
MINUTE 54 OF THE EXPERT PANEL
SH8 realignment, Ardgour Rise and access to the CIT Battery
Bendigo-Ophir Gold Project
[FTAA-2507-1089]
[30 September 2026]

[1] This Minute follows the exchange of legal submissions and is directed to MGL. It addresses Panel concerns in relation to the SH8 realignment, Ardgour Rise and access to the CIT Battery.

SH8 and Ardgour Rise

[2] The Panel is not satisfied with the position set out in paragraphs [42] to [45] of MGL's reply legal submission dated 28 September 2026.

[3] At the outset, it does not address that part of the SH8 realignment in the Conservation Estate which it is intended to vest in CODC (as opposed to NZTA). Vesting of the former, unlike the latter, raises the potential that rights of first refusal under Part 9 of the Ngāi Tahu Claims Settlement Act 1998 (NTCSA) are activated. The same problem arises in respect of any vesting in favour of CODC of that part of Ardgour Rise that passes through the Conservation Estate. Both of these were raised by DOC in its feedback on conditions.

[4] In neither case does the Panel take "comfort" from a proposal that public vehicular access be the subject of a concession in the nature of an easement for a 30-year term, leaving vesting arrangements to be pursued during the intervening period with no certainty of outcome. This is of – particular relevance if Part 9 of the NTCSA is triggered by the proposed vesting of land as road. The Panel's legal

advice is that the proposed concession would not engage Schedule 6 cl 7(3) (c) of the FTAA, and neither would any grant in excess of 50 years, as the concession is in the nature of an easement, not lease¹. However, the Panel cannot condition an approval on a basis which requires DOC to grant a further concession. Long-term certainty of vehicular access is, the Panel suggests, a necessity, absent which it would have to carry a significant adverse impact through to its s 85 (3) analysis.

[5] The Panel therefore invites MGL to urgently consider how the necessary level of certainty is to be achieved. If a satisfactory response is not possible within two working days, it further invites MGL to request a processing pause until it is able to do so.

CIT Battery Access

[6] The application seeks a 25-year concession under the Conservation Act to construct, maintain and eventually decommission a day visitor track to enable public access to the CIT Battery during the operational mine period.

[7] The proposed alignment of the track is depicted in Attachment E to the Land Use Consent. The Panel understands that there is an apparent consensus between all experts that the proposed alignment needs considerable refinement and there is no current agreement as to route. Draft Condition 47 on the Land Use Consent therefore proposes what is effectively a secondary approval process for the route. The draft Concession proposes to license the entire area.

[8] The Panel's legal advice is that it cannot approve an access route in an as yet undetermined location, and cannot defer the identification of that route to a secondary approval process.

[9] The Panel's further advice is that the deferral of the route alignment is not

¹ Refer Conservation Act 1987 s2 definition of concession which differentiates between leases, licenses, permits and easements

an outcome anticipated by the FTAA having regard, particularly, to Schedule 6 clauses 3 (b) (application to include GPS coordinates) and 3 (c) (requirement for information as to whether the proposed activity could reasonably be undertaken in another location where the potential effects would be significantly less).

[10] To that end, the Panel's legal advice is that a new concession would be necessary if the final route alignment ultimately agreed by DOC was materially different to that proposed, that proposed Condition 47 cannot be imposed and that the Concession needs to be clear as to location.

[11] That then leaves the Panel with the unsatisfactory position that it is being asked to grant a Concession for a route in respect of which the stakeholders, and most importantly, DOC, are not ad idem.

[12] Again therefore, the Panel records that, unless agreement as to route is reached, it will be required to carry a further significant adverse impact through to its s 85 (3) analysis.

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

Hon Matthew Muir KC

Bendigo-Ophir Gold Project Expert Panel Chair