

**BEFORE THE EXPERT PANEL**

**FTAA-2507-1089**

**UNDER  
IN THE MATTER**

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

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**OUTLINE SUBMISSIONS OF COUNSEL FOR SUSTAINABLE TARRAS  
INCORPORATED FOR HEARING ON 29 – 30 APRIL 2026**

**Dated 29 April 2026**

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## TO THE EXPERT PANEL

Topic	Reference
<p>1. Introduction: key themes</p> <ul style="list-style-type: none"> <li>• Who Sustainable Tarras represents</li> <li>• One opportunity to get this right</li> <li>• Immaturity of NZ's regulatory landscape for mining</li> <li>• Competence and trustworthiness of the applicant (regulatory compliance, continued gaps in evidence / scope manipulation, engagement with community)</li> <li>• Fundamental flaws characterising all aspects of the application (confirmed in absence/misleading replies to comments and Panel's RFI)</li> <li>• Tailings dam likely becoming a permanent crown liability</li> </ul> <p>2. Effect of s 127B RMA – MGL cannot seek consent for new water permit for &gt;6 years. Section 127B defines a “resource consent” and is not merely a matter to have regard to (not discussed in Homestead Bay Panel decision).</p>	<p>S 42(4) FTAA; ss 2, 87, 123, 127B RMA</p> <p>ST Comments at 113</p> <p>MGL Legal Overview 71; MGL Legal Submissions 152 - 157</p>
<h3>Benefits</h3>	
<p>3. Economic benefits vastly overstated. Key issues from Comments remain, are generally confirmed by MGL's reply/RFI response:</p> <ul style="list-style-type: none"> <li>• Claimed benefits hinge on unsupported/unsubstantiated gold price – not “conservative”. Patterson NPV estimate used USD\$3,138 not USD\$2,220; Patterson sensitivity analysis (10% cf std deviation) understates sensitivity of gold price, exchange rate, discount rate; exchange rate inflates NZD effects; hypothetical cf expected scenarios</li> <li>• High risk of failure as Project marginally viable: “all-in sustaining costs” (AISC) is US\$2,131/Oz – 4% below MGL base case.</li> <li>• Only impacts to New Zealand relevant: 60.9% foreign ownership reduces benefit substantially</li> </ul>	<p>ST Comments at 10-36, Meade, Bertram, Harris and Miller reports</p> <p>ST Comments at 13-18; Meade at 14-90; Miller at 17-34;</p> <p>Patterson RFI at 27, 28, 80, 91; c.f. Waihi Panel (US\$2,000)</p> <p>Patterson RFI at 32</p> <p>ST Comments at 19; Bertram at 4.3; Meade at 68-71;</p> <p>Spring RFI at 21; Patterson RFI at 86, 91</p>

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| <ul style="list-style-type: none"> <li>• Cost of long-term management requirements not comprehensively identified/assessed. Claim that post-closure costs incorporated into NPV dubious/ unsubstantiated</li> </ul>  | <p>Spring RFI evidence 19-20 of long-term/perpetual obligations; Patterson RFI evidence;</p>   |
| <ul style="list-style-type: none"> <li>• Disbenefits ignored, treated as benefits, or poorly addressed: value of Bendigo's wine and tourism industries critical to district's vision for its prosperity, not merely %age of national/regional;</li> </ul>  | <p>ST Comments at 27 – 34; Meade at 134-181; Tarras Community Plan; Central Otago Destination Management Plan; Patterson RFI at 15, 56-74; 88-89; Patterson Reply at 92-126;</p> |
| <ul style="list-style-type: none"> <li>• CBA v EIA: Not just about monetising environmental/social impacts – also use of input/output multipliers, treating costs as benefits. CBA is a tool to assist (not replace) 85(3) assessment; transparency avoids double-counting; monetising economic benefits is also speculative; GDP not useful measure when much added value leaks overseas</li> </ul> | <p>Legal submissions at 248-256; Patterson at 10 – 13; Meade at 113-133; Bertram at 4.3</p>  |
| <ul style="list-style-type: none"> <li>• Long-term economic prosperity from gold mining is illusory; cf Patterson assertion of long-term household wealth effects</li> </ul>   | <p>ST Comments at 26; Harris p3; Patterson Reply at 18</p>   |
| <ul style="list-style-type: none"> <li>• Government revenue: corporate tax and royalty payments likely to be significantly lower than projected due to the inflated pre-tax profit margins, high discount rates, effect of accelerated depreciation rules.</li> </ul>  | <p>ST Comments at 23; Miller at 36-45; Patterson reply at 59-65</p>  |
| <p>4. Employment benefits also inflated:</p> <ul style="list-style-type: none"> <li>• At a 3% overseas worker share and 75% opportunity cost, the annual employment benefits of the project are just \$11.3m/year, largely confirming Meade's assessment</li> <li>• Benefit undermined by high housing costs</li> </ul>  | <p>ST Comments at 6; Meade at 68-90; Patterson RFI at 37 - 44;</p>   |

#### Significant adverse impacts

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| <p>5. Capability and compliance record – “high trust” model sought by low confidence, start-up applicant:</p> <ul style="list-style-type: none"> <li>• Santana/MGL has never constructed or operated a gold mine, nor a processing plant.</li> <li>• Non-compliances are relevant considerations under s 104</li> <li>• Panel is not obliged to assume MGL will act legally and adhere to all conditions</li> </ul> | <p>ST Comments at 41 ; Bertram at 5.1-6.9</p> <p>ST Comments at 96-100</p> <p>ST Comments at 123; Remediation (NZ) (EC) upheld in <i>Remediation (NZ) Ltd v Taranaki Regional Council</i> [2026] NZHC 55. at [94]-[110] c.f.</p> |
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	MGL Legal submissions at 335
6. Not a case of “perceived risk”	Cf MGL Legal submissions at 180
7. Other approvals needed:	ST Comments at 35;
<ul style="list-style-type: none"> <li>• Relevant: Project that cannot proceed does not meet the FTAA purpose</li> <li>• The council in which a road is vested “holds title to the road on trust for the public”. Means CODC agreement to “use best endeavours” to stop Thompson Gorge Road” is unlawful</li> </ul>	MGL legal submissions at 165-171 <i>Ours Not Mines Ltd v Hauraki DC</i> [2026] NZCA 138
8. Conditions:	ST Comments at 115-122. See also Environment Court Practice Note at 10.4(e)
<ul style="list-style-type: none"> <li>• Highly uncertain, key detail left to management plans – unlawful delegation</li> <li>• Certification: <ul style="list-style-type: none"> <li>- Panel cannot certify (has no function of certifying) management plans.</li> <li>- MGL resists DOC and HPTNZ role in certification of plans that affect their statutory interests of Waihi</li> <li>- “The management plans are highly specialised, generally beyond the expertise of the ordinary local government body.” – yet councils will certify amendments and Mine Closure Plan</li> <li>- Deemed certification unlawful</li> </ul> </li> </ul>	Cf MGL legal submissions at 221 and 225, Chrisp Reply at [99c]  <i>Meridian Energy Ltd v Wellington City Council</i> [2011] NZEnvC 232 at [402], followed in <i>Re New Zealand Transport Agency-Waka Kotahi</i> [2024] NZEnvC 133
9. Weighting and s 85 assessment:	
<ul style="list-style-type: none"> <li>• MGL purports to agree that considerations assessed separately then weighting applies, but then frequently minimises considerations based on ultimate weighting exercise</li> <li>• “Adverse impact” includes social or environmental impacts, inadequate information, inconsistency with &gt;1 policy or law</li> <li>• Panel not obliged to consider information adequate based on EPA completeness decision</li> </ul>	MGL legal submissions at 36, 231-236, 320  ST Comments at 9, cf MGL legal submissions at 56  c.f. MGL legal submissions at 15-16
10. Waste rock and tailings management is wasteful, presents intergenerational risks, and ignores international industry practice – confirmed by MGL’s new information	ST Comments at 42-52; Emerman at 14; Lottermoser at pp 5, 8, 11, 21; cf Matuschka reply 49-52
<ul style="list-style-type: none"> <li>• MGL has only undertaken a high level review of tailings disposal options; discounted preferable options due to higher cost (eg “[Dry stacking] has extremely high capital and operating expenses compared to conventional tailing disposal”).</li> </ul>	

- Chosen option is the riskiest in terms of dam failure, uncontrolled liquefaction and long-term water contamination.
  - Most Lottermoser/ Emerman evidence not addressed (regarding tailings-relevant information, risks and risk management, using best available techniques (BAT) and international guidelines.)
11. Underdeveloped tailings dam design
- Assertions re rock foundation shear strength (Matuschka) not supported by O'Bryan
  - Mining induced seismicity should have shaped every aspect of the proposal – new information shows this was identified as “an important consideration” but excluded from scope of work because “key inputs unavailable” and “the insitu stress is poorly understood ...”
12. Hazardous substances and installations
- Information regarding hazardous substances and installations is lacking, including with respect to cyanide and arsenic, to the point that it is not possible to assess whether potentially significant impacts will be properly managed.
  - Hazardous Substances Environmental Management Plan does not address in any detail
13. Heritage effects
- Surveys inadequate to support approvals for mining; assessment misstates value of features in context; so magnitude of effects is understated. Effects will be significant.
14. Landscape and dark sky effects:
- Gaps in the description and evaluation of the existing environment, consequential gaps in the evaluation of landscape effects, issues with the mitigation assumptions. Associative values very poorly assessed: including failure to engage with community associative values
  - Assessment of ONL attributes and values not comprehensive contrary to case law
  - Destruction of ONL – highly significant effect. Elevation Maps (existing and finished landforms) confirm large-scale and incongruous character of change
  - Night sky effects during operations poorly assessed: ST photos of lighting trial add important information for the Panel; MGL criticisms unsound
- McAlpine evidence; Matuschka at 47, 58-59; B.28 Peer Review, O'Bryan Reply  
Part 3 - 02 - PSM5131-003R DRAFT (provided in response to Panel RFI) p 46
- ST Comments at 53-60; CI 6 Sch 5 FTAA; Lottermoser at 4.3; Allan at p15-29; cf Chrisp at 87-89
- ST Comments at 61-65; Sole at 30-44
- ST Comments at 66 – 73; Gilbert, Simpson, Boyle evidence  
cf MGL legal submissions 371
- Girvan Reply at 15, Girvan RFI Appendix  
*Western Bay of Plenty DC v Bay of Plenty RC* [2019] NZEnvC 110

<p>15. Other effects</p> <ul style="list-style-type: none"> <li>• Air quality</li> <li>• Biodiversity</li> <li>• Noise</li> <li>• Transport</li> <li>• Effects on climate change – relevant “effects on the environment” of MGL legal submissions</li> </ul>	<p>ST Comments at 74-85; 91; Martineau and Rogers evidence</p> <p><i>Sustainable Otakiri Inc v Whakatāne DC</i> [2025] NZSC 158 at [58]-[59], [63]-[66]; [70]-[71] of MGL legal submissions at 199-200;</p>
<p>16. Social effects</p> <ul style="list-style-type: none"> <li>• Disagree that social impact assessment not needed or covered by economic assessment – hugely controversial project with major impacts, lack of social license, people who engaged in MGL drop-ins requested to participate in social impact assessment; pre-application engagement only on MGL’s terms, failure to answer questions</li> <li>• MGL must have considered social impact assessment was necessary (it commissioned one) but is now refusing to release it</li> <li>• Higham survey shows clear prioritisation of landscape, natural values – meets requirements for survey admissibility of community perspectives; c.f. Santana Mine Supporters’ Group survey of its supporters only</li> </ul>	<p>ST Comments at 86-90; MGL legal submissions at 391; Chrisp reply at 90-91</p> <p>Spring reply Appx 3</p> <p><i>Shirley Primary School</i>; Higham at 10, 20-27; SMSG Comments at p3</p>
<p>17. Relevant provisions of planning instruments</p>	<p>ST Comments at 92-94; Allan evidence</p>
<p>18. Section 107 RMA:</p> <ul style="list-style-type: none"> <li>• Panel cannot be satisfied s 107 met</li> </ul>	<p>ST Comments at 102; cf MGL Legal submissions at 322-323</p>
<p>19. Concessions:</p> <ul style="list-style-type: none"> <li>• No consideration of purpose for which land is held</li> <li>• Concessions no longer in favour of third parties but to be transferred to them: does not cure third party issues – no NZTA agreement, no “transfer” mechanism</li> <li>• Come-in-Time Battery concession requires post-consent route agreement with DOC: unlawfully defers effects assessment and approval</li> </ul>	<p>ST Comments at 130-145; CI 7(1)(a)(vi) Sch 6 FTAA</p> <p>MGL Legal submissions at 130; Chrisp Reply at 22-34</p>
<p>20. Conservation Covenant:</p>	<p>ST Comments at 146-157, Reserves Act s77; <i>Royal Forest and</i></p>

- Norton/Chrisp evidence that Covenant indicates lower value (than conservation estate) not accurate – TR was a negotiation; statutory test for covenant no less protective than Crown ownership
  - MGL did not specifically assess revocation effects – now accepts there will be a loss of values protected by the Covenant within the revocation area. Reliance on retention of values in wider Covenant area legally incorrect
  - Evidence of predation/decline (biodiversity values) irrelevant and overstated
  - MGL submission that ST relies on criteria that are not in the FTA (at 117) not made out
  - CODC Covenant provides no security of outcomes
21. Wildlife approval
- Very significant impact on lizards with highly uncertain outcomes, contrary to the purpose of the Wildlife Act – MGL submissions misrepresent statutory purpose where approval is for incidental killing
22. Mine closure, bonds, insurance
- Long-term risks, restoration and maintenance requirements and liability responsibilities are significant
  - MGL response to RFI 59 completely inadequate: “the responsible entity will be the holder of the resource consents for the BOGP”
  - Mine Closure Plan and conditions vague and unenforceable – no certainty of outcomes
  - Bond scope uncertain (e.g. TSF repair?), and should be in place before works commence not a year later
  - Insurance proposed by not required by conditions
  - Everything hinges on guarantor – risks and obligations in perpetuity; principal-guarantor contract will not be

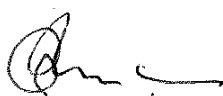
*Bird v Minister of Conservation* [2016] 3 NZLR 828 (CA) at [57]-[77]; *Hawke’s Bay Regional Investment Company Ltd v Royal Forest and Bird Protection Society of New Zealand Inc* [2017] NZLR 1041 at [108];  
cf MGL Legal submissions at 128; Norton RFI at 14; Norton Reply at 38-59; Chrisp Reply at 41; Woods Reply at 57-75; Girvan Reply at 13

ST Comments at 158-161; Rogers at 16, 46-54; MGL legal submissions at 308 c.f. s 53B Wildlife Act and cl 5 Sch 7 FTAA

ST Comments at 50-51, 118, 124-129

MGL legal submissions at 401 – 409; Lane Reply

29 April 2026



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