

**ENVIRONMENTAL PROTECTION AUTHORITY
BEFORE AN EXPERT CONSENTING PANEL**

**IN THE MATTER OF THE FAST-TRACK APPROVALS ACT 2024
AND IN THE MATTER OF AN APPLICATION BY MATAKUNUI GOLD
LIMITED UNDER SECTION 42 OF THE FTAA
FOR THE BENDIGO-OPHIR GOLD PROJECT
APPLICATION NO: FTAA-2507-1089**

Hearing: Held in Monarch Room, Willeston Conference Centre,
11-15 Willeston Street, Wellington Central

Date: 9 June 2026

Panel: Hon Matthew Muir KC (Chair)
Gina Sweetman
Peter Kensington
Roger MacGibbon (via AVL)

Counsel: Joshua Leckie and Mia Turner, Lane Neave, for the Applicant
Mel Russell for Heritage New Zealand Pouhere Taonga
Sally Gepp for Sustainable Tarras
Pene Williams for Department of Conservation

Experts: Dr Naomi Woods for Applicant
Emma Clifford for Heritage New Zealand Pouhere Taonga
Matt Sole for Sustainable Tarras (via AVL)
Dr Matt Schmidt for Department of Conservation
Dr Chris Jennings for Central Otago District Council

TABLE OF CONTENTS

TOPIC 1: METHODOLOGY AND SIGNIFICANCE:.....	7
QUESTIONS FROM THE PANEL:.....	15
CROSS-EXAMINATION BY MS GEPP:	21
CROSS-EXAMINATION BY MS WILLIAMS:	23
CROSS-EXAMINATION BY MS RUSSELL:.....	27
CROSS-EXAMINATION BY MR LECKIE:	28
TOPIC 3:.....	30
QUESTIONS FROM THE PANEL:.....	34
TOPIC 2: MITIGATION AND COMPENSATION	37
QUESTIONS FROM THE PANEL:.....	41
CROSS-EXAMINATION BY MS GEPP:	47
CROSS-EXAMINATION BY MS WILLIAMS:	49
CROSS-EXAMINATION BY MR LECKIE:	51
QUESTIONS FROM THE PANEL:.....	53
TOPIC 4: CORRECT TESTS.....	55
TOPIC 5: BLASTING, VIBRATION AND DUST.....	59

1 **Mr Muir:** Well, good morning and welcome to the second day of MGL's
2 application and the concurrent hearings in relation to it. Today, Heritage. Could I
3 start with a small apology. A flurry of emails and phone calls just as I was leaving
4 my accommodation this morning and conscious of the fact that I was running late,
5 I have walked out without my glasses. So if you see me squinting heavily for the
6 next half an hour until the EPA team resolves this mini crisis, do understand that
7 was the reason.

8 Yesterday, for the experts who are present here today, yesterday, at the start of the
9 day, we rather unpredictably almost jettisoned what had been the framework by
10 which we were going to deal with the landscape issues. It had originally been

1 contemplated that we would work through the joint witness statement issue by issue
2 and tease those issues out within the context of that framework. And when we
3 looked at it yesterday, at the beginning of the day, the panel decided that that didn't
4 really fit terribly well with the results of the JWS. So we tried something quite
5 different, which I flagged about a half an hour before we started yesterday and,
6 although self-praise is no praise, we on the panel think it went reasonably well
7 yesterday, and that it was quite a good framework. So that at the end of the day, I
8 engaged with counsel as to whether they thought it was worth us running that
9 different framework again today, and everyone agreed that it had been a useful day
10 and that it was a good framework. And, if they've all done their jobs, they will
11 have forewarned you that that is what we were going to do again today.

12 So that we would commence the process with Ms Sweetman's fine hand, using the
13 whiteboard that we have in front of us, to distil out of the JWS what we see as the
14 core. Yesterday ended up, I think, seven issues. Today might be a little refined on
15 that. We'll see how we go. And that we then work through those issue by issue,
16 engaging with my original, or our original framework, to the extent that I'm going
17 to invite each of the experts, typically commencing with the applicant's expert, to
18 address very briefly, two to three minutes or thereabouts, their position in relation
19 to the issue that is identified at the conclusion, and that can be a dynamic process.
20 Yesterday, all of the experts, no doubt as you will be today, engaged in a completely
21 professional and courteous way with each other. And, we permitted, indeed
22 encouraged, active interchange from time to time among the panel members just
23 observing them as they teased out, or put pressure on one another around particular
24 issues. That was all good.

25 At the end of that initial process, with such interchanges as might have occurred, I
26 then came back to the panel and a number of questions were asked of individual
27 experts by the panel. In some cases, I then went back to other panel members and
28 invited comment on those responses. At the conclusion of that process, then I
29 invited counsel to renew their applications for leave to cross-examine to the extent
30 that they thought necessary. And I think it'd be probably pretty fair to say, Ms
31 Gepp, that I'm reasonably liberal about the parameters of cross-examination,
32 provided that we are adhering to our overall timeframe working and having matters
33 resolved by the end of the day. And then at the conclusion of that, a little cross-
34 check with the panel to see whether there are any issues emerging out of the cross-
35 examination and then on to the next topic.

36 I haven't, as I'm conscious of, met any of you earlier than today, so I'm going to
37 just do a quick introduction of those panel members that are present. Matthew Muir,
38 Chair of the MGL's application. With me today Pete Kensington. Peter is a
39 landscape architect and will be known to many of you. Gina Sweetman – and also
40 a very experienced hearings Commissioner. Gina Sweetman, known virtually to
41 everyone in Wellington I hear. A very experienced Commissioner again and a

1 planner. And then today we are joined on the panel in person by Roger MacGibbon,
2 who is a very senior at Taylors consultant with expertise in ecology. We have, as
3 you'll be aware, three other panel members, and this hearing today is being live
4 broadcast on the internet, and one of our panel members is still in the Northern
5 hemisphere, will be reviewing the hearing tomorrow or the next day. Other panel
6 members are listening to this process simultaneously so they're not – they are not
7 empanelled in the sense that they won't be asking questions, although we can permit
8 our panel members to come in remotely. But today, they are not participating
9 remotely. They are listening remotely, or will do so very shortly, or will be reading
10 the transcripts of the evidence, which will be prepared at the conclusion of the
11 hearing.

12 So could I just ask the experts to introduce themselves. I understand that we've got
13 Mr Sole. We have you online remotely. Yes, good morning Mr Sole. And starting
14 here to my right.

15 **Dr Schmidt:** Matthew Schmidt. So I'm the Senior Heritage Advisor for the
16 Department of Conservation, southern South Island.

17 **Dr Woods:** And Naomi Woods, expert for the applicant.

18 **Dr Jennings:** Chris Jennings. I'm the Heritage Advisor contracted by the Central
19 Otago District Council.

20 **Ms Clifford:** Kia ora, I'm Emma Clifford. I am the Manager, Archaeology, at Heritage
21 New Zealand Pouhere Taonga.

22 **Mr Muir:** Sorry, just could I have that again.

23 **Ms Clifford:** Emma Clifford.

24 **Mr Muir:** Oh, thank you. Thank you. Yes. Yes. Mr Sole. Yes, thank you. Now
25 could I just ask you, Ms Clifford, did the message get through to you and perhaps
26 the other members – other experts about how we were going to try and approach
27 matters today, and have you had an opportunity to reflect on what you see as the
28 four or five or more key issues for discussion? You have. Right.

29 **Ms Clifford:** I'm Ms Clifford.

30 **Mr Muir:** Oh, Ms Clifford, squinting away here. Sorry, my apologies. Dr Woods.
31 I'll get it right shortly. You have had an opportunity to be able to reflect on that.
32 Do you want to take the lead, Dr Woods, and to try and identify these key issues.
33 Are you in agreement about them?

34 **Dr Woods:** Well, I haven't had a chance to confer with the other experts so - - -

35 **Mr Muir:** Right. I see right, okay, so you have sketched your own issues.

36 **Dr Woods:** Yeah. I have a feeling that our lists will be very similar - - -

37 **Mr Muir:** Right.

1 **Dr Woods:** - - - as the joint witness statement.

2 **Mr Muir:** Yes.

3 **Dr Woods:** There is some disagreement about – well, there’s been a lot of discussion
4 about the methodology.

5 **Mr Muir:** Yes.

6 **Dr Woods:** So I don’t think we can escape not talking about that one. And that
7 probably feeds into the significance values. So they would be the same topic.
8 Mitigation and compensation would be an area that we need to discuss.
9 Conservation covenant, particularly with regard to the proposed new Come in Time
10 access route.

11 **Mr Muir:** Yes.

12 **Dr Woods:** And the questions around the correct tests under clause 4 of the FDAA.
13 And then finally, the potential risks of blasting and vibration.

14 **Mr Muir:** Right. Well, why don’t we do it this way. Why don’t I ask Ms Sweetman
15 to go to the board. She’s taken a note there of those points and let’s just see. We
16 might be able to consolidate them slightly, but let’s just see how we go.

17 **Ms Sweetman:** So it’s the input significance then.

18 **Dr Woods:** Yeah, because that seems to be where the disagreement lies and that the
19 methodology has affected the significance.

20 **Ms Sweetman:** So mitigation and compensation.

21 **Dr Woods:** Yes.

22 **Ms Sweetman:** The covenant. Put the proposed new route as a subset because I think
23 - - -

24 **Dr Woods:** Yeah.

25 **Ms Sweetman:** - - - the compensation covenant - - -

26 **Dr Woods:** Yes.

27 **Ms Sweetman:** - - - is a whole new topic.

28 **Dr Woods:** Exactly.

29 **Mr Muir:** By all means, other experts, other empanelled experts, and Mr Sole, just
30 contribute, and if I don’t hear from you and I’ll assume that that’s – you agree that
31 these are relevant issues.

32 **Dr Woods:** And could focus on the potential clause 4.

33 **Ms Sweetman:** Okay.

34 **Mr Sole:** Can I ask what is meant by clause 4.

1 **Dr Woods:** That is the test that Heritage New Zealand applied to decide whether the
2 authority should be granted.

3 **Mr Sole:** Okay.

4 **Ms Sweetman:** And then blasting and vibration.

5 **Dr Woods:** Yeah, I think that is it.

6 **Ms Gepp:** Mr Sole, this is Ms Gepp. Can I just check that you have – can see those
7 topics and whether you have any comments on them?

8 **Mr Sole:** I can't see them.

9 **Ms Gepp:** So if you – I think that Ms Thomson from the EPA is typing them into
10 the – it's just being typed into chat. So if you just have a look at them when they're
11 in the chat. Yeah.

12 **Mr Muir:** Could you just get the microphone just a wee bit closer.

13 **Ms Gepp:** It wasn't on, it wasn't on. That would be the problem.

14 **Mr Muir:** Yes, yes. Right. So that's Dr Woods' suggestions for broad topics. Any
15 of the other experts, have we omitted anything that you think we need to address.
16 Lots of things will fall out of each of these. No?

17 **Ms Clifford:** Maybe - - -

18 **Mr Muir:** Yes.

19 **Ms Clifford:** - - - I think 4 could be broadly just the archaeological authority if we
20 wanted to take it - - -

21 **Mr Muir:** No, could you just try and get - - -

22 **Ms Clifford:** Oh sorry, I think 4 could be more broadly just the archaeological
23 authority than just focusing on the tests, but we've got that underneath, so I think
24 I'd leave it out. But the rest of them I agree with.

25 **Ms Sweetman:** The compensation covenant, I'd like that we cover significance again
26 because I think there's two contexts to significance.

27 **Ms Gepp:** Mr Sole, just speak up if you've got something to say.

28 **Mr Sole:** Sorry, I was going to add dust to the blasting and vibration.

29 **Mr Muir:** Are we happy with the broad parameters of our agenda. Peter?

30 **Mr Kensington:** I may have one suggestion.

31 **Mr Muir:** Yes.

32 **Mr Kensington:** I mean, it might not be that the experts are in agreement with it, but I
33 wonder whether management planning conditions was something we needed to talk
34 about today with you.

1 **Dr Woods:** I think they might fall under mitigation.

2 **Mr Kensington:** Under mitigation

3 **Dr Woods:** Yes.

4 **Mr Kensington:** Okay

5 **Mr Muir:** Okay. Ms Sweetman, we'll, at the end of the list, just add there the MPC.

6 Thank you very much. Well, we're going to kick off and we're going to start with

7 obviously the issue of methodology and significance. Dr Woods, scope that issue

8 for us from the applicant's perspective.

9 **TOPIC 1: METHODOLOGY AND SIGNIFICANCE:**

10 **Dr Woods:** So the methodology used for the heritage assessment follows the criteria

11 outlined in the Heritage New Zealand Heretaunga Significance Assessment

12 Guidelines written in 2019. These guidelines provide great criteria, but they do

13 lack a clear framework for defining the degrees of significance of value. So New

14 Zealand Heritage Properties, the group that I work for, have adapted the definition

15 of values used by what is now Highways England – it wasn't at the time when we

16 started using them – to allow for a consistent and objective assessment from the

17 ground up, as opposed to going in with any preconceived idea of value based on

18 things like listings, or a schedule of the sites. These parameters have been subject

19 to international scrutiny, are used by international heritage bodies including

20 ICOMOS, of which New Zealand is a member, and are well established in the New

21 Zealand context through both the Heritage New Zealand Heretaunga Act process

22 and the RMA process. And despite the attention given to this date by the other

23 experts in their evidence and during the expert conferencing, method has

24 determined values that are largely consistent with their findings and have produced

25 a consistent magnitude of impact, which is major. No one can argue with that.

26 Heritage New Zealand have also considered this methodology appropriate for

27 granting an authority to modify the majority of the Rise and Shine workings, which

28 is the highest value site complex within the BOGP disturbance footprint. Yep.

29 **Mr Muir:** And in a word, from your perspective, or a phrase or two from your

30 perspective, the pushback to that proposition is what? You see it as – is it almost

31 an, could I use the word ideological pushback, that because the country is so young

32 that a greater percentage of human touch points should be considered than would a

33 framework developed in a country of – with a longer European presence. Is it

34 something like that?

35 **Dr Woods:** I do think that the main critique from the other experts that we've been

36 hearing is that the framework for the levels includes a very high level - - -

37 **Mr Muir:** Yes.

1 **Dr Woods:** - - - which is obviously exceptional, and the original method from
2 Highways England, that includes UNESCO World Heritage Sites, and there were
3 some issues that we don't feel that we potentially have anything of that level in New
4 Zealand. I see things very differently to that. We have two heritage sites that are
5 under consideration for UNESCO World Heritage by DOC. That's the Waitangi
6 Treaty Grounds and the Kerikeri Basin Historic Precinct.

7 **Mr Muir:** Yes.

8 **Dr Woods:** I would also add that there are sites, thinking of archaeological, purely
9 archaeological sites, those relating to the first wave of settlement by Polynesians
10 would fit into that category. I think it is doing New Zealand a disservice, maybe a
11 bit of tall poppy syndrome, saying that we do not have sites that would fit into that
12 category, and I do not feel that this or, in my expert view, this site does not sit in
13 that area. It does not quite sit in the same realm as those types of sites that I've just
14 mentioned.

15 **Mr Muir:** Thank you. That's most helpful. I'll just move the.

16 **Male?:** Yeah, it's a methodology that really comes back to when you've got a
17 cultural landscape like Bendigo. First thing, before you actually develop your
18 defined methodology, that there's understanding what are the protection
19 mechanisms that are on that place and there's a bit of a – that's your high level
20 approach to methodology and in terms of this location, it comes down to the
21 conservation covenant. I know we're going to talk about the conservation covenant
22 later. But when you come to areas with a special type, you need to ensure your
23 methodology is reflective of that level of protection, you understand why that level
24 of protection is there in the first place. And so it's the purpose of it, who was
25 involved. Everything's changed since this conservation covenant was there to
26 protect the land care and landscape values that were there. Is it relevant now? And
27 what other covenants are there that protect heritage values at this level, because we
28 do have our Heritage New Zealand Act and we have our RMA, but covenants are
29 special.

30 And when you look at the conservation covenant for Bendigo, the reason it's so
31 important when you start your development methodology is because they're not
32 that common. So about 180 properties went through the tenure review Land Act
33 process. DOC's going through its covenants, it's been going through for a bit now.
34 It's on about 146th review of the property. Only 11 of those have covenants relating
35 to heritage. And of those 11, only two are landscape ones particularly, that's
36 Bendigo and Happy Valley. And when you look at your methodology, you need to
37 understand okay, there's quite a high level of protection here. So your methodology
38 needs to be bespoke to that, and that means you need to come up with an approach
39 where, with the magnitude of impacts here, you have to come up with an approach
40 that's very, very detailed and genuinely assesses those values that are there.

1 Now the Heritage New Zealand criteria are quite commonly used to assess areas
2 and down to site level. But in the case of methodology for this purpose, there are
3 two methodologies mixed up here. There was one that was directed towards the
4 output authority and so some various sites were just assessed on archaeological
5 grounds, and then there was large areas were assessed using the Heritage New
6 Zealand methodology which looks at architectural, social, technological ground.
7 So it's very hard when you've got two different methodologies that have been
8 applied, to really to the lay person to illustrate to them why this area was covenanted
9 in the first place.

10 So, for the – to illustrate again how important the sites are there, you then need to
11 go back to the wider scene. If you look at Jill Hamill's Bendigo research, she
12 mentions in '93 the cultural landscape as the important was the important things for
13 this place. It was quite a new concept at the time. And so there were about 10
14 archaeologist roles in the survey at the time. Neville Ritchie, who'd been working
15 in the Clutha Valley for 10 years before and after the dam, he had recorded a lot of
16 these sites at the time. These sites were recorded where there was a really good
17 knowledge of what has happened, what was going to be lost, and particularly how
18 important this site was. And this one here, it's mostly focused on the stamp of areas
19 called Reef Mining which is a specific, particular areas to target. So with the
20 methodology, you can get down to the details of how, how things were
21 photographed, or weren't photographed in detail, but it does come back to – I don't
22 think it was to get back to what the conservation covenant said is the conservation
23 covenant.

24 **Dr Schmidt:** My concerns about the methodology largely relate to the way the survey
25 was conducted and the level of detail that's provided, which is almost a bit of a
26 black box to the independent observer. The report shows certain things about the
27 sites that were found and provides some level of detail, but a lot of that kind of falls
28 back on the way they were surveyed in the '80s and '90s without a lot of clear detail
29 about, about what the sites are like now. Like, there's a lack of photography some
30 of the sites were found using LIDAR and not been found in the field. So a lot of it,
31 you know, it started in 2017, 2018, and a lot of those sites haven't been revisited
32 for their current condition. And a lot of the time when these concerns have been
33 brought up, we're essentially being told that these sites were revisited, and they
34 were in the same condition, but there's no real evidence that demonstrates that. So
35 a lot of it, there's no like, there's no information saying these sites were revisited
36 on this point in time and they were found in this condition. Normally in
37 archaeology, we would update ArchSite, which is the New Zealand Archaeological
38 Association's national database of recorded sites. So if you – you're an
39 archaeologist and you go to a site, you record its condition as seen at that point in
40 time. And so a lot of that information isn't on ArchSite. There's a lot of – there's
41 a lack of detail for certain sites, which my concern would be that an independent
42 observer, or a non-trained heritage professional or an archaeologist, might not

1 understand the state of these sites, or they might not readily understand what's
2 contributing to these high heritage values.

3 So I think like broadly the value, I think most of us would agree that the values of
4 the site complex is quite high but, you know, we've been living and breathing this
5 stuff for about a year now, but independent observers might not understand that that
6 value without getting to see what these sites really look like. And so the values,
7 going back to the very high statement, is not as being like an internationally level
8 significant level of value for a site. So things like the Waitara archaeological site,
9 which is the earliest known site of Polynesian land fall by the Waitangi Treaty
10 grounds. They are definitely very high, but in this context for someone who's not
11 really considering what values are, having that very high category kind of lowers
12 the bar, I think, for consideration of these sites and my concern is that, you know,
13 it then values the landscape, the heritage landscape, to an extent that isn't very well
14 explained throughout this process.

15 So my concern is that, you know, the panel will, may look at these things and not –
16 and the value may not be represented very well. Normally Heritage New Zealand,
17 obviously with trained heritage professionals, would go through this and tick yes or
18 no but this, because its up to the panel, I'm just not convinced that the methodology
19 illustrates the value of these sites as well as it could.

20 **Mr Muir:** Thank you, Dr Schmidt. Ms Clifford?

21 **Ms Clifford:** Kia ora. So I probably want to start – flip it over a little bit and sort of
22 talk to what I see as the values of the landscape because what we've got operating
23 here is sort of three levels. We've got this landscape value, we've got site complex
24 value, and then we've got individual site values. And so when we're looking at
25 that, those three methods need to be different and tailored to address those three
26 different sorts of significance or values that we're looking. So really with the sort
27 of broad landscape value, in terms of archaeological values, which is where our
28 focus was, that's very high, and it's all about that interconnectedness of those sites.
29 And normally, when we take a landscape approach, we look at different sorts of
30 values there, and I think that's what Dr Schmidt was talking to more about that sort
31 of covenant approach of a really broad understanding of the landscape, its
32 connectivity of all those sites within that landscape. We then go into the sort of site
33 complex thing, and this is where the archaeological values probably come into
34 process and those are the ones that we would use normally under our archaeological
35 authorities under the HNZPT Act. Those are things like condition, contextual
36 value, historic value. So those are sort of more of a way of working through how
37 we assess an archaeological site or its complexes, which we've all sort of agreed
38 was the right level to assess this. And so we've kind of got different values
39 associated with different parts of the site that required different methodologies.
40 And I think with the assessment, we've kind of got a jumble of those methodologies

1 without clear instructions as to which parts, the layer of that significance you're
2 applying them to. So I think that's probably the first issue.

3 And so we've got, for instance, in the assessment, we've got site complexes where
4 we talk about high value site complexes and this is a number of sites collectively as
5 a whole because they're interconnected and so we look at the Rise and Shine or the
6 Come in Time Battery where we've got these sites all relate to one another and so
7 their value is in that collective group value. And then we've got another assessment
8 that's sitting underneath that where we're breaking it down by individual site, and
9 those site values are lower but it's kind of removing that context and that really
10 important value which is the interconnectivity of those sites. And so that sort of,
11 by lowering it down to the site level, we've taken away that higher value of its
12 collectiveness and its, yeah, its contextual value, which is really important for
13 understanding these sites because so many of them sit on the landscape and tell the
14 story of one another and the interconnection between the two of them, or between
15 all of them.

16 So that's sort of the key point about significance. But we'd also, in regards to the
17 surveying methodology that Dr Jennings touched on, I think in the joint witness
18 statement we came – there were a number of sites that were identified as not being
19 included in the archaeological assessment. So it then brings into question a bit
20 about the surveying methodology and how the sites were recorded. So it's another
21 point to just touch on there is that there are a number of sites that have been
22 identified subsequently, that have not been assessed in the archaeological
23 assessment and so it brings into question that surveying methodology element.

24 **Mr Muir:** Mr Sole. Thank you.

25 **Mr Sole:** Hi, thank you. I'm sorry.

26 **Mr Muir:** Have I addressed you correctly, or – I'm squinting away down here. Are
27 you Dr Sole or?

28 **Mr Sole:** Mr Sole, Matthew, Mr Sole. Thank you. Yeah, I have major reservations
29 over the completeness of the, the survey and its assessment, and also the
30 conclusions over significance. From a landscape, heritage landscape point of view,
31 it's intrinsically connected with the Logan Town, Bendigo, hard rock mining thing,
32 and this area is an extension of that, that, that same mining activity. But it also has
33 one of the only publicly accessible alluvial gold working sites, and that is an
34 endeavour of some 35 years. Another critical element is the lack of
35 acknowledgement for Battery Hill. Battery Hill is named because there's over six,
36 well, there's six battery sites within a two kilometre radius and a one mill site, and
37 this is extremely rare, and really, I believe, underplays, or the lack of
38 acknowledgement of that underplays the significance of this site at right up to a
39 national level.

1 My other concern relates to the way, again talking in terms of heritage landscapes,
2 I was heavily influenced by the Bannockburn Heritage landscape study, and I also
3 believe that the approach that was taken by Heritage Properties, they've been using
4 LiDAR existing sites, and the issue I have with that approach is they're not looking
5 at the landscape in terms of heritage complexes and so they, they, I believe, are,
6 have missed, as we've noted, a number of sites, and those sites are quite significant.
7 An example is the hut sites in the Come in Time, below the Come in Time workings,
8 which were not assessed because apparently the vegetation was too high. But the
9 fact is that those hut sites and the alluvial workings associated are likely to be the
10 accommodation for the various Alta battery complex, the Eureka battery complex,
11 and the Come in Time battery complex. And I think - - -

12 **Mr Muir:** Mr Sole, just for my benefit, could you just explain just a little more fully
13 what one would see if one were to examine those particular sites. These are found
14 – what? Are they the foundations of huts are they?

15 **Mr Sole:** Yes. They are potential floors, potential chimneys. Some have walling.
16 They're, you know, cut into the, the bank. And I know from my previous surveys
17 of that area is there's quite a lot of – I've found picks, tools, and you know,
18 occupation evidence in terms of, you know, the remains of pots and things like that.
19 So they still - - -

20 **Mr Muir:** I don't understand what you mean when you say something like potential
21 floors or potential chimneys. Are we talking about what could possibly be the
22 foundation of a chimney. Is that - - -

23 **Mr Sole:** They're the remains. I mean, you know, as we've had significant
24 environmental decay over that time, and we've now got willow trees that are
25 causing damage to those sites. So they're remnants, ruins.

26 **Mr Muir:** - - - I'm sorry to have interrupted you, Mr Sole. Continue.

27 **Mr Sole:** So I guess the key point for me is the absence of the use of visual
28 interpretation of these significant features. So in Jill Hamill's report, and also Lloyd
29 Carpenter's report, they prepared really good visual diagrams of these complexes
30 and systems. And while the New Zealand Heritage Properties have prepared some
31 good information and research, it's not, they're not at all visually depicted so people
32 can really get a good visual understanding of what is actually available on this site.
33 And my other concern is, again, coming back to the Bannockburn heritage study,
34 the various cultural layers, I believe, haven't been adequately surveyed. For
35 example, the boundary, the historic run boundary fences are not noted, and the old
36 boundary fence between Bendigo and Ardgour's not noted. So things have sort of
37 been cherry-picked, or going back to my work with Neville Ritchie, his comment,
38 as a result of looking at this work, he felt that the assessment and the survey work
39 was undercooked.

40 **Mr Muir:** That concludes your comment, initial comment, Mr Sole?

1 **Mr Sole:** Yes, thank you.

2 **Mr Muir:** Yes, thank you very much. Could I come back to you, Dr Woods, just
3 around back to you, for an overall comment in respect of what you have just heard
4 and, from my own perspective, if you could give some emphasis to the argument of
5 Ms Clifford that you have ignored the sum of the parts, if I could call it that.

6 **Dr Woods:** Yep. So starting with Ms Clifford's thing, I'm not quite sure that's what
7 she was getting at, it that we'd missed some of the parts because we have presented
8 the sum of the parts. As we agreed, those site complexes that we developed, so is
9 there five of them, seven, came out of a heritage workshop with all of us, apart from
10 Mr Sole, and then a further meeting with Ms Clifford. We agreed on those site
11 complexes. We agreed that they should be presented first. So in the chapter,
12 chapter 9 where they, we go through the values assessments, and the heritage value
13 of the complex is presented first, followed by archaeological, purely archaeological
14 values of each individual reported site. So we kind of, we're stuck – we have to
15 rely a little bit on, we call it legacy data. Those sites have numbers, many of them
16 have been recorded prior to us coming in and that – I use that as really a common
17 language that – so if I put in a number, everybody knows what that site is. So Jill
18 Hamill, she very much came from purely a landscape approach so she did away
19 with the numbers. She didn't actually record many of the features that she
20 discusses. It's not till the early 2000s that some of her features appear on the digital
21 site record database. So I really just needed to come up with the easiest way, and
22 there was not, never going to be an easy way for this, to make sure that every feature
23 that we know about in there is assessed.

24 And going back to many of Mr Sole's sites, those fall outside the project area; and
25 so it needs to be focused on the disturbance footprint. Everything, as we've said
26 has been very clear-cut. So outside that boundary of the disturbance footprint,
27 we're going for protection and, therefore, that's, from an archaeological point of
28 view, that's where it stops. We're not qualified. We do consider the value of the
29 covenant area and the Bendigo Quartz Reef historic listed area and, very simply,
30 we agreed with the previous values assessments of those, that they're both very
31 high. And the project area, has to be – it cannot be considered its own thing. So
32 you can divide it into the site complexes and then you can look at each feature, think
33 about the information potential, and that then informs your site management, what
34 recording is appropriate for it, it feeds into the compliance and the heritage
35 management plans. But you cannot separate it from that wider covenant area, which
36 Hamill is very clear about is not the – even that is not to be considered on its own.
37 It has to be considered alongside the historic reserve. And she has a bit of a niggle
38 about those arbitrary boundaries, the both of them. Well she was right, before the
39 covenant was put in place. But that reserve, when she was doing her work, was just
40 an arbitrary line on a map that somebody had drawn with no apparent concern. So

1 she considers the Bendigo landscape goes wider than all of those arbitrary
2 protections and measures.

3 **Mr Muir:** Ms Clifford, just going back to you on this sum of the parts, we just heard
4 from Dr Woods. Could you explain to me, as a non-archaeologist, how you would
5 have approached this issue?

6 **Ms Clifford:** Great question. I think for me it would be working top down and then
7 back up essentially. So first, you would look at sort of those broad landscape values,
8 and like Mr Sole mentioned, the Bannockburn study. There's different criteria that
9 are often used to look at a landscape of heritage or archaeological sites, and they're
10 more based around sort of the integrity of that landscape. So how and complete
11 that landscape is. So that would be my first step is to look at that. Then you're
12 going to look down at these site complexes, because that's where you're going to
13 affect in the archaeological landscape. So look at those site complexes as a whole
14 and understand the value. In my assessment, that's where I stopped. I didn't go
15 down to the next level of value and address each site individually on its own values
16 because I basically understood that those site complexes are interrelated, so
17 therefore their value sits as a whole, and, in this particular project, that whole site
18 complex was going to be affected. So it meant that that's where, in my professional
19 opinion, value should sit. And then it's important to feed that back up into that
20 broader landscape value. So we've got in here a historic area assessment and we've
21 also got the assessment that sits behind the covenant. And it's really important to
22 understand the relationship of the site complexes that you're affecting in relation to
23 those broader landscape values and those broader collections of sites because in
24 removing one site complex, you may affect those broad values because they may
25 be a major contributing part of that landscape. So in this situation, we've got the
26 Rise and Shine gold mining complex which is like some of the earlier alluvial
27 mining. And so that forms part of this continuous landscape that's represented by
28 all the other sites in that area. So removing that then affects the story that can be
29 told through all the other sites in the area. So that's what I mean by work down and
30 then back up again. It's kind of linking those value sets together.

31 **Mr Muir:** [inaudible]

32 **Dr Woods:** I agree with a lot of what Ms Clifford has said, but yeah, I have to tie it
33 back to looking forward in the assessment that we've done, so it has to, because
34 we're working under the Fast-Track, we have to present what it would look like
35 should the project go ahead. So we really have to have the assessment linked
36 through to the management plan and the authority conditions. So we have to have
37 – we have to responsively show how we would report all the sites. How we would
38 treat them, should they be removed, and for me that's vital to show the individual
39 sites to really pull apart. What those are. And because for the highest value
40 complexes, such as the Rise and Shine and the Come in Time, we're not removing

1 the entire site complex as part of this proposal. So you need to know what
2 individual components are going.

3 **Mr Muir:** Thank you all very much for those introductory comments. I'm now
4 going to pass over to the panel and see if there are any questions that emerge from
5 that discussion. Peter?

6 **QUESTIONS FROM THE PANEL:**

7 **Mr Kensington:** Thank you for all your explanations. It's complex. And it makes our
8 job a little bit hard because of the different – we're not comparing apples with
9 apples. Yesterday we had the landscape architects and they gave us a nice table at
10 the end of their evidence that showed where they all sat on a common scale. And
11 we've got this sort of different, very high, national level scale. But if we were to
12 do a scale for this particular project based on is it the landscape value level, would
13 you be able to come up with something to assist us, in terms of each of you filling
14 in a table that showed what those values are and then what the effects might be, or
15 would that not work?

16 **Dr Woods:** Do you mean like our own assessments of the whole landscape?

17 **Mr Kensington:** Or maybe split into three or - - -

18 **Dr Woods:** Well, it is at the end of chapter 9 of my report, I do that.

19 **Mr Kensington:** Oh, you do?

20 **Dr Woods:** Yes. And we did produce one in the joint witness statement, it's
21 replicated there.

22 **Mr Kensington:** Oh, is it?

23 **Dr Woods:** [inaudible]

24 **Mr Kensington:** If you can point me in that direction that would be helpful?

25 **Dr Woods:** [inaudible]

26 **Ms Clifford:** But also in that to help you, in point 30, where all the other experts agree
27 about what that scale should be, what very high should look like, in terms of a
28 methodology within a New Zealand context as opposed to international. So I think
29 the comments from the other experts outside of Dr Woods should be read in that
30 context.

31 **Ms Sweetman:** It would be really helpful if you could explain further what you mean in
32 terms of the usage of "very high" in terms of the significance of the New Zealand
33 context as opposed to international. Which obviously then comes into play with
34 the conservation covenant as one of the criteria we need.

35 **Dr Schmidt:** Can I say? Because I've got experience in world heritage. So myself
36 and a colleague have been advising on some world heritage lists recently and
37 obviously in training cultural landscape. So for the New Zealand context something

1 unusually high would be something with a conservation covenant because the
2 values have already been assessed, usually with those covenants in. And to get a
3 conservation covenant, as you know, can be quite challenging.

4 **Mr Muir:** But the conservation covenant, Dr Schmidt, does not protect simply the
5 heritage sites. It is one part of it, isn't it?

6 **Dr Schmidt:** It is yeah, some part of it, yeah. But that could be seen as a very high
7 value.

8 **Mr Muir:** If you put a composite together of the landscape features, at least at the
9 time the covenant was imposed, because then none of the cultural development had
10 occurred, the reasonably, shall we say, naturalness of the entire range and its
11 foothills and the importance of the archaeological sites that represented, again, a
12 sort of sum of parts, didn't it. And quite difficult then now to say that – or is it
13 difficult to say that to elevate this to very high simply on account of the existence
14 of a conservation covenant when it was a multi-faceted covenant?

15 **Dr Schmidt:** No, that's absolutely fine because if you look around the world at
16 different countries which recognise heritage, it's not necessarily that it's just got
17 one value. So if you look at a world heritage area it can have both cultural and
18 natural values. They're an equal. We can have them separate. The covenant's
19 similar in a way. You can have covenants completely heritage orientated or
20 biodiversity orientated. And so that has to be one of the things you have to sort of
21 rate upon a scale from very low to high.

22 **Ms Sweetman:** Did you want to continue about – anything else to say about why you
23 would do it as very high nationally?

24 **Dr Schmidt:** Because, as Peter just said, often in my experience of looking at
25 covenants, which I have, the particular ones that come out of the tenure review
26 process, the way they're assessed using document's significant values criteria, and
27 they were very specific and very strict in the way they were applied. And that's
28 why there's not many covenants which are particular to heritage. So the way it was
29 assessed would be probably similar to, let's say, if Heritage New Zealand was
30 assessing something as a category 1 historic place, it's quite strict.

31 **Mr Muir:** This mirrors a question that I posed yesterday in the context of the
32 landscape conference. What, if any, significance is there in the fact that some of
33 the more obvious, to the untrained eye, archaeological sites in the Bendigo area
34 have received the special and enduring protection of being brought into public
35 ownership rather than being subject to a conservation covenant over privately
36 owned land. And what inferences could one make about the comparative
37 importance of the archaeological sites that are in public ownership as opposed to
38 these ones?

1 **Dr Schmidt:** I think it's fair to say I call them heritage sites, because if we call them
2 archaeological sites we're bound by the pre-1900 - - -

3 **Mr Muir:** That's fine. I stand corrected.

4 **Dr Schmidt:** Yeah, yeah. Just because it makes a big difference as to how we interpret
5 the landscape.

6 **Mr Muir:** Absolutely, yes.

7 **Dr Schmidt:** So are you saying how would the public perceive something being more
8 important?

9 **Mr Muir:** No, I'm asking because, I suppose in a legal sense, public perceptions are
10 not what will drive our – do not drive our decision making process. I'm asking,
11 from our perspective should we make – is any inference available in terms of this
12 question, high or very high, from the fact that other heritage sites have been
13 regarded as of sufficient importance that in the context of the tenure review, those
14 areas were brought into the public domain as opposed to subject to conservation
15 covenant. Can one infer anything about the hierarchy?

16 **Dr Schmidt:** Yes, you can.

17 **Ms Sweetman:** Did anyone else want to comment on those questions that were just
18 posed?

19 **Mr Sole:** I'd just like to add that Jill Hamill expressed an intent, because of the
20 richness and the scale of the Bendigo heritage landscape, they couldn't actually get
21 round it all and survey it all. So that was one of the basis behind having the heritage
22 covenant provisions. It was an acknowledgement that there was actually extensive,
23 or a lot more heritage than they were able to survey. So that was a kind of a
24 collective catch-all.

25 **Mr Muir:** Thank you, Mr Sole. Any other comments?

26 **Dr Jennings:** I think one of the other key things in regards of the significance is that
27 you have the covenant specifically naming the Rise and Shine area as one of these
28 kind of key parts of it, and then on top of that you have the Heritage New Zealand
29 listed Bendigo Quartz Reef historic area, which explicitly says it demonstrates the
30 key kind of story of going from alluvial through to quartz mining, and references
31 like the miner strike and everything. So if you're taking out that earlier part of the
32 story, being the Rise and Shine alluvial area, that's kind of starting the story at
33 chapter three. The historic area - - -

34 **Mr Muir:** The first chapter in the book.

35 **Dr Jennings:** You just skip straight to chapter three because we've talked – the thing
36 that is celebrated by that historic area is the timeline from early to the later. So if
37 you take away a big chunk of the early, then it's not going to have that same purpose
38 and value.

1 **Dr Woods:** I would add to that that, yes, the Rise and Shine workings are the most
2 intact because people didn't go back to mine like in the other areas. But they are
3 not the only example within the Quartz Reefs historic area or the remaining
4 covenant of that phase of mining.

5 **Mr Sole:** But they're the only publicly accessible ones.

6 **Dr Woods:** Jill Hamill in summing up her report does that – and I'll just quote from
7 her: "And considering where scarce resources are best spent at Bendigo,
8 consideration should be given to retaining representative sites from each era, using
9 criteria being developed at Goldfields Park", which is out of date now. "For sites
10 outside the Bendigo Reserve as it will stand", which was much smaller, "emphasis
11 should be given to intact, historically significant and informative sites in good
12 condition, still within an appropriate setting and with an attractive landscape. Some
13 of these sites should be selected as appropriate to add to the reserve boundary
14 because they could be presented to the public and would provide complementary
15 materials to sites within the reserve." She does argue that some sites should be
16 included in that reserve. The Rise and Shine is not one of them.

17 **Dr Jennings:** Yeah. But the point she makes on the previous page there, she talks about
18 the complex interlinked systems and it's critical that the covenant provides for
19 protecting the type of landscape and ensure that the Red Mine and Shepherds Creek
20 should be included and the boundary shouldn't be artificial. It should be based on
21 the landscape values and the connections between the sites. And so that's what the
22 covenant achieves, for all intents and purposes. But there's another bit I'd like to
23 come back into, and a lot of this stuff was recorded sort of a bit early on as a site
24 record dated the 1980s. So there actually was a good understanding of what they
25 were surveying and what they were looking at.

26 I also want to make a comment about the methodology. With something of a
27 magnitude of things like this, you need to talk to other experts when you're doing
28 your assessment. Now, this methodology, I'm an expert in the heritage Central and
29 Queenstown area. So Sharp Wright. In the last six years Sharp Wright has been
30 updating site record forms in the Clutha Valley up to Queenstown, through this
31 area, and, as far as I'm aware, wasn't consulted. And Peter Petchey did his PhD on
32 history of stamper batteries of New Zealand, again, wasn't consulted as part of the
33 methodology. And that's where I come back to it. Although we can get down to
34 what photographs weren't photographed enough, it's that baseline information isn't
35 there when the methodology was developed. You've got to talk to other experts.

36 And what you find is when you look through the report of things are missed, for
37 example, one of the battery sites there, there's a piece of machinery there. It just
38 looks like a piece of machinery to you and me. It's a [?] turbine. There's only two
39 other occurrences of this on a goldfields site left. Target. When you start, when
40 you've got that experience you start picking up on pieces. It's very important for

1 these really wide landscapes. You've got to talk to other experts who have been
2 doing this work.

3 **Dr Woods:** I'd like to respond to that if I may. We do mention that the turbine is
4 there, on page 153 of the assessment. And Dr Schmidt is right that I did not consult
5 with those particular experts that he has listed. I did, however, spend nearly a
6 decade now interrogating this landscape. That involves field work and research of
7 the existing records. We've interrogated not just the site record forms within this
8 area but the wider region. And we are lucky that this area has been so well surveyed
9 in the past. It's been surveyed about once every decade since 1980. So we're not
10 starting from scratch here. I do also have a background in gold mining archaeology
11 and archaeology Otago. I've in fact co-authored papers with Peter Petchey on the
12 matter. I'm not coming in as a fresh set of eyes that doesn't know what I'm looking
13 at. I've spent a lot of my professional career interrogating that.

14 ? Given this is a fast-track application involving archaeological authorities and a
15 conservation covenant, did you think to engage with the Department of
16 Conservation or Heritage New Zealand in preparing your methodology?

17 **Dr Woods:** We had an extensive pre-application consultation with Heritage New
18 Zealand.

19 ? In preparing your methodology?

20 **Dr Woods:** Not in preparing our methodology, but we have not varied from the
21 standard methodology you would use. And prior to submission we ran the methods
22 past Heritage New Zealand and they deemed them appropriate. And we said to the
23 applicant that we needed to get DoC involved and they did their own consultation
24 with DoC.

25 ? So there's no consultation with DoC in 2021 when drilling and tracking the
26 proposed – I received a draft assessment from Heritage Properties. I gave feedback.
27 With the feedback we're talking about now, you need to have a methodology that
28 looks at all the areas of heritage. It's not about the archaeology. I've got an email
29 I gave in 2021 showing that I gave in discussions with the archaeologist there. That
30 stopped in 2023 and nothing else. So where DoC was very open to those
31 discussions but then it just stopped. And it all came back to the methodology which
32 was discussed in 2021. So we were quite surprised with the feedback given back
33 then, we've now got the same – in my opinion, the methodology isn't what I would
34 expect and it had been informed five years earlier what the expectation was.

35 **Ms Sweetman:** Ms Clifford, did you have anything to add?

36 **Ms Clifford:** Yes. I would like to add that we were approached and [?] is correct, we
37 did have pre-consultation about it. But what we were delivered was a completed
38 sort of methodology. We weren't involved in sort of the development of a
39 methodology. Which I think as you speak to the point that this is a fast-track, it's a

1 totally different way of informing people and they're not informing us, they're
2 informing you really with this assessment. And I think that it should have come
3 from a bit of a different angle in that regard. But also I think that really it should
4 have been a case of building a methodology suitable to the landscape, which really
5 required sort of a more of a dynamic methodology that could probably have been
6 achieved with really early consultation before any methodology was actually
7 established. I think that's an important point to make, is that the methodology
8 presented to us was sort of already designed and created.

9 And also just to talk a bit to the point about it sort of being a methodology. I guess
10 the complicating thing for Heritage New Zealand in this situation is we make a
11 recommendation to you on whether or not to grant or decline an authority. Under
12 our Act we make a decision. So the scrutiny that takes place into an archaeological
13 assessment takes place within Heritage New Zealand and we discuss it and sort of
14 come to a conclusion then. In this situation we had to inform you. So that's kind
15 of where our advice may be different and probably, I think a lot of parties are
16 actually seeing the matters that we consider under our standard process actually
17 coming to light now because we do a different way. But we have to inform you
18 essentially. So it means that it's much more of a – how am I trying to say it – much
19 more of a clear understanding of what Heritage New Zealand does to determine
20 whether or not to grant an authority.

21 **Ms Sweetman:** So we are placed in a situation where we have four experts who don't
22 agree with the methodology used and one who does. What is your advice to us on
23 the way forward from here?

24 **Dr Woods:** If I could start, I think, feel like as I said in my opening statement, we
25 may disagree with how we got there but we're broadly in agreement with the values,
26 and we're all in agreement with the magnitude of impact. So I think we could be
27 here for months, and I challenge you to find two archaeologists that will ever agree
28 on anything!

29 **Dr Schmidt:** I think there's a good point there. When you use the Heritage New
30 Zealand criteria like you did over the landscape we're agreed, it's a major impact.
31 There's significant loss you can't replace. And we got to that point there. And these
32 are coming at irrespective of how we disagree, how things were photographed or
33 recorded, stuff like that. I agree, archaeologists never agree. But we all agree that
34 it's a major, major loss, and how you compensate.

35 ? And one more specific question for Dr Jennings. You do quite a bit of work for the
36 Otago District Council?

37 **Dr Jennings:** Origin Heritage, where I work, they've done a few.

38 ? I just wanted to understand what the District Council's approach is in terms of
39 heritage matters located either in its conservation covenant area or on publicly

1 owned block land, in terms of does the Council list those items or protect them in
2 its District Plan or does it rely on those other instruments?

3 **Dr Jennings:** So generally the Council wouldn't list areas or topics in their District Plan
4 but I think part of it is more the Council's broad kind of responsibilities under the
5 RMA to protect historic heritage from improper development and subdivision. I
6 think is the terminology in the Act. But the areas aren't specifically listed for this.
7 So in terms of the actual execution of the District Plan, it's more of a general
8 responsibility than actually specific listed, in this context.

9 ? Do you have anything [inaudible]?

10 **Dr Schmidt:** The Councils? I can add to a bit about that. Some years ago I worked –
11 I was at Heritage New Zealand. As a Council you need to look at your city as
12 heritage landscape areas. We did polygons and all that. But CODC was never keen
13 on that approach. So it depends on who's on Council at the time and [?] really
14 embraced that approach. You can still see the maps there. And we did areas
15 towards the [?], like Bendigo, the Skippers, and then at Whakaari, a few lots areas,
16 and that was never taken on.

17 **Mr Muir:** Does the panel have any other questions? Ms Gepp, any cross-
18 examination topics arising out of this first issue?

19 **CROSS-EXAMINATION BY MS GEPP:**

20 **Ms Gepp:** Firstly I'd just like to clarify [inaudible].

21 **Mr Muir:** It's not particularly good today.

22 **Ms Gepp:** I'll move it closer. Oh yeah, that's good. So it's a slightly awkward
23 arrangement but I can see you all and you can see me so that's probably good. My
24 name is Sally Gepp. I'm a lawyer and I'm representing Sustainable Tarras today.

25 I just had a question about that point where you say you've arrived at the same –
26 you're in agreement with the values. Because when I look at paragraphs 27 and 30
27 of the joint witness statement, that seems to show a difference in assessment of
28 value between Dr Woods and the other heritage - - -

29 **Dr Woods:** I'll clarify. I said broadly in agreement.

30 ? It's paragraph 30.

31 **Dr Woods:** That's where that disagreement between having the very high there and
32 the high.

33 **Ms Gepp:** Okay. So there is still a disagreement between you on that. Can I ask,
34 anyone who wants to, about is there much significance to that distinction. Is this a
35 key issue that really determines or really drives into what the impacts are and what
36 management should be if the project proceeds, or does it not matter that much?

1 **Dr Schmidt:** I'll throw in two cents on that. It's a really tricky one. In a way, for me,
2 it's a little bit of a re-hearing. Because when the covenant was developed all these
3 discussions took place. They already took place between the archaeologists and Jill
4 Hamill and the Crown and the landowner. And so, as I said, this is re-cover. It's
5 the only one with a hard rock mining area that's trying to protect that whole
6 landscape related to that. So in a way those discussions have happened. So it feels
7 as though we're backpedalling a bit by then applying this here to that work being
8 done, where we all agree with everything. The complex is related and this has
9 already been established. That's majorly important.

10 And then getting down to this site level which, if you know about cultural
11 landscapes, it's the sum of the parts. That's the whole idea of a cultural landscape.
12 And it's the tangible and intangible values together illustrate that here. So we now
13 have, for example, Lloyd Carpenter's PhD on the Bendigo community. So that's
14 just adds to what's already established all those years ago.

15 **Ms Gepp:** Does anyone else?

16 **Dr Jennings:** I'll also add that a lot of those kind of discussions were made like 20 to
17 30 years ago now. And so during that time, like, the Central Otago landscape has
18 seen significant kind of development and loss as well. And some of these, there
19 have been sites that have been destroyed that Heritage New Zealand never know
20 about or never even had the opportunity to manage because they weren't reported,
21 and Heritage New Zealand relies upon this kind of site damage being reported. So
22 while the values are kind of considered representative at that point in time, they
23 even may be more, like the values may even be rarer than we're really considering
24 because we're not really comparing against what's been lost.

25 **Ms Gepp:** My next question – I'll start with you, Dr Woods – it seems as though
26 there is a disagreement between you regarding the relevance of sites being within
27 or outside the direct disturbance footprint. The way I understand the joint witness
28 statement is that you have assessed sites and complexes as affected if they're within
29 the footprint but sites and complexes and part of the heritage landscape that are
30 outside the footprint, you have assessed as not affected. Whereas the other experts
31 consider those are affected because of the severance of the connection to the sites
32 within the footprint. Is that a correct statement?

33 **Dr Woods:** So I do consider the effects to the wider landscape in both terms of the
34 covenant area and the listed area. So it comes out of a report that is probably trying
35 to do too many things, and in hindsight would have split it out to, say, the covenant
36 report, an RMA report, and a archaeological authority report. For the
37 archaeological authority we're applying to modify only those sites within that
38 footprint. But we do acknowledge that, as it is a wider landscape, that will have an
39 impact on that broader landscape, but physical impact to those sites outside that
40 footprint will be avoided.

1 **Ms Gepp:** And that would be relevant, for example, to, under the RMA approval in
2 assessing historic heritage, which has that broader definition, wouldn't it. Okay.
3 Do any of the other experts want to comment on that.

4 **Dr Schmidt:** Yeah. Because I used to be a senior archaeologist at Heritage New
5 Zealand. The distinction here is the Heritage New Zealand Act, Historic Places, is
6 that is a protection mechanism. It's not a management tool. The Act doesn't say
7 it's a management tool. The RMA and the conservation covenant are management
8 tools. And that's why the covenant says [inaudible] been informed. And that's a
9 really important distinction for this here because there's a world of difference
10 between a piece of legislation that just protects, yes or no, and one that's actually in
11 the goal is to manage resources which are there. And that is why I agree it's
12 muddied the waters somewhat by throwing in the archaeological versions with
13 something that's looking at the resources, landscape, biodiversity, and all that with
14 the covenant on top for this process.

15 **Ms Clifford:** Can I just add something there too. I think with – and this we'll probably
16 touch on with the blasting and vibration – an archaeological authority will apply to
17 any modification or destruction of an archaeological site. So whether or not that's
18 directly dug up or whatever in the direct footprint, it could also be places that are
19 affected by the blasting and vibration. And what's important to note here is that
20 that's not really fully assessed in this assessment. And there has been ongoing
21 conversations about blasting and vibration in the joint witness statement about how
22 to make sure of that. But what we don't have is the clear understanding of before
23 we put protectively understanding the mitigation required is the actual potential
24 effect of that blasting on these archaeological sites, and whether that could destroy
25 and modify. And while protection may ultimately be there, at the moment we don't
26 have any understanding of the potential effects. So that's sort of what's missing in
27 regard to those broader archaeological sites sitting outside of that direct impact
28 footprint at the moment as well. I just wanted to kind of put that in.

29 **Mr Sole:** I would like to reinforce that but also add that the covenant provides
30 specific access to the Rise and Shine catchment and all the features that are
31 contained within that. So the Rise and Shine alluvial workings are actually the only
32 publicly accessible alluvial workings within the whole Bendigo historic area.

33 **Mr Muir:** Any other matters, Ms Gepp? No. You've concluded.

34 **CROSS-EXAMINATION BY MS WILLIAMS:**

35 **Ms Williams:** Thank you, sir. I do have a couple of matters that I'd like to raise.

36 **Mr Muir:** Just get the microphone a little bit closer. And for the purposes of the
37 record, would new counsel that are appearing, whose voices won't be recognised by
38 our stenographers, introduce themselves, thank you.

39 **Ms Williams:** Pene Williams. Counsel for the Department of Conservation.

1 **Mr Muir:** Yes, thank you, Ms Williams.

2 **Ms Williams:** There was a question actually asked by Mr Muir, the Chair, about terms
3 of significance in terms of whether there was any inference which could be taken
4 from part of this area being covenanted and another part of this area being added
5 into the historic reserve. And I just wanted to check first with the experts, do you
6 have knowledge of the tenure review process and how that ran. So perhaps if I start
7 with Ms Clifford, because you're closest to me?

8 **Ms Clifford:** Not fully.

9 **Ms Williams:** Dr Jennings?

10 **Dr Jennings:** Not outside of this project and discussions with Matt, not
11 comprehensively.

12 **Ms Williams:** Dr Woods?

13 **Dr Woods:** No.

14 **Ms Williams:** Dr Schmidt, we know you do so we'll move past you. Mr Sole? Sorry,
15 you're on mute.

16 **Mr Sole:** Can you repeat that question, sorry?

17 **Ms Williams:** Just before I get into asking too many questions, I wanted to check what
18 knowledge you have of tenure review and how the tenure review process ran?

19 **Mr Sole:** I was involved.

20 **Ms Williams:** Thank you, Mr Sole. I'm going to then direct these questions probably
21 more to Dr Schmidt and Mr Sole, just because you others have confirmed that you
22 don't understand that process so well. So Dr Schmidt, Mr Sole, tenure review, did
23 you understand that to be a negotiation between the leaseholder, the Commission
24 on Crown Lands, as to what the outcome could be for the review of the tenure of
25 pastoral leases and pastoral occupation licences?

26 **Mr Sole:** Yes.

27 **Dr Schmidt:** Yep.

28 **Ms Williams:** And as this was a negotiation, what do you understand could happen in
29 terms of values being recognised and how that was dealt with in the final outcome?

30 **Dr Schmidt:** Oh, there are a few options now because it was a voluntary process
31 between the tenure review. It was all or nothing, so you could get freehold land
32 with no covenant or you could get a reserve taken off, a historic reserve. So there
33 were different options. So it was all negotiated at the time. And what informed it
34 was the resources reports. And then they used significant inherent values criteria
35 to apply. The bar is set pretty high when it came to negotiations because it involved
36 freehold land and land with covenants.

1 **Ms Williams:** Mr Sole, have you got any comment?

2 **Mr Sole:** I agree. It was a negotiation between productive land values and
3 significant natural values.

4 **Ms Williams:** And do you agree that part of that negotiation process was about ensuring
5 that whatever the holder was left with actually provided them with the opportunity
6 to make a living, that they had that ability to carry on being productive?

7 **Dr Schmidt:** Yeah, absolutely, yeah. And it wasn't uncommon to have grazing et
8 cetera and then value protection bespoke or management bespoke to how they
9 wanted to use the land.

10 **Ms Williams:** So coming back to the context here, where we have the covenant and we
11 have the focus on the covenant on the Rise and Shine area and we have adjacent to
12 it the historic reserve. Looking at those, but also bearing in mind Dr Hamill's
13 comments, which Dr Woods helped clear that up before, how do you take that as
14 influencing your assessment of whether or not something is very high or high?

15 **Dr Schmidt:** I don't understand the question.

16 **Ms Williams:** Sorry, it was convoluted.

17 **Dr Schmidt:** I got it. We've got to go back to how the historic reserve was created
18 really. It wasn't arbitrary. It came out of the Goldfields Park work and then there
19 was negotiations to deal with the particular areas of land [inaudible] reserve of
20 feared. But what we see in the covenant is an extension of that. So they're related
21 to the significance of it being very high, as I say. Does that answer your question?

22 **Ms Williams:** Yes, thank you. Mr Sole?

23 **Mr Sole:** I would just add to that that the earlier Goldfields Park and when it was
24 set aside, was influenced more in terms of structures and buildings. And since that
25 time our understanding and our assessment criteria has moved more towards the
26 assessment of heritage systems. And I think that's where the importance of Jill's
27 work, she took that approach. And so the covenant and what came out of that tenure
28 review added significantly to what was originally just the Bendigo Historic Reserve
29 which focused on Logan Town and Welshtown. We certainly look at those
30 landscapes quite differently now. Just to enhance that point, the survey work
31 associated with Welshtown and Logan town has none of the water races, dams or
32 anything, or very few of them, recorded, because the priority was based on the
33 shafts and the battery sites, where we'd look at that landscape through different
34 lenses now.

35 **Ms Williams:** And just finally to Dr Schmidt and Mr Sole, and then I'll ask the other
36 experts if you have any comments on this as well. Again, as Dr Woods pointed out
37 in Dr Hamill's report, she makes a complaint, I suppose, about arbitrary nature of
38 boundaries. So Dr Schmidt, Mr Sole, keeping in mind that negotiation aspect of

1 tenure review, do you have any comment about where those boundaries sit between
2 the historic reserve and the Rise and Shine covenant area?

3 **Dr Schmidt:** Yeah, nothing is arbitrary when it comes to negotiating tenure review.
4 And so – and Jill says don't take into account we need to consider everything that's
5 interconnected in the cultural landscape. And so that's clear. There's a purpose,
6 irrespective of boundaries, of why these areas were chosen.

7 **Ms Williams:** Mr Sole?

8 **Mr Sole:** Yeah, I agree with that and would add that I believe in some ways the
9 historic reserve boundaries reflect more the biodiversity values and they actually
10 omitted some of the critical heritage components. And I reference there the fact
11 that the old battery complex is actually outside of the historic reserve.

12 **Ms Williams:** Thank you. And just checking in with Dr Woods, Dr Jennings and Ms
13 Clifford. Do you have any comments on that?

14 **Dr Woods:** I guess it is related but the covenant document itself does list it. It says
15 Rise and Shine is, let's separate that out. It's extra special. But it does then list the
16 other principal values as described by Hamill, and many of those fall outside the
17 covenant boundary.

18 **Ms Williams:** Do you mean the covenant boundary or do you mean the - - -

19 **Dr Woods:** Yes, the covenant boundary. We have it here. So it's clause 10. So
20 acknowledge the principal historic values outside the Rise and Shine Creek area
21 comprise three stone buildings near Ardgour Road. It's not clear what those three
22 stone buildings are but they do not seem to fall inside the covenant. Stone yards
23 near Shepherds Creek, which is the ones referenced in the assessment. That is not
24 covered by the covenant. The hotel foundations and environs of the bakery in the
25 town of Bendigo, which from memory are just outside. Possibly that's correct. The
26 other ones, the down keepers hut [inaudible] the mining site [?], some of those do
27 fall within the reserve. And stone yards near Devil's Creek, which Jill did not
28 record exactly where those are. But Devil's Creek is covered, so assuming that's
29 fine.

30 **Dr Jennings:** Yeah, there's a couple of pockets of – some of those cover the pockets of
31 – they're like a little square with "covenant" on it. Some of them are included. And
32 also the Bendigo Bakery is a reserve. So there were things that came later. So the
33 baker's been preserved.

34 **Ms Williams:** Just following up on that, Dr Woods, does that indicate the arbitrary
35 nature of the covenant boundary as well?

36 **Dr Woods:** Yes, it does. If you go back to Hamill's report, her recommendations are
37 for a typical archaeologist fashion, a much broader protection than is actually given.
38 She, I think, extends the Bendigo landscape she considers basically all the way to
39 the river, the equipment, and that obviously is not being extended.

1 **Ms Williams:** Thank you. Dr Jennings, any comments?

2 **Dr Jennings:** No comment from me.

3 **Ms Williams:** And Ms Clifford?

4 **Ms Clifford:** Probably just to throw my two cents in really is when we're talking about
5 those arbitrary boundaries I think the important point to take away here is that
6 there's negotiation around this. And with heritage, there always is, and that
7 negotiation isn't the needs based on the values of the place. It's quite often got a lot
8 of different layers in it. I think that what's taken place with the tenure review.

9 **Ms Williams:** Thank you. I have nothing - - -

10 **Mr Muir:** Thank you, Ms Williams. Could I just make a small observation for the
11 benefit of all counsel. I haven't interjected in any way in the way in which Ms
12 Williams has framed her questions. The process that we have is a flexible one and
13 ultimately the panel is engaged with all information which assists it in its decision
14 making. But the framework is one by which cross-examination is. Leave to cross-
15 examine is sought and is granted. In the way in which Ms Williams approached
16 those questions, one would have to take a very generous view of that proposition if
17 we were to have engaged in a discussion about whether the question should be asked
18 or not, because they were directed primarily to Dr Schmidt, essentially her own
19 witness, and were designed to infill or elaborate on some other issue, one that the
20 panel had asked. Now, as I say, I didn't intervene in that respect but I think that
21 could I just ask counsel to confine their questions as much as possible to the leave
22 that has been granted, which is to cross-examine parties, not your own witness. And
23 then of course it's often appropriate within the dynamic involvement, dynamic
24 environment in which we are engaged, to then come back to other experts and to
25 seek their comment on those responses. Thank you.

26 Now, Ms Russell. Yes, good morning Ms Russell?

27 **CROSS-EXAMINATION BY MS RUSSELL:**

28 **Ms Russell:** Yes. In following what you just said, I didn't seek leave to cross but can
29 I ask just one question?

30 **Mr Muir:** Yes. Perhaps you could indicate the broad parameters of that question
31 first. Just so we don't completely lose control of the process.

32 **Ms Russell:** Sure. It's just a question about the scope of the archaeological authority
33 that's been applied for, just following one of Ms Gepp's questions.

34 **Mr Muir:** And who would you like to address that to?

35 **Ms Russell:** Dr Woods.

36 **Mr Muir:** Thank you, yes.

1 **Ms Russell:** So Dr Woods, I'm Ms Russell, counsel for Heritage New Zealand.
2 Following Ms Gepp's question about the sites within the project boundary and those
3 outside, and then Ms Clifford's answer that some of the sites outside the boundary
4 may be modified by the activity, do you agree that the archaeological authority
5 application and assessment will need to be expanded to include some of those sites?

6 **Dr Woods:** I think this will be discussed with the blasting and vibration. It relates
7 directly to that, but the boundary is deliberately black and white to show that there
8 is a commitment to protecting those outside. And we'll get to this with the blasting
9 and vibration. But the memos from the acoustics expert in the joint witness
10 statement does indicate that there is a pathway for protection. And so our
11 preference is to not apply to modify them. In effect that takes away a lot of the
12 impetus to protect them, if you do apply for an authority to modify.

13 **Ms Russell:** So can I just confirm you're saying that they won't be modified? Okay.

14 **Mr Muir:** Thank you very much, Ms Russell. Mr Leckie?

15 **CROSS-EXAMINATION BY MR LECKIE:**

16 **Mr Leckie:** Yes, thank you, sir. Just a small number of questions on matters that
17 have been exchanged this morning, and I'll share them between the experts. The
18 first is for Dr Schmidt. Just referring to paragraph 29 of the joint witness statement,
19 you were asked some questions about this earlier, which is why I'm asking you the
20 question. Where you say the category very high should cover heritage and covenant
21 areas, presumably there you're talking about the conservation covenant – in this
22 context, sorry?

23 **Dr Schmidt:** Yeah, yeah, in this context here, the different types of covenants, yes.

24 **Mr Leckie:** And you'd agree that in this context the conservation covenants can cover
25 matters of natural environment, landscape, community, wildlife, freshwater, marine
26 life, and historic matters. There's a range of matters that conservation covenants
27 cover?

28 **Dr Schmidt:** Yeah, they can, yeah.

29 **Mr Leckie:** And there's also been some exchanges this morning and would you agree
30 with those that at times these conservations covenants, I think the wording used was
31 cover arbitrary boundaries. Would you agree with that?

32 **Dr Schmidt:** Arbitrary boundaries. Do you mean boundaries not restricted? Usually
33 they're – the ones I was negotiating within a boundary of a tenure review property.
34 So you are restricted anyway. But the heritage you're protecting shouldn't have a
35 boundary. Understand what I mean?

36 **Mr Leckie:** Yeah, understood. And given all that, those matters together, would you
37 agree that it could be a perverse outcome if the background to a covenant related
38 to, say, a landscape matter, and there also was a heritage element on the site, but

1 that element would receive a very high rating in terms of the existence of the
2 covenant simply because the covenant was there, regardless of the particular
3 heritage value?

4 **Dr Schmidt:** Yeah, I'll clarify that in that you should consider a covenant which is
5 bespoke to protecting the various heritage values. So you've got to look at the
6 covenant itself. And in this particular case, when you look at the purpose of that
7 covenant for heritage, in my view it meets as very high. Because I can only put in
8 the perspective of what's here. I've got a really good knowledge of the other
9 covenants to see there's not many when you look at the tenure review reports.
10 Actually this one would meet that level.

11 **Mr Leckie:** Thank you. So when the panel's considering in this instance however
12 they consider the very high should cover heritage covenant areas, you're saying
13 actually what you mean there is the panel should look into what the covenant says,
14 not just the existence of the covenant. Have I captured what you - - -

15 **Dr Schmidt:** Yes, I agree that you do, yeah.

16 **Mr Leckie:** Different topic for Ms Clifford. Paragraph 34 of the joint witness
17 statement, if you could just go there. You've captured that you agree that this is
18 around Rise and Shine and Come in Time workings, and that comment there around
19 their contribution to the values. You would agree that Heritage New Zealand has
20 already granted an archaeological authority for damaging and destroying some of
21 those Rise and Shine working values. Is that correct?

22 **Ms Clifford:** Yes, that is.

23 **Mr Leckie:** Thank you. My last question is for Dr Jennings. I'll just get these up
24 here. Dr Jennings, in your introduction you raised concern around untrained, in
25 terms of methodology. You raised concerns around untrained observers not being
26 able to understand the values that have been assessed. Is that correct?

27 **Dr Jennings:** My concern was more that there wasn't sufficient information for an
28 untrained observer to make their own assessment based on the descriptions of these
29 sites. So there wasn't enough kind of – there wasn't enough description to consider
30 these sites individually and what they look like.

31 **Mr Leckie:** In the exchanges you've been having with your fellow experts through
32 this fast-track process, you've been able to conclude on the rating of values which
33 are accorded in the joint witness statement, aren't they?

34 **Dr Jennings:** In a high level, yes.

35 **Mr Leckie:** So you'd agree that, as an expert, you have had the information you
36 needed to come to your own conclusion regarding those values and impacts on those
37 values?

1 **Dr Jennings:** I would say at the landscape or site complex level, yes, but not necessarily
2 the individual site level. Since I've been asked to review this, I've consistently
3 wanted more information about the individual sites.

4 **Mr Leckie:** Thank you. No further questions.

5 **Mr Muir:** Thank you. Yes, of course.

6 ? Ms Clifford, just in terms of the archaeological authority that has been granted
7 already for those particular areas in some of those sites, can you tell us just a bit
8 more context about those and how that relates to what we are considering here?

9 **Ms Clifford:** Yes. So the authority was granted for limited geotech – sorry. Drilling.
10 Thank you. Limited drilling across that landscape. So when we assessed that
11 landscape, we identified that there would still be remaining parts of that landscape
12 and agreed that that was basically enough to still tell the story of that landscape in
13 that particular site complex. So that sort of the balance of decision that we make
14 when we grant an archaeological authority. And those are sort of the section
15 59(1)(a) matters of the HNZPT Act that we'll talk about later I'm sure. And it's
16 sort of that balanced consideration of those matters.

17 **Mr Muir:** Any other questions emerging from the cross-examination? No. Thank
18 you very much. That closes out issue number 1. It's 10 past 11. We'll just take a
19 10 minute break now before we start on issue 2.

20 **Ms Sweetman:** I think we should go to issue 3 next.

21 **Mr Muir:** I'm told we should go to issue 3. Very good. Issue 3 it will be.

22 **Hearing adjourned**
23 **Hearing resumed**

24 **TOPIC 3:**

25 **Mr Muir:** We're going to move to topic 3, which is so closely inter-related with
26 what we've just discussed and can probably be dealt with quite briefly within the
27 rubric of the conservation covenant. A particular focus on the adequacy of the
28 proposed new route to the Come in Time battery, the significance of the
29 conservation covenant, an issue that we have traversed in quite some detail already.
30 Dr Woods?

31 **Dr Woods:** So when we talk about the conservation covenant, I think all four of us
32 will probably be a little bit guilty of using that to talk about the area as opposed to
33 the document, just in case I slip up. If you need clarification, just ask. So obviously
34 the impacts of the proposed uplift of the covenant will be major to the wider
35 covenant area. However, the covenant currently acts as a passive management tool
36 for those heritage sites that fall within it. Should the proposed uplift go ahead, these
37 passive conditions and recommendations within the uplift area will be replaced by

1 a programme of active monitoring and protection of those sites within the uplift
2 area but outside of the disturbance footprint. And then - - -

3 **Mr Muir:** This informs question 2, it sits there. The mitigation, the compensation
4 issues, yes.

5 **Dr Woods:** Yep. But it's useful to understand when we're talking about how it
6 impacts the – what the impacts are to the covenant, I suppose. So parts of all
7 heritage site complexes identified in the heritage assessment of the city within that
8 covenant uplift area will survive to be replaced by the next on it. And there are
9 examples of all those types of mining sites will survive in the covenant and the
10 historic reserve, which have to be considered together in terms of the heritage
11 landscape. So we're not completely wiping the slate clean if we uplift this part of
12 the covenant. Do you want me also to touch on the new Come in Time route?

13 **Mr Muir:** Yes, I do, please.

14 **Dr Woods:** So we can agree the proposed new route as it stands. I understand it isn't
15 agreed to anybody. It's not a like for like replacement of the existing access to the
16 battery, the Come in Time battery. Therefore it will not maintain the status quo or
17 heritage values for visitor experience. Values outlined by Hamill, which the
18 covenant draws from, and the application for exchange of property rights, they
19 specify that safe public access to the battery should be allowed for. However, they
20 do not state that it needs to be the most direct route. Hamill also states that all
21 features within the Bendigo area, and therefore the covenant area, should be
22 presented as part of the heritage landscape. And that a walking route from the
23 Bendigo Historic Reserve to the battery would provide the visitor with the full
24 chronological range of mining activities. And therefore that would be in keeping
25 with the covenant values.

26 **Mr Muir:** For the benefit of those panel members who haven't walked down to the
27 Come in Time battery, and your recognition that it is not like for like, just explain
28 would you to us please, Dr Woods, how – what the essential differences are. We
29 understand it's a longer route for a start, and could you expand from that point?

30 **Dr Woods:** Yes, it is longer. The proposal is for not a track as such but a walk guided
31 by, what do you call it, the poles that you use to guide the track?

32 **Mr Muir:** In terms of rock.

33 **Dr Woods:** Yeah, clay markers, yep. Clay markers. And there's proposed
34 interpretation panels which would improve the visitor experience. Currently as you
35 come down you access the Come in Time battery directly from Thomson Gorge
36 Road. So there is, unless you come into it with extensive prior knowledge, which
37 most people visiting the battery do not, you're not presented with it as part of that
38 wider Bendigo heritage landscape, as was one of the key drivers Jill's report and
39 her recommendations for the covenant. It's more presented as an isolated feature.

1 So you get down there, see the battery. [inaudible] talks a little bit about how it is
2 part of a wider system. But you drive there, go down, drive back, and you could
3 not interact with the rest of the heritage landscape.

4 Put in a walking route from the reserve. You're walking the same routes that many
5 of the miners would be walking. So you've got from the main settlement at
6 Welshtown and Logantown, where all the hotels and shops and bakery are. And as
7 you walk through those hills and gulleys you're seeing evidence of sluicing, some
8 cut sites, water races. You're seeing possibly not 100% of the picture but a much
9 broader range of features than you would.

10 **Mr Muir:** That traversing time from Thomson's Gorge Road at the moment is, I'm
11 just trying to remember the last time I went down there. I think I popped down
12 there in about five minutes. That about right?

13 **Dr Woods:** Yes.

14 **Mr Muir:** And the duration of the new walking route would be something like 50?

15 **Dr Woods:** Yes, I don't know off the top of my head but it is considerably longer, but
16 that really falls into recreation rather than heritage. So we just focus on the heritage.

17 **Mr Muir:** Yes, yes.

18 **Dr Woods:** So we don't overstep any recreation.

19 **Mr Muir:** You say experientially that it will actually be an enhanced route in that
20 sense?

21 **Dr Woods:** Yes. We're just talking about heritage, yes.

22 **Mr Kensington:** Just checking Dr Woods. Have you walked that alternative track?

23 **Dr Woods:** I have not. One of our staff walked it. But I have seen it. We [?] it on
24 GIS.

25 **Mr Kensington:** Anyone else has walked that track?

26 **Mr Muir:** Walked the proposed route?

27 **Dr Schmidt:** Just starts and finishes but all the way around the bottom [inaudible].

28 **Mr Kensington:** What about Mr Sole?

29 **Mr Sole:** Yeah, I only walked either end so I haven't completed it, because it's not
30 publicly available. You'd be trespassing.

31 **Mr Kensington:** Thank you.

32 **Mr Muir:** Back to the broader frame. Dr Schmidt?

33 **Dr Schmidt:** Should I focus on the route?

34 **Mr Muir:** You can focus wherever you like, on this topic.

1 **Dr Schmidt:** Because I've talked a lot about the conservation covenant. So in terms
2 of the route, yeah. So one thing's key about the [inaudible] management of the
3 stamper, not just the public access. That's why the alternative shorter route was
4 always really, really good. And there was also in from the historic reserve, there's
5 also another entry which is a track you can drive on. It goes up to Thomson's Gorge
6 Road there, when we restored the battery in 2005 or 6 we used those entranceways.
7 But look, with any track, cycleway or whatever – I've worked on giving advice on
8 most of the cycleways that have gone through DoC land over the years, you can
9 never put a line on a map. You have to get it evaluated thoroughly. We've had
10 cycleways we've completely changed the route after it's been assessed for [?]. Is it
11 access reasons, recreational reasons. And so - - -

12 **Mr Muir:** Safety reasons.

13 **Dr Schmidt:** Safety reasons as well, yeah, yeah. So I've got a lot of experience in
14 track building and so have DoC. We can't put a line on the map and say this is the
15 proposed route because we don't know if it will work. We get a lot of people that
16 – you've got to consider, for example, not just the heritage experience, which DoC
17 does actually recommend a track going up through the reserve would be quite good.
18 One thing to consider, for example, is the demographic of people using it. For
19 example, if you go to the current accessway you notice that people of all ages can
20 get down that five minute track and get up. It's pretty good. If you have a poled
21 route and it's on a slight slope, you're really restricting your audience that can
22 through the heritage place – through heritage.

23 The other thing when you do a track assessment is you've got to look at what's the
24 purpose, the historic reserve, the primary pieces of the conservation of the heritage
25 resources there and the landscape for public appreciation. So if you say, oh, there's
26 a short route, we'll go along the – down through a steep ridgeline, you're
27 immediately having an impact on those landscape values, let's say the old miners
28 used to experience.

29 So I think – I was pretty much sure that when we met with Santana at the workshop,
30 we did agree that a new track has to be informed by a heritage and recreational
31 assessment, which is best practice and typical, yeah.

32 **Mr Muir:** Dr Jennings?

33 **Dr Jennings:** I don't have a strong feeling about the route in terms of accessible
34 recreation. I would assume that, yes, passing more heritage sites would be a good
35 user experience, but I'd question – well, I know that traditionally it's supposed to
36 be about the journey, not the destination, but if the destination has a massive mine
37 pit next to it, it kind of might erode that value of the destination. I'd also add, I
38 worked in Western Australia for about eight years and there was a lot of blasting
39 there related to iron ore mines and whenever we were anywhere near a rock shelter
40 or anything, we would have to get out of it within a kilometre. So I would also

1 question how blasting times of the operation of the mine would affect the user
2 access to that track.

3 **Mr Muir:** You comment on that, Dr Woods?

4 **Dr Woods:** I do not have that information.

5 **Mr Muir:** We'll just put a post-it note on that issue. Right. Okay. Ms Clifford?

6 **Ms Clifford:** Just a brief statement really. With the Come in Time battery, the access
7 that they currently have you walk through features associated with that battery. So
8 you kind of understand the battery more based on the landscape. I'm not sure that
9 the alternate route provides that same level of context of the site that you're
10 ultimately visiting. And so I think that's an important factor to consider in about
11 particular routes, is that you're actually building the context of that site that you're
12 going to visit as you walk through that path.

13 **Mr Muir:** Mr Sole?

14 **Mr Sole:** I believe it's going to severely compromise the use of that area. It's an
15 eight kilometre return route with basically no physical formation. So it's going to
16 severely constrain. And I also have reservations about the heritage experience that
17 is going to be achieved when looking at ArchSite there's only recorded sites at the
18 beginning at Logantown and as you enter Come in Time. So yeah, you're down in
19 a gully for most of the trip. So yeah, I question the values that are going to be
20 obtained through taking this route. I also make the point that Oceana Gold, Macraes
21 project, has a public road operation right through its operation, and it's also set aside
22 the Golden Point Historic Reserve, and that has retained public access throughout
23 the whole operation. So I question why the road up to Come in Time, where Matt
24 was talking about, where they originally accessed the Come in Time, can't be
25 retained. And we have walking access where we can view the mining complex
26 below Come in Time and then access the Come in Time battery itself. Yeah. I just,
27 I guess, question the degree of looking at alternative options other than an eight
28 kilometre return route, walking route.

29 **Mr Muir:** Dr Woods. Comment on that?

30 **Dr Woods:** It is longer. I'll agree with that. I don't really have anything to add.

31 **Mr Muir:** Questions from the panel in relation to this issue?

32 **QUESTIONS FROM THE PANEL:**

33 **Mr Kensington:** Just one if I may. I'm just looking at the landscape closure plan and
34 the landscape mitigation plans, and perhaps Mr Leckie can confirm. My
35 understanding is that once works have ceased, the existing access [inaudible] with
36 vehicular access still provided to that same point that people can get in at the
37 moment. Is that your understanding. So it would just be a temporary while the

1 works are happening that that would be closed to the public. In the future it will be
2 open. Is that your understanding?

3 **Mr Leckie:** What's the definition of "temporary"?

4 **Mr Muir:** For the duration of the mining market operation, around 13 years.

5 **Mr Leckie:** Historic reserves are required to provide access as part of the historic
6 reserve status. So temporary loss for 13 years, no, can't do that. We have to think
7 of an alternative.

8 **Mr Kensington:** I guess my question is, you know, I'm not worried about the effect of
9 it but, you know, in the future is that going to be restored, that access that's there
10 now. That's the question.

11 **Dr Woods:** As I understand, it can be, yes.

12 **Ms Sweetman:** This is for everyone really. Do you think there is an appropriate
13 alternative route. Do you think an appropriate alternative route can be agreed,
14 particularly between the Department of Conservation and the landowner?

15 **Dr Schmidt:** I honestly can't answer the question because we always get them
16 informed by, you know, like an assessment and that works with the landowner, what
17 are your needs, what do stocks need. So it's just a really hard question to answer.
18 We, for the cycleways for example, they'll go through sometimes multiple
19 landowners areas of land. Sometimes they've got to bypass, go through, yeah, so
20 it's difficult.

21 **Ms Sweetman:** I'm just trying to gauge about how much certainty do we have about the
22 proposed route and the ability for us to rely on conditions of consent for a secondary
23 approval between MGL and the Department of Conservation?

24 **Dr Woods:** I think given the state of the landscape and it's really empty, there's going
25 to be a route that we can agree on. We don't know exactly what that would look
26 like yet, more work needs to go into it, but I'm confident that we could come up
27 [inaudible].

28 **Dr Schmidt:** I don't like to commit to anything but like honestly, we need this session
29 because it's just one experience. It just depends. Suddenly landowners can go, no,
30 I don't want that now.

31 **Mr Muir:** We don't have that particular problem here.

32 **Dr Schmidt:** Yeah, but you know, I mean like it's very difficult to answer that question
33 without - -

34 **Ms Sweetman:** And it was probably to some degree a bit of the legal [inaudible] Mr
35 Leckie has gone to.

36 **Dr Schmidt:** Because it's historic reserve we've got to provide access so you sort of
37 you do it in a planned way so the big demographic can get to these historic reserves

1 and move around easily. Yeah, we could find a route but it might go up like this
2 and around like that, and we might be left with a real problem, yeah.

3 **Dr Woods:** The [?] we can agree on a route.

4 **Mr Muir:** There has to be a route and if one is prepared to devote sufficient resource
5 to the establishment of that route, it has to be a route that people are able to safely
6 walk and it may need further efforts than they currently are required, but I think
7 that's all that Commissioner is saying.

8 **Ms Sweetman:** Any of you other want to comment on that question?
9 [inaudible]

10 **Ms Sweetman:** The other question I want to ask is taking a step back, and I'm looking at
11 clause 45 of Schedule 6 of the Fast-Track Approvals Act. And I see in your JWS,
12 under item G, that you all agree that the proposal's not consistent [inaudible]. So
13 that talks to, if we're looking at clause 45(1)(c), and just really backtracking to what
14 we were covering this morning, I'd like your opinions in terms of whether the
15 revocation would compromise values of regional, national or of international
16 significance. Would you like to start Dr Schmidt?

17 **Dr Schmidt:** So revocation would be – say again, sorry?

18 **Ms Sweetman:** Would revocation compromise values of regional, national or
19 international significance?

20 **Dr Schmidt:** Yes, it would.

21 **Ms Sweetman:** All of the three?

22 **Dr Schmidt:** International, regional, national, local, absolutely, yeah.

23 **Ms Sweetman:** Dr Woods?

24 **Dr Woods:** It will have – I consider the Bendigo conservation covenant area is really
25 a regional importance but – I'll just make sure I'm saying what I've said previously
26 – nice try. But it will not have such an effect that the overall value of the covenant
27 area will be reduced from - - -

28 **Ms Sweetman:** That's not my question. Will it compromise values of regional, national
29 or international significance?

30 **Dr Woods:** I don't think it will change the covenant area to be no longer regionally
31 significant.

32 **Ms Sweetman:** Dr Jennings?

33 **Dr Jennings:**
34 [inaudible portion]

35 **Ms Sweetman:** Mr Sole?

1 **Mr Sole:** Definitely nationally and regionally and I personally believe there's
2 possibly a case for international.

3 **Mr Muir:** Any other questions from the panel? Right. Ms Gepp, is there any cross-
4 examination topic emerging out of this issue?

5 **Ms Gepp:** Yes please, sir. Commissioner Sweetman has kindly asked most of my
6 questions so I've just got one to add on - - -

7 **Mr Muir:** That's fine. I'm still not hearing you very well, Ms Gepp, I'm sorry.

8 **Ms Gepp:** And, sir, sorry, I should have said this earlier by name is actually Jepp,
9 not Gepp.

10 **Mr Muir:** Sorry, Jepp?

11 **Ms Gepp:** Jepp, as if it had a J. But you are at least the 100th person to not say it
12 that way so that's fine by me. So Dr Woods, I just want to come back to your answer
13 to Ms Sweetman, which was that it won't change – will it compromise values of
14 regional, national or international significance. You said it won't change the
15 covenant to be no longer regionally significant. So I'd just like you to focus on the
16 words of clause 45. Will it compromise values of regional, national or international
17 significance?

18 **Dr Woods:** It will in effect compromise some values of regional significance.
19 ? Thank you. I have nothing.

20 **Mr Muir:** Thank you. Ms Russell?

21 **Ms Russell:** No, thank you.

22 **Mr Leckie:** No questions, sir, thank you.

23 **Mr Muir:** Right. Issue 2, the mitigation and compensation issues.

24 **TOPIC 2: MITIGATION AND COMPENSATION**

25 **Mr Muir:** Are mitigation and compensation proposed for the loss of heritage values
26 sufficient and what other measures may be appropriate to mitigate or compensate
27 for loss of heritage values. Starting with you, Dr Woods?

28 **Dr Woods:** I consider that the mitigation and compensation proposed by MGL will
29 go some way to offsetting loss of heritage as a result of the proposed Bendigo-Ophir
30 gold project. Obviously archaeology – archaeological sites and physical heritage
31 are nontangible heritage you cannot – once they're gone, they're gone. So we
32 cannot ever replace them. But in addition to the legally required recording of all
33 archaeological and heritage sites within the footprint, we've got the proposed
34 mitigation offsetting those with the development of a research strategy to guide
35 works, recording, analysis, reporting of all post-1900 heritage sites, as well as 1,900
36 archaeological sites, detection and condition monitoring of all sites within 20
37 metres of the disturbance footprint boundary. The establishment of the biodiversity

1 and heritage fund to allow for investment in other sites. The removal of the invasive
2 willows from an area of Clearwater Creek to increase the amenity value of a group
3 of at least 13 heritage sites which are not currently accessible. So those ones that
4 Mr Sole mentioned previously. Further investment in the conservation of the Come
5 in Time battery and engagement with the Cromwell Museum for the safekeeping of
6 artifacts. Public dissemination of all results of the archaeological investigations.
7 Replacement of the uplift portion of the Bendigo conservation covenant, the larger
8 covenant that protects surviving heritage values from both Bendigo Station and
9 Ardgour Station.

10 And now currently if you were to look at the NZAA, part 40(c), you would see no
11 reported heritage sites out in that direction. But that has to be taken with a grain of
12 salt because there's people that have been using that landscape in the past and
13 archaeologists haven't been out there recording.

14 **Ms Sweetman:** So we don't know what archaeological values may or may not exist there?

15 **Dr Woods:** Exactly. We do have reference to there being Māori sites out on Ardgour
16 Station that are from, I think, 1870s, some miners found a cave full of stuff, as they
17 tended to do rifling around. So we know there is potential for sites out in that area.
18 Then finally, reinstatement of public access to the remaining sites in the Rise and
19 Shine area following mine closure.

20 So as I said before, destruction of any archaeological site or heritage site can never
21 be truly mitigated for, the knowledge we would be able to gather through the
22 proposed detailed investigations of these sites and site complexes, will greatly assist
23 in future site management of other sites and site complexes within the Bendigo
24 landscape. And the proposed investment would allow for these learnings to be put
25 into practice. The heritage sites proposed to be destroyed currently have limited
26 accessibility to the majority of the public and the proposed site investigations and
27 subsequent dissemination of the results will allow for these site stories to reach
28 wider audience.

29 **Ms Sweetman:** Can I ask questions on your last comment, that there's limited access to
30 the sites. What do you mean by that?

31 **Dr Woods:** Really thinking about the Rise and Shine, that's the key area, and to get
32 up there you need a four-wheel drive or the ability to cycle up that road. And so
33 legally you're allowed to access them.

34 **Ms Sweetman:** I think legally under the covenant people are allowed to, yes.

35 **Dr Woods:** Yes, but physically not everybody is able to get up there. There is
36 nothing, once you are there, to guide your interpretation.

37 **Ms Sweetman:** Could you please have a look at clause 9A? People are allowed - - -

1 **Dr Woods:** They are allowed, yes. But, as I say, not everybody is physically able to
2 walk up to those sites, or cycle up to those sites. And if you want to drive you need
3 a four-wheel drive.

4 **Mr Muir:** Apart from the Come in Time battery, are there any established walking
5 tracks to any of the other, is it 14 sites that we're talking about?

6 **Dr Woods:** No. Thomson Gorge Road goes through that Rise and Shine area.

7 **Mr Muir:** Yes, it does. I mean, we, in the course of our site visit, we were exposed
8 to a number of these sites and I just can't remember how we obtained access to
9 them.

10 **Ms Sweetman:** Just off the road.

11 **Mr Muir:** Yes, just off the road.

12 **Dr Woods:** Yes, so that road goes through that area of mining. And the more remote
13 ones at Shepherd's Creek and Jean's Creek, some of them are close to that paper
14 road, the Matakanui/Bendigo road. But that is a site in itself. So that is accessible.
15 But there's no – once you get up there you're on your own to find the sites.

16 **Mr Muir:** That closes out your initial comments on that subject? Dr Schmidt?

17 **Dr Schmidt:** Negations have already happened. That's the conservation covenant
18 when the negotiations were undertaken, first back in, I think it was signed in 2000
19 with the lessee. Heritage sites and land was given up. The covenant was penned,
20 giving people access to the heritage sites, capability for DoC or agents of DoC to
21 go on and manage them. Areas were being put into vineyards. There would have
22 heritage sites modified because of that, which were probably applied for under the
23 Historic Places Act I'd say. So, in my view, the mitigation's been done. What
24 we've got today is what was negotiated years ago. So that's the point I'd like to
25 emphasise.

26 In terms of the proposed mitigation, as you established, there was no discussions
27 with a methodology for mitigation with DoC, who is the person managing the
28 covenant. Our view of the mitigation is just what's legally required under the
29 archaeological authority. All that's happening is you're recording heritage sites as
30 they're destroyed and you're producing a report. We don't need any more heritage
31 sites excavated in Otago. We've got enough information on goldfield sites per se
32 in terms of ones that have been recorded as destroyed. What does add value is
33 retaining now the tangible record of those sites was the outcome of the covenant.
34 So I think the conditions are directed towards that purpose of the archaeological
35 authority application, in my view.

36 The compensation proposed. Because they haven't discussed it with DoC, they
37 have no idea how much it costs to manage heritage sites. And I provided some
38 evidence for that in my Appendix 8. It's a pittance to what is proposed. I'm working
39 on the restoration of a site of the Lindus Hotel ruins at the moment. Just the

1 stonework alone is going to cost \$130,000. To get a roof will be another 200. That's
2 just one site. So to conserve these places is a lot of money. So to have in
3 biodiversity and heritage fund, is it \$1 million? That's not the way you approach
4 mitigation and compensation. Mitigation and compensation should be project
5 based. It needs to be discussed with the persons being affected by it. It shouldn't
6 be driven by applicants who say here's a pot of money, that'll do. It has to be driven
7 through best practice approaches, and that's what hasn't been done here. So the
8 mitigation currently proposed, it's based really on no information and no best
9 practice approach. Thanks.

10 **Mr Muir:** Dr Jennings?

11 **Dr Jennings:** Yeah, I would agree with Dr Schmidt on this point. I think the horse has
12 bolted in terms of mitigation. Regarding the proposed additional covenant and the
13 revocation of the existing one, I'm not really sure what the point of a covenant is if
14 it can just be relaxed when it's inconvenient. And I would say that the proposed
15 new covenant area, if it's there to be a replacement – and we've got no idea what
16 archaeological or heritage sites are there at this point in time. You can't – it doesn't
17 make a good case for providing a new area to replace the old area to me.

18 **Mr Muir:** Ms Clifford?

19 **Ms Clifford:** So first, I'd like to say that basically through my assessment I have
20 recommended a decline, and that is because I don't think the effects can be
21 mitigated on these archaeological sites. I think the important point to make there is
22 that the values of these archaeological sites are predominantly, as they currently
23 stand, with them remaining in that landscape. So it's really important that their
24 contextual value and their amenity value are both the sort of higher values. And
25 that means that basically they're of more value to us standing than they are to us
26 investigating them and then removing the information and recording that
27 information.

28 I'd just like to agree with – I mean, sorry, disagree with Naomi about the
29 accessibility of those sites. I think they are accessible. You can easily access them
30 and a lot of people in central Otago go four-wheel driving all the time. So it is quite
31 an easy thing to access. And also - - -

32 **Mr Muir:** Is that the case of all of them?

33 **Ms Clifford:** Sorry, I'll refine that to the Rise and Shine and then obviously the Come
34 in Time battery has that access down to it. So there is both those sites and those
35 two complexes are the ones with those high contextual and amenity value. Also,
36 there was a second point there, sorry, I'll just find it. Oh yes, the second point was
37 I understand there's no interpreter there but I think that the nature of goldmining
38 sites is it's quite an interpretable landscape. And when you go and visit them you
39 can visually experience them without having to be told what exactly is there and
40 what they are. And particularly with some of those sites, you've still got some

1 standing huts. It's very obvious and very interpretable without the need for a
2 description of what those are. I just wanted to make those points there as well.

3 So really what I'm saying is I don't think you can mitigate it. And I also just want
4 to raise the point that there's obviously this bit of ambiguity about sites, particularly
5 new sites with the new features within sites that haven't necessarily been addressed.
6 So I guess I'm not satisfied that there may be potential for more sites that haven't
7 been assessed and therefore I'm not certain that they've been mitigated against
8 either. And we haven't got a clear understanding of that mitigation that would be
9 proposed.

10 **Mr Muir:** Mr Sole?

11 **Mr Sole:** Yeah. My fundamental concern is that there's been little or no evidence
12 or any attempt at mitigation in terms of the mining footprint on the key values of
13 the Rise and Shine. I disagree with the accessibility. There is significant four-
14 wheel drive desire lines all through the Rise and Shine sluice workings and it is
15 actually quite easily to drive a car up there in the summer time. I agree you need a
16 four-wheel drive in the winter time.

17 The other issue is there's immense value in the self discovery in these sites so you
18 don't always need to have it fully interpreted. One of the, I guess one of the reasons
19 I got involved in archaeology was just wander at will and discovering what was in
20 the land site, and you have this feeling of you being the first one there discovering
21 it since it was put down aeons ago. And there's a really high value in that wander
22 at will and self discovery.

23 And I agree with the others that, you know, I believe that this process was mitigation
24 was dealt with through the covenant. And to me it seems a bit of a betrayal on our
25 public processes that these things can be re-litigated. You know, it's proving to
26 have little security or meaning, these covenants and conservation areas. That's all
27 I have to say, thanks.

28 **Mr Muir:** That's probably an argument you have to have with the politicians, Mr
29 Sole, not with the panel, isn't it, because there is a statutory basis for the revocation
30 within the Fast-Track Approval Act and a series of criteria by which we assess
31 whether that application should be granted or not. Questions from the panel on this
32 issue?

33 **QUESTIONS FROM THE PANEL:**

34 **Ms Sweetman:** So one of the compensation measures proposed is this additional
35 covenant area over Ardgour and the conditions as have been put before us by the
36 applicant is the covenant being between the landowner and the Central Otago
37 District Council. Is that appropriate?

38 **Dr Schmidt:** No. Because of the clear reason that it is currently managed by DoC.
39 What's DoC getting out of it. We're losing all these values. Where's the

1 compensation. And has the new covenant holder agreed that they're going to take
2 on that covenant? I don't know. But no, it's a lose, lose.

3 **Dr Woods:** I put it very basically. If it's protecting heritage, I know in many ways it
4 does matter who it's with, but if it has the same outcome - -

5 **Ms Sweetman:** You don't care?

6 **Dr Woods:** Yeah, as long as it's protected.

7 **Dr Jennings:** I've not been party to any conversations regarding the covenant with
8 CODC. I again think it comes back to we've got no idea about what's going on
9 inside that proposed covenant area. There's been no assessment of this new
10 covenant area in terms of heritage. Regarding who it's with, I would agree with Dr
11 Schmidt that you're basically exchanging one organisation's management or
12 oversight with another's with little development of how that's going to look or what
13 it's going to do. So I would not consider that to be a like for like exchange.

14 **Ms Clifford:** I would agree with what Dr Jennings has just said there. I think, as Naomi
15 said, that area hasn't really been surveyed so we don't actually understand the
16 archaeological landscape yet.

17 **Ms Sweetman:** Mr Sole?

18 **Mr Sole:** Just my concern is it's not like for like and like the others, we have no
19 understanding of what we're covenanting in the future.

20 **Ms Sweetman:** Can I just have Dr Schmidt indulge me a little bit in terms of tenure
21 review. So this was an early one that commenced in the 90s and [inaudible] in the
22 2000 covenant. How did these leasehold properties operate in the past before going
23 through the land tenure process?

24 **Dr Schmidt:** They ran them as a pasture lease and occasionally the Crown would have
25 surveys on them now and then. Because the Crown is responsible for the heritage
26 on the properties. So for example, LINZ – oh, go back. 2004 there was the
27 government policy on all departments had to have consideration of heritage. So
28 with LINZ, for example, working with the lessee, they had to ensure that heritage
29 values were conserved on those properties. Before 2004 it was a bit hit and miss
30 and people depended on the Historic Places Act and people reporting damage, if it
31 ever got reported.

32 **Mr Muir:** It was never a specific provision built into the leases?

33 **Dr Schmidt:** I couldn't answer that question actually, yeah. Yeah, I couldn't answer
34 that specifically.

35 **Ms Sweetman:** I was also interested in how these leaseholders would work with, for
36 example, their neighbours. Was there grazing and running of animals across
37 between different leasehold areas?

1 **Dr Schmidt:** Oh, I'm not sure. I presume not. I presume you're not interfering with
2 someone else's property. So they just ran the farm as they ran the farm. In my
3 experience on the property [large portion inaudible] a lot of the farmers were quite
4 sympathetic to the heritage. There's some properties that are really good, thanks to
5 themselves, and other ones it was a bit poor. It's really left up to the lessee more or
6 less.

7 **Mr Kensington:** This is a question that I've been pondering about when to ask and I
8 think probably this is the right time. We put a similar question to the landscape
9 architects about this part of the world has had mining activity occurring in it and
10 this proposal was a continuation of that mining activity, and will add to the, you
11 know, heritage values in 100 years time. People will look back and see that mining
12 has continued there and this is another part of that journey. What's your thoughts
13 on that as a concept. Does it change your view on things or are you pretty much
14 looking at we're destroying what's happened in the past and that's as far as we can
15 go.

16 **Dr Woods:** I wholeheartedly agree in a lot of ways that this is a mining landscape.
17 So Hamill's work that formed the covenant reckons that things stop in 1930, the
18 30s, but there has been a continuation of mining in this landscape throughout the
19 20th century through exploration is dredging down on the flats. It's never – interest
20 in mining in this area has never stopped. And it is, it's an interesting question to
21 pose, at what point does mining go from worth protecting to bad. So I don't know
22 if anybody can answer.

23 But if we do look forward in time to following mine closure and remediation, you
24 will have the surviving sites, the Rise and Shine, the outskirts of those. You'll have
25 huts left, you'll have dams, you'll have water races, some areas of sluicing,
26 alongside a modern, well, what is now modern, but in 150 years will be as old as
27 the current mine sites, will be remediated and people in 200 years will be seeing
28 continuous landscape, which will still be a mining landscape, whether they value it
29 or not I can't say. Things will change. But I think it personally presents some really
30 interesting and excellent opportunities for interpretation when you get to that point.
31 So you can see how it started. You'll have some of those 1860 sluicings [inaudible]
32 because should the proposal as we're proposing, you'll have a huge digital record
33 of these sites you can include in that interpretation, alongside your mining, current
34 mining, which maybe we can take a lot of photos of that too and put them in the
35 landscape. So in many ways it's an opportunity for future heritage.

36 **Mr Muir:** Just before we move on [inaudible] because it has troubled me also this
37 general issue about whether – and again, I'm operating at a very high level of
38 abstraction – but whether the process is romanticised – in this process we
39 romanticise a method of gold extraction which was itself and in places highly
40 environmentally destructive but which now is given an iconic status because it
41 occurred at a different time. But if you look, if you look at the way in which the

1 phrase “industrial scale” is now used, if you look at the totality of workings in some
2 of the areas in Central Otago, cumulatively they look industrial scale – albeit
3 achieved in a different century. Does that sort of thinking sit in the background of
4 what you just said?

5 **Dr Woods:** Yes. So I think, yeah, there is definitely a romanticisation – if that's a
6 word – and what we value now, what we're seeing, is a very softened, picturesque,
7 landscape that does not – it doesn't represent what it was like when the mining was
8 actually happening. It was, basically it looked like the moon. If you look at
9 somewhere like Gabriel Scully, for example, his original little prospecting pits from
10 the very first rush there, there under 100, 200 feet of tailings. And if you look at
11 somewhere like St Bathans, they mined out the whole mountain to make a lake. So
12 I think in a lot of people's minds they see that picture of an individual miner with
13 the pan in a lovely river, birdsong, all that. Whereas really it would have been loud,
14 like stamper batteries going, water gushing everywhere, it would be so wet. It's
15 only now in its softened state that we're actually – it's valued by a lot of people.

16 **Mr Muir:** Dr Schmidt?

17 **Dr Schmidt:** Yeah, I've got a dollar for every time I was asked that question. Thank
18 you. It's not the activity which is important, it's the destruction of the heritage.
19 And the heritage there is, we think there could be Māori [inaudible]. Māori sites
20 there, pastoral sites, gold mining sites. And remember we have a whole PhD on the
21 community associated with that place. So it is about the intangible and tangible
22 values of that particular heritage which is there, irrespective of what is going to be
23 destroyed through a mining operation replicates how that heritage is created or it's
24 a forestry example. And on the theme of forestry, I say to people, well, if someone
25 said we'll cut down this native forest and we'll replant with pine trees, it's the same
26 thing. It's not the same thing. And for this particular area as well, we're talking
27 about hard rock mining which slows down to [?], which is very specific. There's
28 alluvial stuff all over the place like St Bathans mentioned as alluvial but [?] mine's
29 very location specific.

30 And so it's not the activity. And those places are, these sites, they're your heritage
31 and our heritage, visitors' heritage from overseas. I've seen motorbike trips up and
32 down through Thomson's Gorge, through there. People come over here to go
33 through these areas. They want to see your heritage. These places are associated
34 with people that we've got kiwi accents but they weren't. If you're in a pub in
35 Cromwell in 1864 you'd have an Irish person over there, an American, a Canadian
36 there, a French man and Italian. So this is all about our standing heritage and
37 tangible heritage that people can interact with.

38 So, as I said, it's not the activity, it's the destruction on a major scale of our heritage
39 in this room and in New Zealand. So yeah, I've had that question quite often. I've
40 probably missed out something, but there you go.

1 **Mr Kensington:** Does that then circle back to your, the importance you place on the
2 covenant?

3 **Dr Schmidt:** Yes, it does, yeah. And remember the covenant wasn't just looking at
4 tangible stuff. It was looking at the stories associated with it. If you look at – well,
5 we've now got a PhD on it – it was about the people who created, the people
6 associated with the companies, the interaction back with Cromwell for supplies and
7 living there. If you go on the Aurora Track and the Bendigo Reserve, it talks about
8 stories and the interpretation of the communities and families that were there. It
9 was a really, really, really hard life. So when the covenant was put together – and
10 I worked with Jill Hamill – it was about what that place represents for our heritage,
11 which if we don't preserve it we're going to have nothing left.

12 I'll say one last thing. All of us have experienced goldfield sites and stuff like that
13 but what I've noticed over the years in the Clutha Valley is it's death by a thousand
14 cuts. It's gone, since the 80s when I was a kid at Bannockburn, it's been pushed
15 and pushed and pushed and pushed. We've had changes in land use, farming,
16 vineyards, and what you find now is for people to get that during experience they're
17 being pushed right on to the margins now, into covenant areas – or areas on DoC
18 land, or areas where you've got a sympathetic farmer who really loves the heritage
19 and has the complete systems on their property.

20 **Dr Jennings:** I'd like to say I largely agree with everything Matt said just then. I think,
21 thinking about the heritage of an era, a modern mine coming in and being part of
22 the continuance is a convenient argument to attempt to make. But I also think it
23 does leave out a lot of – for a start, it is highly subjective, and I think it also cuts
24 out a lot of the things that we value in the existing heritage landscape, which is the
25 stories of the people, the development of the communities that would make Central
26 Otago and basically part of that colonial New Zealand story. So another mine
27 coming out, coming along and basically transplanting that existing evidence isn't
28 going to contribute to that story I don't think in the way that the sites that are there
29 already do. And I think that making the argument that places like St Bathans or
30 wherever, you know, because it's happened there it can happen here, isn't a great
31 argument to make. You know, the horses again, to use the same saying I said
32 before, you know, the horse has bolted on that. We've just got to accept that that
33 has been done.

34 I would also say that because of the kin of subjectivity of it in a modern context,
35 you know, I want to see a heritage assessment of a modern mine. You know, you
36 get these massive pit lakes that occur as a result of these open-cut mines. But I
37 haven't seen any consideration or any studies of what this means from a heritage
38 point of view. And I'm not sure – I don't have any information about the kind of
39 auras and bribe that might make people want to consider visiting those sites. So to
40 say that a modern mine is just all part of it is, not myopic, but it's very simplified.

1 I don't think it's something that can be very unpacked easily without a lot of study
2 and discussion.

3 **Mr Muir:** Have you considered international examples of that in the context of that
4 comment?

5 **Dr Jennings:** No, I haven't.

6 **Mr Muir:** There are international examples for the ability to gold mines now have
7 high environmental value. I have referred to one that I just have personal
8 knowledge of on several occasions during the course of various hearings about 20
9 kilometres north-west of Calistoga in the Napa Valley.

10 **Dr Jennings:** Is there any information about what was there precedingly?

11 **Mr Muir:** It was terrain broadly similar to what we're talking about here, which is
12 now the McLaughlin Natural Reserve, and a well recognised and highly rated
13 natural reserve. But we're talking about here particularly heritage values. I just
14 wanted to understand whether there had been any consideration of international
15 examples.

16 **Dr Jennings:** No, I haven't considered that.

17 **Mr Muir:** Ms Clifford?

18 **Ms Clifford:** I think with this argument I can understand it. It's the idea of a
19 continuous landscape. But I think for it to really apply you need to be sympathetic
20 to the heritage that already exists there. Sort of apply that argument of saying, you
21 know, it's just an extension of that landscape, and I don't feel like that's what's
22 taking place here. We're not sympathetic to this continuous landscape idea and
23 then adding the modern mining as an additional feature. It's not really relevant
24 there. What we've got is we've got a method of extraction that will be very
25 destructive of heritage and it's not focusing around avoiding to then build that
26 landscape further, if that makes sense. So you're not looking at the values of what
27 exists there now to then continue those values across the landscape through the
28 inclusion of modern heritage.

29 **Mr Muir:** Mr Sole, did you have a comment on this?

30 **Mr Sole:** Yeah, I just agree with the other archaeologists. I would just add that the
31 humans, we're talking about human association here, and certainly my experience
32 with a lot of archaeology is family descendants retracing. And I've certainly been
33 involved in a number of projects where families are coming back to restore huts –
34 not huts – early buildings associated with mining sites. And that happens at St
35 Bathans, also Matakanui, at Tinkers, where families have come back and restored.
36 And I also, one of the things that's stuck in my mind because I have this question,
37 I'm challenged with this question fairly regularly, even by my own family, but I'll
38 never forget going to a reunion at Gabriel's Gulley and I was just surprised at the
39 politicians, rugby players, that all had direct descendant connection to Gabriel's

1 Gullies. And that really highlighted the significance of this heritage with having so
2 many people had direct descendant connections to these sites and places. And one
3 thing that's always baffled me with Bendigo is there's no cemetery and yet there's
4 been a long period of use and occupation. So yeah, that's challenged me. Because
5 most other mining areas, you know, have a cemetery.

6 So I don't think you can override the personal connection back in the human stories
7 associated with these places, where, you know, Santana Minerals when it's gone,
8 what are you going to go back to? Some shareholding organisation or commercial
9 entity. It just doesn't have the same personal connection with the landscape and the
10 existing heritage.

11 **Mr Muir:** Are there any other questions from the panel either emerging out of that
12 exchange or independently? No.

13 **Mr Kensington:** Other than Dr Woods, is there anything that you've got after you've
14 heard from your colleagues?

15 **Dr Woods:** No. I guess with the human connection it's a big deal and it's very
16 important to heritage, given that it's intangible. It isn't necessarily locked into the
17 landscape being in sync with physical appearance. And currently if you knew you
18 had ancestors who mined the Rise and Shine break, you could go up there and stand
19 there and say the mind this area. But as it stands there is no human story when
20 you're up there. There's a PhD done it, yep. There's Jill's report. It was another
21 point [inaudible].

22 **Mr Muir:** Thank you. Cross-examination. Ms Gepp?

23 **CROSS-EXAMINATION BY MS GEPP:**

24 **Ms Gepp:** Dr Woods, did you have input into the mine design?

25 **Dr Woods:** Other than the avoidance of impact to heritage along the road that goes
26 through the Rise and Shine area, and we had input into the location of some of the
27 ancillary services, at the Shepherd's Creek area instead of the Rise and Shine area.

28 **Ms Gepp:** You have referred to the covenant in the joint witness statement at 36B.
29 And you accepted it being between the landowner and DoC, you now understand
30 that it would be between the landowner and CODC. Does that make any difference
31 to your opinion about it as a form of mitigation?

32 **Dr Woods:** As I said to [inaudible].

33 **Ms Gepp:** Do you have an understanding of how decisions would be made about
34 revoking that CODC covenant or granting approvals under that CODC covenant?

35 **Dr Woods:** No.

36 **Ms Gepp:** Lastly, just picking up on the discussion that the questions that's the
37 panel's been asking about mining, new mining, as a continuation of heritage values

1 of old mining. Just looking out the window here in Wellington, we've got a number
2 of office buildings and houses, and a very small portion of those will be protected
3 as, say, Heritage Category 1 or Category 2 buildings. If there was a proposal to
4 destroy a Heritage Category 1 building, it wouldn't make it more appropriate
5 because there was a house to be replaced on that Heritage Category 1 site, would
6 it?

7 **Dr Woods:** When you do the application for the authorities and Resource
8 Management things, you do consider what the replacement will be.

9 **Ms Gepp:** It doesn't go to how appropriate the destruction of the heritage values that
10 exist are, does it?

11 **Dr Woods:** In some ways it does.

12 **Ms Gepp:** Can you expand on that?

13 **Dr Woods:** If, you know, you've got a Category 1 listed site, that is a, I think, a really
14 good example. If you start with the process, you consider whether the destruction
15 is worth it. So most of the time you will come up, if it's a really high value Category
16 1 listed house and your client comes to you and says I just want to knock it down
17 and put in a carpark. That's where it goes to the no. You say that's not, Heritage
18 New Zealand I'm sure would agree, that would be a clear no. But if you are
19 replacing it [inaudible] we come across most of the term in the setting of a heritage
20 building and we don't as a rule try to knock down Category 1 heritage buildings. If
21 the development, in whatever way, enhances the values of that site, that does come
22 into thinking. Desperately trying to think of an example off the top of my head.

23 **Ms Gepp:** Can you think of an example where it's involving destruction rather than
24 an enhancement, because that will be akin to what we've got here.

25 **Dr Woods:** I can't think of a specific example.

26 **Ms Gepp:** Those are my questions. I can ask if anyone else has comments?

27 **Mr Muir:** Yes.

28 **Ms Gepp:** Thank you. So I actually asked three questions there.

29 **Mr Muir:** Did any of the other experts have any comments on that, on those
30 observations? No. Thank you, Ms Gepp. Ms Williams, did you have any cross-
31 examination?

32 **Ms Williams:** Yes.

33 **Mr Muir:** Thank you.

34 **Ms Williams:** Thank you, Mr Muir. Yes, I do have just a couple of matters to put.

1 **CROSS-EXAMINATION BY MS WILLIAMS:**

2 **Ms Williams:** And I will start with you, Dr Woods. Do you agree that when thinking
3 about compensation, that when thinking about potential compensation going
4 forward, what you need to also understand to assess what's required for
5 compensation is the values that are being lost. And keeping that in mind, turning
6 to the proposed biodiversity and heritage enhancement fund, currently that just kind
7 of puts everything into the pot in terms of biodiversity values and heritage values.
8 Do you think that's appropriate?

9 **Dr Woods:** I think in the context that the covenant covers both those things. Having
10 a joint fund is appropriate and obviously the best project to fund from that would
11 be one that helps with both. That's the ideal. I don't know how you would
12 [inaudible] but again [inaudible] DoC needs and how we can improve the – I see
13 the best [inaudible] improving other parts of the covenant and the reserve.

14 **Ms Williams:** I'll just check in with the other experts. Do any of the other experts have
15 any comments on those matters. So firstly, having an understanding of the values
16 when determining what's appropriate for compensation?

17 **Dr Schmidt:** Yes, it's understanding the values that are being lost as you're
18 compensating for. Yeah. And a pot of money is never a good idea for that thing,
19 because what happens is if you just say to someone here's a pot of money, you can
20 potentially create conflict with the group you're giving it to. What are their
21 priorities, you know. If they're not a really well funded organisation they'll be
22 struggling to do that. And you're the one creating the loss and we have to bring it
23 back. So what are the values being lost? And it's your project base is one of the
24 options for that.

25 **Ms Williams:** Dr Jennings?

26 **Dr Jennings:** Yes, I think the values being lost absolutely should be considered. I'm
27 not an economist. I don't know how much money should be involved in any of that.
28 But it seems like the fundamental starting point to me.

29 **Ms Williams:** Ms Clifford?

30 **Ms Clifford:** Yes. I would agree that values should be considered, but I also think that
31 when you consider compensation, you consider the fact that those heritage sites that
32 you are compensating for, you're not really compensating for them. Once those
33 have been destroyed, they're gone. They don't regenerate. So your compensation
34 is then contributing to other heritage sites or other value of the values that you're
35 destroying.

36 **Ms Williams:** Mr Sole? Sorry, Mr Sole, you're on mute.

37 **Mr Sole:** I agree with the other comments. And I mean, I think we've got an
38 example where the Otago Goldfields Heritage Trust has come onside with the

1 mining company, and one could suggest the sponsorship of the mining company
2 has affected the Otago Goldfields Heritage Trust decision making.

3 **Ms Williams:** Moving on to and actually following on from that comment that you
4 made, Ms Clifford, do you agree that there's potentially a distinction between
5 biodiversity, which potentially can be restored and enhanced, and what we're
6 talking about here in terms of heritage?

7 **Ms Clifford:** Yes. I would say there is because ultimately it's the site that it's lost.
8 You can't rebuild an archaeological site or replace it in the landscape. So whatever
9 mitigation you're going to have is only going to be based on presenting information
10 to the public of something that's now lost. It's no longer got those values of
11 interpretation or ability to access.

12 **Ms Sweetman:** Can I jump in? Sorry to interrupt. We did talk to the landscape architects
13 about this yesterday, about whether the ecological concepts of offsetting and
14 compensation can actually apply to heritage. We know they can apply to ecology,
15 because we have an EPS on indigenous biodiversity that tells us that. Is offsetting
16 and compensation in the heritage lexicon?

17 **Dr Woods:** [inaudible] Where you put that as archaeologists is using words in ways
18 that they probably shouldn't be used. We talk a lot about mitigation but it's not true
19 mitigation. Offsetting I think.

20 **Dr Schmidt:** [inaudible] in terms of biodiversity because you can potentially relocate
21 something like a species or something like a bird, like kakapo for example, takahe,
22 but you can't with heritage. You can't compensate for the loss. It's gone.

23 **Mr Muir:** Is that strictly true. Let's just assume that you had two adjoining sites,
24 one in private ownership and not subject to any conservation covenant, and an
25 adjoining site subject to conservation covenant, where development was anticipated
26 and loss of archaeological sites would ensue. And you happen to own both of them,
27 albeit in separate titles. And you offered a conservation covenant over your
28 adjoining property with attendant rights of public access to archaeological sites on
29 that property not previously accessible to the public. Surely that would be regarded
30 as an appropriate offset. Dr Schmidt?

31 **Dr Schmidt:** Possibly, yeah.

32 **Mr Muir:** So in theory, offsets can occur. It's just that one is probably struggling
33 to find on the ground, real examples of where that would work?

34 **Dr Schmidt:** Yeah. That's the nature of heritage, as you can appreciate.

35 **Mr Muir:** Any other comment on that?

36 **Dr Woods:** Yes, I think it's also, going back to the question as well, it's important
37 that, yes, we cannot compensate for those individual sites that are lost. But in this
38 context we are talking about Bendigo heritage landscape as a whole. So if you

1 sacrifice those sites in the Rise and Shine but then you identify at risk sites in other
2 parts of the heritage landscape, it does almost fall into that compensation offsetting.
3 And Dr Schmidt has produced a really wonderful table of essential project-based
4 mitigations that does equal sites that are going to be removed under this proposal
5 and then identified sites within the landscape, some a little bit further away, that it
6 would be appropriate to invest – maybe “appropriate” is not the right word. But
7 that was how you would treat like for like and if it’s within the same landscape,
8 we’re all in agreement that that is the bubble that you live in.

9 **Dr Schmidt:** Just to clarify. That was just an example of a type of compensation if
10 there was absolutely no choice on this earth that something was being lost.

11 **Dr Jennings:** Yeah, I would say, considering the whole, just to use an analogy, you’ve
12 got a house and you smash some windows in it, you’re not going to appreciate your
13 house as much. So like you’ve got a whole, you know, part of a considered whole
14 and you know, somebody comes and puts some windows in your front yard and
15 said that's, you know, that's your compensation. It’s not really going to achieve that
16 same outcome. You’re always going to have a lack of windows.

17 **Mr Muir:** With compensation but inadequate.

18 **Dr Jennings:** Yeah. The original is always going to be diminished, regardless of what
19 the compensation or mitigation is.

20 **Ms Sweetman:** Mr Sole, did you have anything you wanted to add then?

21 **Mr Sole:** No.

22 **Ms Sweetman:** And I interrupted you. Do you have anything further?

23 **Ms Williams:** No, thank you, Ms Sweetman, I think you have probably taken up where
24 I was going.

25 **Mr Muir:** Ms Russell, you didn't have any cross-examination on this point?

26 **Ms Russell:** No, not at all, sir.

27 **Mr Muir:** Thank you. Mr Leckie?

28 **Mr Leckie:** Thank you, sir. Just a few minor questions for Dr Schmidt again.

29 **CROSS-EXAMINATION BY MR LECKIE:**

30 **Mr Leckie:** I just want to pick up on a point, Dr Schmidt, in an exchange around who
31 the proposed covenant would be in favour of, one of your responses was that you
32 had no idea what would be covenanted. I just wanted to test with you, are you
33 aware of Condition 118 in a District Council set of conditions regarding the
34 proposed covenant?

35 **Dr Schmidt:** Can you remind me?

1 **Mr Leckie:** Yeah, if I just put to you propositions within that condition. So that
2 condition defines the four areas of land that the covenant will apply to the mine
3 regeneration site, the Ardgour restoration area, the two sanctuaries and the DDF,
4 and then mapped within the condition. So you'd agree that provides the
5 geographical extent for certainty - - -

6 **Dr Schmidt:** Oh yes, and the ones that haven't been surveyed yet for heritage values.

7 **Mr Leckie:** So they're the geographical areas referred to in the conditions. You'd
8 agree that they provide that certainty of geographical extent?

9 **Dr Schmidt:** Oh yeah. If you've got something on a map.

10 **Mr Leckie:** And then that same condition, it has, it goes on to list environmental
11 objectives – or sorry, environmental outcomes to be specified in the covenant. And
12 there's four of those and one includes the protection of archaeological and heritage
13 sites. So you'd accept that that means one of the environmental outcomes of the
14 covenant would be to protect those archaeological and heritage sites?

15 **Dr Schmidt:** Yes, okay, yep.

16 **Mr Leckie:** And you accept that gives by geographical certainty and also certainty as
17 to what is to be protected?

18 **Dr Schmidt:** Okay.

19 **Mr Leckie:** So that my last questions just relate to the table that my friend was just
20 exploring with you at the back of your evidence. So it's right on the back page, I
21 think it's Annexure 8 maybe. And I acknowledge your answer to a question earlier
22 that it was just an example of potential projects. I found it very, very helpful. In
23 terms of your suggested or your projects you give as examples, am I right that they
24 all sit on Crown owned land?

25 **Dr Schmidt:** Yeah, they do.

26 **Mr Leckie:** And they're all within the Central Otago district?

27 **Dr Schmidt:** No.

28 **Mr Leckie:** Are they all within the Otago District?

29 **Dr Schmidt:** Yeah, they are [?] and QLDC.

30 **Mr Leckie:** And you're aware, because there's been some exchange already, around
31 the proposal for the fund. A million dollar per annum fund for heritage and
32 ecological cases. Where you've given, again very helpfully, indicative costings of
33 those projects, you'd agree that they would all fall within the available budget of
34 that fund over the course of 10 years?

35 **Dr Schmidt:** Yeah, if you added them up, yeah. And that's if the fund was targeted
36 mostly towards heritage. Because they're just, for example, they're not specific
37 costs. Remember I'm trying to take it from experience with other projects. And of

1 course you get blow-outs on projects. You always add your 10%. But you find that
2 with heritage projects, once you start at some you can't stop, and with the additional
3 cost because it will then compromise the place. So you need more funds. Hence
4 why the project base is always the best approach.

5 **Mr Leckie:** And you'd agree, just taking that point a step further, given these are on
6 DoC lands, so there's presumably no issue of DoC approval, that the key hurdle to
7 these projects is really the availability of the funds, isn't it. The money is there.
8 There would presumably be support within DoC for the projects?

9 **Dr Schmidt:** Yeah, yeah.

10 **Mr Leckie:** Am I right that there's also a Regional Heritage Plan in existence that lists
11 further projects?

12 **Dr Schmidt:** Yeah, there is. We've got a four year plan and it more or less prioritises
13 – I work with each district which heritage places we need to focus on, and they're
14 usually the most urgent ones.

15 **Mr Leckie:** And is there an Otago specific part of that plan?

16 **Dr Schmidt:** Yeah, there is, yep.

17 **Mr Leckie:** So, acknowledging you don't support the fund, but would you agree that
18 those projects would be other examples of projects that are in need of funding to
19 enable those heritage protections?

20 **Dr Schmidt:** In need of funding but they're not all – I got the impression that this fund
21 is directed towards goldfields heritage per se but that plan is not just goldfield sites.
22 It's the ones that are the most urgent. So there's a whole variety.

23 **Mr Leckie:** And in your expert opinion, do you think there would be benefit in the
24 fund being targeted to the goldfield heritage or heritage more generally in the Otago
25 district?

26 **Dr Schmidt:** There's enough there to target particular goldfield sites, yeah. And there's
27 enough sites, sorry, of goldfield heritage to target.

28 **Mr Leckie:** Thank you, that's been helpful. No further questions, sir.

29 **Mr Muir:** Thank you, Mr Leckie. Are there any questions from the panel arising
30 out of the cross-examination?

31 **QUESTIONS FROM THE PANEL:**

32 **Mr Kensington:** Mr Leckie, can you just remind me of that condition that you took the
33 witness to. I'm just struggling to find it myself. It would be helpful if you could
34 point me in that direction. 118.

35 **Mr Leckie:** 118 was my recollection in the Central Otago set.

36 **Ms Sweetman:** It's the April conditions.

1 **Mr Leckie:** It's, yeah, a tracked change that was added to the original.

2 **Mr Kensington:** Okay. That's where I've gone wrong. I'll look at that version. Thank
3 you.

4 **Mr Leckie:** I'm probably referencing the April numbering and you might be looking
5 at the as lodged numbering.

6 **Mr Kensington:** Yeah, I am. That's my mistake. Thank you.

7 **Ms Sweetman:** Dr Schmidt, there's been reference to that table which is attached to your
8 evidence. Which particular piece of evidence do we need to look at to find that
9 table?

10 **Mr Leckie:** Appendix 8 in, what's it called, [inaudible] 20th of March.

11 **Ms Sweetman:** That's your section 51 comment?

12 **Dr Schmidt:** Yes.

13 **?:** It's attached – all the expert statements are attached to the DoC section 51 covering
14 report and there's a separate attachment for Dr Schmidt's.

15 **Ms Sweetman:** I've got Appendix H.

16 **Dr Schmidt:** Oh, I think they locked them all together.

17 **Mr Leckie:** Commissioner Sweetman, if my friend's comfortable, I might be able to
18 help here, because I had the same issue last night. What's labelled on the EPA
19 website as Appendix H is actually all of Dr Schmidt's appendices. So the file name
20 is Appendix H.

21 **Ms Sweetman:** And it's all of the appendices attached to Dr Schmidt's evidence. So this
22 is the table?

23 **Dr Schmidt:** Yeah, that's it and before that there's a rundown how compensation is
24 usually approached.

25 **Ms Sweetman:** If someone can usefully find that or send the link to Daya that can then
26 be sent to us, would be incredibly helpful. Thank you.

27 **Mr Muir:** It would be. Any other matter? No.

28 **Mr Sole:** I have a question.

29 **Mr Muir:** Yes, Mr Sole.

30 **Mr Sole:** Can I ask a question of Mr Leckie?

31 **Mr Muir:** That's a little unorthodox. What did you want to ask Mr Leckie and I will
32 see whether we go down that track or not?

33 **Mr Sole:** It was just clarification about public access with the new proposed
34 covenant and whether there was any management conditions with the new
35 covenant.

1 **Mr Muir:** Why don't I ask Mr Leckie that very question.

2 **Mr Leckie:** I have had some witnesses try to ask me questions in the past. Just for
3 context, the panel has issued an RFI on this access point. I don't have the filing
4 date. It will either be this Friday or next week. There's a few different dates. This
5 Friday. Ms Turner has helped me. So there's some more details provided in that
6 RFI, which I won't jump ahead of, around that, that access question.

7 **Mr Sole:** And management.

8 **Mr Leckie:** Can you ask the question again in the context of management separate to
9 the access.

10 **Mr Sole:** You talk about protection. I was just questioning whether there was an
11 ongoing management component?

12 **Mr Muir:** The conditions and management plans are currently being revised with a
13 view to provision by the 22nd of June. Does that clear the point, Mr Leckie?

14 **Mr Leckie:** Yes, that's a helpful steer, thank you, sir.

15 **Mr Muir:** Thank you. On that slightly unorthodox note, we'll take the lunch
16 adjournment. Could I suggest we come back just as close to half past one as you
17 conveniently can, just a little shorter than we'd anticipated, and we will get on with
18 the business.

19 **Hearing adjourned**
20 **Hearing resumed**

21 **TOPIC 4: CORRECT TESTS**

22 **Mr Muir:** The next topic is identified, somewhat intimidatingly, as correct tests,
23 clause 4, Schedule 8, of the Act. STEM as a shorthand for. Dr Woods?

24 **Dr Woods:** So Heritage New Zealand have acknowledged that they have not applied
25 the full test in coming to their recommendation to decline the authority. But I, in
26 my expert opinion I consider that the current proposal achieves the matters set out
27 in clause 4, Schedule 8 of the Fast-Track Act. And nestled in that is the New
28 Zealand exercise of trying to find the relevant points but maybe to get a better one
29 for Slipper to start actually. But in terms of the authority application, practicable
30 steps to reduce the impact of the proposal to archaeological sites have been
31 undertaken, which has resulted in the protection of 12 recorded archaeological sites,
32 and provisions for protection of all sites close to but outside of the disturbance
33 footprint have been outlined. The blast one needs shoring up but the [?] there. And
34 the previous granting of authority to 2025574 for the intensive drilling in the Rise
35 and Shine working would suggest that Heritage New Zealand applied the test there
36 and does not consider that that soft site complex is significant enough to oppose its
37 destruction as per policy 1.31 and 2.25 of Heritage New Zealand statements of

1 general policy. And Heritage New Zealand has acknowledged this area holds
2 amongst the highest archaeological values within the OTP footprint.

3 So this current proposal that we're talking about today offers a greater level of
4 mitigation and [?] in the incorrect sense that the archaeology way and offsetting
5 than that proposed for the previous authority to reflect that greater impact.

6 **Mr Muir:** Dr Woods, just trying to summarise that. Is the first point that you take
7 that effectively Heritage New Zealand should not be recommending to this panel a
8 result in relation to this part of the application, other than if it had considered all of
9 the components of clause 4(1), and that having deliberately – and I'm not criticising
10 it – but having excluded 4(1)(a) from its consideration, at most it should have been
11 addressing us on 4(1)(b) and (c), which it can do so, whatever terms it regards as
12 appropriate, but that as a matter of form, it should not have gone further than that.

13 **Dr Woods:** Yes. I think because we're working under the Fast-Track legislation, if
14 you cannot you should be at least making an attempt to apply those tests as much
15 as you can, or seek advice from them. If you're not considering them, that's not the
16 full [inaudible].

17 **Mr Muir:** To the extent that it is relevant, I don't think that whether HNZ makes a
18 recommendation to us which is not informed by all considerations or whether it
19 brings to us the information it thinks is appropriate and doesn't make
20 recommendations is not going to make a lot of practical difference with where we
21 end up. But to the extent that the applicant considers otherwise – perhaps I could
22 just go straight to Ms Clifford on that issue.

23 **Ms Clifford:** Sure. Yes, we have presented that we did not consider clause 4, schedule
24 8A. That's because I undertook an assessment within my area of expertise. So my
25 area of expertise is in considering the section 59(1)(a) matters and our statements
26 of general policy. So that's what I've advised, well, added as my test and a
27 recommendation to the panel. My understanding is that those matters are for the
28 panel to consider and I'm just providing my expert opinion on them.

29 **Mr Muir:** We could essentially take your evidence without the – in the old days we
30 used to call this the ultimate issue – it's not really the way we look at it these days.
31 But if we took all of your evidence but we effectively removed from it a final
32 recommendation, on the basis that you had not consider – you cannot, and were not
33 qualified to, and did not consider it your role to, express any view about how the
34 purposes of the Act intersected with this, then we'd all be happy, wouldn't we?

35 **Ms Clifford:** I'm not sure I see it that - -

36 **Mr Muir:** Could I rephrase it. An objection seems to be taken, and I can, as panel
37 Chair, understand, the basis of the objection, which is that HNZ has expressed a
38 final view in the form of a “you should not grant”. The subject matter of that is
39 assessment of an application for archaeological authority under clause 4 of schedule

1 8. In order to answer whether we should grant an application for archaeological
2 authority, we are required to consider the statutory matters that are set out in section
3 8(1)(a), and we are required, by virtue of the Act, to give greatest weight to the
4 purposes of the Act and we are required to consider also the very matters on which
5 your evidence is premised, discussion around section 59(1)(a) primarily in your
6 case. So it may be considered simply a matter of form, there does seem to be some
7 substance in saying that HNZ should have confined itself, or could have confined
8 itself, to saying we regard these matters under section 59(1)(a) as having
9 particularly high value in the context of this proposed development but we leave it
10 for the panel, as you are in fact doing, leave it to the panel to make the overall
11 assessment required under 4, and not made that final recommendation. That's I
12 think the point that's being taken, isn't it?

13 **Ms Clifford:** Yes. I think, I'm just going to flick back because what we get when we're
14 requested to provide our advice by the convenor panel see it, a direction to make a
15 recommendation. I'll double check that. I'm just reading through the direction we
16 received from the panel convenor, which was how [inaudible] in the relevant
17 sections which we've just covered off, whether we agree or wish to amplify the
18 experts' planning assessment. Then file a report. Each agency may confirm [?]
19 advice previously given and each agency is to respond to the draft conditions
20 planned.

21 **Mr Muir:** I don't any of us to make a meal out of this because we're focused on the
22 underlying evidence, so I got to the point of saying, should we receive your
23 evidence on the basis of all of the opinion evidence that you give in relation to the
24 importance of the matters under section 59(1)(a), particularly as they relate to this
25 site. But insofar as you make an overall recommendation on the ultimate issue,
26 whether we should grant the archaeological authority or not, you acknowledge that
27 you can't assist beyond what you've identified under paragraph 41(a) – 41(b) and
28 (c) – and leave it to basically make the overall assessment. Is that right?

29 **Ms Clifford:** Yes, I'm just working the references.

30 **Mr Muir:** You've got the Act directly in front of you?

31 **Ms Clifford:** No, I haven't, sorry. So the matters, so (b) and (d), are the matters that I
32 considered. (c) is for a minor effects authority, so that would be – this is not a minor
33 effect.

34 **Mr Muir:** That's correct, yes. So just coming back to the point, I hope we can just
35 basically clear it away on this basis. Evidence addresses comprehensively HNZ's
36 perspective the matters in 4(1)(b) and (c), to the extent that they are relevant,
37 primarily (b).

38 **Ms Clifford:** Yes, but then (d). So it's our statements of general policy and the section
39 59(1)(a) matters. (b)'s a different matter.

1 **Mr Muir:** You don't purport to consider purposes of the Act. Could you consider
2 that beyond your remit and not a matter within your experience and a matter
3 properly for the panel. And in that context, your evidence is advanced under the
4 sections that you have specifically addressed and HNZ leaves it to the panel to make
5 the final assessment. Therefore any recommendation that we not grant an
6 archaeological authority must be considered in that light?

7 **Ms Clifford:** Yes.

8 **Mr Muir:** Is that fair?

9 **Ms Clifford:** Yep. Sorry, can I say something. I don't want to give evidence but it's a
10 little bit circular in the Fast-Track Approvals Act itself, because Heritage New
11 Zealand is directed to prepare a report under 51(2)(d). And then 51(2)(d) says
12 prepare that in accordance with clause 3, which states, make a recommendation to
13 grant with conditions or decline. So it's clause 4 that sets out what the panel must
14 consider. So for our purposes, for Heritage New Zealand's purposes, it provides a
15 report within its remit, as administering agency of the Heritage New Zealand
16 Pouhere Taonga Act.

17 **Mr Muir:** I think that point is very well made. Does any counsel consider that
18 there's anything substantive here that we have to deal with. Does it change any of
19 the substance?

20 **Mr Leckie:** I think I'd put down a cross on this, sir, and I don't need to take it any
21 further from the applicant's perspective.

22 **Mr Muir:** Right. Ms Clifford has appropriately acknowledged that the assessment
23 that she has conducted has not had reference to the purposes of the Act and nor is
24 she qualified to. Believe me, Ms Clifford, you don't want to go there! Is there
25 anything more then in this topic that we need to explore. Dr Woods, your
26 observations weren't confined to that point alone?

27 **Dr Woods:** Yeah, yeah. We disagree with that decision. So the link back to Heritage
28 New Zealand in their decision links back to a certain set of policies and matters
29 within the Heritage New Zealand Pouhere Taonga Act. As per policy 2.23(a) of
30 their statement of general policy, they say no effort has been made to reduce the
31 impact on the sites. Whereas we have taken practical, practicable, steps that
32 included relocation of the infrastructure away from Rise and Shine Valley and
33 protection of everything outside the disturbance footprint. So we're basically being
34 really clear-cut that the archaeological authority application is restricted to those
35 sites within the footprint and in effect everything outside there we're protecting.
36 [inaudible].

37 There's the consent area, then the uplift area, but the archaeological authority is
38 limited just to that. And yeah, there's the other point they make is, that Heritage
39 New Zealand makes, which policy is it, for policy 1.31 and 2.25 that states general

1 policy, basically they have a remit to protect and oppose efforts to modify or destroy
2 sites that they deem of sufficient significance. They should be protected at all costs.
3 Paraphrasing [inaudible] but the fact that we have already got this existing
4 archaeological authority for the majority of that Rise and Shine footprint that is
5 proposed to be impacted by this authority, and that is the area, the complex of
6 highest value. If we apply that test to this application, it's conflicting. So they've
7 already granted authority saying it's okay to modify and remove most of that site
8 previously but not it's no longer.

9 **Mr Muir:** That's not an issue that goes to the test, or the correctness of the test. It's
10 really an application of the test. Ms Clifford?

11 **Ms Clifford:** I've just scribbled down some notes. The first one is the recorded
12 archaeological sites that are avoided and sit outside. I guess we're using mixed
13 terminology here. We've got an idea of protection because we're not affecting it,
14 whereas protection and avoidance really comes into play when you make a
15 conscious decision to avoid a site, rather than you're just not affecting it. Sorry. I
16 just want it clear. The other part is the 12 recorded archaeological sites that are
17 avoided in the Rise and Shine. [inaudible] actively are avoiding and you put that
18 and you say that's very clear and it's clear in the archaeological authority. The 12
19 additional sites, that doesn't seem to be here and it's not clear in the archaeological
20 authority application [inaudible]. That's what we do our assessment on. Is the
21 information presented to us. So not having that information presented to us, it
22 means we can't [inaudible].

23 The existing authority, I guess with that we've got – the site complex has got three
24 actionative sites. We assessed that application under the same matters and came to
25 the conclusion that there was enough of that site complex that remained to capture
26 those values filled. With this application we're talking about the remainder of those
27 sites, plus additional high value sites. So it's not just the same site context again.
28 It's a bigger, larger, landscape. So we're not just factoring in the Rise and Shine,
29 our factoring involved different site complexes as well. So it's a different
30 application with higher values.

31 **Mr Muir:** Did any other of the experts wish to contribute to this discussion,
32 probably confined to Dr Woods and Ms Clifford. I just changed the order round a
33 little bit. Ms Russell, has that issue been addressed fairly now. Is there any issue
34 that arises out of the way the panel has explored that issue that you wanted to pick
35 up on? No. Back to the panel, if I may. Any questions arising out of that? No.
36 Okay. I think we're all quite clear about that. Any other cross-examination. Ms
37 Gepp? No. Mr Leckie? No. Good. Thank you.

38 **TOPIC 5: BLASTING, VIBRATION AND DUST**

39 **Mr Muir:** We've had the addition of dust. Someone will need to explain to me the
40 context in which dust has been added. I presume just dust contamination of

1 archaeological sites in the immediate area. The issue of blasting and vibration and
2 potential – the way in which that might potentially compromise archaeological sites
3 was of significant interest to the panel, and Dr Woods, would you lead off the
4 discussion about that please?

5 **Dr Woods:** So I'll start by acknowledging that future work does need to be
6 undertaken to assess the potential impacts of blasting and vibration on heritage
7 items around the disturbance footprint. However, the noise, vibration, joint witness
8 statement, and John Farrow's March 2026 memo on effects to heritage from
9 blasting both outline that there is a clear potential pathway for protection of the
10 sites. So what we really need, we need to tie in the archaeological heritage
11 management plan to that. I think they put the abbreviation in the joint witness
12 statement but didn't spell it out. Because it's the blasting and noise and vibration
13 management plan. Yeah, BNVMP. So that needs to be produced for that, I'm not
14 an acoustics expert. My vague understanding is they need to do some test blasts to
15 actually measure how it works in practice. But from my perspective that can still
16 happen without impacts to heritage sites, and needs to happen, before we could even
17 apply for an authority to modify those.

18 **Mr Muir:** Right. So, with my unerring eye on the facts that we are statutorily
19 required to produce a decision by the 29th of October, and this is a matter which
20 could have significant implications for conditioning or management plans, what are
21 we, as a panel, to do about it. There is an RFI out at the moment, yes. Right. So
22 is the position that you don't want to pre-empt the RFI, the response to the RFI, at
23 the moment?

24 **Dr Woods:** Not in detail but I will make it clear that there is currently, yeah, a clear
25 pathway for not having to include those sites in the archaeological authority. But
26 there will be mechanisms to protect them.

27 **Mr Muir:** Right. It's a little bit difficult for us then to interrogate this issue further
28 today, isn't it?

29 **Dr Woods:** Yes.

30 **Mr Muir:** Right. Other experts? Dr Schmidt?

31 **Dr Schmidt:** Yeah, the reports, (a), come too late for effective protection from blasting
32 vibration. I've noticed in a report here. The two sites shown are the most solid
33 sites you'll probably get concrete base. The, from my experience of dealing with
34 things like passing vibration and things that affect heritage sites, the areas should
35 have been visited by a heritage engineer. And then you assess what the possibility
36 could be of these, let's say hut sites, collapsing with the blast and the vibration.
37 Then you, the heritage consultant, work with that engineer and you figure out a plan
38 of what should be done. Then that's what you produce. So, for example, we did
39 work with the Lindus Hotel. We got a heritage engineer there and we looked at the
40 chimney and said what's going to happen there if we don't – and they said, well, in

1 an earthquake that could fall down or something. So we had to reinforce those.
2 And the same with the Christchurch earthquake. You need to go and assess a
3 building for it it's earthquake prone or not so you can inform on how to do it.
4 So yeah, it's just the information was lacking. They should have had someone up
5 there with the heritage consultant engineer to go around and identify those really at
6 risk sites. Because you don't want to find out after they've collapsed. Some of
7 these features are really, they need a bit of work. Some of the hut chimneys there,
8 some of the walks. You don't want to wait till it happens. One more recent example.
9 There was a cemetery I gave advice on recently and it was to do with vibration of
10 the cars going past. So they got the stone mason up there with the engineer and
11 they sandbagged all around and they're going to repair it first before they were
12 going to get the work done on it.

13 **Mr Muir:** Dr Jennings, do you have any comment?

14 **Dr Jennings:** Yeah, I'm not sure I agree with the idea of leaving it out of an authority.
15 I think by leaving it out of an authority, then they're not being assessed for their
16 value at all. And there is – the argument to say that you're having your authority
17 there indicates that they can be destroyed, I don't think that holds water. I think
18 you can have it there as a precaution in case damage that can't be controllable
19 occurs. So I think that, you know, drawing a 500 metre buffer around the pit areas,
20 which was proposed in the original Marshall Day memo, indicates that that could
21 capture at least an additional 23 sites, including more now that Mr Sole's recorded
22 additional sites. So I would think, and I don't want to put words in Heritage New
23 Zealand's mouth, but if I was approaching this myself as a consultant, I would
24 include those sites as potentially affected and assess their values and include them
25 in the archaeological authority.

26 **Mr Muir:** Ms Clifford?

27 **Ms Clifford:** I think it's quite hard to address this matter, particularly with an RFI. I'm
28 sorry, I don't know the exact – do you have it in front of you? I've just been trying
29 to find it, the exact question and the effect. The effects from blasting. I'll talk a
30 standard process here, right. If we've got a potential effect for blasting what we
31 would see is you'd normally assess it in the assessment and then you would say,
32 you know, these could be affected but these are the mitigation measures we've put
33 in place to make sure that this will not be affected. At the moment we haven't got
34 an understanding of potential effects. We've got no ability to understand what
35 could potentially happen to these heritage sites and the archaeological sites. In
36 particular because a large number of them are above ground and so they could be
37 affected by it and we've not got that addressed. So it makes the process of making
38 any recommendations about archaeological authorities really difficult because we
39 can't really conceptually understand it.

1 I'm just going to read the RFI kind of quickly. Yeah. So that would address that
2 idea of what would the effects be and that's what we get out of that RFI. Then we
3 have to have a further conversation to understand can those effects be mitigated. If
4 they can't, then they result in the modification or destruction of heritage sites. It
5 doesn't have to be the whole building falls down. There's modifications that can
6 take place. Then there would need to be another archaeological authority. So we're
7 kind of, yeah, hand tied by not having that information in front of us really to make
8 further comment on archaeological authority requirement.

9 **Mr Sole:** So yeah, just trying to find that RFI. But yeah, I share the concerns of
10 the other expert witnesses, in terms of vibration. And certainly in other
11 archaeological assessments and authorities we've used additional support or
12 bracing with vibration-prone buildings prior to any earthworks happening. So yeah,
13 there's a precedence to taking pre-emptive measures.

14 **Mr Muir:** A direct question to Mr Leckie. Mr Leckie, I premised the discussion of
15 item 5 by saying it is a matter that is of significance and importance to the panel.
16 An RFI has been issued and will be responded to, I think it is this Friday or shortly
17 thereafter, but the response to the RFI will not be based on any blast testing because
18 it hasn't yet been conducted. Where there is an evidence deficiency in relation to
19 any application, the routes that are available to the panel are to issue an RFI to see
20 whether it can be satisfied. If it can't be satisfied, then essentially the panel should
21 work on a reasonably cautious basis about the likelihood and consequences of the
22 outcome, in this case damage to other archaeological sites. How do you propose,
23 Mr Leckie, that we deal with this issue, in the time we now have available?

24 **Mr Leckie:** Yes, I understand the question. I'd start by saying I am conscious to not
25 pre-empt as well the outcome of the RFI, because that will likely guide partially the
26 answer to your question, and also because I don't, it's still out with the relevant
27 experts so I can't speak to that yet. So to me there's really two aspects here. There's
28 what are the effects and do they trigger the need for this particular approval. I think
29 that RFI question's important to guide that answer. I think - - -

30 **Mr Muir:** That's one of the questions that's raised. Is a further approval necessarily
31 and is there any facility for you to parasitically add that on to the existing
32 application. I doubt it.

33 **Ms Sweetman:** And yeah, if not, then what.

34 **Mr Muir:** Yes, then what.

35 **Mr Leckie:** On that scope point, if I use an RMA term, I mean the application is for
36 an activity, not an approval at this stage. So I think there is room – this is a
37 hypothetical response, depending on what the answer to the RFI is. But
38 hypothetically, I say to you as a panel, there's room for different approvals to be
39 added through the process, provided the activity has been applied for through the
40 FTA. So I don't think you're necessarily bound by the particular approvals that

1 were included in the original application. I think that's an important part of the
2 response, in that you could create approvals or add concessions or whatever they
3 may be through the FTA process [inaudible].

4 **Mr Muir:** We need to because it's got the ring of being a small legal grenade that
5 we don't want going off approximate to decision making.

6 **Mr Leckie:** Completely understand, sir. I feel the same way. So, I'll give that some
7 more thought but that's my submission on that point, that there is room within the
8 scope of the application for actual approvals to be added or changed. But I can
9 address that further - - -

10 **Ms Sweetman:** And then the implication, if things are added, in terms of our process.

11 **Mr Leckie:** Yes, as a process type question.

12 **Mr Muir:** Is there any utility in contemplating for example remotely reconvening
13 this hearing once the RFI answer is in. We don't at this stage – you may not even
14 know yet Mr Leckie – what the response to the RFI is going to be. You've got
15 technical experts, they will be geotechnical people no doubt, who are informing you
16 on this. And it may well be that it's a highly technical issue as to, I don't know,
17 reverberation rates or whatever it might be.

18 **Mr Leckie:** It's very technical, and that's why I'm struggling to land a fixed suggested
19 pathway until I have the information for the RFI. But absolutely, would be the
20 opportunity for you to reconvene remotely and/or invite comment or legal
21 submission on the point. So there are avenues there for this to be explored further.

22 **Mr Muir:** And it might be quite a hybrid group that was reconvened, involving
23 geotechnical people as well as heritage people on that, possibly?

24 **Mr Leckie:** Yes. And there's influences from both. Both could be important I
25 suspect.

26 **Mr Muir:** Is your advice to the panel that this issue number 5 – your submission to
27 the panel – that really we cannot any more usefully explore this issue today?

28 **Mr Leckie:** That's my submission, sir. I think we need the response to the RFI, both
29 to inform ourselves but also the other parties and then to best help the panel. I don't
30 think we can really take the point much further today.

31 **Mr Muir:** We can of course issue RFIs on receipt of your response to other parties.

32 **Mr Leckie:** Yes.

33 **Mr Muir:** And it may be that we do that or that we can simply invite response by
34 way of memoranda or in this context we might even invite a response by way of
35 additional evidence.

1 **Mr Leckie:** Yes, all those are available opportunities and there is – while I appreciate
2 timing is always tight – there is time, as I see it, for those steps to take place
3 following the receipt of that initial 17 June RFI.

4 **Mr Muir:** So your submission is essentially that we park this issue and that we
5 engage with the parties, on receipt of the RFI, as to – on receipt of the answer to the
6 RFI – as to how we move forward on it appropriately?

7 **Mr Leckie:** Yes, that's right. As to what it means for you as a panel and how we best
8 get the various inputs from other parties and the experts, to that response. That's
9 my submission.

10 **Mr Muir:** Ms Gepp, do you have any view about that?

11 **Ms Gepp:** Sir, there's just two points I would like to make. I do need to record that
12 it is really concerning that this information about blasting and its potential impacts
13 has come to light so late in the piece and that this wasn't a centrepiece of the
14 archaeological assessment back when it was first being written. All this can
15 inevitably do, if there is a way to process-wise progress this, is to make all the
16 parties incur more cost and have more time pressure put on them because of that
17 upcoming decision date that keeps changing.

18 **Mr Muir:** In fairness, possibly that is a comment that could – I mean, there's been
19 an awful lot exchanged already and it really – it was a side wind from the panel's
20 perspective. We weren't expecting it. Perhaps we should have thought about it,
21 about an RFI earlier, but we didn't until we saw that it emerged from the expert
22 conferencing. But it really seems to have been something that no one has thought
23 about up until however many weeks ago, two weeks ago.

24 **Ms Gepp:** I disagree, sir. Because while the panel formally picked it up in an RFI,
25 the applicant identified the impacts from blasting back in March and there hasn't
26 been any proactive attempt to then assess what the impacts are that flow on from
27 that blasting memorandum of 3 March that the applicant produced. So it shouldn't
28 be for the panel to have to issue an RFI - - -

29 **Mr Muir:** The document in March, are you referring to - - -

30 **Ms Gepp:** The applicant produced a blasting memorandum on the 3rd of March.

31 **Mr Muir:** A blasting memorandum?

32 **Ms Gepp:** Yes. So then it was raised in comments, that there were additional effects
33 on heritage that hadn't been assessed. But it's taken the panel's RFI that actually
34 gets some traction on this issue. And that shouldn't be the way that it is. Having
35 said that, we are where we are. I have my doubts about the ability to simply add an
36 archaeological authority at this very late stage of the process but perhaps we'll park
37 that issue for – I would like the ability to respond, if that is where we end up.

1 The other point I would make is just this issue isn't only relevant to the
2 archaeological authority. The resource consents that are required that are
3 discretionary activities or non-complying activities are all able to take into account
4 the effects of blasting on historic heritage. Protection of historic heritage is a matter
5 of national importance under the Resource Management Act, under the provisions
6 that are directly relevant to your fast-track decision. So this is not just whether it
7 needs another archaeological authority, this is also how are these effects factored
8 into the experts' assessments across all of the authorities where this issue is
9 relevant.

10 **Mr Muir:** What about at this stage. Let's just assume that when the, for the
11 purposes of argument, when the response to the RFI comes in, fully informed by
12 the applicant's expert evidence, they say, yes, undoubtedly an issue appropriately
13 raised but we consider there is no realistic prospect of damage to archaeological
14 sites as a result of the type, method, placement, et cetera, of explosives in the
15 development of the mine. So then what do we do with that. Because that might be
16 a proposition that other parties wish to test.

17 **Ms Gepp:** I expect it would be and I think the more likely hypothetical, I think that
18 the blasting reporting's already identified that there are risks but that there may be
19 mitigation that can address those risks. So it's not a question of there isn't a
20 potential impact, it's just there's an impact that can be mitigated through bunding
21 or some other methods. So I don't think it's likely we're going to get an RFI
22 response that says no effect at all. But yes, I think other parties will want to
23 comment.

24 **Mr Muir:** Insofar as the proposed mitigation measures which may then ultimately
25 feed into the revised conditions and management plans that we are anticipating, that
26 of itself might be something that other parties wish to explore in a context other
27 than the statutory opportunity to consider conditions at the end of the process were
28 we to grant the application. Just to back up on this. The extent to which negative
29 impacts can be appropriately be conditioned away is the essential part of our
30 primary decision making under section 85.

31 **Ms Gepp:** Absolutely.

32 **Mr Muir:** So it's in some ways unhelpful for us to look at the appropriateness of
33 conditions at the very end of the process after we have made a decision which in
34 some ways might have to be premised on the effectiveness of the condition. You
35 understand the problem?

36 **Ms Gepp:** Yes.

37 **Mr Muir:** And certainly I think from the panel's perspective, on something as
38 important as potential damage to other archaeological sites from blasting, we would
39 probably want to know as early as possible what the position of other parties were

1 in relation to proposed mitigation measures. Could you help me, or Ms Williams
2 help me, as to how the panel might approach that?

3 **Ms Clifford:** It's difficult to say without seeing the RFI response because I can say that
4 my client would want to comment on that. But it may be a multi-disciplinary
5 comment beyond even noise, vibration, geotech and heritage because it may, for
6 example, have different ecological impacts by building bunds. It may have
7 different landscape impacts. So there may be other flow-on effects of the
8 mitigation. I don't know what the mitigation's going to be but there may be other
9 flow-on effects that need to be considered. So it might be best to have a brief period
10 of time to consider that RFI response and then perhaps convene a - - -

11 **Mr Muir:** A conference.

12 **Ms Clifford:** And with a direction perhaps to the parties to have a chat beforehand and
13 see what they can sort out between them. Not that they need direction, I'm sure.

14 **Dr Jennings:** Sure, we can have a conversation.

15 **Mr Muir:** Ms Sweetman will have an answer. She always does. Very good. Then
16 formally, in terms of the hearing today – yes? Mr Sole, just before we close out in
17 a way that will put into the record this issue number 5, you wanted to talk about the
18 dust?

19 **Mr Sole:** Yes. I'm struggling to see where that's managed or mitigated. And I
20 know it was raised by Heritage New Zealand and reading through their material it
21 appears that it's unresolved to them as well. So I was just seeking clarity on whether
22 it has been managed in terms of, especially in terms of the haul road below the
23 residences of the alluvial mining, the Rise and Shine alluvial mining syndicate.
24 They are very close to the road.

25 **Mr Muir:** Ms Woods, the applicant's [?] is extensive dust mitigation measures
26 which have been otherwise discussed to different fora. Have you been privy to
27 those discussions and the outcomes of them?

28 **Ms Woods:** Yes. And the discussions are included at page 168 of the heritage
29 assessment. That references the air quality management plan and basically lists the
30 relevant attempts to or measures to mitigate effects of dust and other airborne
31 contaminants. So, for example, the whole roads will be regularly graded,
32 [inaudible] within 50 kilometres per hour, reducing to 20 kilometres per hour in any
33 identified dust-prone section. A practical thing for that could be speed limits around
34 heritage sites too. But the dust is a big issue, not just for heritage obviously, in this
35 kind of thing. So the efforts to mitigate that kind of cover off the effects to a lot of
36 the heritage. And we're also proposing the annual condition that inspections of
37 sites within 22 metres of the footprint. And in that, if they are covered in dust,
38 threshold for dust, that we would then flat that dust is an issue for this site and put
39 measures in place to reduce it.

1 **Mr Muir:** Any other expert wish to comment on the issue of dust? Coming back to
2 you, Mr Sole, does that address your inquiry?

3 **Mr Sole:** To a point. I just sort of feel we should be avoiding the dust. If we do
4 monitoring and find we've got dust, you know, we haven't done any precautionary
5 mitigation to avoid it. I mean, I'm just very concerned and cognisant that - - -

6 **Mr Muir:** That may not be an accurate statement of what MGL proposes, in that it
7 has, in other contexts, developed extensive dust mitigation strategies which will
8 inform conditions and management plans. So insofar as obviously dust is sort of a
9 major concern to local residents and others.

10 **Mr Sole:** I mean, my concern is that the archaeological, the heritage fabric, is right
11 beside these things, and we're in a, you know, a low of rainfall, very dust prevalent.
12 It's a semi-arid climate. I just think – I don't think there's enough – we're not
13 precautionary enough.

14 **Mr Muir:** You would like to see significant emphasis in the context of the – to the
15 extent the conditions and management plans are currently being recalibrated, you'd
16 like particular emphasis on the circumstances on mitigation of dust in relation to
17 archaeological sites, given their proximity to area of dust generation?

18 **Mr Sole:** Yes.

19 **Mr Muir:** I'm sure that's been noted by the applicant. Is there anything else that
20 needs to be addressed on that subject by anyone? Right. I've sort of lost track of
21 where I'm at. Mr Leckie, this overall issue, any cross-examination of any expert?

22 **Mr Leckie:** No, not on this overall topic. No, I have no further questions.

23 **Mr Muir:** Have we exhausted all tendered cross-examination on this topic on this
24 side of the room?

25 **Ms Clifford:** Technically willow control doesn't quite come within blasting and
26 vibration but I just wanted to note that a similar arises with respect to the – with
27 respect to blasting as with respect to the willow issue, where again the experts have
28 said a heritage assessment would be required and this would be subject to a separate
29 archaeological authority application. So we've got another outstanding application
30 and assessment there. And then we've got sites within the Bendigo Sanctuary area,
31 so within the fenced sanctuary, where all experts agree that an assessment of the
32 sanctuary area and the extent of the site and the effects on site G41256 needs to be
33 undertaken. So it's a similar issue of when is that going to happen. It fits in our
34 items 5 and 6 [overspeaking].

35 **Mr Muir:** I simply record for the purposes of the hearing today that Issue 5, blasting
36 and vibration, has been considered to the extent the parties are currently able. That
37 there is an outstanding RFI which is to be imminently answered, that Mr Leckie,
38 quite understandably, cannot yet further inform us as to the likely content of the
39 response. That the response would inform, significantly inform, particularly the

1 mitigation measures around potential effects of blasting on archaeological, or
2 heritage sites, and that to that end, upon consideration of the response to the RFI,
3 the panel will confer and advise the parties as to what, if any, future steps it
4 considers necessary to interrogate that issue, which may include a conference
5 between counsel, a request for memoranda and submissions from counsel, or a
6 reconvened hearing which might include experts other than those present today to
7 address that issue discretely. Such hearing to be remotely conducted. Does that
8 fairly state the position?

9 **Mr Leckie:** Yes, thank you, sir.

10 **Ms Clifford:** Yes.

11 **Mr Muir:** Very good. That, according to the agenda, concludes our hearing today.
12 But I just give an opportunity to the experts. Is there any other issue that you have
13 thought of as the day has developed that we have not properly traversed? No. Then
14 I declare this part of the hearing closed. Could I thank again, as I did yesterday,
15 counsel for the very confined and appropriate way in which they have approached
16 the subject of cross-examination, which has facilitated somewhat earlier a stop
17 today than yesterday. And in particular thanks to all the experts. Mr Sole, to you
18 included for your presentations today. I think it could be fairly said that the panel
19 is enormously impressed by the quality of expert evidence that has been called by
20 all parties in relation to this application thus far. And you have all adhered carefully
21 to your professional obligations in that respect, and I thank you for the courteous,
22 respectful and considerate way in which you have dealt among yourselves and with
23 the panel. Thank you.

24 We will next convene tomorrow afternoon at what will now be 3 o'clock and not 2
25 o'clock to hear from Ms McArthur who is unavailable for the following week, and
26 I will notify all counsel if any of the others had an interest in participation in that
27 probably relatively brief hearing tomorrow afternoon of that change in the
28 programme. We next convene for the behemoth that is ecology.

29

30 **Hearing adjourned**