
MINUTE 44 OF THE EXPERT PANEL

RFI 11 Part Response Redactions and Resumption of Landscape

Conferencing

Bendigo-Ophir Gold Project

[FTAA-2507-1089]

[10 August 2026]

[1] This Minute follows the Teams Conference convened by the Panel Chair at 1.30pm (NZST) on 7 August 2026.

[2] The Conference was convened in response to a joint memorandum (the JM) by Sustainable Tarras Inc (ST), Otago Regional Council (ORC), Central Otago District Council (CODC), Environmental Defence Society Inc (EDS) and the Director General of Conservation (DGC) dated 6 August 2026, in which the signatories sought provision of certain redacted information in MGL's part response to RFI 11 (Bonding and Trust Arrangements) and directions in respect of a reconvened Landscape Expert Conference.

[3] Present were Mr. Leckie (MGL), Ms. Gepp KC (ST), Mr. Randal (ORC), Ms. MacDonald (CODC), Mr. Enright and Ms. Vella (EDS) and Ms. Williams (DGC).

Redaction of Part Response RFI 11

[4] RFI 11 sought, among other things, identification of effects management components which would need to be managed for the future by the intended Trust and modelling to confirm the Trust would be self-sustaining to fulfil its objectives.

Necessarily, that involved production of a draft budget. This was included in MGL's response dated 22 July 2026 but was identified as "Commercially Confidential", with the notation "Must be redacted prior to upload on the Fast-track website". Because the application was on "pause" at that point, EPA uploaded a redacted version to the Application Website with the intention that any issues in respect of confidentiality be resolved at the point processing recommenced.

[5] Although such recommencement is not anticipated to occur until August 17, 2026, all parties are agreed that the challenge to confidentiality referenced in the JM be determined now in order to expedite any response and, in turn, commencement of the Panel's evaluative processes.

[6] The statutory framework for resolution of Fast-track confidentiality disputes is provided by Clause 11 Schedule 3 of the FTAA which, in turn, cross references section 42 of the RMA. With Mr. Leckie's consent, the Panel intends to treat the redaction request which accompanied the response of 22 July as an application pursuant to s42 for an order "prohibiting or restricting the publication or communication of information supplied". As such the Panel is required to consider whether a confidentiality order is necessary to avoid unreasonable prejudice to MGL's commercial position and whether in the circumstances of the case the importance of avoiding such prejudice outweighs the public interest in making that information available.

[7] The redacted information includes a list of items, some in perpetuity, which the Trust would be required to fund to meet the requirements of the effects management regime. These are reasonably predictable, and the Panel is unable to identify how their identification compromises MGL's position. All have been the subject of discussion during expert conferencing and/or the concurrent hearings and/or the Panel's RFIs. However, it is in relation to the budgetary provisions where issues arise because MGL is concerned that if these provisions are publicly available, this may prejudice it, or the Trust's negotiating position, when ultimately

contracting for the relevant services. The Panel considers this a legitimate commercial concern, albeit that because most of the relevant services would be contracted a minimum of 13-15 years hence, line items identified in a 2026 budget will inevitably diminish in commercial relevance over time.

[8] In terms of the countervailing public interest, the Panel considers that this is significant. Whether the Trust is adequately capitalised to ensure the proposed management regime performs adequately for the long term and without recourse to taxpayer support is undoubtedly an important issue within the context of the application and relates to the Project's significance. The Panel should be reasonably capable of making that assessment and, importantly, because the relevant material has come in by way of response to an RFI there is no statutory right for s51 parties and s53 invitees to comment (see FTAA s 67 (5)). However, if experts for these parties and invitees were to take significant issue with the budgetary provisions, it is likely that the Panel would want the benefit of their opinion and issue a request under that section.

[9] The Panel considers that the competing confidentiality and public interest considerations can each be adequately met by provision of the relevant material (at least at first instance) to counsel and experts only, subject to standard confidentiality undertaking. In saying this, it acknowledges that, in respect of some parties, particularly the DGC, the relevant "expertise" lies in house with relevant officers. They can be specified individually.

[10] Ms. Gepp KC expresses some concern that if representatives of ST are not also provided with the information, she may be embarrassed in terms of fulfillment of her professional obligations. The Panel can however assume from the JM that each of the identified parties have given instructions:

- (a) to seek provision of the redacted information
- (b) to seek to have their experts comment on the adequacy of the budgetary provisions

- (c) if such experts do not agree with the provisions, or consider any items omitted from MGL's budget list, to persuade the Panel that it should issue a s67(5) request and receive that competing information.

[11] The Panel considers that Ms. Gepp's concerns can be appropriately met by making a first instance order in the terms identified, reserving leave to any counsel to apply for orders seeking wider dissemination if embarrassed in the way suggested.

[12] The Panel requests that Ms. Gepp provide MGL a form of undertaking acceptable to those parties signing the JM, together with the names of the intended signatories. If the form of undertaking is acceptable to MGL, the Panel directs execution then provision of the redacted information to the identified individuals. In the event any issue arises as to form of undertaking or who is an appropriate recipient of the information, leave is reserved to all counsel to apply.

[13] Self-evidently, if the Panel does invite further comment under s67 (5) further confidentiality issues will arise. The Panel will address these in the context of any request. It is likely that it will direct that the responses are either redacted (as appropriate) or not uploaded to the Application Website.

Resumption of Landscape Conferencing

[14] On 17 July 2026 MGL's landscape expert Mr. Girven provided a supplementary brief of evidence in response to the Panel's Minute no 35. The evidence addresses, in particular, an identification of the specific existing landscape character and values of the Bendigo Conservation Covenant (BCC) land affected by the proposal, as well as an assessment of the proposal's effects on those values.

[15] The Panel has previously (Minute 41) granted leave to any party/invitee who wishes to respond to this evidence, to do so. However, it also encouraged all parties to consider whether the better course was for the experts to reconvene in conference with a view to production of a supplementary JWS.

[16] Parties to the JM agreed with this suggestion. Initially Mr Leckie questioned whether the more efficient course was to invite responsive briefs and then a final reply from MGL but, after further discussion, he indicated that if the Panel and other parties considered a reconvened expert conference preferable, MGL would cooperate. As indicated, that is the Panel's preference, and it directs accordingly under its general procedural powers in Schedule 3 Clause 10 of the FTAA. In doing that, it again acknowledges the cooperation of MGL in facilitating disposition of these procedural issues despite the processing suspension.

[17] The Panel therefore requests EPA organise a resumed (remote participation) landscape expert conference, utilising ChanceryGreen as moderator, in the week of 17 August 2026, with a view to production of a supplementary JWS by 21 August.

[18] Without intending that it exclusively define the areas which are to be addressed, the Panel identifies the following agenda items for the Conference:

- (a) Confirm agreement with the methodology that has been undertaken by Mr. Girven, noting that the purpose of the additional assessment was to: confirm expert advice on what are the specific landscape related character and values of the BCC; and what would be the effects of the proposal on those values. This is within the context of understanding the scale of adverse landscape effects when considering the application to revoke/uplift part of the BCC under the Reserves Act 1977. If there are any methodological disagreements, clearly set these out and provide reasons for the disagreement and outline whether these differences are of any consequence.
- (b) Confirm agreement with Mr. Girven's assessment findings as to, firstly, the identification of existing character and values, and secondly, the scale of adverse landscape effects on the identified character and values. Where there is any disagreement, outline

alternative findings, with reasons as to why these findings are different to those of Mr. Girven.

- (c) Any other expert evidence related to this topic which has arisen as a result of the additional assessment undertaken by Mr. Girven.

[19] The Panel does not envisage that the Conference should last any longer than half a day, a view shared by counsel.

A handwritten signature in blue ink, appearing to read 'M. A. Muir', with a stylized, cursive script.

Hon Matthew Muir KC

Bendigo-Ophir Gold Project Expert Panel Chair