s assertions of national and regional benefits, the Panel will still need to consider the “need” for the extensive water components of the project. Much of the landform disturbance and therefore the diversions, reclamations and discharges relate to the pit mining components of the project. Consideration of alternatives such as limiting the project to underground mining only should in my opinion be undertaken.

76 Similarly, some of the water consents apply to the discharge of leachate from tailings material and discharges from engineered land forms³³. The statements of Dr Lottermoser and Dr Emerman both address this in detail. I note that, as well as the NESF criteria, Schedule 5.6 of the Fast-track Approvals Act requires that the applicant provides information on alternative methods of discharge, including into other receiving environments.

77 The final NESF criterion, the effects management hierarchy, refers to the NPSFM and requires a structured consideration of avoidance, mitigation, remedy, offsetting and compensation. If, following those steps, there are still more than minor adverse effects or aquatic compensation is not appropriate, the activity must be avoided³⁴.

78 Mitigation, remedy, offsetting and compensation are included in the proposed project. All these components will require very careful construction, long-term

³² NESF Rule 45D(6).

³³ To the extent that contaminated runoff will occur from the ELFs these considerations also apply to those parts of the project.

³⁴ NPSFM 3.21(1)(d) to (f).

(and immediate) management and monitoring, and some elements such as the effectiveness of constructing realigned and raised streambeds (such as the realigned Shepherds Creek) in the particular environment of the Dunstan catchments, including over areas of fill, are likely to be to a certain extent experimental. I consider there are a number of aspects where, if approval for the project is granted, careful ongoing oversight by the operator will be needed. This is particularly because of the scale of the operation, the various components which need to be separately managed, and its location.

79 As well as the fundamental modification to natural freshwater systems in the area, there are a number of downstream users of both surface and groundwater. A level of uncertainty as to how the modified water system will perform in practice is apparent in the documentation, including recognition of the potential for high levels of adverse effects, which are expressed in risk management terms³⁵, and on a high reliance on the need for monitoring as changes take place to the water management systems across the site and over time. Downstream water is used for human, stock, irrigation and frost-fighting purposes. Downstream waterbodies also have ecological value. Contaminant discharges have the potential to affect both surface and groundwater, and to have significant adverse effects on both human use and downstream ecologies. Any loss of availability and quality of water has the potential for adverse social and economic effects on people nearby and on freshwater ecosystems. Given the elevated nature of the site, including the location of soil and ore stockpiles and ELFs, and the tailings storage area, there is ongoing potential for downstream adverse effects, and any failure in design, management or construction has the potential to have significant downstream consequences³⁶.

Water policy

80 RMA s6(a) requires that an “appropriateness” test is applied to any loss of naturalness in surface water features. In this case the watercourses of the two catchments which lie within the ONL area contribute substantially to its natural

³⁵ Table 9 of the Water Management Plan identifies a number of aspects of high risk

³⁶ There are also a range of hazardous substances stored on the site, intended to be in banded facilities, and the actual processing of the ore involves large quantities of hazardous substances.

character. Shepherds Creek runs through a natural gorge which will be obliterated by the placement of fill to form the Shepherds Service Corridor, as will the smaller watercourses which provide the shape of the natural landscape in the Project Area, and the small wetland areas. In my opinion, as explained earlier (see paragraph 52), the proposed mining activity does not meet the requirements of RMA section 6(b) to avoid inappropriate use and development in relation to outstanding natural landscapes. Consequently, because the two affected catchments in their current state form part of the ONL, I also consider that the proposed mining activity is inappropriate in relation to the loss of natural character of rivers and their margins terms of RMA s6(a).

81 Primary policy is found in the NPSFM with its concept of Te Mana o te Wai, and the hierarchy of obligations which prioritise the health and wellbeing of water bodies and freshwater ecosystems above the health needs of people and then social and economic opportunities. This is the sole objective for water management under the NPSFM. The 15 policies require integrated management on a catchment basis, tangata whenua active involvement in decision-making, avoidance of the loss of river extent as far as practical, efficient use of water, consideration of downstream uses, minimising loss of natural wetlands and their restoration, and ongoing monitoring of quality, quantity and aquatic ecosystem health.

82 If approval is to be granted for the proposed mine project, there will need to be a high degree of confidence that water on and downstream of the site will be managed in a way that complies with the objective and policies, including those that relate to freshwater ecosystems. While Sustainable Tarras has not produced evidence on this issue, I understand that other commenters' evidence calls into question whether freshwater ecosystems will be protected. Over the period of establishment and extraction there will be ongoing changes in onsite water management, including the detailed design and management of sediment ponds (for runoff from exposed faces including the ELFs), and discharge points to the structures, and establishment and management of new stream beds and wetlands. There will need to be ongoing close liaison between ORC and the consent-holder, careful monitoring and enforcement as soon as there is any lapse

in performance. I comment later on some aspects of the conditions and management plans later in this evidence.

83 Policy in the proposed Otago RPS closely follows that in the NPSFW, as do the provisions of the Otago Regional Water Plan. My comments in paragraph 80 also apply.

Indigenous biodiversity

84 The Direct Disturbance Footprint (DDF) of the proposed goldmine comprises 610 ha. All of the BOGP may be subject to some form of land disturbance and vegetation clearance³⁷. This area contains an existing complex mosaic of well-established dryland vegetation, as described in several reports for the applicant, supporting lizard, insect and other indigenous fauna. The area has very high ecological values and ecologically significant vegetation communities including a large number of national or regionally at risk or threatened species. Directly adjacent to the BOGP Consent Area lie 3 significant Natural Value Areas as identified in the District Plan – Bendigo and Ardgour Conservation Areas and the Bendigo Historic Reserve. As well as the directly affected DDF, which is subject to land disturbance and vegetation removal, immediately adjacent areas will be affected by noise, dust, ground vibration and lighting, all of which can affect biota, particularly mobile fauna.

85 The area within and in the vicinity of the proposed goldmine project thus comes within the scope of RMA 6(c) matter of national importance – “the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna”. This is a statutory imperative without the qualification of protection from inappropriate use of development which applies to outstanding natural landscapes and the natural character of rivers and their margins and, in my opinion, must be give considerable weight.

³⁷ I note the applicant’s documentation requests consent to undertake exploration activities across the whole BOGP Consent Area including forming roads, drilling pads, sumps, minor earthworks and vegetation clearance across this total area in section 3.7 of the application.

86 Key policy direction applies at national level through the National Policy Statement for Indigenous Biodiversity 2023 (NPSIB)³⁸. The Objective is to maintain³⁹ indigenous biodiversity across Aotearoa New Zealand so that there is at least no overall loss in indigenous biodiversity⁴⁰. Associated policies include, inter alia, that a precautionary approach is adopted when considering adverse effects on indigenous biodiversity (Policy 3) and that restoration of indigenous biodiversity is promoted and provided for (Policy 13). The NPSIB requires systematic recognition and protection of Significant Natural Areas (SNAs) (a local authority responsibility) (Policy 6), and their protection through avoiding or managing adverse effects of use and development. The importance of maintaining indigenous biodiversity outside SNAs is recognised and provided for (Policy 8). Activities that contribute to New Zealand’s social, economic, cultural, and environmental wellbeing are also recognised and provided for (Policy 10).

87 This is relatively new national policy, and SNAs have not yet been identified under it throughout the district and region. The objective and policies 3, 8 and 13 nevertheless apply generally along with other generic parts of the NPSIB. In seeking to achieve RMA s6 (c), the effects management hierarchy set out in the NPSIB is now typically applied. By definition, this requires that

“(a) adverse effects are avoided where practicable; then

³⁸ For completeness, the Central Otago Regional Plan includes Policy 4.4.7 which seeks to protect significant areas of indigenous vegetation, and to to promote and encourage, where practicable, the retention, enhancement and reinstatement of [indigenous ecosystems](#) within the [District](#). Rules limit the clearance of indigenous vegetation throughout the Rural Resource Area.

³⁹ Including a comprehensive explanation of what is meant by “maintain” in the context – in 1.7 of the NPSIB

⁴⁰ A codicil to the objective sets out how this is to be achieved, including recognizing the kaitiaki role of tangata whenua, recognizing roles of people and communities (including landowners) as stewards, requiring protection and restoration as necessary to achieve the overall maintenance of indigenous biodiversity; and at the same time providing for the social, economic, and cultural wellbeing of people and communities now and in the future.

- (b) where adverse effects cannot be avoided, they are minimised where practicable; then
- (c) where adverse effects cannot be minimised, they are remedied where practicable; then
- (d) where more than minor residual adverse effects cannot be avoided, minimised, or remedied, biodiversity offsetting is provided where possible; then
- (e) where biodiversity offsetting of more than minor residual adverse effects is not possible, biodiversity compensation is provided; then
- f) if biodiversity compensation is not appropriate, the activity itself is avoided.”

Principles for biodiversity offsetting and compensation are included as schedules to the NPSIB.

88 The applicant has incorporated various proposals to mitigate, remedy and offset the significant adverse effects on indigenous biodiversity which it recognises the proposed gold mine will have. The applicant acknowledges that, even with these proposals, the project is expected to result in “net loss outcomes”⁴¹. Dr Rogers’ review of the offsetting proposals (including those set out in the Landscape and Ecological Rehabilitation Management Plan (the LERP) suggests that they are likely to be much less successful than the applicant indicates. This raises questions as to the monetary value of any compensation for residual effects that should be offered. If the applicant’s assessment of the value of the adverse residual effects turns out to have been a significant under-estimation (as Dr Rogers anticipates including over the long term) it is likely that there is no mechanism for the community or local or central government to obtain further compensation. There are also significant questions around the compensation proposals, including the extent that DoC, the proposed administering agency, can adequately administer

⁴¹ Pages 313 to 318, 320, 326 and 400 of application documentation.

any fund, and also whether it can ensure effective offsetting in line with the requirements of the NPSIB.

89 If compensation is inadequate or inappropriate⁴² the NPSIB requires that the activity itself should be avoided. Given that the applicant's own analysis acknowledges that there are numerous instances of moderate, high and very high residual adverse effects on both flora and fauna species, and that even after offset or compensation actions there are net loss and uncertain outcomes, in my opinion, the activity is inconsistent with the NPSIB and does not provide for RMA s6(c).

Comments on Conditions, including Management Plans

90 The application, as would be expected, includes draft sets of conditions. I have limited my comments to those relating to approvals that would otherwise be RMA consents. There are four sets – Central Otago District Council consent conditions, Otago Regional Council consent conditions, Schedule One, being conditions that apply to all consents (both councils), and Schedule Two which apply to the regional council only. My comments are in no particular order⁴³.

General comment on conditions

91 The conditions rely heavily on the description of the activity in the application. While this is normally acceptable, there are reasons why a more specific list and description of the authorised activities would be appropriate in this case. Firstly,

⁴² The NPSIB, Appendix 3, Principles for Biodiversity Offsetting, states; “Biodiversity compensation is not appropriate where indigenous biodiversity values are not able to be compensated for. Examples of biodiversity compensation not being appropriate include where:

- (a) the indigenous biodiversity affected is irreplaceable or vulnerable;
- (b) effects on indigenous biodiversity are uncertain, unknown, or little understood, but potential effects are significantly adverse or irreversible;
- (c) there are no technically feasible options by which to secure a proposed net gain within acceptable timeframes.”

⁴³ They also do not address the many problems of fine wording detail I have identified in reading all the documents.

the gold mining project is very large and complex, with very little detail being provided on numerous aspects of how components are intended to be designed and operated (e.g. the processing plant, the ore storage areas, the concrete batching plant, the on-site quarries). Secondly, the application material is very extensive, and is being added to throughout the process by responses to requests for information and other additions from the applicant. In some cases, those additions make changes to the description of the activity that was in the application as filed. This means that anyone seeking to understand what activity was described in “the application” needs to read thousands of pages and check whether earlier information has been superseded. As a result, there may be difficulties in determining the scope of activities for which consent has been granted. An example covered earlier in this evidence (paragraph 23) is the applicant’s intention that the whole area can be subject to mineral exploration activities including access roads, drilling pad and sumps and minor earthworks and vegetation clearance ⁴⁴. Mineral exploration is noted as a possible activity in the regional land use consent, but only in relation to drilling holes and bores, and not at all in the District Council land use consent description of activities. Also missing from the description of activities in the district consent appear to be the concrete batching plant, and the ore storage piles.

Certification of management plans

92 Much of the environmental performance relies heavily on the successful operation and implementation of a very large number (23 in all) of often intersecting or overlapping management plans. The first iteration of these is provided as part of the application and is anticipated, as described in the conditions, to be certified by the Panel and to form part of the consents⁴⁵. The constraints of the Fast-track Approvals Act mean that this certification process is proposed to be carried out in

⁴⁴ Which appears inconsistent with the protection of the two sanctuary areas within the BOGP Consent Area in the Description of the Activity in Section 3 of the applicant’s documentation (including in the updated plan provided on 10th March – although the Bendigo Sanctuary is excluded from the Project Overview Plan, Plan 1 in Schedule 1, Attachment 1.

⁴⁵ Another management plan – the Mine Closure and Rehabilitation Plan – is a later requirement, to be certified by both councils under C47 to C50.

a way that is very different to the usual RMA process where consents require management plans to be prepared and certified at a later stage by the consent authority (or a nominee of the consent authority). The normal approach provides the councils with a period of ongoing liaison with the applicant as the management plan is prepared and refined to meet the consent authority's as well as the applicant's requirements. Whether the applicant's approach in this application is lawful is a matter for legal submissions

- 93 Many of the management plans provided appear to be relatively early stage⁴⁶. Because the management plans are so fundamental to the effectiveness of avoidance, mitigation and remedy of adverse effects of particularly sensitive parts of the existing environment⁴⁷, the Panel will need to carefully consider and evaluate each one and may need to seek changes to be satisfied that effects are appropriately managed, whether or not the Panel itself certifies the management plans.

Duration of consents and lapse period

- 94 All the consents sought, other than the district land use consents, are requested to have a duration of 35 years, with a lapse period of 10 years. The lapse period causes some issues, as the management plans have performance period out to 35 years which are also specified in conditions For example conditions C39 and C42 in Schedule 1, Common Conditions relating to the Landscape and Ecological Rehabilitation Management Plan (LERMP); monitoring of the Ardgour Restoration Area Management Plan, which involves 35 years of monitoring (see conditions 92 - 94 of the CODC conditions and the management plan itself); and the Biodiversity Outcome Monitoring Plan, CODC Condition 101).
- 95 If consents are granted and there are delays in commencement, the regional consents will have lapsed before the effectiveness or adequate performance of the conditions can be assessed. The need for the consent holder to seek new

⁴⁶ I am not aware of the extent to which the Councils or other parties such as Heritage NZ Puhere Taonga or DoC may have been involved in their development.

⁴⁷ Including on and off-site water and sediment management, ecological effects, effects on heritage, and managing overall risks from the hazardous installations and activities.

regional consents at that stage is likely to arise, especially if performance of the condition and/or management plan is in question. A shorter lapse period (the 5 years of the RMA) would have lesser implications.

96 The application indicates that site set-up and gold extraction and processing will occur only in the first 14 years of the consents. It is not clear how much of the activity will continue on-site in subsequent years to ensure that the consent conditions and management plans are complied with. Subsequent consents will be required for ongoing discharges of contaminants to land in circumstances where they may enter water (for the extracted rock which has the potential to discharge contaminants to land and water for millennia⁴⁸ and the tailings dam).

97 I note also that the Water Management Plan envisages 50 years of active water treatment will be needed for the site, and passive water treatment systems beyond that, as follows:

“Active Water Treatment Plants will be required for ~50 years in the Shepherds Creek catchment until such time that PCOC loads (SO₄, Mo, and Sb) have reduced enough to enable passive water treatment to achieve water quality objectives (MWM, 2025b). Passive Treatment Systems will be required following active water treatment ~Year 50 and beyond for many decades”.⁴⁹

98 These intergenerational issues raised by the project require more of a response as to future management than anything provided in the conditions or management plans to date.

The proposed bond condition (C51 to C61)

99 A bond is proposed in the meantime to ensure compliance with conditions, secure completion of rehabilitation and closure, and to ensure monitoring obligations of the consent holder and enable the two councils to monitoring and management of the project site until completion of the closure of the site.

⁴⁸ Due to breakdown of physical and chemical components)

⁴⁹ Water Management Plan 4.7

- 100 The applicant has a year from grant of consent in which the bond is set in place. Condition C51 – Rehabilitation Bond is prefixed by the words “within 12 months of the commencement of the consents ...”. This enables the consent-holder to proceed with substantial works prior to a bond being in place. Other consents I have examined have a requirement of “prior to the exercise of this consent”, or even “this consent shall not become operative unless and until the consent holder provides the rehabilitation bond to the Councils”⁵⁰.
- 101 Given the extent of change in the immediate area which the applicant has undertaken under early works, in my opinion, the bond should be in place at the earliest possible time.
- 102 Little information is provided in the application as to the duration of the bond⁵¹, but in my opinion there should be a condition ensuring this continues until the two councils are satisfied that specified environmental outcomes are achieved (see comments on the wording used in paragraphs 94 to 98 of this statement). The current conditions indicate only that the bond needs to be fixed annually, and when being fixed, specific consideration applies only to a relatively narrow range of management plans – for example it does not seem to apply to any of the water-related management plans including those that relate to on-site water management, including the Freshwater ecological management plan, nor to the soil-related or hazardous substances management plans, and nor does it apply to the offset sites.
- 103 In my opinion, the applicant should be proposing some entity or mechanism whereby the bond sum remains available to the two councils for many decades post the duration of the consents, commensurate with the timescale of effects. In line with other consents, such as the recent Waihi North Project, further coverage for unanticipated impacts should be provided through the consent-holder funding the councils to take out public liability and associated insurance policies.

⁵⁰ Oceania Gold, 2019 consent condition.

⁵¹ The Lane Report in Appendix B assumes a maximum total term of 30 years.

104 The application also appears to include no provision or mechanism whereby the ecological mitigation undertaken, including for example the predator fencing of the two sanctuary areas, is passed on to a responsible agency or organisation to continue to manage and maintain. The absence of such a proposal suggests that the consent-holder could walk away from the area, and the ecological efforts could rapidly regress. This is in contrast to, for example, Oceania Gold’s Waihi operation where consent conditions not only require establishment of a Trust to take over the post-closure Martha Mine pit and adjoining land but also includes provision of a Capitalisation Bond, to be provided and maintained in favour of the councils to “secure the settlement on the Trust of the required capital sum to fund the Trust to carry out its obligations”. The absence of any proposal for the post-closure management of aspects of the project where ecological and other mitigation has been undertaken, is unusual and risks undoing the restoration and offsetting gains that the applicant relies on.

The proposed biodiversity and heritage enhancement fund (C46)

105 The applicant has offered, on an Augier basis, condition C46. This is proposed as financial compensation for recognised residual effects which range from minor to very high (see section 3, p331 and 312 of the application documentation), although it is not intended to be considered to be part of the residual effects management package as expressed in the documentation:

“Additionally, a \$5 million biodiversity fund is proposed to support the protection and enhancement of cushionfield habitat or other threatened species and ecosystems within the Dunstan ED. While this is expected to provide biodiversity benefits, the type, quantum, location and timing of benefits is not certain and on this basis this fund is not considered to be part of the residual effects management package. Providing such a biodiversity fund does, however, demonstrate the commitment of the Applicant to providing positive outcomes that extend beyond like-for-like offsetting and similar ecological compensation in the hope that a decision maker may consider these beneficial in a weighing

exercise of overall losses and overall gains to the ecological values subject to the project.”

106 This makes it clear that it is not expected that the fund will do anything to reduce the extent of the adverse ecological effects, as it cannot ever be seen as a “like for like” response.

107 While this can be seen as a nice gesture, it is also a relatively small gesture, being just \$500,000/year for “up to a maximum of 10 years” and starting at the 3rd anniversary of consents being granted or commercial production being declared. As the condition is worded, it could be less than the \$5M promised, but it cannot be more. It is not clear as to the Department of Conservation’s interest in or ability to undertake the intended work within Central Otago⁵².

Environmental manager’s role

108 In other major projects, there is often a specified role for an Environmental Manager in conditions. The nearest position proffered by the applicant here is the position of a “Company Liaison Officer” – see C6 - 9⁵³. The complexity of the proposed activities and the number and diversity of the management plans involved suggest that there will be a very important role for an appointed Environmental Manager with appropriate competencies. Absence of such a role can lead to problems, as it may result in a gap in competencies. Such a situation arose on the Transmission Gully project, where an experienced environmental manager had to be added to the public-private partnership joint venture team specifically to address environmental issues including water management plans and rehabilitation⁵⁴.

⁵² No details of any liaison over this are provided in Section F, Consultation and Engagement, of the application documentation.

⁵³ Although I note the Ecological Management Plan Framework assumes an Ecological Manager (in a narrower role) who will liaise with the Mine Manager on ecological aspects.

⁵⁴ Also partly at the request of the Regional Council, as liaison with the consent-holder was considered not adequate.

Do the ecological management conditions correctly lie with Central Otago District Council?

- 109 The allocation of conditions between the regional and district council as proposed by the applicant associate ecological aspects with the district land use consents and place most of the ecological conditions within the district consent framework, with most management plans relating to ecological aspects being allocated to the Central Otago District Council for monitoring, and presumably for enforcement.
- 110 I note that the Regional Policy Statement 2019 does not allocate particular responsibilities for ecological values, whereas the proposed Regional Policy Statement 2021 allocates equal responsibilities⁵⁵ to regional and district councils (ECO-M1 – Statement of responsibilities) relating to the margins of wetlands and rivers (which applies over much of the application area) while the district council is responsible for other areas unless the regional council has reached agreement to take responsibility. In this case the RPS is relatively new, and I am not aware of allocation decisions having been made. I am assuming that it is on this basis that the applicant has proposed the current allocation of responsibilities.
- 111 However, regional consents relate to land disturbance (earthworks and soil disturbance) and vegetation clearance, as well as to diversion, disturbance and destruction of watercourses and wetlands and their margins. In my opinion, the regional land disturbance and vegetation removal consents have ecological consequences which are indistinguishable in their effects from the land use district consents which have been sought which include extensive land disturbance and vegetation removal.
- 112 The water-related management plans, including that for freshwater ecology, have been allocated to the regional council, and the Landscape and ecological Rehabilitation Management Plan has been allocated to both. In my opinion, in the

⁵⁵ These are plan-making responsibilities, rather than consent administration responsibilities.

interests of integrated management⁵⁶, all the ecological responsibilities should be jointly managed.

“Loose” wording in conditions and management plans and uncertainty around the applicant’s ability to achieve conditions

113 The conditions and management plans in places contain wording which is loose and consequently will lead to uncertainty if any enforcement action is involved. For example, many conditions include “where practicable”, “as far as practicable” or “as far as reasonably practicable” or “as soon as practicable” (e.g. Condition 29, 30 and 31 relating to site lighting, Condition 40 relating to clean-up of hazardous substance spills and remedial action to limit further spills). Such wording often relates to ecological requirements, such as requirements to minimise disturbance of plants and plant salvage (Conditions 56 and 112) or the timing of invertebrate salvage (Condition 71). A variation of this is “where possible” found in conditions relating to minimising effects on birds (Condition 59) and in relation to the speed of repairs to sanctuary fences (Condition 87). I accept that in some situations it is appropriate to include concepts of practicality or practicability, but the frequency of such wording occurring in the draft conditions is high⁵⁷ and the conditions could in my opinion often be tightened up.

114 The range of management plans includes some provisions which are very unresolved. In particular the number of individual management plans related to different aspects of ecological management should, in my opinion, be consolidated, including across terrestrial and aquatic aspects.

115 The Hazardous Substances Management Plan contains a requirement for an Emergency Management Plan (EMP) which is yet to be developed, including the requirements for any emergency at the BOGP area and include Trigger Action Response Plans (TARPS) in case of emergency to cover a chemical incident such as a medical or spillage event. This plan seems particularly light on detail given that the

⁵⁶ Integrated management is a fundamental RMA planning concept and is highlighted in the proposed Otago Regional Policy Statement.

⁵⁷ And appears to benefit the applicant by allowing divergence from the desired stated condition.

BOGP area comprises a hazardous installation. The only requirements in case of a spill is found in conditions 40 and 41 is to “clean up the spill as soon as practicable and take measures to prevent a recurrence”, and to advise the Council under condition 41. If the application was for a gold processing plant on its own (or similar large industrial processing activity), I would expect a very comprehensive set of detailed plans and much more detail in management of hazardous substances.

116 Condition C47 refers to the requirement for an “updated”⁵⁸ Mine Closure Plan for certification by the two councils. All that is known about this plan is that it will have to demonstrate compliance with the objectives and outcomes in C48. These include wording relating to both safety hazards and contamination having been, respectively “appropriately managed, and effective controls are in place” and “appropriately remediated or managed”. This leaves a high level of uncertainty to the certification process. A further requirement is that “A strategy has been implemented that manages impacts of mine closure on the workforce” – a provision that would be difficult for any council to certify.

117 A specific condition related to blasting, CODC Condition 16, requires the exclusion of the public for areas within 500m of the blasting area, which may include the Bendigo Historic Reserve, and, depending on timing, Thompsons Gorge Road or the new replacement Ardgour Rise in relation to at least one of the aggregate pits. The application, including the Noise and Vibration management Plan, which sets out responsibilities in relation to noise and vibration, is silent on how this will be achieved. This is a risk area which would require not only an operating procedure but also agreement with other agencies (DoC and CODC). It is not clear how performance would be checked and enforced. I would expect, as a minimum, that it would be one of the items to be included in the Blast Summary report in Condition 22.

⁵⁸ No draft or indicative such plan has been provided.

“Remedy” in conditions and management plans

- 118 The requirements to remedy situations which may arise when standards or conditions are breached appear very light in the consent conditions and management plans. There are extensive monitoring requirements throughout these, but relatively few specific responses required if a breach is found.
- 119 An example is the Water Management Plan which has requirements for water quality for both surface and ground water. Site water management is a major and very sensitive aspect of the project because of the range of potential sources of contamination within the site, and because of the downstream productive land uses and resident population which relies on aquifer water sources for drinking and production water supply. Section 7 of the plan contains details of monitoring and compliance. Section 8 refers to Monitoring Methods and Quality Assurance. Section 10 includes a risk assessment. There are several “high” risk aspects of operations identified. I note that neither the plan nor the proposed consent conditions provide detail as to what the remedy is to be in case of a breach. Contamination of ground water and drinking water supply are both noted as high risks, with for drinking water, bottled water to be provided until the required conditions are re-established. There is no remedy proposed for stock water, or irrigation or frost fighting water. An adaptive management response is recommended. However, adaptive management takes some time and the remedy for the local community is missing. Similarly, remedies for the wider environment are not provided.
- 120 Because the project is so large and the various stages of the goldmining activity will modify the landform very extensively over time, it is reasonable that the Erosion and Sediment Control Plan should enable subsidiary plans to be developed and certified by suitably qualified persons for different parts of the site at different times. The sizing and design requirements for clean and dirty water diversions, bunding and sediment ponds are however quite modest⁵⁹ and with a relatively high risk of the

⁵⁹ See section 6 of the Erosion and Sediment Control Plan, which requires design for a 1 in 2 year rainfall event for systems that are intended to last a year, a 1 in 5 years event for systems intended to last up to 2 years, and a 1 in 10 year event for systems lasting over 2 years.

design rainfall being exceeded within the life of any of the installations⁶⁰. The plan includes no risk evaluation or possible responses, which I would expect for a sensitive site and the opportunities for cross-contamination between different activities and areas. Section 9.2 of the plan sets out the required responses to an incident. Given the elevated nature of the activity areas, and the associated downstream environment, I would have expected more detail in the plan as to appropriate remedies.

121 The lack of specified remedies, in my opinion, highlights the range of unresolved environmental and social risks which are associated with the proposed gold mine.

Summary and Conclusion

122 This statement provides a brief overview of some of the planning issues that are associated with the proposed Bendigo-Ophir Gold Project. In my opinion there are numerous aspects which raise concerns about the project and its appropriateness in the area. These include conflicts with established policy at national, regional and district level, and the extensive adverse effects on landscape, ecology, water systems and rural character and amenity which will be associated with the mine over many decades or permanently, if consents are granted.

123 The applicant has failed to provide adequate social and economic information, so the full social and economic effects on the established local, district and regional communities cannot be adequately assessed. I have also identified a number of other inadequacies in the information provided.

124 The proposed conditions and management plans are inadequate.



Sylvia Allan - 8th April 2026

⁶⁰ Particularly now that known averages are often widely varied from under climate change conditions.