

BEFORE THE EXPERT PANEL

FTAA-2507-1089

**UNDER
IN THE MATTER**

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

**JOINT MEMORANDUM OF COUNSEL (REDACTED INFORMATION AND
LANDSCAPE CONFERENCING)**

Dated 6 August 2026

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TO THE EXPERT PANEL

1. This Memorandum is filed on behalf of Central Otago District Council (**CODC**), Otago Regional Council (**ORC**), Environmental Defence Society Inc (**EDS**), Director-General of Conservation (**DOC**) and Sustainable Tarras Inc, and addresses two matters on which directions are sought from the Panel:
 - a. Release of an unredacted version of information provided by MGL in response to RFI 11.
 - b. Landscape conferencing.

Redacted information

2. MGL's partial response to RFI 11 on 22 July 2026 included a Memorandum of Counsel, response to Q12 – Q16 (**Bond Response**) and a response to Q 23 – Q30 (**Economics Response**). The Bond Response and Economics Response provided to the parties are both partially redacted. MGL's Memorandum of Counsel said:

Given the commercially confidential nature of the responses, both a redacted and an unredacted version have been filed. Counsel respectfully requests that only the redacted version be uploaded to the Fast-track website.
3. The redacted information addresses the costs of project components that will need to be managed in perpetuity. The information is necessary to support MGL's position that the Trust fund will be sufficient to cover all post-closure costs in perpetuity. MGL's intention is that the bond quantum will reduce to zero at mine closure, leaving the Trust fund as the mechanism to directly cover those costs in perpetuity and to underwrite any failure to undertake necessary works or remediation activities that may be required. The adequacy of post-closure arrangements has been squarely raised by commenters. The information is therefore critical to the Panel's assessment of a principal issue in contention.
4. Counsel for Sustainable Tarras requested a copy of the unredacted information from counsel for MGL, subject to confidentiality arrangements being put in place. That request was supported by CODC, ORC and EDS. MGL has declined to provide an unredacted version "due to the commercial sensitivity of the relevant information".
5. Clause 11 of Schedule 3 of the Fast-Track Approvals Act 2024 (**FTAA**) provides that when a panel is assessing a proposed approval under the Resource Management Act 1991 (**RMA**), s 42 of that Act applies with any necessary modifications, as if the panel were a board of inquiry given authority to conduct a hearing under section 149J RMA. Section 42 RMA relevantly provides that a local authority may, on its own motion

or on the application of any party, make an order prohibiting or restricting the publication or communication of information supplied to it where:

- a. it is satisfied that the order is necessary to avoid unreasonable prejudice to the commercial position of the person who supplied, or is the subject of, the information; and
 - b. in the circumstances of the particular case, the importance of avoiding such prejudice outweighs the public interest in making that information available.
6. Those provisions indicate that unless such an order is made, information should be made available to participants in the normal course. It does not appear that the Panel has made such an order. On that basis, the documents ought to have been provided to the participants on an unredacted basis.
 7. Should the Panel be minded to make an order, Sustainable Tarras, CODC, ORC EDS, and DOC, respectfully submit that the order should be on terms that enable it to be viewed by specified representatives of Sustainable Tarras, CODC, ORC, EDS, and DOC, and those entities' counsel and specified expert witnesses on a confidential basis.
 8. Fully prohibiting publication of the redacted material is not "necessary" to avoid unreasonable prejudice to MGL's commercial position, given MGL's position can be protected by confidentiality orders.
 9. An order in the terms set out at paragraph 7 would more appropriately address the two sets of interests requiring consideration under s 42 RMA. There is significant public interest in making the information available to core participants in this process, subject to confidentiality terms, so that they can consider the information and provide any response on this issue for which leave is granted to respond. Withholding from participants information that addresses a principal issue in contention is contrary to natural justice. That public interest is not outweighed by the importance of avoiding prejudice to MGL's commercial position.
 10. The parties to this memorandum have considered confidentiality terms, in particular how narrowly the information could be made available, and have arrived at the view that it should be made available to specified representatives, counsel and specified expert witnesses as set out above. While consideration was given to limiting this to expert witnesses only, this would not enable those experts to obtain advice from counsel when preparing their response. If limited to expert witnesses and counsel, this would prevent counsel taking instructions and may place counsel in a situation of being unable to discharge their professional duties.

11. It is common for the Environment Court to make orders under s 42 RMA (which applies to that Court pursuant to s 279 RMA) that prevent the disclosure of information except to specified persons. Usually, those persons are the parties, their witnesses and counsel. For example:
 - a. *Bay of Islands Maritime Park Inc v Northland Regional Council* [2021] ELHNZ 177 (order that evidence containing information related to catch and position of commercial fishing effort, and commercially sensitive information regarding the revenue and profits of certain fishing operators may be disclosed to the Court, counsel, the parties, and the parties' witnesses only).
 - b. *Connor Kingi v Northland Regional Council* [2024] NZEnvC 304 (order that access to part of the Court record be restricted to the parties to the proceeding).
 - c. *Minister of Corrections v Otorohanga District Council* [2017] NZEnvC 161 (order that the Minister of Correction's Schedule of Works Requirements may be disclosed to the court, counsel and to the parties and their expert witnesses on terms stating that publication or communication of the works requirements to those other than the court, counsel and the parties to the appeal (including their expert witnesses) was prohibited).
12. The parties to this memorandum can provide specific wording for the order, but anticipate that MGL will wish to provide its views and consider it may be of most assistance to the Panel if wording is provided once that has occurred.

Landscape Conferencing

13. The Panel's Minute 41 said, in relation to Mr Girvan's Supplementary Landscape Assessment dated 17 July 2026, provided in response to Minute 35:

[5] This supplementary landscape assessment responds to the Panel's request for a specific assessment on the landscape values of the Conservation Covenant area.

[6] In both instances, the Panel considers it appropriate to give leave to any party who called lizard or landscape evidence and who participated in expert conferencing to file a response to this material. It requests that this be provided by 17 August 2026. However, it encourages parties/invitees to first consider whether a better course might be to reconvene the expert conference with a view to production of one JWS, rather than individual expert statements (in turn possibly inviting a reply by Dr. Ussher or Mr. Girvan).
14. The parties to this Memorandum produced landscape evidence. They support expert conferencing rather than further iterative exchanges of

evidence. Further conferencing was explored with MGL, however MGL's position was that:

... the Panel's invitation in Minute 41 of any response from relevant experts for parties, followed by a potential reply by Dr Ussher or Mr Girvan is the preferred approach to this rather than reconvened conferencing on the topic.

15. DOC does not have a landscape architect and accordingly does not have an interest in this issue. ORC's position on these issues is set out separately below. The remaining parties to this Memorandum consider that Mr Girvan's information should have been provided as part of the application so that it could have been commented on by the other experts, or at the very least prior to the hearing. They are concerned that MGL now anticipates having a further right of reply to their experts' response to the supplementary landscape assessment. They consider that expert conferencing is a fairer approach that will also enable all expert evidence on this issue to be concluded in a timeframe that enables the panel to include the information in its deliberations. On that basis, they seek a direction for expert conferencing on the supplementary landscape assessment.
16. Ms Gilbert is unavailable until 14 August 2026. While the Panel requested the responses by 17 August 2026, that will unfortunately not be possible. However, all experts engaged by parties to this memorandum are available in the week of 17 August and as such anticipate that a joint witness statement could be made available by the end of that week (21 August 2026).
17. ORC has no issue with further landscape conferencing taking place in light of Mr Girvan's supplementary statement, but is neutral as to whether its expert (Mr Parker) participates, given that the supplementary statement focuses on landscape issues relevant to the Bendigo Conservation Covenant (rather than broader matters relevant to the regional consents sought). If directed to participate, Mr Parker is generally available on 17 to 19 August (but not on 20 or 21 August).

6 August 2026



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