

**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 at Cromwell
Date:	30 April 2026
Panel:	Hon Matthew Muir KC (Chair) Gina Sweetman Phillip Barry Roger MacGibbon Tim Mulliner Peter Kensington Douglas Johnson
Individual presenter:	Peter Rough
Schoolhouse Terrace Services Co:	Hayden Johnston
Individual presenter:	Di Lucas
Otago Conservation Board	Dean Fraser
Individual presenter:	Holger Reinecke
Individual presenter:	Ross Hanan
Individual presenter:	Bridget Irving, Trevathan Family
The Canyon Vineyard Ltd:	Hayden Johnston

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1 **The hearing commenced at 9.00 am**

2 **Mr Muir:** The schedule that is published indicates that there's a 15 minute period
3 allowed to the panel. I don't intend to reintroduce the Panel Members. There is
4 a reduced presence from the public today and I made full introductions yesterday,
5 which are available online.

6 So at this point I'm going to invite Mr Peter Rough, who is the next person to
7 submit and will give evidence. Mr Rough. Now Mr Rough, just before you get
8 underway, the evidence and submissions that you give and those also of Ms Di
9 Lucas, who I understand is your sister-in-law, correct?

10 **Mr Rough:** That's correct.

11 **Mr Muir:** Yes. Raise a particular issue in that you both of you give evidence in several
12 capacities, as individuals personally affected, and as ostensibly expert witnesses.
13 There is, of course, no issue in respect of your and Ms Lucas's professional
14 qualifications. The issue that arises is as to whether you have the necessary
15 independence to give expert evidence as such.

16 The panel notes that in respect of both your and Ms Lucas's evidence that you
17 have stated that you regard yourselves as bound and we are adopting, by analogy,
18 the relevant rules of the Environment Court in this respect. The position of the
19 panel is that subject to any comments from Mr Leckie, counsel for the applicant,
20 the panel would be minded to accept and receive your evidence, both personal and
21 professional evidence. The weight that it ultimately gives to the professional
22 component or expert component of your evidence will be a matter for the panel
23 ultimately to reflect on, should any of the issues that you raise be critical in its
24 ultimate assessment.

25 There is one issue that I would just like to clear with you now. I know that
26 Ms Lucas intends, or wishes to participate in expert conferencing. Do you
27 likewise intend – wish to do that Mr Rough?

28 **Mr Rough:** Yes, I have made that request or suggest - - -

29 **Mr Muir:** You have made that request?

30 **Mr Rough:** Made myself available, should that be accorded.

31 **Mr Muir:** Right, and you would like to participate in expert conferencing?

32 **Mr Rough:** Yes, yes, I would.

33 **Mr Muir:** Right. That's fine. So firstly I'm just going to, in so far as the receipt of
34 your evidence here today is concerned, and that of Ms Lucas, as I've indicated the
35 provisional view of the panel is that that evidence be received and we hear it today.

36 **Mr Rough:** Thank you.

37 **Mr Muir:** That I will seek Mr Leckie's input on that, in one moment. In so far as
38 participation by yourself or Ms Lucas – is Ms Lucas present here already? No,
39 she's not.

40 **Mr Rough:** She's not.

1 **Mr Muir:** I'll have to repeat this when she comes. In so far as participation in expert
2 conferences is concerned, I have prepared a draft minute in relation to expert
3 conferencing, which will issue very shortly, probably later today or tomorrow, and
4 in that minute we, the panel invites further comment from both yourself and
5 Ms Lucas as to the basis of participation in the expert conferencing, and invites
6 comment from the applicant in that respect. So, your appearance on the schedules
7 of expert participants in conferencing is provisional at this stage pending further
8 submission in that respect, and the panel's decision on that.

9 However, so far as the hearing today is concerned, it's my preference that your
10 evidence be received on the basis that its weight be a matter ultimately for the
11 panel and I just invite Mr Leckie to indicate whether he has any objection to that
12 proposed course?

13 **Mr Leckie:** Yes, thank you sir. Hopefully our microphone's working?

14 **Mr Muir:** Not yet.

15 **Mr Leckie:** Is it working now?

16 **Mr Muir:** That's a lot better.

17 **Mr Leckie:** Thank you sir. There's a couple of points there, but for the first one being
18 the receipt of the evidence today - - -

19 **Mr Muir:** Yes.

20 **Mr Leckie:** There's no objection from my perspective with what you've proposed. I
21 do have some concerns regarding the ability for submitters to also provide
22 evidence and, in compliance with the Environment Court Code of Conduct - - -

23 **Mr Muir:** Yes.

24 **Mr Leckie:** - - - but I don't – I don't see that as a reason for you not to accept the
25 evidence and submission today.

26 **Mr Muir:** We raise, in my draft minute, I raise that issue. There is some provisional
27 concern, but not such that we suggest that the evidence be excluded. But
28 participation in the expert conferencing is a different issue.

29 **Mr Leckie:** It is, and I will – it sounds like you'll be issuing a minute on that and I can
30 respond. But just to signal that I do have some concerns about that participation,
31 given the dual role of commentator and expert. But for today, no objection - - -

32 **Mr Muir:** Very good.

33 **Mr Leckie:** - - - to you receiving the evidence and submission.

34 **Mr Muir:** Thank you Mr Leckie. Thank you. That's exactly as I would've expected
35 the applicant to respond to it.

36 Thank you very much, Mr Rough.

1 **PETER ROUGH PRESENTS HIS SUBMISSIONS**

2 **Mr Rough:** Thank you. I'd just like to say that I have developed a familiarity with the
3 Bendigo area since about 1973, so over a period of 53 years. I hold diplomas in
4 Horticulture and Landscape Architecture, obtained from Lincoln College, which
5 is now Lincoln University, and I'm a life member of the New Zealand Institute of
6 Landscape Architects. I'm a semi-retired landscape architect and consultant to
7 Rough Milne Mitchell landscape architects and over the first approximately 20
8 years of my career I attained considerable experience in landscape design, site
9 planning and master planning, and over the last 30 years I've concentrated in
10 undertaking landscape and visual assessments in a wide range of projects,
11 including communication, marine farm, wind farm, hydroelectric power,
12 subdivision, mine and quarry projects.

13 I have peer reviewed other landscape architects' landscape and assessment work
14 on a range of projects including the Trans-Tasman Resources Seabed Mining
15 proposal in the South Taranaki Bight, and some of Oceania Golds' activities at its
16 Reefton and Macrae's operations.

17 My wife, Cheryl Lucas, who is also a submitter, and I reside in Lyttleton and own
18 a 3.5 hectare property which is located on the junction of Bendigo Loop Road and
19 Blue Mines Road. We acquired that land in 1997. It was formerly part of Bendigo
20 Station and was kept in my wife's family after her parents sold the station in 1979.
21 For a period in the 1860s our property was part of the former town of Bendigo and
22 was subdivided into 31 small lots, and we understand that remnants of a small
23 stone building on the property was a hotel during the township period.

24 Our property lies north, in the north or near the north-western corner of the mineral
25 prospecting permit held by Matakanui Gold. The eastern end of our property is
26 4.5 kilometres from the north-western end of the proposed process plant mine
27 infrastructure and 9.5 kilometres from the south-eastern end, that's the furthest
28 most point of the proposed tailings storage facility. Because of intervening
29 landforms, the principle components of the project that's in the Shepherd and Rise
30 and Shine Valleys will not be visible from our property.

31 At the time of my preparing my submission, time constraints led me to address in
32 the expert part of my submission just two areas of concern. These were the
33 landscape and visual effects during construction and operational stages of the
34 project, and more significantly for me I think, the enduring landscape and visual
35 effects of the project. So I briefly address the effects during construction and
36 operational stages of the project.

37 The application material, particularly the Boffa Miskell landscape and visual
38 effects assessment, describes industrial scale open pit gold mining operations,
39 including engineered landforms, terraced waste rock stacks, tailing storage
40 facilities and processing plant. These are large scale geometric human made
41 features that will visually dominate the landscape of the project area and
42 fundamentally alter its character. Other issues, of course, will be noise, dust, night
43 lighting and increased traffic.

1 It is my opinion that although progressive rehabilitation would occur over time,
2 the landscape would provide a mosaic of active and partially rehabilitated areas,
3 with the overall impression being one of an industrial landscape. And in this
4 context, the characterisation in the Boffa Miskell assessment of effects as
5 moderate adverse during the operational stages, does not fully reflect the extent to
6 which the project would temporarily establish an industrial landscape within an
7 area identified as an ONL, outstanding natural landscape in the operative Central
8 Otago District Plan, which has objectives and policies that seek to avoid, remedy
9 or mitigate adverse effects on landscape values, and to protect the natural
10 character, visual amenity and coherence of such landscapes.

11 Mr Chairman, I wish to clarify a point here. At para 23 in my original submission,
12 I included a quote from the Boffa Miskell assessment, which reads:

13 The overall effects on the Dunstan Mountain ONL are considered moderate
14 to adverse during the start-up and mining activity.

15 And it goes on to say that “on closure and following rehabilitation, effects would
16 reduce to low to moderate adverse as mitigation measures are established”.

17 But what I would like to say about that is that in making a conclusion about the
18 overall effects of the project on the whole of the Dunstan Mountains ONL is one
19 thing, but it ignores what I regard as very high adverse effects on the project area,
20 especially the Shepherds and Rise and Shine Valleys. It seems to me that Boffa
21 Miskell do not treat these valleys as independent ONL landscape units requiring
22 their own full landscape evaluation. Instead they assess them as parts of the wider
23 Dunstan Mountains ONL and focus on effects of specific project components on
24 natural character and visual amenity within these valleys.

25 Later in this presentation I will come back to what I regard as Boffa Miskell’s
26 preoccupation with overall effects on the Dunstan Mountains ONL rather than
27 more localised effects on the ONL.

28 Turning now to enduring post closure landscape and visual effects of the project.
29 Enduring landscape and visual effects give rise to my principle concerns regarding
30 the project because following closure, while buildings, plants and other overtly
31 industrial elements would be removed, the resulting project area landscape would
32 be permanently modified in ways that are fundamentally different from its existing
33 natural character.

34 The principal issue arising from the project is the enduring nature of landform
35 modification associated with large open pits, engineered landforms, the
36 engineered platform to accommodate the process plant, retained and capped
37 tailing storage facilities, and I would add, reconfigured drainage systems.

38 So turning to the large open pits. While it is proposed that the Come in Time pit
39 will be backfilled following extraction with the intention of achieving a landform
40 that blends with the surrounding terrain, the SOE pit will be back filled and then
41 covered by an engineered landform. The SRX pit and the Rise And Shine Pit will
42 not be backfilled. In the absence of backfilling the remaining pits will constitute
43 large artificial voids, features that are inconsistent with the natural landform

1 pattern of the area and be permanent elements of the landscape and introducing
2 lakes which are a new feature in that part of the area. Such features represent
3 significant adverse effects on landscape character.

4 Now when I first read that the Come in Time pit is proposed to be backfilled and
5 then a landform achieved that blends with the surrounding terrain, I thought, “well
6 that is good”. And when I read that the SOE pit is proposed to be backfilled I then
7 wondered why it is proposed be covered by an engineered landform rather than a
8 blended in landform like the Come in Time pit. And then when I read that the
9 SRX and the Rise and Shine pits are not proposed to be backfilled I wondered
10 why backfilling is going to be a selective and not a universal closure strategy.

11 From the application it seems that overburden is required for the tailing storage
12 facility embankment construction and large engineered landforms. Tailings are
13 explicitly directed to the central tailing storage facility in Shepherds Valley and
14 are not used to fill pits. However, it is my understanding that in pit tailing, disposal
15 is a common alternative but the project has chosen not to do that. The application
16 does not provide clear justification for the decision to not backfill the other larger
17 pits. In my opinion, given the scale of these excavations, this is a critical omission.
18 If the decision to not backfill is based on economic considerations, then this I think
19 should be explicitly stated and evaluated in the context of the resulting
20 environmental effects.

21 But perhaps the answer to what I have pondered about, leaving the two pits as
22 voids in the landscape, lies in the answer to my comment number 5 in the FTAA
23 response table on page 14. I’ll just refer you to that. There were 13 comments
24 made in response to my submission, and number 5 was that one about there was
25 no clear justification to not backfill the other large pits. If this is an economic
26 reason then this should perhaps have been evaluated. And the response to it is,
27 well part of the response is, backfilling presents an obstacle to possible extended
28 mining, for example, in response to increased commodity prices.

29 I could not find it articulated anywhere in the project application material that the
30 SRX and the Rise And Shine Pits would not be backfilled to allow future mining
31 in response to gold price increases. Given what I consider will be an enduring
32 significant adverse effects resulting from open pits, this seems to be a somewhat
33 surprising omission.

34 So addressing now the engineered landforms. My concern that the proposed use
35 of engineered landforms in place of more extensive backfilling of open pits will
36 result in a highly artificial and visually prominent landforms that are not
37 appropriately integrated with the existing character of the Shepherds Creek and
38 Rise and Shine Valleys. The proposal does not demonstrate that the landforms
39 will replicate the scale, form and coherence of the existing valley systems. Instead
40 they are likely to remain recognisably artificial features at the macro scale,
41 notwithstanding any surface irregularity or revegetation. And while the Come in
42 Time Pit is proposed to be backfilled and recontoured to integrate with the
43 surrounding terrain, that indicates that the backfilling is both feasible and capable
44 of delivering a more appropriate landscape outcome in certain locations.

1 However, the application does not provide a clear or consistent set of criteria for
2 why this approach is not applied more broadly across the site. In particular, there
3 is no comparative assessment of landscape and visual outcomes between full or
4 partial backfilling in proposed ELF approach. There is no transparent evaluation
5 of the extent to which increased backfilling could reverse adverse landscape
6 effects, and the reasons given for not backfilling out of the pits are framed in such
7 terms as not practicable or not necessary, without clear supporting analysis, and
8 appear to effect operational economic considerations rather than landscape
9 outcomes.

10 The Shepherds Creek and Rise and Shine Valleys have a distinct landform pattern
11 that will be fundamentally altered by the introduction of large scale engineered
12 landforms that do not reflect the underlying geomorphology. And even with
13 successful revegetation the underlying landform shapes will remain substantially
14 modified and will continue to be perceived as unnatural.

15 Just addressing the process plant platform. The Boffa Miskell assessment treats
16 the process plant area as a major, long duration industrial feature. The plant will
17 sit on a large flat engineered terrace involving cut and fill earthworks for long
18 term stability for heavy infrastructure. Once processing equipment has been
19 removed and salvaged or demolished and taken off the site, the remaining
20 engineered platform will result in a fundamentally altered landform that will
21 persist well beyond the life of mining. And while the applicant relies on
22 rehabilitation and revegetation to mitigate effects, this does not equate to
23 restoration of the natural landform or landscape character. The process plant
24 platform will result in a permanent transformation of part of the landscape,
25 contrary to the intent of landscape protection provisions.

26 Addressing the tailings storage facility, the TSF. For the proposed TSF, the
27 proposed key feature that will remain permanent after mine closure. It will result
28 in an enduring modification of the natural landform of the character of Shepherds
29 Valley through the introduction of a large, engineered valley fill landform that
30 does not currently exist. While rehabilitation and revegetation may reduce its
31 visual contrast over time, the resulting landform will remain discernibly artificial
32 in its geometry, surface expression and origin, and will not replicate the
33 complexity or legibility of the pre-existing natural landscape.

34 And Mr Chairman, in para 23 of my submission, under the heading of “Tailing
35 Storage Facility” and it’s on page 10, I wrote a sentence that is reproduced in my
36 para 17 in my overview statement. That is, when considered alongside the open
37 pits and engineered landforms, the TSF will contribute to a cumulative and
38 enduring transformation of the landscape from a natural outstanding one to a
39 modified, naturalised landscape. In this context, the proposal does not avoid
40 adverse effects on the key attributes of the ONL, but instead relies on mitigation,
41 which is insufficient to address the permanent loss of natural landform character
42 and integrity.

43 Look, I now realise that I have perhaps not been clear, as in my both statements,
44 written statements, not being clear in describing the extent of what I consider to

1 be an enduring adverse effects of various aspects of the proposal, such as the
2 tailing storage facility, the large open pits, the process plant platform, and
3 engineered landforms, in particular. These features will give rise to adverse
4 effects on the central part of the Dunstan Mountains ONLs, specifically in the
5 Shepherd and Rise and Shine Valleys, which we really viewed from the proposed
6 Ardgour Rise Road. And I note that that existing Thomsons Gorge Road and the
7 proposed Ardgour Rise Road will be the only public road that crosses the Dunstan
8 Range.

9 In the FTAA response table, the applicant's response to my comments numbered
10 4, 8, 9, 10, 11 and 12, have a common theme, in that when rebutting what I have
11 stated concerning enduring adverse effects of some of the project's elements,
12 while the response accepts that and says that open pits, for example, will have
13 enduring adverse effects, it goes on to say that they will remain localised and that
14 the wider Dunstan Mountains ONL retains it's broader coherent skyline and
15 representative values. It is my opinion that that may be so, but it is the localised
16 enduring adverse effects that I find unacceptable. I accept that I may not have
17 made that point clear, and my conclusions in my submission and in the overview
18 statement should be read with perhaps that in mind.

19 And my conclusion is that, in my opinion, the proposed mine closure outcomes
20 would result in a permanently modified landscape that while rehabilitated and
21 revegetated, if that indeed ends up being practicable, would remain fundamentally
22 different from the existing natural character of the Dunstan Mountains outstanding
23 natural landscape.

24 In particular, the creation of large open pits and large engineered landforms, the
25 substantial engineered terrace to accommodate process plant, the retained tailing
26 storage facility, the modified valley forms and reconfigured drainage systems
27 would introduce geomorphological features that are anthropogenic in origin and
28 not characteristic of the schist derived landforms that underpin the ONL's
29 identified values.

30 Although these features are intended to be stabilised and integrated through
31 contouring, re-contouring, and revegetation, their scale, form and spatial
32 arrangement would be enduring in the landscape, thereby diminishing the
33 coherence, naturalness and legibility of the underlying landform patterns.
34 Consequently, post-closure environment would represent a permanent
35 transformation rather than a restoration of the landscape, with adverse effects on
36 the integrity and experiential qualities of the ONL, particularly in terms of its
37 perceived naturalness and continuity of its landforms systems. Such effects are
38 not readily consistent with the intent of either the operative or proposed District
39 Plans' provisions relating to outstanding natural landscapes.

40 Also, considering the landscape effects that would arise from the project, it is my
41 opinion that it will not maintain the landscape values of the Bendigo Conservation
42 Covenant, or the area of that that is affected, or that is going to be removed, I
43 should say. And in particular, regarding stated outcomes for Thomsons Gorge, it

1 is my opinion that the project will not maintain the gorge area in its present state,
2 nor protect the landscape of the upper reaches of Rise and Shine Creek.

3 I have one final paragraph, and that is finally I consider the project raises broader
4 issues of cumulative effects and precedent. The Central Otago District Plan
5 recognises the need to protect outstanding natural landscapes from incremental
6 degradation over time. The acceptance of a large scale landform modification
7 associated with the extractive activity in an ONL, it would have enduring adverse
8 landscape and visual effects, has the potential to establish a precedent that could,
9 if repeated, erode the very values that underpin the ONL classification. Thank
10 you.

11 **Mr Muir:** Thank you Mr Rough. Could I perhaps start by just a couple of questions.
12 You're particularly critical of the decision on the part of the applicant not to infill
13 two of the pits, and no doubt the one that most concerns you is the Rise and Shine
14 pit because of its dimension. Realistically, the only source of material from which
15 the Rise and Shine pit could be infilled is that which is destined to the Shepherds
16 engineered landform. Were that landform not in place, would not the tailings
17 storage facility be an even more dominant landscape feature? Let's put it another
18 way, does not the Shepherds Creek engineered landform moderate and integrate
19 what is an absolutely essential part of the applicant's proposal, which is the
20 construction of a tailings storage facility?

21 **Mr Rough:** Yes. And I accept the reason why the engineered landform below the dam
22 has been put there, but it just seems such a very extremely artificial feature. And
23 well, as I said, the tailings in some situations I've understood can be put – have
24 been put into pits so that's a – but what I was surprised in reading the application
25 was that we're going to like – and I can understand the reason for putting the pits
26 where they are – was because that's where obviously the geologists have decided
27 the gold is. That's understandable. But then the material that's being – as I said
28 some pit – one pit is going to be – two pits are going to be backfilled, the others
29 aren't. But there's no, I was surprised that there was no sort of explanation as to
30 why they were doing what they're doing in terms of not backfilling, making these
31 engineered landforms. So you know, that raises, to me, raised the whole question
32 of why didn't they explain that, or and compare alternatives, and provide some
33 options.

34 Look, I understand there may be very good reasons why that, in this case, they
35 don't want to put the tailings into the pits as I understand they do in other mines,
36 and there may be a reason why they wanted to make that engineered landform
37 below the dam other than for visual reasons. Although I understood from the
38 Santana people that took Bridget Gilbert and me on a very good excursion of the
39 mine area, that the dam that is going to be built to contain the storage, the tailings,
40 could be a standalone facility. It's designed for a 1 in 10,000 year earthquake and
41 could be a standalone - - -

42 **Mr Muir:** Correct. It stands on its own feet in an engineering sense, that is the
43 applicant's position.

44 **Mr Rough:** Yes.

1 **Mr Muir:** So clearly, for those who have concerns about geological stability in the
2 area, its overall performance would seem, on a common sense perspective, to be
3 greatly enhanced by the introduction of the very substantial engineered landform
4 at its toe.

5 **Mr Rough:** Yes, I understand that.

6 **Mr Muir:** Thank you.

7 **Mr Kensington:** Good morning, Mr Rough. Thank you for your comments and
8 evidence which are very clear, and I don't have a lot of questions, other than, in
9 your experience with other projects, including you mentioned the Macraes Mine
10 that you have had involvement with, have you seen this type of infilling of pits
11 work and have been successful, and could this project be successful based on your
12 experience with other similar projects. And are they in outstanding natural
13 landscapes, those which you've had experience with?

14 **Mr Rough:** I haven't seen backfilling of pits in New Zealand. The only one I've seen
15 is in Powder Valley in Wyoming, in the United States, of where it's sort of a
16 rolling, agricultural landscape and they dig down about 150 metres, and extract
17 coal and then backfill. And its in there, in that part of the world there's a legal
18 requirement to backfill. Yeah.

19 I haven't been aware of it in New Zealand. But I'm aware that it does occur. The
20 only project I've been involved in where backfilling was proposed, and it went to
21 the Environment Court, it was a case of a coal mine inland from Westport. And
22 it was a Skyline excavation, open cast excavation for coal. But in that situation
23 the applicant was keen to completely put everything back, well what was left back,
24 and reshape the ridge line and to appear as natural as possible. And it was going
25 to be – we did a simulation of that. It was going to be a natural looking ridgeline
26 very similar to what was there before and revegetated. But I haven't experience
27 with tailings and pits, no.

28 **Mr Kensington:** So, if the applicant is able to achieve what you are suggesting, you
29 would be comfortable that that is a good option, particularly with all the
30 rehabilitation that's being proposed, you know, and ecological restoration work.
31 If the landform was able to be sorted out satisfactorily, you'd be comfortable with
32 it professionally, or personally?

33 **Mr Rough:** Sorry could you say that again? The – I'd be comfortable with what
34 exactly?

35 **Mr Kensington:** With the outcome, I guess, professionally and personally.

36 **Mr Rough:** If?

37 **Mr Kensington:** If the applicant was able to do what you are suggesting, filling in and
38 reshaping?

39 **Mr Rough:** Yes. Yes, I think, I mean that would, as I said, my concerns are that the
40 integrity of that portion of the wider Dunstan Mountains ONL is going to be
41 severely compromised by what's left after this project has finished. And if it could

1 be restored in a better way, I think that certainly that could be acceptable, yes.
2 Definitely.

3 **Ms Sweetman:** Good morning Mr Rough.

4 **Mr Rough:** Good morning.

5 **Ms Sweetman:** Should consent be granted for this work, as proposed, what is your view
6 as to whether the ONL classification for this specific part of the Dunstan ONL as
7 a whole, would that classification be able to be maintained, if the District Plan was
8 reviewed again?

9 **Mr Rough:** In terms of the whole range of the - - -

10 **Ms Sweetman:** No just this part?

11 **Mr Rough:** Oh yeah, that's something I certainly have pondered on, and I think if you
12 were starting from scratch and if the whole range hadn't been made an ONL
13 you're going to, looking into that, you would seriously question whether you
14 would include the two valleys in the ONL. If, it's, you know, in the state it's going
15 to end up in. So I'm not, yes, I'm not sure about that.

16 But I mean I think the ONL with the mine, the ONL status of the whole – the
17 greater part of the Dunstan Mountains would remain. But, I'm just saying that –
18 well I think the difference with the Boffa Miskell approach is that every time you
19 suggest something is going to have an adverse effect, the answer is “but it's not
20 going to affect the overall status of the Dunstan Mountains ONL”. But to me, it
21 is going to seriously affect the localised part that it's going to affect, and whether
22 or not that could be taken out of an ONL, I'm not sure. But I would suggest this
23 probably doesn't qualify to be ONL, won't qualify to be ONL.

24 **Ms Sweetman:** Thank you, Mr Rough. I think you've identified an area, well we've
25 identified an area for expert conferencing to occur on. No further questions from
26 me. Thank you for your time this morning.

27 **Mr Muir:** Mr Rough, from many perspectives in and around the area, and we had a
28 very useful and extensive site visit and of the general environment. From many
29 perspectives, particularly from the Pisa Range and adjacent areas, the ONL, of
30 which I'm aware of what the geographic sort of limitations of the ONL are, where
31 it starts and stops, but it reads inseparably from the larger landscape in which it
32 fits, much of which is highly modified and indeed not a natural landscape. At
33 least it wasn't in the early part of March, closing in on vintage as we were at that
34 stage. That read as a mosaic of pale green, white, and other nettings over large
35 parts of the foothills and the terraces of the Dunstan Range. Is that in any way
36 relevant to our assessment of the points that you make?

37 **Mr Rough:** Yes. I must say I have again pondered on the effects of the grape industry
38 in the way they cover their – they can be very prominent. And I guess – but they're
39 not an enduring effect. I think that's the main difference in what's going to be left
40 after the gold mining and what I've hopefully set out today, what I consider to be
41 very high adverse and enduring adverse effects in terms of the landforms, artificial

1 landforms and features that are going to be left in the Rise and Shine and the
2 Shepherds Valley.

3 And, having been involved in windfarm applications too, where people, some
4 people don't like windfarms. But one thing about them is that you can say that
5 they're not – they're not going to need be there forever. If you took the turbines
6 away there's nothing going to be seen apart from perhaps a part of the access
7 tracks that were formed to get the equipment on site.

8 **Mr Muir:** Yes.

9 **Mr Rough:** So I'm thinking there is a difference between the – and you can go down
10 other times of the year and not see those nets, you will see the grape vines of
11 course, and their posts, and vines and lines. But so I don't think it's in the same
12 category.

13 **Mr Johnson:** Thank you Mr Rough. Just as a clarification, a little bit of explanation,
14 because they're down-dip mines, the mines won't be available to backfill until
15 they're literally finished. So, to backfill them would actually extend the life of the
16 earthworks project. You'd have to pick up all the dirt and put it back in, and so
17 would extend the lifetime of the project considerably, if it was economically
18 viable. But the reason they're not backfilling is because they're actually mining
19 down. You'd be putting stuff where you're taking stuff out of them all the time.
20 And it wouldn't work. But if that was to require to backfill, the implication of
21 extension of the project quite considerably, let alone the economic implications?

22 **Mr Rough:** There would be economic considerations you say?

23 **Mr Johnson:** Well there's the economic considerations of double handling and triple
24 handling.

25 **Mr Rough:** Yes, I understand all that.

26 **Mr Johnson:** But, that would also mean that you wouldn't be able to backfill until
27 they'd literally finished mining.

28 **Mr Rough:** Yes.

29 **Mr Johnson:** And then you'd backfill and then if it takes five years to dig the hole,
30 it's going to take five years to fill the hole. So the whole project will extend from
31 11 years to, you know, earthworks projects will basically double. I'm just trying
32 to get my head around - - -

33 **Mr Rough:** Right. Well I mean I understand that the project, the actual mining is it a
34 17-year period, which is incredibly nanosecond, if you like, in terms of what it's
35 taken to form the natural valleys that are there. So, if it took longer, but to get a
36 better result, so be it, I would say.

37 **Mr Muir:** Your paradigm case therefore is the construction of a temporary tailing
38 storage facility, which will run possibly for 15 or whatever the active mining life,
39 at the conclusion of which that tailing storage facility by one mechanism or
40 another, forms the – is introduced into the Rise and Shine pit and then is topped

1 off with all of the material which is, in the interim, held in the Shepherds Creek
2 engineered landform, correct?

3 **Mr Rough:** Yes.

4 **Mr Muir:** Yes. Any other questions from the Panel? Thank you, very much indeed
5 Mr Rough.

6 **Mr Rough:** Thank you.

7 **Mr Muir:** Appreciate you coming and giving evidence today. Thank you.

8 Good morning Mr Johnston. I think that you appear wearing various hats today.
9 Well perhaps - - -

10 **Mr Johnston:** I do indeed.

11 **Mr Muir:** - - - none as the case may be.

12 **Mr Johnston:** Yes.

13 **Mr Muir:** So your – you will be speaking to us again later in the day in your capacity
14 as representative of The Canyon Vineyard, and are there – can we expect from
15 your two submissions a different perspective based on the particular
16 circumstances of each of the two companies whom you’re representing?

17 **Mr Johnston:** Yes, indeed.

18 **Mr Muir:** Yes. Right, very good. Well let’s then start with you in your capacity as, is
19 it a Director of the Schoolhouse Terrace Services Company?

20 **Mr Johnston:** It is.

21 **Mr Muir:** Right very good. Thank you Mr Johnston.

22 **HAYDEN JOHNSTON FOR THE SCHOOLHOUSE TERRACE SERVICES**
23 **COMPANY**

24 **Mr Johnston:** Thank you. Yeah, so I’ll stick to the points because, as you pointed out
25 you will hear from me twice today. So I submit here for The Schoolhouse Terrace
26 Services Company and our company we have shares, a scheme, with a pump and
27 a bore that’s located very close to the proposed bore field from the applicant. In
28 fact, that is the closest bore, and so we are – we are quite concerned by that
29 proximity.

30 So we hold the necessary consents from the Regional Council to irrigate 90
31 hectares of vineyards in Bendigo. We don’t have 90 hectares yet, but we have
32 land to plant out to expand to that number.

33 **Mr Muir:** That access is with the Ardgour Aquifer is it?

34 **Mr Johnston:** It’s actually the Bendigo Aquifer.

35 **Mr Muir:** The Bendigo?

36 **Mr Johnston:** Yeah.

37 **Mr Muir:** Right.

1 **Mr Johnston:** But they are interconnected.

2 **Mr Muir:** Yes.

3 **Mr Johnston:** So, you know, water is integral to growing wine in Central Otago. We
4 have such a dry climate here that without water we couldn't keep the vines alive
5 and let alone produce fruit. It's also essential for vineyards that are located in
6 frost prone areas, it's the most reliable method of frost protection. So we use
7 water to create a layer of, a continuous flow of water during a frost event, yeah,
8 overnight. And that's critical in the spring and the autumn, and nearing harvest to
9 hold onto the canopy. So it's as very critical resource, and you know it does
10 concern our directors and members that this is all very, very close to our
11 operations.

12 So the major concerns are the impact on the existing water rights and peak flows.
13 So we're concerned about the substantial volume of water that the applicant has
14 required. So they've reported around a hundred litres per second. Now when I
15 was first alerted to that we looked at the draw down rates listed in the Regional
16 Council for the bores that the applicant had drilled test bores. And I don't know
17 whether there was an error in the data or not, but two of those test bores in that
18 bore field had significant draw downs.

19 And so a draw down is the static water level, is the difference between the static
20 water level before you pump and after pumping it's the distance that the ground
21 level has dropped. And that draw down was very, very significant. Such that, we
22 are concerned that during that peak season, where we absolutely must have water
23 guaranteed in the hot summer days or we will be in trouble, and also during those
24 frost fighting events, such that our pump could be left dry. And if our pump is left
25 dry, well we could burn the motor out for a start, but more significantly because
26 we've replaced the motor, but we've run out of water. So this is a very real
27 concern for us.

28 And I think, you know, listening to the experts yesterday on water – and I'm
29 certainly not an expert on water – from the Regional Council, from the iwi, from
30 EDS, and Dr Morgan, the theme that I heard really clearly was that there is so
31 much that is unknown. There is so much that is unknown about what happens
32 underground, and there is so much that is untested. We're kind of just figuring
33 out, you know, there was a theme that I got that we're kind of just figuring this
34 out as we go. And, you know, that makes us incredibly nervous.

35 The other aspect is the recharge and the integrity of the water body. So the
36 recharge of the aquifer is in part fed by water running through and near the
37 proposed mine site. So this creates a two-fold risk. First, there's a high probability
38 of water picking up contaminants as it passes through a disturbed industrial site.
39 And the second is a risk that the mine physically disturbs the flow of the water so
40 we may not get sufficient water for replenishment.

41 The other point I make is that our vineyards are mostly organic. My own vineyard
42 is certified with BioGro and all of them are certified at the very least sustainable.
43 And just with the precious resource that water is in this region, we respect it, we

1 value it. The use for industrial purposes is not a sustainable use. So that concerns
2 us as well.

3 There's as risk of aquifer and river contamination. So the proximity of the aquifer
4 is an unacceptable environmental risk, and we are particularly concerned about
5 the potential for mine polluted waters to impact the Rise and Shine Creek, and the
6 creek runs via the Bendigo Creek through the wine growing area and eventually
7 into the Clutha Mata-Au.

8 And there's a cumulative environmental impact on future expansion, and the
9 applicant has stated that they plan to go on. I appreciate that your role is to assess
10 the application in front of you, but the applicant has clear intentions that this is
11 just the beginning. They have a very large footprint of exploration area. In fact,
12 just recently they've applied to expand that considerably into Cloudy Peak Station.
13 So from our business risk point of view we go, "well okay, this is what's before
14 us but this is the intention to go on".

15 I just wanted to talk of the impact on us, of the applicant's lack of experience.
16 Matakanui Gold has no history of operating a mine of this scale, and that lack of
17 experience concerns our members because it reduces our confidence that the
18 applicant will be capable of following all of the requirements of consent necessary
19 to protect our water supply in perpetuity. The applicant's failure to obtain the
20 necessary consents for their workshops on Bendigo Loop Road just below us, and
21 more recently for the tower they installed on the top of Battery Hill, really supports
22 our concerns that the company may not follow best practice all of the time for the
23 life of the project.

24 So the directors sought an opinion from a local mining consultant, Chris Goddard.
25 Mr Goddard highlights several areas and it's attached to my submission, where
26 the applicant's approach to mine safety and performance further reinforces our
27 concerns that they may not, they may lack the experience to manage the site
28 adequately.

29 I want to talk now about the end product that we produce, wine. There's a
30 reputational impact on the Bendigo brand. We proudly apply Bendigo to our wine
31 labels, and it adds a premium. It's regarded globally as a sign of quality. Our
32 shareholders rely on the 100 per cent pure image of Central Otago and New
33 Zealand to market our wine globally. And amongst our shareholders we operate
34 tasting rooms, and restaurants and supply across global locations.

35 **Mr Muir:** A certain irony in that your branding is based absolutely on the gold
36 industry, in the Bendigo, you know, the name was given for historical reasons
37 related to that industry.

38 **Mr Johnston:** And we celebrate that.

39 **Mr Muir:** Yes.

40 **Mr Johnston:** Yeah, that's a, you know, I'm from a goldmining family. My ancestors
41 were part of those pioneers of the gold mining times. But that is essentially
42 alluvial mining. It did not have the impact on the landscape that we are seeing
43 with this application. And it was 150 years ago. What we're left with is something

1 to celebrate. There are incredible ruins up there at Bendigo, the old miners'
2 cottages and we celebrate that. Part of, and I'll speak to this, this afternoon more,
3 but when we have visitors we take them up there because it's really cool. It's a
4 beautiful part of Bendigo.

5 You know the incompatibility and the scale of the proposal here it will
6 permanently damage the reputation of wines grown at Bendigo. And just to
7 illustrate that, one of our shareholders is Constellation Brands. It's a Fortune 500
8 company, the largest importer of beer in the US with revenues of US 9 billion.
9 They, talking with their viticulturalist, they perhaps don't mind me saying, but
10 their Bendigo vineyard has the highest cost of any of their vineyards in the world
11 to grow, and they persist because it's great wine and it adds value to what they're
12 offering globally.

13 And on Monday I'm hosting at the Canyon, which again I'll talk to this afternoon,
14 but I'm hosting – I'm raising it now because it ties in with Constellation Brands.
15 I'm hosting Kim Crawford, which is one of their brands. So they are bringing 20
16 of their distributors from Southern Glazers in the US. Now again on the US scale,
17 Southern Glazers is the world's biggest distributor of alcohol. They are almost
18 twice the size of Fonterra, US 26 billion is their turnover. And we have their top
19 sales people coming to Bendigo on Monday. You know so this is – I say that to
20 illustrate that we're not just talking about Bendigo. We're talking about a region
21 and the wine quality that resonates globally.

22 So just in summary there, and I will – there was a last minute supplementary
23 information I sent through last night, and I'll talk to that in a second, but so - - -

24 **Mr Muir:** I'm just conscious a little of our time, Mr Johnston.

25 **Mr Johnston:** Yeah.

26 **Mr Muir:** There's expectation that you conclude by 10.05 if you could.

27 **Mr Johnston:** Yes, okay. Yeah, so look just to summarise then, our view is that the
28 Fast-Track process should not come at the expense of existing consent holders,
29 especially with this vital water resource. And we – we just – we simply do not
30 believe this project is compatible with the current and future Bendigo based wine
31 industry. And we politely request that the panel decline the application.

32 Just turning to that supplementary information, so I just picked up yesterday there
33 were some questions around co-existence of the wine industry. So do you have a
34 copy of that? Thank you. So, there are some examples there which I think are
35 useful to look at, and so Napa Valley in California, so look, there are some mines
36 there that have operated, but they closed a long time ago, and significantly - - -

37 **Mr Muir:** Well the last of the major mines there closed in the early 2000s.

38 **Mr Johnston:** Yes, that's right.

39 **Mr Muir:** And that's McLaughlin.

40 **Mr Johnston:** Yes.

41 **Mr Muir:** And that's a huge mining operation, just north of Calistoga.

1 **Mr Johnston:** That's right, and but look that McLaughlin Mine has left a legacy. The
2 California State Mining and Geology Board has noted that no large open pit
3 metallic mine in California has been returned to the conditions contemplated by
4 the State's Mining Legislation. And significantly this mine was 40 kilometres
5 from the nearest wine producing subregion.

6 **Mr Muir:** With 20 as the crow flies from Calistoga.

7 **Mr Johnston:** Right. Okay. Yeah, fair call. I think, you know, the – so there's a
8 number of articles that I included in there of that tension, and we also discussed
9 Hunter Valley. And I've been through the Hunter Valley and the mining's not
10 visible from there. But what I think is really significant to talk about with the
11 Hunter Valley is coal mining and gold mining are very, very different. Coal
12 mining it's organic. You know, I would not be – would not be happy, I mean
13 there are similar issues with dust and light pollution and noise that are in common
14 with coal mining and open pit gold mining. But the toxicity, you're dealing with
15 an organic compound versus a heavy metal compound. So if I had my vineyard -
16 --

17 **Mr Muir:** Is it boron, is it that – what's the byproduct of coal mining that's of great
18 environmental concern. Someone on the panel?

19 **Member:** Boron, but there's lots of other things as well.

20 **Mr Johnston:** Yeah, but the point is, if my vineyard was covered in coal dust I
21 wouldn't be devastated. I'd be upset, but we'd just wash it off and it would form
22 part of the organic matter in the soil. If it was covered in arsenic, it's game over.

23 And I think, you know, the other point to make there is that in the Hunter Valley,
24 and in the Napa, they have major metropolitan cities that support the industries,
25 and they've been around for a very, very long time. Central Otago, we're a new
26 kid on the block and we rely, you know, there's only a million people in the whole
27 South Island. We don't have that big population base. So we rely on our
28 landscape, on our image of 100 per cent pure New Zealand reputation to bring the
29 people to us.

30 And the last point I made there is, and excuse my spelling error, is that GHD
31 Social Impact Assessment Report. So I just attached an email there and I
32 participated in that assessment, but I never received a copy. So I just reached out
33 to GHD to say, "hey do you mind sending that through please?" and they said,
34 "well we gave it to Santana in October last year, but you have to ask them". And
35 I know I'm not the first to ask that question. But, it just to me speaks to a lack of
36 transparency that, you know, we – myself and many others took a lot of time to
37 participate in that assessment and it hasn't been provided to us, or to – and it hasn't
38 been included in the submission. And I think it, you know, for the sake of
39 transparency, it really should be.

40 Thank you so much.

41 **Mr Muir:** Does the Panel have any questions of Mr Johnston? You'll get a second
42 opportunity this afternoon if you think of something.

1 **Mr Mulliner:** So going back to your initial points when you were talking about the
2 Bendigo Aquifer, so the applicant's provided a, I guess, Compliance and
3 Monitoring Schedule. If that schedule is adhered to, would that alleviate a lot of
4 your concerns in terms of potential contaminants?

5 **Mr Johnston:** Look it would add some comfort, but you know there's an element of
6 risk and we heard that yesterday, that can't be mitigated by a schedule. And, you
7 know, that just – our business is tough enough as it is, you know, without adding
8 extra worries and risks on about, because you know as I said at the start the water
9 is everything for us. There are many other wine regions where you're not even
10 allowed to irrigate. We have to. We can't sustain life in the vineyard without it.

11 **Mr Muir:** Any other points? Well thank you Mr Johnston, and we very much
12 appreciate your coming and giving your evidence, making your submissions
13 today. I know that you had some provisional concerns about the process. You
14 may not have been here yesterday morning when I spoke about the importance of
15 respectful receipt of opposing views, and I am delighted to say that that's exactly
16 the way these hearings have progressed, and I hope that you regard the
17 environment in which you have appeared as an appropriate one.

18 **Mr Johnston:** Absolutely. I have been following it online and I agree, and thank you
19 very much for that.

20 **Mr Muir:** Right. Very good. Thank you Mr Johnston. We'll hear again from you this
21 afternoon, in your capacity as the Director of the Canon Vineyard.

22 **Mr Johnston:** Thank you.

23 **Mr Muir:** Thank you. Ms Lucas. Yes good morning Ms Lucas, and welcome - - -

24 **Ms Lucas:** Good morning.

25 **Mr Muir:** - - - to this hearing. Just take a seat.

26 **Ms Lucas:** Thank you.

27 **Mr Muir:** I understand you weren't present earlier this morning when your brother-in-
28 law, Mr Rough gave - - -

29 **Ms Lucas:** No, I wasn't.

30 **Mr Muir:** - - - evidence.

31 **Ms Lucas:** I've just arrived sir.

32 **Mr Muir:** No, I absolutely understand that and there's no reason why you should've
33 been here any earlier. You were scheduled for 10.05 and we're precisely on
34 schedule. But because you weren't here when Mr Rough presented his evidence,
35 there's just a couple of issues, a couple of matters I need to repeat.

36 Your evidence is a combination both of personal statement/evidence and
37 ostensibly, and I don't mean that in any pejorative way, clearly you are a highly
38 qualified expert, but ostensibly expert evidence. You state in your evidence that
39 you are bound by the relevant, by analogy, Rules of Court of the Environment
40 Court.

1 We reviewed this morning, and I sought input from counsel for the applicant,
2 about the status of Mr Rough's evidence, which is in exactly the same category.
3 Unquestionably, like you, someone of significant expert experience and
4 undoubted credentials. The position which I advanced this morning, and invited
5 the consent of the applicant, was that your evidence be received. That is both the
6 personal and the "expert" evidence, that it be received, and that the weight that the
7 panel gives to the expert component of your evidence will be a matter for its
8 assessment, in due course, taking into account the fact that you have dual
9 capacities before this panel. So that matter is resolved, and I have the consent of
10 the applicant that all of your evidence be received as evidence in the proceeding.

11 You have also indicated, and Mr Rough likewise, that you would like to
12 participate in expert conferencing. We see that as a separate issue, and I have just,
13 within the last day or two, penned a draft minute which will issue no doubt within
14 the next day or so, relating to the basis upon which expert conferencing will take
15 place, setting out the various schedules of topics; some guidance from the panel
16 as to what we, on the panel, would like to see addressed in the expert conferencing;
17 the identities of experts; and as I've indicated, general topics.

18 You are included provisionally in that material, but I say provisionally because
19 the minute invites some further input from both yourself and Mr Rough before we
20 accept you as participants in the conferencing aspect of it. And, when we've had
21 that further information from you, we will invite a response from the applicant,
22 and then we will make a decision as to whether the invitation to expert
23 conferencing extends to yourself and Mr Rough, or whether your evidence, the
24 expert component of your evidence is received and considered by those who have
25 been empanelled for the conferencing, but that you do not participate.

26 So that's a live issue at the moment, and we'll have to come to that in due course.
27 But for today your evidence can now be given, received, and we will place such
28 weight on it as we consider appropriate when we get to that part of the analysis.
29 Understand all of that?

30 **Ms Lucas:** Yes, thank you.

31 **Mr Muir:** Any questions arising out of that?

32 **Ms Lucas:** No, thank you sir.

33 **Mr Muir:** No. Good. Thank you very much.

34 **DI LUCAS PRESENTS HER SUBMISSIONS**

35 **Ms Lucas:** I haven't got a – oh I do have a PowerPoint. I would like to speak
36 informally.

37 **Mr Muir:** You just take your time, Ms Lucas.

38 **Ms Lucas:** Yes.

39 **Mr Muir:** Whatever time you need to get yourself organised there. And don't consider
40 yourself under any pressure.

1 **Ms Lucas:** Is this for me? Or is that – oh here’s another one.

2 **Mr Muir:** We’ll just make sure that we’ve got the microphone appropriately located
3 in deference to my degraded hearing. Thank you.

4 **Ms Lucas:** I have been a landscape architect for quite some decades and I love the
5 profession because first I did a natural science degree at Otago, botany, zoology,
6 geology, and my mother here at Bendigo said, “what about landscape?” And she
7 was so right, because landscape is about the past, the present, the future, nature
8 and culture and their interweaving at all scales. And I just think we’re so lucky as
9 a profession to work in that. But it’s a huge responsibility. It’s hugely complex.
10 So that all of these aspects being addressed, the geomorphological, the biological,
11 the heritage, the waters, the access, all of these are part of the landscape and
12 they’re all you know, and lots more. And, it’s very complicated and the proposal
13 is substantial.

14 I worked in a lot of big projects early in my career, big construction projects,
15 Ministry of Works. So I’m used to the big stuff and including mining. And, I
16 then set up private practice and I worked in a lot of farm planning for high country
17 farmers, and lowland farmers and all around. And also, as a Government advisor
18 for quite some decades, including on high country management and on
19 conservation.

20 So, I feel professionally very comfortable about the tasks. Is there a screen?
21 Right. Yes, so because it’s so complicated, and I’m not sure how best to address
22 it.

23 **Mr Muir:** You don’t have any argument from us Ms Lucas about the complexity of it.

24 **Ms Lucas:** So I provided some feeble appendices. We had a – Spark had an outage for
25 20 hours. Unfortunately I couldn’t complete what I was providing. [Slide 1] But
26 what is important in the Bendigo-Tarras Basin, and I meant to include the map of
27 the glacial pathways, because the glaciers, the Lindus and Lowburn Glaciers,
28 come down to, this is the culmination here. This blue, the schist country, that
29 bedrock country is where the glaciers terminate there. And you can see the yellow
30 there is the glacial deposition at the base. And the site that’s – you can see
31 Shepherds Creek and Bendigo Creek are labelled with the Thomson Gorge Fault
32 between them. And that, all of that glacial deposition land, which is at the base of
33 the site. And that distinction’s really important. And what you can – your impacts
34 and what you can do on the deposition land is quite different than the bedrock
35 country above, the schist country above.

36 [Slide 2] So in my first statement early – was it on the 10th of April – what a
37 month we’ve had – I said that the Boffa Miskell, per the landscape architects for
38 the applicant that I’m responding to, they have provided the land type map. But
39 only in which is what we’ve produced over many decades, and it’s a you know
40 public available database these days. They didn’t include the 1 to 50,000 map,
41 which you can see there. So the brown colour, the deposition land and the
42 bedrock above. And I said, in my statement, that Boffa Miskell should, because
43 of the drama of this country, that deposition country and the steep bedrock

1 country, they should be recognising the geomorphology better. Not just in the big
2 whole range thing, but in the site, on the site.

3 [Slide 3] So, you know, that deposition country, which is all sorts of stuff going
4 on down there.

5 [Slide 4] So there's the model of the land type of the schist country above, that
6 model we did years ago, and that applies to this site. And what I added was images
7 where we've mapped just preliminary mapping of the landform components from
8 that typology, mapped them across the site. And it's just the start, and I thought
9 it could be helpful in conferencing and so on, to have something. Because, in my
10 opinion, Boffa Miskell have not addressed landscape analysis of the site.

11 That is contrary to Te Tangi Ata Manu, best practice. One must address the
12 landscape. They're required to have. So Boffa Miskell call it the landscape site
13 analysis but they haven't actually addressed the site. And as stated in our Te Tangi
14 a te Manu, our Bible for the profession, is that it's important not to conflate
15 specific and generic character. Specific character conveys more than generic
16 character. So that's on page 190. It's often more pertinent to managing a
17 landscape's value than the generic character. So you've got to address the specific
18 and they have not addressed it, in my opinion. I think it's a big slip.

19 Te Tangia a te Manu says at page 105, "Landscape character and value. To assess
20 the landscape is to assess its character and values". They have not. I mean I find
21 it absolute phenomenal that the site, which includes Thomson Gorge Road, yes,
22 and an unformed legal road, and is overviewed from other sites, has conservation
23 covenant with specific provisions within it, but they have not addressed the access,
24 the overview, the character within the site. They haven't addressed it. It is a very
25 coarse photo stuff and not addressed it.

26 So character is an expression of the landscape's collective attributes and then
27 values are the reasons a landscape is valued, as according to Te Tangi a te Manu.
28 So values are embodied in attributes, and you need to identify those before you
29 can address effects. And they have not done that.

30 So the specific landscape values must be addressed, and I note that Te Tangi a te
31 Manu warns against beware of understatement of the values when you're looking
32 at deciding on the relevant spatial extent. Beware of understating by diluting
33 effects across an unreasonably wide area or overstated by concentrating on an
34 unreasonably narrow context. So that's really important to get that balance. This
35 is Te Tangi a te Manu, page 139. And I think they have failed miserably, excuse
36 me, in diluting – in diluting the values and attributes of this site through addressing
37 the ONL just in total.

38 And one fundamental error, as well, is that two titles within the site are a
39 conservation covenant with very specific objectives. Just this area. It's not the
40 whole big Bendigo Covenant. It's just this area. Those two lots, I mention them
41 in my statement, 11 and 12. Isn't it S11 and S12.

42 [Slide 5] There's the covenant. The pink. And you can see – you can see there
43 that it goes to the unformed legal road. So there's a public access right along the

1 edge of that covenant. There's also the public access through the covenant, the
2 pink with Thomson's Gorge Road.

3 So that legal access of Shepherds Creek Valley is not addressed in any of the
4 landscape assessment. Now that is a big, big gap. If you don't address access you
5 are not addressing the landscape. Now the recreation assessment for Santana
6 addresses it. That's in there, and in the map. The landscape assessment has not
7 addressed it. It is a major, major failing.

8 Now the covenant in the pink, so it's a Reserves Act covenant under section 7,
9 and it's the Reserves Act 1977, and the objectives for that covenant are to maintain
10 natural character, the ecology, maintain landscape values, and the historic values.
11 Now, they are to be maintained in that conservation covenant, and that's
12 statutorily really, really important, and the Reserves Act has as its purpose, in
13 section 3(a)(4), that about environmental and landscape amenity interest.

14 So landscape is recognised in the Statute, and this covenant objective of natural
15 character is natural character in the big sense. It's not natural character as under
16 6(a) in the RMA, which is waterway associated. This is natural character for the
17 general character.

18 So, the task, the statutory task for the landscape assessment includes assessing the
19 covenant area for its values. The covenant is required to maintain the values. You
20 need to know what the values are. Will they be maintained? Boffa Miskell have
21 not identified the values. Therefore, they have the effects assessment, the
22 requirement - it's not an effects assessment - sorry, the requirement to maintain
23 those has not been addressed. They have not addressed, are the values
24 maintained?

25 Now, the objectives of the covenant addressing natural character, ecology,
26 landscape and heritage, as I said in my opening, those things are all intertwined in
27 landscape. They are all, you know, historic isn't separate from landscape; ecology
28 is not separate from landscape; natural character isn't separate. So there needs to
29 be a recognition of these dimensions.

30 And so the important heritage landscape, as has been recognised by the
31 Department of Conservation, needs to be assessed properly. And I added an
32 appendix that I thought might be useful to colleagues conferencing and things,
33 because back in yeah, 2009, a wee while ago, but I drafted, I was asked to present
34 at a New Zealand Planning Institute Conference on how to address heritage
35 landscapes, and that's just from that - from that task.

36 **Mr Muir:** Ms Lucas, I'm just conscious of time. I cribbed some of your time with
37 discussions about the status of your evidence and the like. But I would like us to
38 try and conclude your presentation by 25 to the hour, if we could. And in that
39 context, can I say that the quality of your written work, utterly consistent with
40 your professional background, is extremely strong and of course it has been read
41 by us. Which underpins everything you're saying today.

42 **Ms Lucas:** Yes.

1 **Mr Muir:** And if you could therefore just use that available time to focus on what you
2 think are the principal takeaways that we should leave this hearing with.

3 **Ms Lucas:** I don't know. The effects – the effects on this landscape, the Upper Rise
4 and Shine, the Thomsons Gorge landscape, the Shepherds Creek, they need to be
5 addressed place-based. This is a special area on the whole Dunstan Range. It is
6 not just a small bit of the range, and you generalise it, and dilute it. The Gorge is
7 a focus. It's a destination. It's an access route, and its geomorphologically,
8 ecologically recreation land, and in every way it is a focal special area.

9 The proposal does not respect the specialness. So, I'm particularly concerned
10 about the bedrock country and the proposal is to create very large landforms,
11 artificial landforms both down and up, that are completely contrary to the
12 geomorphological character, the ecological character, and the heritage character
13 of this landscape.

14 The geomorphological character, as I showed in those appended things, the
15 steepness, the bedrock country and the surface of them is really important. The
16 integrity, the slopes. There's a consistency, there's the sheer zone, there's the
17 consistency in those slopes in that terrain. And then there's very narrow flats in
18 the alluvial floors, just little discrete, because we're in the driest part of New
19 Zealand. This is the driest place here. And this is little alluvial systems. And so
20 the horizontal in that bedrock country is a small component, it's a very small
21 component within a suite of steep slopes. And there's a really important pattern.
22 So the legibility of the landscape is very dependent on the landform, the forms of
23 the landform, and the character, the surface character, and then the ecological
24 character.

25 Boffa Miskell have not recognised the importance in this driest bit of New Zealand
26 of things like cushion fields. I mean the roots of the diminutive vegetation might
27 be this high, the roots can be three metres deep, like a forest, like a Totara. They
28 are diminutive, and it's an expression of this place. But that's not been valued.
29 The values have not been addressed. Yeah. So you know the hundred hectares or
30 so within the site of cushion fields is a really important value, an attribute, a value,
31 a characteristic.

32 And so in the proposed large forms to have massive, very obviously artificial
33 landforms, is completely contrary. It's like dumping, you know, dumping stuff in
34 a special place. And, to just round them off and plant a few things around them is
35 superficial, insult to me. It is not respecting the landscape. The massive,
36 engineered landform that is proposed to be almost as high as Battery Hill, I mean
37 from down in the valley and the upper Clutha Valley, just up here, this engineered
38 landform, so arbitrary, even if you round its corners, would be competing with the
39 stature of the really important landmark of Battery Hill.

40 So, to change the, you know, relocate the stream corridors, to completely change
41 the landforms, the effects are very highly significant in all aspects of the
42 landscape.

43 **Mr Muir:** Thank you very much, Ms Lucas. Questions from the panel?

1 **Mr Kensington:** Good morning Ms Lucas. Thank you for your comments and summary
2 there. My question, I only have one, and that is will the values that you say are
3 missing from the Boffa Miskell assessment, can expert conferencing find those
4 values and use them as a basis to assist us with an understanding of the effects.
5 Or you know, how are those values going to be found through this process?

6 **Ms Lucas:** I think that some more base information would be helpful from Boffa
7 Miskell to help the conferencing because people, everybody shouldn't have to do
8 a lot of field work. I mean this should be available. They should be doing it, and
9 it's not just remote. I mean those remote maps stuff, I mean that is not adequate.
10 They need to provide better information.

11 **Mr Muir:** In particular?

12 **Ms Lucas:** The landscape characteristics, the physical characteristics need to be
13 mapped. They're not. And the accessibility and so on needs to be identified, and
14 the relationship with those places. And so, you know, if we're in a heritage
15 landscape, how do we – you know getting better information on these aspects. So
16 there's the biophysical and there's the heritage, and there's accessibility, and then
17 of the perceptual use. And it is such an important place in terms of remoteness,
18 and darkness, and all of those things, that some recognition of that would be
19 helpful. Yes.

20 **Mr Muir:** Sorry to interrupt, I'll just pass back to the panel.

21 **Mr Kensington:** I think that's answered my question adequately, and that's all I had,
22 thank you.

23 **Ms Lucas:** Thank you.

24 **Mr Johnson:** Thank you Ms Lucas, a quick question. We've just been talking about
25 the adequacy or inadequacy of the Boffa Miskell report.

26 **Ms Lucas:** Yes.

27 **Mr Johnson:** But we've also read, or we've read in different places, and you've also
28 referenced that some of this work is picked up by others, for instance the
29 recreation, and Fish and Game and all that. In the absence of the Boffa, what can
30 we rely on that other information in terms of addressing some of your concerns,
31 picking that up?

32 **Ms Lucas:** I haven't seen anything that would fill the gaps.

33 **Mr Johnson:** Thank you.

34 **Ms Lucas:** Yes, I mean I was fascinated in looking at the Landscape Rehabilitation
35 Plan, Part A, and I saw their overall landscape objectives include "Ensure
36 rehabilitated enclosure landforms, include rock sacks, remain responsive to the
37 underlying ONL context". Well they've completely failed on that. "Reinstate
38 public recreation access" and they haven't even identified the public access in the
39 first place. You know, so there's just failures in all of these aspects, and they just
40 seem to address it as a back drop. That is not – it's insulting to this – to this place.

1 It is not just a coherent natural mountain back drop. Sure that's an important
2 value, but it's only one.

3 **Mr Muir:** Ms Lucas, could I just ask this, which may inform our response to your
4 request to participate in expert conferencing. Your views are very articulately and
5 passionately expressed this morning. I get a sense that you regard the proposal as,
6 if I could use the word, irredeemable.

7 **Ms Lucas:** Redeemable?

8 **Mr Muir:** Irredeemable. Irredeemable. That there is nothing that could really emerge
9 from expert conferencing that could make this a proposal acceptable to you. Is
10 that a fair – no?

11 **Ms Lucas:** I don't know. I'm always open. I get passionate about lots of places. There
12 are – I mean underground mining there's a long, you know, there is a tradition
13 that, you know, maybe that underground aspects have some potential. I don't
14 know. Yeah. Mm.

15 **Mr Muir:** Good. Thank you. Any other matters? Thank you very much Ms Lucas for
16 making the time to come and speak to us in person. We greatly appreciate it.

17 **Ms Lucas:** Thank you. Thank you sir.

18 **Mr Muir:** We're going to take a slightly abridged tea break now. We'll be back at 10
19 to 11.

20 **Ms Lucas:** Should I tell you the – what my school report at Tarras said about my oral
21 expression?

22 **Mr Muir:** Sorry?

23 **Ms Lucas:** Oral expression. My school report said, "Excellent but a little too much".

24 **Mr Muir:** Thank you very much Ms Lucas. A pleasure.

25 **Hearing adjourned**

26 **Mr Muir:** We are now joined remotely by Mr Dean Fraser on behalf of the Otago
27 Conservation Board. Thank you Mr Fraser.

28 **DEAN FRASER FOR OTAGO CONSERVATION BOARD**

29 **Mr Fraser:** Kia ora.

30 **Mr Muir:** Mr Fraser, the floor is yours.

31 **Mr Fraser:** Sorry, I've never been to one of these things so I don't know the process.
32 So just tell me what to do.

33 **Mr Muir:** That's quite alright. The floor is now yours. Use your – you can use your
34 allotted 15 minute period as you see fit.

35 **Mr Fraser:** Who am I – who is on the panel. Can I ask that?

1 **Mr Muir:** You most certainly can. We introduced ourselves all fully yesterday at the
2 commencement of proceedings. I take it that you would not have been following
3 those proceedings remotely?

4 **Mr Fraser:** Absolutely not.

5 **Mr Muir:** You have not. Okay, that is fine. I'm sure it doesn't get to compete with
6 many of the other alternatives to entertain you. The panel consists of seven
7 members. My name is Matthew Muir. I am the Chairman of the panel and very
8 briefly, I am a retired High Court judge and a King's Counsel. I am joined by a
9 number of specialist disciplines on this panel. I have Ms – going from my right –
10 I have with me Mr Tim Mulliner, he is a highly qualified environmental scientist.
11 He's got particular expertise around geochemistry and hydrogeology. Then
12 Ms Sweetman, she's a highly experienced planner and hearings commissioner.
13 To her right is Mr Kensington. He is our go-to panel member on all matters
14 relating to landscape architecture and planning. To my immediate left is
15 Mr Douglas Johnson, and Mr Johnson is a geotechnical engineer, highly qualified
16 – one of the most experienced in the country geotechnical engineers – with Tonkin
17 & Taylor. This is very much an abridged summary - - -

18 **Mr Fraser:** I understand sir.

19 **Mr Muir:** - - - of very extensive credentials, which are all available on the EPA's
20 website if you would like to review them further. And then we have Mr Phillip
21 Barry. He is an economist. That somewhat understates his credentials. He's a
22 Fellow of the Law of Economics Association and is frequently empanelled in
23 relation to IMF related economic matters. And then to my far left is Mr Roger
24 MacGibbon. He is an expert in matters of restoration ecology and ecology
25 generally. Is that sufficient introduction for you?

26 **Mr Fraser:** I really appreciate that sir. It just gives me just a bit of an understanding
27 of who's in the room and to help to understand. So thank you very much. Kia ora
28 to everybody. Thank you for my quick – I'll try and keep this short and sharp. I
29 guess from – yes, I am the co-chair of the Otago Conservation Board. I guess I
30 also come from a background of many of the disciplines that are in the room. I
31 have worked for many Fortune 500s around the world and in particular I mention
32 the ones in relation to mining. I have worked in oil and gas around the world from
33 everything from Shell, Mobil Exxon to Saudi Aramco. So I am well aware that
34 our world needs minerals. And I guess everyone in the room, we can all accept
35 that – I ask the question – we all accept that the world in fact does need minerals
36 to help the economy grow, to help employment grow, etc. So I guess if we can
37 all agree on that as somewhat of a starting point.

38 The next – if we can all agree on that as a starting point, I'd also like to see if I
39 can agree on the next starting point, that we can all agree that biodiversity is also
40 critical for all of the same reasons – for economic growth, for employment, the
41 care of our waterways, etc, etc. I will take the Conservation Board's submission
42 as read.

43 **Mr Muir:** Yes.

1 **Mr Fraser:** So I am aware of the short time for this. So if we can agree that both – we
2 do need minerals in the world. Assuming that everyone on this panel can agree
3 that we need a thriving, healthy biodiverse economy is a good starting point. From
4 our point of view, and I was fortunate enough to go on a site visit to have a look
5 at the mining site and it would be fair to say you were treated – even though I was
6 there as the Conservation Board – treated as somewhat of a second class citizen
7 when the mining staff almost get angry when you ask a question around how will
8 we indeed protect our environment. If we can get to the point of believing that,
9 yes, we need minerals and, yes, we need a healthy biodiverse. My thesis therefore
10 is that piece of land needs to be returned to the exact same state as it is today.
11 Leaving a large gaping hole full of tailings in any world is unacceptable. And that
12 just cannot – we cannot operate an economy in a world in a way where we both –
13 I can get to a point where we have to extract. I am wearing a watch, holding a cell
14 phone, you know, talking to you virtually, all of which requires precious minerals.
15 So I am supportive of that.

16 **Mr Muir:** Mr Fraser – can I just ask - - -

17 **Mr Fraser:** So you have to – the mining team must return it to the same state.

18 **Mr Muir:** Can I just ask a question there. You postulated leaving a large gaping hole
19 full of tailings. I don't think that that really fairly describes the proposal. A large
20 gaping hole, I don't think there's any argument with. The tailings of course will
21 be taken to the TCF or tailing containment facility. Are you proposing that the
22 tailings be reintroduced into the hole as you describe it, or not?

23 **Mr Fraser:** Okay, so I'm sorry your Honour. I will – I may have used the wrong
24 words.

25 **Mr Muir:** You can just call me Mr Chairman. Just call me Mr Chairman.

26 **Mr Fraser:** So agreed – tailings might be the wrong word. Let's agree there's a large
27 gaping hole.

28 **Mr Muir:** Yes.

29 **Mr Fraser:** Full of something that is – does not enhance the environment. There won't
30 be a beautiful lake there that the community can swim in. It will be an area that
31 just cannot be used. So I'll retract the word "tailings" and whatever is left in that
32 large hole is not appropriate for the environment. So that must be rectified and
33 not be left like that.

34 **Mr Muir:** Thank you. I'm sorry to interrupt. Continue.

35 **Mr Fraser:** No, no, that's fine Mr Chairman. To be honest, out of all the other things
36 that is – I really – we could go into large depths around the biodiversity or the
37 large amounts of water or close to aquifers. We all know those particular
38 components of those. Our submission is, as it stands, but, yeah, we are of a strong
39 belief that utilise the land appropriately - - -

40 **Mr Muir:** It's essentially a landscape - - -

41 **Mr Fraser:** - - - but return it back to how it was.

1 **Mr Muir:** Sorry, it's essentially a landscape objection. That's at the – that's at the top
2 of your list of objections, that the geomorphology of the area changes irreparably
3 and that it should be restored to its natural form or as close to as is practicable.

4 **Mr Fraser:** The words “close to as practicable” are filled with - - -

5 **Mr Muir:** Right, thank you.

6 **Mr Fraser:** So I don't – using the words “close to as practicable” is a difficult
7 discussion.

8 **Mr Muir:** Okay, yes, I do accept that that opens its own particular Pandora's box.
9 Your paradigm case is that it is restored to read as it does today, in terms of the
10 geomorphology of the area?

11 **Mr Fraser:** Yes sir.

12 **Mr Muir:** Thank you.

13 **Mr Fraser:** Yes sir. I really have nothing – honestly I have nothing else to add. Our
14 submission is as read.

15 **Mr Muir:** Very good. Are there any questions of Mr Fraser from the panel?

16 **Mr Kensington:** Thank you Mr Chair. If I may Mr Fraser, in your experience, and
17 you alluded to that at the start of your discussion, you've had experience with
18 other similar scale projects. Have you seen this sort of thing done successfully
19 before where you've achieved both objectives?

20 **Mr Fraser:** Never.

21 **Mr Kensington:** Never. Right, okay. But do you think it's possible?

22 **Mr Fraser:** I have not seen them returned in a way – I think there is – I think there's
23 an opportunity for us to do it better. I think if we always accept that this is – if
24 you always do what you've always done, you'll always get what you've always
25 got. I think we have – we have moved on as a community. We have moved on
26 in relation to science and engineering. We must be challenged to do it better. We
27 have seen around the world many scars left on landscapes where there is large
28 impacts. Don't get me wrong. I also know there is no perfect solution, you know,
29 I know Mr Chairman says “as close as reasonably practicable” but I also know
30 what that means. We just have to be careful with words around that, but we must
31 be challenged to do better.

32 **Mr Kensington:** Understood. Thank you.

33 **Mr Fraser:** My last comment, and this is a personal passion, and I am somewhat
34 disappointed to see that at this panel that I do not see mana whenua representative
35 – represented at this panel – on this panel, which I think is, in my view, not
36 appropriate.

37 **Mr Muir:** Yes, well, we note that comment. We have engaged this week on the marae.
38 We are very conscious of those issues – the extent to which cultural objections are
39 in play here. And although we note your comment, we do not accept that we are
40 not adequately sensitive to those issues.

1 **Mr Fraser:** Yes sir, I appreciate that. I just – the panel becomes not a full reflection
2 of the community.

3 **Mr Muir:** Thank you. Any other matters for us Mr Fraser? Thank you very much
4 Mr Fraser for joining us remotely today. We very much appreciate your
5 contribution and we will now proceed to our next submitter. Thank you. Before
6 I embarrass myself by mispronouncing your surname, perhaps you could help me.

7 **Mr Reinecke:** Yes, how does this microphone work. Can you hear me?

8 **Mr Muir:** Yes.

9 **HOLGER REINECKE PRESENTS HIS SUBMISSIONS**

10 **Mr Reinecke:** Yeah, good morning. My name is Holger Reinecke.

11 **Mr Muir:** Reinecke, thank you.

12 **Mr Reinecke:** Morning Mr Chairman, members of the panel, the applicant, everybody
13 else in the room. I will speak on behalf of myself and Chantal Degril, my partner.
14 Just in order to ease any speculation about my heritage, I am not Dutch, South
15 African or Swiss. I am German. I will not go through my written comments that
16 I supplied. I believe you would have read them. I'd just like to flesh out a few
17 things and largely express very personal opinion that affects us where we are.
18 Chantal and I bought our property at number 6 Thomson Gorge Road in 1999 and
19 restored and transformed the historic 100 year old Ardgour Station woolshed into
20 our home and have lived in that home since then – since 2002. Our property is
21 located at the intersection of Ardgour Road and Thomson Gorge Road. From
22 what I understand, this intersection will be changed in order to allow Thomson
23 Gorge Road to have the right of way. At the moment, it's the other way round.
24 Ardgour Road, at that intersection, has the right of way. Thomson Gorge Road
25 comes from the direction of the Dunstan Mountains and gives way to the Ardgour
26 Road. What is now a rural gravel road servicing farmers and the residents along
27 the road will be transformed into the main access road to the mine. Obviously we
28 all know this.

29 For purely personal reasons, we decided to sell our property early last year. At
30 the time, our decision had nothing to do with the mine. Nothing. It was personal.
31 I realise I am only a very small cog in the big decision making process here that's
32 come upon us. In a way I feel jealous of those 750,000 lizards up in the Dunstan
33 Ranges. They seem to have an unfair advantage over us. They were very well
34 represented and wouldn't it be interesting to have a few in the room here to
35 represent themselves. Unfortunately there's only the two of us and we're not rare
36 or protected.

37 I listened with great pleasure to the Tuesday hearing in Dunedin remotely and Kā
38 Rūnaka's position to the project. In, as I understand it, Kā Rūnaka's submission,
39 high importance and value was placed at the early engagement and meaningful
40 consultation. Apart from this being a legal requirement in the Fast-Track
41 Application Act and other pieces of legislation, it simply should be a normal

1 modus operandi between human beings, especially during the imposition of a
2 large scale industrial project on local people that obviously has the real potential
3 to impact their lives and livelihoods.

4 Notwithstanding the absence of a threshold legal requirement in the Act similar to
5 section 7, the applicant had the opportunity to include persons it considered to be
6 affected by the application under section 13J. I do acknowledge that there is a
7 level of discretion offered to the applicant in that clause. However, the applicant
8 has not considered any of the residents along Thomson Gorge Road as affected
9 parties. Conversely, by inviting us to comment on the application, the panel has
10 clearly identified us as persons likely to be affected by the project.

11 I do not wish to repeat what many others before me have commented on today
12 and yesterday regarding the tailings dam and its potential environmental
13 implications, I have mentioned under my comments. However, I'd just like to
14 note my astonishment as to how little consideration has been given to the seismic
15 risks residing in the Dunstan Mountains and further afield emanating from the
16 alpine fault and other known and unknown fault lines.

17 It should also be noted that during hot and dry summer days – and here I speak as
18 a resident and with very small local knowledge – that on hot and dry summer days
19 we do get very strong catabatic winds in the evenings. As dry hot air rises during
20 the day, it is then replaced in the evening by colder, heavier air above it resulting
21 in wind that locals call “the barbecue breeze”, as it normally starts at sunset and
22 can last well into the night. That wind blows very, very hard, straight down the
23 Dunstan Mountains, straight down the gully, straight down Thomson Gorge Road.
24 It is very annoying when you want to have a barbecue.

25 Lastly and this is obviously the most pressing issue for us personally – the current
26 loss of value in our property. The applicant has asserted that there hasn't been
27 any evidence to that effect. I have submitted a letter from our real estate agent –
28 last night I think you might have received that – Tessa Silcock from Harcourts
29 Wanaka – and I'll just read one of the paragraphs in that letter. She says:

30 Over the past 12 to 18 months, there has been a noticeable shift in
31 buyer sentiment. Previously, properties in this area were selling
32 readily, often achieving prices above market expectations. However,
33 as media coverage surrounding the proposed mine has increased, and
34 with growing perception that the project may proceed, buyer enquiry
35 has declined and sales have become more challenging.

36 Thomson Gorge Road has been the most significantly affected
37 location. While some buyers are willing to consider properties
38 further removed from the proposed access route, properties situated
39 directly on or near the access road are encountering strong resistance.
40 One of the first questions buyers ask relates to the location of the
41 mine access. When they learn it is effectively past the front
42 boundary, interest typically ceases immediately.

1 Not only did the applicant assert that there is no evidence in the loss of property
2 values along Thomson Gorge Road, but also suggested that there could be an
3 upturn of such values given the demand for accommodation once the mine goes
4 ahead. Therefore, I suggest to the applicant the purchase of properties for sale
5 along Thomson Gorge Road with a view of capitalising on their predicted – their
6 own predicted demand and increase in value. Or in fact, for the panel to think
7 about a condition in its decision on the project for compensation of loss of property
8 value for the affected properties along Thomson Gorge Road.

9 In conclusion, I'd just say a mining project doesn't just land on us from outer
10 space or appear through some Harry Potter style magic. It's thought about and
11 [inaudible] along by people. However, people behind such a project need to
12 understand that they do not operate in some imagined void or world of alternative
13 facts. Not only do their ideas, aspirations and motivations impact on the
14 environment, heritage and social values, but especially on people like themselves.
15 I have the feeling that this is sometimes forgotten, perhaps even neglected or
16 ignored. You, the people of the panel, have been given the task to find a way
17 through all that fog. I thank you for it and wish you all the best along the way.

18 **Mr Muir:** Thank you very much Mr Reinecke. Any questions from the panel of
19 Mr Reinecke? Your property remains on the market at the moment?

20 **Mr Reinecke:** It is on the market at the moment, yeah, because our plans haven't
21 changed.

22 **Mr Muir:** Very good job of advertising it today.

23 **Mr Reinecke:** You asked for it.

24 **Ms Sweetman:** I'll just jump in with a question. How much engagement have you had
25 with the applicant?

26 **Mr Reinecke:** None.

27 **Ms Sweetman:** Have you attended any of the drop-ins or anything like that?

28 **Mr Reinecke:** I got those emails. They looked like some very generic drop-in session
29 invitations. I did speak to a couple of neighbours who attended those and their
30 conclusion was that they were, in their words, useless.

31 **Ms Sweetman:** Thank you.

32 **Mr Muir:** Thank you Mr Reinecke, thank you.

33 **Mr Reinecke:** Alright.

34 **Mr Muir:** Yes, Mr Hanan, good morning.

35 **Mr Hanan:** Good morning. Can you hear me?

36 **Mr Muir:** You get the benefit of Mr Reinecke's efficiency because we are running five
37 minutes ahead of schedule.

38 **Mr Hanan:** Well, lots of questions then. I estimate about 10 minutes for this. I've got
39 some prepared comments and I'll just run through them.

1 **Mr Muir:** Thank you.

2 **ROSS HANAN PRESENTS HIS SUBMISSIONS**

3 **Mr Hanan:** I'd like to thank the panel for their hard work in reading all the material
4 presented – quite a challenge – and in its endeavour to provide for a wider range
5 of community representation. I represent myself and my father, James Hanan, and
6 my brother and sister, Grant and Kate Hanan. Our submission is focused on the
7 long term quality of water, particularly in relation to the downstream implications
8 of the proposed mine. The application before us does not deal adequately with
9 the environmental risk that the gold mine will have over the lower Lindis
10 catchment. Particularly we are concerned about the risk on the water that we and
11 others drink. We have detailed these concerns in our submission. We present our
12 submission and comments at this hearing as community members rather than
13 technical or legal specialists.

14 MGL is looking to extract significant value from this part of Otago. We ask that
15 the company do its best efforts to mitigate the risks that we and many others have
16 outlined. We also seek to have in place robust plans, should a calamity occur.

17 I will focus on three themes where we believe that the company and panel could
18 improve and do more to allay our concerns. I will then quickly address the
19 responses to our submission made by the applicant.

20 The three themes are accuracy, process and standards. Regarding accuracy, we
21 detailed multiple examples in our submission where MGL experts had
22 commented, on the lack of detailed information on the lower Lindis catchment,
23 both in the substantive application and subsequent editions. The respondent
24 rebuffed these concerns in their section 53 response, citing that they were made
25 out of context. Yet in the very same report, at paragraph 72, regarding the Lindis
26 aquifer, they state: “In my professional opinion the LARA has not received
27 sufficient scientific investigation or monitoring from the ORC or scientific body
28 consistent with the Lindis River and LARA’s importance in regional water
29 management. Currently there are only partial formal studies, informal studies,
30 desktop hydrological assessments to support hearing evidence and little
31 continuing monitoring.”

32 And also in response to the Panel’s RFI on the same day, on the Ardgour aquifer,
33 he states: “Little is known about the Ardgour aquifer in terms of its dispersion
34 and hydrochemistry.”

35 Two EDS reports from Dr Leanne Morgan and Jennifer Webster-Brown also point
36 out the limited data available and detail problems with the modelling so far
37 undertaken. Taken together, this points to significant gaps in the understanding
38 of the various downstream interactions, and those gaps will mean the panel will
39 be making decisions on incomplete information, thereby increasing the risks -
40 project’s risk profile. As we have previously requested, use of a proven model
41 would enhance the accuracy of the modelling and provide greater confidence that
42 the outcomes being proposed will in fact occur.

1 The application should not proceed until the applicant has increased its
2 understanding of the hydrology of the area and once this has been done, all
3 previous modelling needs to be re-run using the same – using the new model and
4 re-submit it to the panel.

5 Regarding process, we hold general concerns about the underlying premise of the
6 overall process, that of speed. We also have specific concerns that the proposed
7 hot tubbing may undermine independence, thereby increasing the risk profile on
8 the environment.

9 A project of this complexity requires a significant level of examination and should
10 not be hurried. We are part way through a process in a multi-layered review where
11 sequential reports, RFIs, responses and counter responses, spread across
12 numerous groups, are making it difficult to maintain a unified, coherent record. It
13 is hard to see the wood for the trees. This compressed process increases the
14 probability that some risks are overlooked. That risk is not compatible with a
15 project of this scale and uncertainty. It is worth asking – what is the urgency?
16 The gold will still be there in a year's time.

17 And unless carefully managed, hot tubbing is likely to create proximity and
18 familiarity bias, among others. I am sure that the panel will put in place protocols
19 for correct engagement and solutions for where impasses occur. For example,
20 written terms of reference stating experts owe duty only to the regulatory outcome,
21 not the party that may be paying them. Or where experts disagree, the default
22 setting should be to the more protective criteria, the default being the safest design
23 where uncertainty exists. We hope that there are similar processes for the
24 workshops.

25 Although not a formal hot tubbing situation, you can see the issue in this example.
26 In our submission we suggested that a 10 year ARI proposed by MGL was
27 insufficient for the silt and sedimentation ponds. The consultant, GeoSolve,
28 recommended that a 50 year ARI was appropriate for the Shepherds silt pond.
29 This has now been countered with an ARI of 20 years by the applicant's
30 consultants. Ten, 20, and 50 years represent very different failure probabilities:
31 10 per cent, five per cent and two per cent per year. A compromise of 20 years
32 from 50 years is a negotiated increase in environmental risk. Central Otago has a
33 long history of localised flash flooding and with projected climate change, this is
34 only going to increase. The environment is not something to negotiate over. It
35 has no direct voice. Its protection comes from the veracity of the process.

36 Regarding standards. The applicant frequently states that various parts of the
37 application meet New Zealand standards, from dam building to water quality. But
38 we ask that the panel also consider whether those standards are sufficiently robust
39 for the specific risks here. We also ask that should there be a level of debate
40 around the required standard, that the panel again seek the most precautionary
41 approach. For example, the lack of a geomembrane to line the various dams and
42 ponds comes under some conjecture between the experts. Where there is
43 disagreement, the panel should adopt the safest standard available. Simply put, in
44 the lining.

1 We ask that the panel look at the worst case scenario and select solutions across
2 the full application with that in mind. The consequences of even a small
3 miscalculation can have indefinite negative implications on this part of Otago and
4 the water that we and my family drink.

5 I would quickly like to address the response to our submission by the applicant.
6 On the omission of critical aquifers, the applicant states the credentials of
7 representatives and notes the reports filed but does not point to the areas where
8 the aquifer was covered. Why? Because there wasn't anything meaningful stated.

9 On the inadequate understanding of ground surface interactions and need for use
10 of a proven model. We have already covered this in the section "need for
11 accuracy".

12 The response appears more focused on limiting liability than addressing the
13 substantive data gaps. We note continued backfilling by the applicant. This
14 should have been fully addressed at the substantive application stage.

15 On no effective modelling of plume prediction. In a recent response, the applicant
16 stated that 28 tonnes of sulphur would be advancing at 0.9 metres per day from
17 the TFS. This was the first acknowledgement I could find of the likely plume
18 flows. Yet, in our response, and the response to us, "MGL was unable to
19 commission the development of a calibrated and fully optimised groundwater flow
20 and transport model within the Shepherd's Creek alluvium, Ardgour aquifer and
21 the LARA during the time of the primary effects assessment, due to the deficit in
22 aquifer geometry and calibration data".

23 On climate change, the respondent has dealt with the design elements of the TFS
24 but nothing on the project as a whole. And on carbon abatement, the respondent
25 simply does not address it, which is a requirement of the FTAA.

26 On the Lindis aquifer needs to be treated as both surface and groundwater. Our
27 respondent notes "MGL has a comprehensive understanding of the dual
28 interaction", but at no time does it address the issue. And further, on the difference
29 in quality between groundwater and surface water, I failed to understand the logic.
30 If water moves between the two then there has to be a unified quality metric. We
31 notice some movement here by the ORC.

32 And finally on plan change 5A water allocation, the respondent notes that in case
33 of a calamity the ORC will be in the difficult position of potentially seeking extra
34 water from upstream farmers to enable dilution of a polluted downstream aquifer.
35 Something of a Hobson's choice. The Lindis River is fully allocated. We have
36 no way of knowing what will occur because a remediation schematic has not been
37 presented.

38 In conclusion, the panel is being asked to make decisions on incomplete
39 information (accuracy), within processes that increase the likelihood of error, and
40 against standards that may not reflect the level of risk involved. We submit that
41 the application should be declined. If the panel is not minded to decline at this
42 stage, then the application should be paused to allow MGL to address the
43 identified information gaps, and they are numerous.

1 **Mr Muir:** You're aware, Mr Hanan, that we have no capacity to be able to pause the
2 application ourselves.

3 **Mr Hanan:** Sorry?

4 **Mr Muir:** You'll be aware that we have no capacity to pause the application ourselves?

5 **Mr Hanan:** I was not aware of that sir. That is a shame.

6 **Mr Muir:** It can be paused on the application of the – of MGL.

7 **Mr Hanan:** Okay. Well, if the panel is nevertheless minded to approve the application,
8 it should do so only with the most exacting standards and robust, enforceable
9 conditions applied throughout. To misquote Einstein, "God does not play dice
10 with the environment, and neither should we".

11 Once again, we thank the panel for its work and do not envy its task.

12 **Mr Muir:** Any questions from the panel?

13 **Ms Sweetman:** Mr Hanan, can I ask what your background is?

14 **Mr Hanan:** Researcher in strategy for a large strategy firm.

15 **Ms Sweetman:** I ask because your comments were very comprehensive.

16 **Mr Hanan:** Thank you.

17 **Ms Sweetman:** And covered a wide range of issues. We have read through them all.
18 No questions but I just wanted to confirm your background. Thank you.

19 **Mr Muir:** You know, Mr Hanan, that you hold the record within all the fast-track
20 applications that have been dealt with by the Environmental Protection
21 Association – you hold the record for the fastest response when the invitations
22 were issued. No reflection on the quality of the response, which had been
23 foreshadowed in your earlier correspondence.

24 **Mr Hanan:** Well, not too sure how to take that but thank you, I think. I like being first.

25 **Mr Muir:** Any other matters? Thank you again Mr Hanan for coming and assisting us
26 in the way you have. Right. Well, we're running quite well ahead of schedule at
27 the moment. Is there any capacity – is Mr Johnson still present with us? No, he's
28 going to come back a little later. Could some enquiry be made of the Trevathan
29 family as to whether they might be joined earlier than their intended 12.45 slot
30 and we could deal with them before. Ms Irving. Have we got an audio connection.

31 **Ms Irving:** Yes, good morning sir.

32 **Mr Muir:** Good morning Ms Irving. And thank you for being available at short notice.
33 We're running a little ahead of schedule this morning.

34 **Ms Irving:** Yes, I've been observing so jumped on a little early in case you did decide
35 to push on.

36 **Mr Muir:** Yes, and are you happy that you join us now?

37 **Ms Irving:** Yes, yes, that's fine. We also have Jonny and Beau in the room with you so
38 I assume they'll be making their way up to the front desk as we speak.

1 **Mr Muir:** They're already in place. Right, thank you very much. We appreciate your
2 help, thank you Ms Irving. The floor is yours.

3 **BRIDGET IRVING FOR THE TREVATHAN FAMILY**

4 **Ms Irving:** Thank you. Firstly, look, thank you very much for making this opportunity
5 available to us to appear before you. I appreciate, you know, it's quite a logistical
6 challenge given the time pressures that you're under. So the opportunity I think
7 for invited parties to address the panel and speak to the issues they've raised is
8 very valuable and certainly appreciated.

9 So I'm just going to run through the relatively brief submissions that we have pre-
10 filed, highlighting the key issues of concern for the Trevathans and then we'll all
11 be available for any questions that you have.

12 **Mr Muir:** Thank you.

13 **Ms Irving:** So, firstly, the Trevathan family have been identified as an adjacent
14 landowner for the purposes of this application. They own a block of land of
15 approximately 150 hectares that straddles Dry Creek and adjacent to Ardgor
16 Road. The land is identified as being within the impact area or inundation area if
17 the tailings storage facility were to fail, and it is that issue and the potential of
18 leachate of contaminants from the tailings storage facility that the Trevathan
19 family are concerned about. They don't really have a view in terms of the broader,
20 I suppose, environmental issues that may be raised by other parties. Their interest
21 is in those direct potential effects on their property.

22 The core, I suppose, issue for them is around the creation of and externalisation
23 of potentially catastrophic and irreversible risks to downstream landowners
24 without, in their view, a genuine assessment of alternative methods to deal with
25 the tailings without complete geotechnical and hydrogeological evidence and
26 information to support the assessments that have been undertaken, and in terms of
27 the conditions that then flow, enforceable governance mechanisms to ensure that
28 the risks are not transferred to private landowners and future regulators,
29 particularly in that post-closure phase.

30 These concerns align squarely with the Parliamentary Commissioner for the
31 Environment's submission which emphasises that tailings facilities represent long
32 lived, intergenerational hazards that demand a precautionary system level
33 approach rather than reliance on adaptive management or downstream mitigation.
34 The proposal is for a conventional wet slurry tailings facilities without a
35 documented assessment of lower risk alternatives such as filtered or dry stacked
36 tailings. And in our view, this is a risk creation decision and not simply a design
37 choice. And that is also supported by the evidence of Professor Lottermoser who
38 has provided evidence on behalf of Sustainable Tarras.

39 Independent scientific literature – and I've attached an article with the
40 submissions that we filed which we feel is a helpful sort of summary of the issues
41 the Trevathan family is concerned about. But that confirms that tailings facility
42 failures are increasing in their severity and consequence and to contextualise that,

1 the proposed facility will store an estimated 18 million cubic metres of material.
2 And an example of a recent tailings facility failure was in Brazil in 2019 which
3 released approximately 11 million cubic metres of material and resulted in 272
4 deaths. So these are significant facilities with significant potential to cause
5 damage when things go wrong.

6 The literature identifies that failures often occur through a combination of
7 mechanisms that were previously assessed as being unlikely or in some cases
8 where an assessment of no credible risk, you know, was the case when the facility
9 was established but failures have still occurred.

10 Downstream exposure, and not just probability, need to drive the governance and
11 consent decisions and in this case there are people, nationally significant
12 infrastructure and the Clutha River Mata-Au, a nationally important water body
13 with significant social, cultural and economic values ascribed to it downstream.
14 And it is submitted that this combination of features directly contradicts any
15 suggestion that a wet slurry facility can be treated as a low risk or routine
16 infrastructure choice in this context. The applicant's geotechnical evidence
17 asserts that there is no credible long term failure mode for the facility but it also
18 does model breach scenarios that demonstrate the Trevathan property would be
19 inundated and placing buildings within predicted impact zones.

20 The Parliamentary Commissioner's submission correctly observes that if a failure
21 scenario is sufficiently credible to justify breach modelling and consequence
22 mapping, that cannot be dismissed as non-credible. The evidence of Professor
23 Lottermoser also identifies that there are documented failure histories in facilities
24 that were assessed as having no credible failure mode. And in many of those
25 cases, the post-failure investigation reveals failure mechanisms that were not
26 assessed as credible, were unidentified during the design process or where there
27 is a failure to adhere to the required engineering practices during construction.

28 The presence of the engineered landform to buttress the tailings dam appears to
29 be relied on extensively to support conclusions regarding there being no
30 credibility of failure. However, the GeoSolve peer review notes that that hasn't
31 been relied upon in the stability calculations and whilst on one hand that could be
32 a conservative approach, it is submitted that caution should be exercised in relying
33 on the efficacy of the engineered landform, given that it hasn't been formally
34 assessed. This is further exacerbated by the lack of assessment of potential effects
35 on upstream land instability, mining induced seismicity, as discussed by Professor
36 Lottermoser. And so in short, it's our view that there are multiple layers of
37 assumption inherent in the no credible failure mode refrain. And as it is often
38 said, I'm perhaps being a little colloquial here, but assumption is the mother of all
39 stuff ups.

40 International tailings governance standards recognise that catastrophic
41 consequences require heightened precaution, regardless of estimated probability,
42 particularly where loss of life and irreversible environmental harm are
43 foreseeable. Now people do live downstream of the proposed tailing facility and
44 loss of life is foreseeable if the worst were to happen.

1 The Trevathan family are concerned about the deferral of assessment of critical
2 geotechnical and hydrogeological uncertainties. Key hazards, including the
3 landslide risks, long term seepage behaviour, tailings chemistry and arsenic
4 mobilisation are acknowledged, but deferred to later investigation or adaptive
5 management. It is also apparent that risks of mining induced subsidence in this
6 location are not particularly well understood with the information that is currently
7 available. The assessment of Peter O'Brien points to the need for a significant
8 amount of additional information to enable full assessments to be completed. And
9 his assessment states: "We stress the need for further investigation and analysis
10 of feasibility assessment, detailed mine design and ongoing geotechnical
11 assessment and review during mining, once operations are established." So that's
12 the applicant's own expert.

13 The tailings facility assessments appear to assume, for example, that subsidence
14 such as that that could be induced by underground mining nearby will not be an
15 issue. It's understood the tailings facility will be established and operating when
16 underground mining begins. So the ability to adapt the tailings storage facility to
17 design to address any new information that may be gathered when underground
18 mining commences will have passed. It is not clear where the conclusions that
19 there is a remote possibility of subsidence holds if the area was subject to a large
20 seismic event, which, you know, that is clearly a possible scenario in this
21 environment. As the international literature outlines, it is often a series of events
22 that gives rise to tailings facility failures, not one single factor.

23 The Parliamentary Commissioner's submission cautions that deferring resolution
24 of these matters would undermine informed consent decisions, shift risks from the
25 proponent to downstream landowners and is inappropriate for infrastructure
26 expected to remain hazardous potentially in perpetuity. And the Trevathan family
27 share the concerns expressed by the Commissioner.

28 Chronic contamination pathways are often more damaging over time than sudden
29 failures and are frequently under-assessed at approval stage. The Commissioner's
30 submission again highlights some of the key conclusions regarding tailings
31 seepage at page 3 of the submission in relation to this application and it makes for
32 very troubling reading from the Trevathan family's point of view, whose farming
33 operation is reliant on safe access to water for stock, their homes and for irrigation
34 of crops, etc.

35 And I think there was some discussion, I think in the first day of this hearing,
36 about the potential for seepage to groundwater and questions about practically
37 what options are there to address that once it is identified. And I think that's a
38 real question that needs to be tested. It's all very well to monitor and identify
39 when it might be happening, but if it does happen, what happens next. Yeah, what
40 options are there.

41 There has been in our view a mischaracterisation of compliance with international
42 best practice. The applicant claims alignment with the global industry standard
43 for tailings management yet relies on less stringent flood design criteria, deferred
44 climate change allowances and national guidelines that do not embed the standard

1 zero harm, no loss of life principle. Again, the Commissioner emphasises that
2 claims of equivalence should be scrutinised carefully by the panel as partial
3 compliance materially alters risk outcomes for downstream communities, and
4 Professor Lottermoser's evidence also discusses the selective approach that has
5 been taken to the application of that global standard.

6 Now the review article that we've attached with our submission highlights the
7 significant consequences that are imposed upon communities and the environment
8 when these facilities fail. It highlights the key issues and significant complexities
9 in building, maintaining and monitoring the facilities to achieve the assessed
10 outcomes. And I think, you know, the construction of this facility will be a
11 complex operation and will require a high degree of competence and consistency
12 on behalf of the team actually on the ground building it. And I think it would also,
13 you know, be reasonable to assume that it is almost inevitable when that
14 construction is happening that conditions on the ground will be encountered that
15 won't be exactly what was anticipated.

16 And so that process and the robustness of the process to identify those departures
17 to ensure that how the design or the approach may be adapted to respond to those,
18 is still going to achieve the assessed outcome is really important. It becomes really
19 important particularly where those departures, you know, create time pressures,
20 cost pressures and so on on the part of the consent holder, you know. There is a
21 real risk of misalignment between, you know, what is required to achieve those
22 assessed outcomes and potentially their own, you know, financial or time
23 imperatives. And that pressure and those misalignments have played out in many
24 examples, you know, where you're dealing with complex construction projects
25 effectively like this.

26 The review article of course points to the global industry standard being the high
27 water mark for tailings facility management but also notes its non-binding nature
28 unless it is incorporated into the relevant regulatory regimes. And I think those
29 limitations are laid bare in the current application, given that it hasn't been totally
30 applied by the applicant in this case. And in my submission begs the question
31 about whether or not this applicant is committed to adopting best available
32 practice at this site.

33 And finally, even if the tailings facility is perfectly built and performed as
34 designed, residual risks of the catastrophic failure or chronic harm remain. And
35 at the moment are proposed to be borne by downstream landowners, including the
36 Trevathan family. The Parliamentary Commissioner's submission highlights the
37 absence of enduring funding mechanisms for post-closure impacts, event
38 responsive compensation for third party loss and assurance that intergenerational
39 risks will not default to the Crown or affected landowners. Once this tailings
40 facility is approved, risk transfer is effectively locked in, regardless of later
41 refinements or monitoring regimes. And there are plenty of examples of the
42 government – or governments – being left holding the baby so to speak. And the
43 Commissioner does identify some New Zealand based examples of that.

1 The Trevathan family has specifically raised this concern with the applicant in
2 their discussions and the applicant's response was that if there was leachate
3 contamination, it would be a breach of their consent conditions and enforceable
4 by the regulator. If there was a failure of the tailings facility, it would trigger the
5 applicant's liability insurance, but noted that this would be in place for the
6 construction and operational phases of the project. So what happens in, say, 40,
7 50 years post-closure. And they also pointed out that of course the Trevathans
8 would have a general legal claim. But again, in 40, 50 years' time, when in all
9 likelihood Matakanui Gold no longer exists, what happens then?

10 The response in that respect has not given the Trevathans much comfort. It points
11 to a reliance on third parties, the fact that risks will not be covered by the applicant
12 beyond the operational phase of the mine, and a "you will have to sue us" mindset.
13 It does not suggest that the applicant is willing to take full responsibility for the
14 potential effects of its operation.

15 The effects that the Trevathans are concerned about are entirely foreseeable if
16 something goes wrong. The applicant's attitude seems to be "yeah, but she'll be
17 right". And international experience demonstrates that in fact there is a good
18 chance that it will not be alright. Tailings facilities are more prone to failure than
19 their equivalent water storage facilities. And I think that's quite important when
20 we think about the dam standards that have been utilised in relation to this
21 application.

22 With respect to this issue if consent is granted, the Trevathans seek conditions
23 requiring the applicant to hold insurance policies specifically for the benefit of the
24 owners of the Trevathan land. If the worst happens, the Trevathans do not want
25 to be in the queue with all and sundry trying to get access to money necessary to
26 respond to the impacts of the applicant's activity. Such an insurance policy would
27 need to be held for so long as the tailings facility is a risk.

28 Read together, the Trevathan family's submission, the Parliamentary
29 Commissioner's submission and the evidence from the likes of Professor
30 Lottermoser, demonstrates that this application is unfortunately not decision
31 ready. The panel is respectfully urged to require a genuine alternatives assessment
32 for the tailings focused on risk avoidance. An option that eliminates the facility
33 will go some considerable way to avoiding the risks of concern to the Trevathan
34 family, not to rely on deferred investigations for hazards with such catastrophic
35 potential consequences and ensure that downstream landowners are not compelled
36 to accept uncompensated intergenerational risks. Approval in the absence of these
37 safeguards would amount to endorsing avoidable risk creation rather than
38 regulating unavoidable risk.

39 It is clear, I think, that the application has significant benefits, whether at a
40 regional scale or possibly a national scale. However, those benefits are
41 predominantly financial and will accrue over the short to medium term, given the
42 projected mine life. However, the potential adverse effects of concern to the
43 Trevathan family will persist over the long term, potentially multiple generations.
44 From the Trevathan family's point of view, the risk of significant effects will

1 metaphorically sit above them and any future owners of the land in perpetuity. It
2 will, on an ongoing basis, affect their decision making and plans for their own
3 land. It is submitted that the relative difference in the time scales over which these
4 benefits and effects accrue is a relevant consideration for you in determining the
5 proportionality of those benefits and adverse impacts.

6 It is also apparent that the drafting of consent conditions, if consent were to be
7 granted, will be critical, particularly the mechanisms for reviewing detailed
8 design, including the evidence available if relied on to inform that design; the
9 process for adapting detailed design if on the ground conditions depart from
10 assumed conditions. Equally, monitoring obligations and trigger points need to
11 be clear with established response protocols and funding to carry those out where
12 they are required post-closure. Consideration should be given to the monitoring
13 being carried out by an independent third party so that the risk of adverse results
14 being obfuscated is eliminated.

15 Those are my comments. Jonny or Beau, did you have anything else that you wish
16 to add?

17 **Jonny:** No, I think you've covered us well, thank you.

18 **Beau:** I'm pretty happy with the way Bridget has presented that.

19 **Mr Muir:** I think you have every reason to be very happy with the performance of your
20 counsel. It was a very comprehensive submission. Thank you. Questions from
21 the panel?

22 **Ms Sweetman:** I'll just jump in with a question. Thank you very much. Thank you
23 Ms Irving and thank you to you both for coming in. How long has your family
24 been in this area for?

25 **Jonny:** I'm fourth generation, so I'm Jonny. This is Beau on my right. I'm fourth
26 generation and the fifth generation started school at Tarras last week. 1914 is the
27 short answer.

28 **Ms Sweetman:** No other questions. I thought your comments were very thorough, as
29 has Ms Irving's submissions been this morning.

30 **Mr Johnson:** Thank you very much for your presentation. A lot of the issues you
31 raise will be picked up and followed through in expert conferencing. I just would
32 like to clarify – the dam breach analysis by both the international tailings dam
33 standards and the New Zealand dam standards are required to set the design
34 standard by which the facilities are built and the purpose of that analysis is to
35 define the standard, and because of the hazard, therefore the standard on the New
36 Zealand dam forces the dam design to a higher standard. So that breach analysis
37 is done before design to direct the design standard and not as a result of the design.
38 So just a clarifying point on that. But a lot of the points you raised have been
39 identified and will be carried through to expert conferencing and some of the
40 experts you mentioned will be there. So thank you.

41 **Ms Sweetman:** Sorry, I do have one more question. What level of engagement have
42 you had with the applicant over the last few years?

1 **Jonny:** We've been to several of the days they have held at the Tarras Hall. In the early
2 one, we tried to get some personal, sit round the table, meetings. They
3 unfortunately fell on deaf ears for the first couple of requests and then the last one
4 we went to, we put a bit more pressure on and we did get a meeting round the
5 table at home with Damien and Paul Miles. We didn't feel that the responses we
6 got from those meetings were adequate. They kept saying – coming back to – that
7 it's not going to happen basically, it can't happen.

8 **Beau:** We were kept in the dark as to what the engineering – what is this one Jonny –
9 they had a map there that showed that what would happen if there was a breach in
10 Shepherd's Creek and how it expanded as it got down into the Ardgour Valley –
11 they had that information available but we weren't given that until we researched
12 it ourselves.

13 **Mr Muir:** Any other matters? Well, thank you very much Ms Irving again for your
14 very comprehensive submission and to the representatives of the Trevathan family
15 for making time available to come and speak to us today. We greatly appreciate
16 it and thank you again.

17 **Jonny:** Thank you.

18 **Beau:** Thank you Mr Chairman.

19 **Ms Irving:** Thank you sir.

20 **Mr Muir:** We'll take the lunch adjournment now and I'd just ask if EPA
21 representatives could perhaps make contact with Mr Johnson and see whether it
22 would be possible for him to resume his submission on behalf of the Canyon
23 Vineyard at 12.45. Thank you very much. We'll adjourn until 12.45 unless
24 advised to the contrary.

25 **Hearing adjourned**

26 **Mr Muir:** Mr Johnston, we welcome you back and we are most appreciative of you
27 rescheduling your afternoon to accommodate us a little earlier.

28 **Mr Johnston:** Kia ora, that's my pleasure.

29 **HAYDEN JOHNSTON FOR THE CANYON VINEYARD LTD**

30 **Mr Johnston:** Well, I just wanted to, before I get into my address for the Canyon
31 Vineyard, just address a couple of points from earlier, and forgive me if I get – if
32 I have the reference wrong but, Sir, you raised an example in Napa of a vineyard
33 that was close to the ceased operation of the McLaughlin mine. Now was that the
34 Wild Diamond Vineyard at the Six Sigma Ranch?

35 **Mr Muir:** Sorry, I just missed the last bit there. Just put the microphone closer to you.

36 **Mr Johnston:** Was it the Wild Diamond Vineyard at Six Stigma Ranch that you
37 referred to?

1 **Mr Muir:** No, I was referring generally to what is known as the McLaughlin Mine and
2 now the McLaughlin Natural Reserve which is about 20 kms north-west of
3 Calistoga.

4 **Mr Johnston:** Okay, yeah. So look, I just did – just in the break I just had a wee look,
5 a look and there is a vineyard, and you’re quite right, there are vineyards that are
6 closer to that. But the closest one is the Wild Diamond Vineyard. But I think
7 significantly it was planned in 2018 to 2022, so after the mine was closed and that
8 rehabilitation began.

9 **Mr Muir:** Yes.

10 **Mr Johnston:** The other point I wanted to make was one of the gentlemen there raised
11 the – boron in coalmines. So I referred to Chris Goddard, who is probably one of
12 New Zealand’s most expert on coalmines. That’s his, that’s his thing. And he
13 said look Hunter Valley coal is high quality with very low boron, and it’s only
14 liberated when it’s burnt in power stations. So the Hunter Valley power stations
15 that remain operational are distant from the coalmines and the vineyards.

16 **Mr Muir:** Thank you.

17 **Mr Johnston:** So that’s that there. Now I also just wanted to talk about the process of
18 engagement, and this was something that iwi, our iwi spoke about at length, and I
19 think some other submitters have touched on that. But I think the point hasn’t
20 quite been made clearly enough where meaningful engagement is something that
21 happens with full information. And for us as affected businesses and residents in
22 the area, one of our greatest frustrations has been that for many, many public
23 meetings and personal tour – Mr Spring kindly took me on a tour personally of
24 the site. That’s all well and good but when it’s not accompanied with the detailed
25 information that allows you to assess how you are affected, it’s really just a
26 marketing exercise. And I had a message from Simon Gibbard. He and his wife,
27 Nicola, live on Thomson Gorge Road and are very close to the lovely couple who
28 spoke from the heart last – yesterday. And, you know, Simon explained that, you
29 know, they’re at ground zero and that the only thing they’d heard was a note in
30 the letterbox to say, “we’re digging up your road”. And, in fact, they did more
31 than that; they ripped out the trees on the road that lined their street.

32 I came to Bendigo in 2022 after I was hit by a stolen car. I was out on a run in
33 London. And when I returned home, it’s the landscape that got me. And I think
34 you have to leave New Zealand and live somewhere else for a while to come back
35 and really appreciate what we have here. I had no intention of becoming a
36 winegrower, but I fell in love with the landscape, and I had to find a way of
37 working with the landscape. And as a chartered accountant, you might think I
38 knew better than to get into the wine business and even more so to keep going
39 with it. But it’s the landscape that kept me here. And above the vineyard perched
40 on the edge of a schist canyon that runs up behind me into the Dunstan Mountains,
41 I now have a world class events venue, and it’s called The Canyon at Tarras
42 Vineyards.

1 In a few short years I fought hard – since I fought hard at the Environment Court
2 for the perpetual resource consent to operate that venue. I can see the future. It's
3 starting to pay off but it's been a 24 year journey to get here. Up at the Canyon,
4 it's a place to stand, it's a place for manaakitanga, but it's the landscape that makes
5 the magic happen. I host visitors from all over the world, from global race car
6 teams to billionaire wine tourism visitors on an outing from Queenstown, and
7 many, many weddings and every time, without fail, when they walk in the door
8 they are instantly won over and silenced by that landscape. It's meant that I can
9 now sell wine with a full retail margin, not selling wholesale where at times I'd
10 just make a dollar a bottle. In fact, from the feedback I've had from mainly
11 American wine visitors, they told me to put my prices up. So my top wine went
12 from \$80, and I now sell it for between 150 and 175, depending on the vintage, a
13 bottle, and it's good margin in that. And I sell more of that wine than any other.

14 So next Monday. I talked about the 20 Americans that are coming up to the
15 Canyon who work for the large – largest alcohol distributor in the world. Again,
16 it's a company nearly twice the size of Fonterra. And they're coming to the
17 Canyon for a tasting and it's with Kim and Erica Crawford. They have their own
18 vineyard down below in Bendigo called Loveblock and they share the distributor
19 with Kim Crawford Wines. And for me and my visitors, it's the experience of all
20 of Bendigo that shapes this magnificent postcard. Part of the wine tour packages
21 that we offer in conjunction with Latitude 45 Wines, who I'm pleased are in the
22 room with us here today, is bringing those people out of Queenstown. And I just
23 wanted to emphasise that, that the economist for the applicant doesn't seem to
24 grasp that these interconnections, that here at Bendigo we are connected to the
25 world. What we do is interpreted around the world, and we rely on the natural
26 environment, on our outstanding landscape, to sell our product. And again, we
27 don't have San Francisco or Sydney on our doorsteps. We need the landscape to
28 help us.

29 As a part of what makes living at Bendigo appealing for me, and I do split my
30 time between Dunedin and Bendigo, is having that Conservation land right behind
31 it. I walk it and I bike it several times a week, and I've cycled up Ardgour Rise
32 and Thomson Gorge Road in the peace and quiet of the historic environment that
33 it is today, and I rely on the integrity of that Conservation covenant being
34 maintained to continue to enjoy that.

35 Down in the vineyard every December there's a swarm of hundreds of thousands
36 of native bees. They're a tiny little insect, I think most Kiwis would never have
37 seen but they're native, and they cover the vineyard, they cover each leaf. It's
38 like, "what's going on there", and we figured out that they're actually breeding.
39 So they're all females and they're burrowing down into the vineyard. There's
40 little holes in the rows between the vines. It's the only vineyard in the world that
41 we know of where this happens. But it's that interconnection with the Department
42 of Conservation land behind with all that kākūka that is working with the vineyard.
43 It's also a reflection of organic farming. And right from those early days, it's not
44 just the bees that discovered there's something special here. The 2009 Tarras, the
45 Canyon pinot noir that I make, was judged by Steven Spurrier, from Decanter, the

1 best pinot noir in the show. It knocked out the very best from Burgundy and every
2 other pinot noir region in the world. So I grow an organic wine but it's more than
3 organic. It's Māori wine. As a founding member of the world's first collective
4 into indigenous winegrowers, Tuku, together we farm across Aotearoa 300
5 hectares of vineyards. And we stand for tiaki, for mana and hiheko, and I've
6 spoken to each of my partners there and together we oppose this application
7 because it is incompatible with those values, and it is incompatible with this
8 landscape.

9 And in my submission I've included an expert statement from distinguished
10 professor James Higham from the Department of Tourism and Marketing at
11 Griffith University; and he confirmed that all four components of my business –
12 that's wine production and sales, events, wine, tourism and accommodation – and
13 he said: "In my professional opinion, these businesses will suffer irreparable and
14 ultimately terminal damage if this fast-track mine application is approved by the
15 panel." In other words, co-existence would reduce customer demand and
16 ultimately kill my business. And it's not like I can just put it on ice and wait until
17 they finish. You know, we can look at Macraes, that started 36 years ago in 1990
18 with stage one. And when I toured the site with Damian Spring, he pointed out
19 with enthusiasm to the areas that they hope to mine next. So it won't finish with
20 stage one. And it's kind of academic to talk about rehabilitation when true
21 rehabilitation at Bendigo can only begin when all mining operations have ceased.
22 And planting some tussocks on a crushed and terraced maunga only to start
23 crushing the whenua next to it, it's not rehabilitation, it's managed destruction,
24 and it's permanent.

25 You know, we look at tourism numbers into this region and I'm going off – I
26 hadn't quite critiqued my notes in the break as I planned, but I understand the
27 number to be 3.1 billion of annual tourism spending in Otago. When you compare
28 that \$3.1 billion of tourism spending in this region with the discounted MPVGP
29 contribution of the mine, I think you can begin to understand that the contribution
30 of this project is insignificant in proportion with tourism and so, by definition,
31 highly sensitive to tourism.

32 Talking about remedies. I listened to an interview in Parliament – well, not an
33 interview – a debate in Parliament last week with Minister Jones, the minister
34 perhaps responsible for us being here today. And he said when asked in
35 Parliament about the effect of the Bendigo mine on hospitality businesses at
36 Bendigo, and of course he was talking about my business, he said it's about
37 balance and we've not seen any balance from this applicant.

38 When I look at the reply to my statement from the applicant, the response on
39 page 18, the bottom of page 18 of their response, "economic loss", they say the
40 desire for adjacent property owners to have their business purchased by MGL is
41 not a relevant consideration for the panel as the statutory framework does not
42 require nor provide for property value protection or underwriting. So as far as the
43 applicant's concerned, that balance should not occur. And I just don't think that's
44 fair. I've set out in my submission how I believe that balance should look. I've
45 also made it really clear that the incompatibility of this project means that I can't

1 be there, you know, I've got to get out. There's no – it'll completely blow the
2 wind out of my sails. There's a – it would be a depressing future to know that it's
3 going to get harder and harder and piece by – you know, it's like fighting – the
4 excitement, the thing that motivates me, the excitement I have about expanding
5 into accommodation, I already have the dining hall, you know, I've built that. I've
6 got the resource consent. Adding accommodation to that experience is a no
7 brainer. We've had feedback from the market from in-bound tour operators.
8 They're like, "when can you build it?". They're ready to send those high value
9 tourists there. You know, I had the owners of NASCAR up there. They were
10 enjoying the time so much that they said to their guide, "is there any way we can
11 hang around here longer" and he said, "ah, don't worry". Instead of going by
12 road, he ordered a helicopter so they could spend more time. I've had several
13 emails and correspondence with them since then but it's that – it's the landscape
14 again that binds that relationship.

15 I think – I haven't been keeping track of time but how we're going there?

16 **Mr Muir:** You're good, good to go.

17 **Mr Johnston:** Good.

18 **Mr Muir:** You've got the – you're the beneficiary of other people's economy.

19 **Mr Johnston:** Okay, thank you. So yeah, I just – I think that, you know, there's a lot
20 of concepts here that have been talked about that, like I say, I think are really quite
21 academic and don't, don't point to the realities on the ground for those of us that
22 are living and working and facing the prospect of trying to adapt to what is
23 proposed next, next door. You know, I gave the examples of how name
24 association in itself, you know. At the moment, the Bendigo name is, in the wine
25 world is, is right up there with Bannockburn, you know. So you talk about
26 Bendigo pinot noir, Bannockburn pinot noir, well you know it's some of the best
27 pinot noir in the world. And pretty soon, if because of the scale of the operation,
28 just like Macraes, just like Tiwai Point, the name Bendigo will be lost, it will be
29 liquidated. And I think ultimately, you know, that industry dislocation that we
30 speak about will occur to the whole of the wine industry. As the pathway is lit,
31 you know, a yes decision here will light a pathway for the many, many other
32 applicants to follow and I just think that it's the beginning of the end of the current
33 economy for this region. And I don't know, frankly, whether we have the
34 mandate, all of us in this room, to make that call.

35 I'm open for questions, thank you.

36 **Mr Muir:** Thank you very much, Mr Johnston, for your considered, measured and very
37 useful contribution. Questions from the panel?

38 **Mr Mulliner:** I've got one short question, thanks, Mr Johnston. Can you see any way
39 in which your business and the applicant's proposal can co-exist side by side?

40 **Mr Johnston:** No, no, none at all. It's just, you know, you could come up with a whole
41 lot of technical explanations at why, you know, the tailings are going to be fine,
42 don't worry, it's all, you know, in a perfect world, but you can't convince my

1 customers of that, I can't convince my customers of that. The perception is mining
2 of this scale next to what we do, it's just incompatible, it's too close.

3 **Mr Muir:** What is the – just remind me – you've probably already indicated this in the
4 written material – precise distance again between, between the vineyard and your
5 current facilities and, shall we say, the proposed "industrial" part of the
6 application?

7 **Mr Johnston:** Yeah, so the rise and shine pit?

8 **Mr Muir:** Yes.

9 **Mr Johnston:** We're looking at five kilometres.

10 **Mr Muir:** Five kilometres.

11 **Mr Johnston:** Yeah.

12 **Mr Muir:** That's as the crow flies?

13 **Mr Johnston:** Yeah, yes, that's right, yeah. And, you know, I think, you know, when
14 I was on a mountain bike ride up on the Aurora Creek track, a beautiful, beautiful
15 trail, I could hear this beep, beep, beep, beep, beep, beep, and I realised it
16 was the machinery down on the mine site. It was the reversing warning on their
17 vehicles, and that's just – they haven't even started practically, you know, so it
18 really will – I mean it, I think, you know, it's important again to distinguish
19 between noise limits and disturbance of that pristine natural environment. And
20 there was another occasion when I was there with a mate cycling and we could
21 hear a roar and we were like, "what is that?", and we realised it was a motor car
22 race at Highlands. And that's over a valley, a long way away, I think I measured
23 35 kilometres away, and we could hear it really clearly. So I just don't buy the
24 reassurances from the applicant that we're not going to hear or see anything,
25 because where I was standing and I could hear the race at Highlands 35 kilometres
26 away, it was only a kilometre from the mine. It just doesn't make sense.

27 **Mr Muir:** Any other questions? Yes, Mr Barry.

28 **Mr Barry:** You referred to the applicant's economic evidence briefly and, of course,
29 that suggests the creation of hundreds of higher paying jobs, a considerable boost
30 to GDP and a significant boost to the Government's tax revenues. Any comment
31 on that in terms of the bigger, bigger picture economic impacts of the project?

32 **Mr Johnston:** Yes. So I think – two comments on that. So one is the Benji Patterson
33 report is – has no recognition of the existing economy, so they're not taking into
34 account us.

35 **Mr Muir:** Well, their response does, doesn't it?

36 **Mr Johnston:** It does.

37 **Mr Muir:** Yes.

38 **Mr Johnston:** But, but, but inadequately, in my view. But certainly their initial report
39 ignored that elephant in the room. I think – so there, there's an under,
40 understatement of the effects on the existing economy and you really need to look

1 at a net effect, at the net benefits that the project would bring. So I think, you
2 know, in my mind, and, you know, I'm not an economist but when I sort of weigh
3 that all up in my head, it just doesn't make any sense. You know, the risks, you
4 know, again, when you take that, the scale of tourism too in the wider region and
5 the complexities of the, the connections between all of those. So a tourist that is
6 attracted to New Zealand, they're often attracted to this region. It's their sole
7 purpose for coming to the country, right. They've had – they come to
8 Queenstown, they walk the trails, they come to the wine region here. That's the
9 point of their trip. So if we mess it up here, we mess it up for the rest of the
10 country.

11 **Mr Muir:** It's poss – sorry.

12 **Mr Barry:** But I mean it is a heavily modified landscape already, would you agree
13 with that?

14 **Mr Johnston:** Nothing of the scale that is proposed.

15 **Mr Muir:** When you set up a comparison between the 3.1 billion value of the tourist
16 industry in Central Otago generally against the anticipated economic benefits of
17 the application, is that an entirely tenable position in that whatever
18 interconnectedness there is, and I'm sure that the panel accept some degree of
19 interconnectedness, the tourist industry for Central Otago is not going to be
20 entirely extinguished by this mine were it consented, is it? And that's just not a
21 realistic possibility.

22 **Mr Johnston:** No, I agree.

23 **Mr Muir:** Yeah.

24 **Mr Johnston:** Yeah. But the point that I'm making with that number is that if it's
25 affected by only four or five per cent - - -

26 **Mr Muir:** Yes.

27 **Mr Johnston:** - - - it's made the whole exercise a waste of time. So it's highly
28 sensitive to it.

29 **Mr Muir:** Yes. There has been some commentary in the press, most recently an article
30 about 10 days or so ago, which tried to bring some focus to the comparative
31 numbers of tourists who are spending their time and their money in this, the sort
32 of Cromwell-Bendigo-Luggate-Tarras loop effectively, sort of excluding the
33 Queenstown-Wanaka and the Gorge, and Bannockburn part of Central Otago. Is
34 there any more – is there any accurate information of which you are aware and
35 which we can test that premise?

36 **Mr Johnston:** None that I can point to, but I can say that – again, I read that comment
37 in, from the applicant's response, and I just think it's way too simplistic to assume
38 that that most visitors, if I read through there, most visitors to Queenstown do not
39 even pass through Central Otago. Well I just don't – I don't think that's relevant.
40 You have to – if you look at – there's a huge number of traffic, amount of traffic
41 that travels from Mount Cook, Aoraki Mount Cook, through the Lindis. They go
42 right past Bendigo on their way to Queenstown.

1 **Mr Muir:** Sure.

2 **Mr Johnston:** That's a – it's a major tourist route and also, you know, we've seen
3 evidence, I think Professor Higham may have referred to flights arriving into
4 Queenstown that will be able to see the pits on their arrival. And I, and, you know,
5 if we had another thing to deal with in Bendigo, in Tarras, the airport.

6 **Mr Muir:** Yes, you could have had the airport.

7 **Mr Johnston:** Yes. But I just don't see how that could work either. I mean, how can
8 you – how can you promote an international tourism destination and the first thing
9 you see as you fly in is a massive open pit mine.

10 **Mr Muir:** Yes.

11 **Mr Johnston:** It's just the first, the first - - -

12 **Mr Muir:** Well - - -

13 **Mr Johnston:** - - - aeroplane load of - - -

14 **Mr Muir:** - - - you did a very effective job of killing that proposal.

15 **Mr Johnston:** - - - I had no part in that but, yeah, look I think it's such a complex issue
16 and it really I think, you know, the arguments put forward are incredibly simple
17 and I just don't think are correct, yeah, of looking at the economy - - -

18 **Mr Muir:** Just relatedly - - -

19 **Mr Johnston:** - - - is so isolated.

20 **Mr Muir:** - - - you mentioned the Minister's comment about, you know, balance.
21 Accepting that this area has a long history of goldmining and that there are –
22 because obviously there are rich mineral deposits in and around the Bendigo area,
23 what would, in your view, balance look like?

24 **Mr Johnston:** Oh look, I don't, I don't – those are the Minister's words and I'm
25 making the point that the applicant doesn't seem to accept that there should be any
26 – that they should have to pay any balance towards, towards achieving a balance.
27 My view is, is, is consistently clear that I don't think any amount of balance, any
28 amount of mitigation for this project will achieve something acceptable for us. I
29 don't think that it is compatible, it is incompatible with the activities that we
30 undertake.

31 **Mr Muir:** That is not because it is mining per se, but it is mining on this scale, what
32 some have called an industrial scale, is that correct?

33 **Mr Johnston:** That's right, and it's, and it's because it's open pit mining with a tailings
34 dam and of the scale, you know, I – when you drive, and I understand the panel
35 have, when you drive from one end, you know, of the site to the other, right to the
36 very top where the tailings dam is planned, it's a long way, right, and it just, it
37 helps frame that in your mind that this is a big chunk of Te Waipounamu, you
38 know, that's going to be messed up by this project. It's the scale of it, it's the
39 nature of it, it's the permanence, it's the intergenerational effects, and the toxicity
40 that remains forever, that makes this completely inappropriate, especially in a

1 region where we're in the spotlight. This is the, this is the thing that people come
2 to see and if they see something that is completely counter to their, to their
3 expectations, that's going to resonate around the world, and I wouldn't think for
4 one minute that our competitors won't use it against us.

5 **Mr Muir:** Thank you very much, Mr Johnston. Are there any other comments or
6 questions? I'm sorry we've kept you longer than you anticipated but - - -

7 **Mr Johnston:** No, it's my pleasure.

8 **Mr Muir:** - - - you've been most helpful, thank you.

9 **Mr Johnston:** Thank you.

10 **Mr Muir:** That concludes the scheduled submitters in this hearing of the application.
11 Under the Act, of course, whenever there is a – whenever a hearing is scheduled
12 in the context of a fast-track approval application, there is a mandatory
13 requirement that the panel give an opportunity to the applicant to participate and
14 respond. And the applicant has in this context chosen to exercise that right at the
15 conclusion of all of the submissions over the last two days. We allocated up to 90
16 minutes for that, given that there had been essentially a day and a half's worth of
17 evidence, largely oppositional to the application. And so I'd now invite Mr Leckie
18 to tell us how he would like to use that up to that available time. There is, like
19 speed limits, you don't need to drive to the number.

20 **Mr Leckie:** It's not compulsory, Sir.

21 **Mr Muir:** It's not compulsory. But how you would like to use that time, whether it be
22 by way of submission, evidence, or a combination of those. Thank you.

23 **MR LECKIE'S SUBMISSIONS IN REPLY**

24 **Mr Leckie:** Yes, thank you, Sir, and the team and I have given some careful thought
25 to that. What I'd propose to do is present to you, in the form of submission, a
26 response in a thematic way, so not, not a submitter by submitter response - - -

27 **Mr Muir:** Yes.

28 **Mr Leckie:** But address some reoccurring points that have come up. What I'd propose
29 to do in the time available – I filed legal submissions with the section 53 responses,
30 and I don't propose to – unless the panel wishes me to – I don't propose to take
31 you through those.

32 **Mr Muir:** All 90 pages of them.

33 **Mr Leckie:** All 90 pages, and I apologise for the length, but they're there, they've been
34 filed, and they're intended to assist you in the interpretation of that response. So
35 I don't propose to take you to those today, other than to just mention that they're
36 there. What I would – what I do suggest would be of most help to the panel I think
37 is if I respond to the categories, or respond to the points that have been raised in a
38 couple of categories. One - - -

1 **Mr Muir:** Just give me one minute before you do so, because I'm quietly frying here -
2 --

3 **Mr Leckie:** I think the sun - - -

4 **Mr Muir:** - - - in the afternoon sun and I'm going to, with the consent of everyone, just
5 remove my jacket and go down to a shirt sleeve.

6 **Mr Leckie:** It's me who should be frying, Sir, not you.

7 **Mr Muir:** Thank you.

8 **Mr Leckie:** And broadly what I'm intending to do, again to hopefully best assist the
9 panel, is address you in two broad categories, as I see it. There's some categories
10 where there is a clear difference of opinion between experts and also between
11 commentators and MGL and I'll just touch on those where appropriate. But there's
12 another category which I think I can be most useful for today for the panel's task
13 in terms of setting the conferencing, which is there are a lot of points that have
14 come up that are likely, I expect, subject to what the panel directs perhaps later
15 this week, will be the subject of expert conferencing. So in my response today,
16 I'll attempt to frame up some of those live points - - -

17 **Mr Muir:** Yes.

18 **Mr Leckie:** Noting that they're a live – that those agendas are a live point for the panel
19 as well.

20 **Mr Muir:** Well, from the panel's perspective, I think that we see this not just as a
21 valuable process for the invitees, but hopefully also for the applicant. The quality
22 of the submissions that have been heard since Tuesday of this week has been high
23 and, from the panel's perspective, this process has exceeded by a measure its
24 expectations of it in terms that we always regarded it as important, based on the
25 transparency of the process, that there be such a hearing. But it has been
26 qualitatively an excellent process from our perspective and it has raised new
27 approaches and ideas which has us pondering. And we hope that it has also been
28 an opportunity for the applicant to reflect on some of the concerns in the way in
29 which they frame their responses now over the next period, in terms of adequacy
30 of information, in terms of the, obviously the very high emphasis that so many
31 submitters place on the reliability of trigger points and the confidence that the
32 panel can have that those trigger points, having been as a function of accurate
33 measurement having been activated, that there is a completely reliable and robust
34 cascade of responses available. And we just simply emphasise that rather than an
35 opportunity for the applicant to robustly respond, there is much possibly for the
36 applicant to be learnt in this process.

37 **Mr Leckie:** Yes, and completely acknowledge that, Sir, and acknowledge that with
38 that, this presentation today is certainly not the last say on these matters. In a way,
39 it's the beginning of this next stage of the process. So I certainly, I certainly hear
40 your point there. And those points are relevant both to the technical conferencing,
41 if I can call it that, but also – and also the workshopping conditions, being a matter
42 largely for the planners and the, and potentially lawyers as well, but they're very
43 relevant to both, both those processes.

1 And I've just made another observation here, Sir, which is something else that the
2 panel may like to reflect on, while I'll go through today, at a relatively high level,
3 the response of the applicant, I see there may be, if the panel's minded, at some
4 point in the future, certainly after the expert conferencing, for a more complete
5 reply in writing potentially to link feedback that's been received by the submitters
6 to outcomes that have been, I would anticipate, landed on through the
7 conferencing and the applicant's response to that. It's something I can see may
8 assist in further narrowing down what matters are before you and where and what
9 the applicant's position is on that. So it's just a thought I've been considering - -
10 -

11 **Mr Muir:** Well we can keep that, as they say, under advisement and as the
12 conferencing and ancillary processes develop, then you can file a memorandum
13 with us if you consider that useful and we will reflect on it.

14 **Mr Leckie:** - - - thank you, Sir. So with those introductory comments, I'll just move
15 now into my notes, and I will attempt to not go too fast but also not go too slow
16 either, so obviously interject as you feel you need to as I work through, work
17 through my notes.

18 So starting with the purpose of the Act, so right at the – right at the start of the
19 FTA. I just wanted to respond to a point raised by EDS, which is around their
20 submission that there's no presumption of approval and, as I understand their
21 argument, it's that the purpose of the FTA is a facilitative one, not a substantive
22 one. And we disagree with that submission that's been put to the panel. In my
23 submission, there is a presumption of approval. I wouldn't frame it that way, I'd
24 frame it slightly differently. One FTA decision, the Southland Wind Farm, did
25 talk about that presumption of approval that sits within the Act. That's not the
26 wording I've used in our legal submissions, and I don't think it's a - - -

27 **Mr Muir:** I don't think so, I don't think it's - - -

28 **Mr Leckie:** - - - an accurate - - -

29 **Mr Muir:** - - - a valid word to apply to it. You can distil, can't you, from section 85,
30 you can distil from section 85(3), and it's a requirement to assess whether the
31 adverse impacts are out of proportion to the regional or economic benefits such as
32 you do, but – and you can identify that the purposes, which is of course the case,
33 that the purposes of the Act are emphasised throughout.

34 **Mr Leckie:** Yes.

35 **Mr Muir:** Both substantively and in the schedules to the Act.

36 **Mr Leckie:** Yes.

37 **Mr Muir:** But the presumption, as you call it, only applies to the extent that you can
38 infer something from the words “out of proportion to”. Ultimately, we've got to
39 make an assessment of whether those adverse impacts are out of proportion to the
40 economic regional benefits, and you can say well, that means that you start, you
41 know, unless it's a good clear case that the adverse impacts overshadow the

1 economic and regional benefits, then you must consent. That's a perfectly valid
2 argument that I've been trying to tease that out for two or three days - - -

3 **Mr Leckie:** Yes, yes.

4 **Mr Muir:** - - - in discussions with various people. It's – that's an open question, which
5 is exactly how we interpret it. But beyond that you couldn't say that the Act says,
6 “we start here with a presumption” and I'm pleased that you're not using that
7 word.

8 **Mr Leckie:** No, absolutely not, Sir, and the point of difference between my submission
9 to you and those of EDS is that I say the purpose of the Act, being the facilitation
10 of the delivery of infrastructure and development projects, I say there is substance
11 to that purpose. It's not – that facilitation is not just the right to be part of the FTA
12 process, the right to go on the schedule. I think there's more to it than that due to
13 the words “delivery” within that, within that purpose. So I don't go as far as
14 saying, like the Southland Wind Farm did, that that's a presumption, and I don't
15 – I agree, Sir, that that's not a particularly helpful way to frame, to frame that
16 purpose. But I do think the words “delivery of the projects” is relevant to that
17 purpose of the Act - - -

18 **Mr Muir:** Yeah.

19 **Mr Leckie:** - - - and that it's not just a – not just a facilitative purpose - - -

20 **Mr Muir:** Yes.

21 **Mr Leckie:** - - - there's more to it than that.

22 **Mr Muir:** Well there's perfect harmony in what you say there and then the section
23 85(3) test. I don't see them - - -

24 **Mr Leckie:** Yes.

25 **Mr Muir:** I don't see them as in any way inconsistent.

26 **Mr Leckie:** Yeah. I agree. They work together.

27 **Mr Muir:** They work together.

28 **Mr Leckie:** They work together. So that's just starting with the purpose. And
29 segueing, which you've now done, to that section 85(3) test, which I agree is the
30 key one for you really, along with, along with other tests. And perhaps to pre-
31 empt a question you may have asked me because you've asked many of my friends
32 around this proportionality and do I have any thoughts on how the panel should -
33 - -

34 **Mr Muir:** Yes.

35 **Mr Leckie:** - - - address that proportionality. And, and I do. I say that the, or in my
36 interpretation, the use of the words “sufficiently significant” leading into that out
37 of proportion test, so I'll just let you go to the Act, page 5.

38 **Mr Muir:** It's never far from me.

39 **Mr Leckie:** No, it probably has as many sticky notes the same as mine does.

1 **Mr Muir:** I got a very strange look when I suggested to Ms Sweetman that it actually
2 sits on my bedside table.

3 **Mr Leckie:** I make no comments on that, Sir. But I say that sufficiently significant
4 description of the impacts is helpful to your interpretation of what is out of
5 proportion, because I say that takes you beyond a 50/50 or a 51/49 call. It needs
6 to be – those impacts need to be more than that, and that’s an intentional word of
7 the – in the legislation, given that sufficiently significant lead-in to the
8 proportionality test. So that was just an additional point that I wanted to raise;
9 that it hadn’t been raised, as I’d heard it, to date but I think it is important to that
10 interpretation. And I agreed with Mr Holms’ response to your answer on that on
11 Tuesday - - -

12 **Mr Muir:** Yes.

13 **Mr Leckie:** - - - as I, as I heard it. I thought that was quite a similar response to what
14 I’ve given. I agree with my other friends that it’s ultimately an evaluative exercise
15 for the panel. I don’t think that’s controversial. The only other point I wanted to
16 raise is – that hasn’t been raised to date, is that the test is influenced by the
17 magnitude of the benefits. That becomes very important when you’re applying
18 your proportionality assessment because the magnitude of the benefits is relevant
19 to whether they’re out of – oh sorry, if I flip that around – the magnitude of the
20 effects will be different depending on the magnitude of the benefits and whether
21 they’re out of proportion or not. So the benefits are relevant to your determination
22 of that out of proportion test. It was the only other point I’d add to that. And to
23 put that in another way, the more benefits a project brings, the more potential
24 adverse impacts that project can bring and not be out of proportion because there
25 are more benefits. I think that’s part of your evaluative, evaluative exercise. A
26 project with smaller benefits, I say, could be tipped into that out of proportion
27 category sooner than a project with bigger benefit.

28 **Mr Muir:** It doesn’t make the job of comparing and commensurables any easier.

29 **Mr Leckie:** It doesn’t make it any easier, Sir, I agree, I agree. But it is a relevant part
30 of your evaluation of that test.

31 **Mr Muir:** Yes.

32 **Mr Leckie:** And again I, throughout these submissions, sometimes reference other
33 FTA decisions, and I acknowledge you’re not bound by them but they are
34 persuasive and relevant to your decision making. And the Southland Wind Farm
35 decision did grapple with this point as well, a similar point where it said the more
36 substantial the benefits the more significant the effects would need to be to justify
37 a refusal. So that’s another way of saying what I was just submitting then. And
38 we say in this case that that bar’s not reached.

39 So with those – so if I could call them the more fundamental statutory
40 interpretation points addressed, I’d like to just move through – I’ve attempted to
41 group them but some other points that have come up in the last, the last two days.
42 Starting with a point from the District Council regarding the formation standards
43 of the alternative access Ardgor Rise and in my submission, Sir, that while this

1 will ultimately be a matter for conferencing, I see it really is a point that can be
2 addressed also through conditions. It's a matter of design and a matter that I think
3 suitable clarity can be provided for through conditions, and really I'll leave that
4 for the technical experts to reflect on, and it will no doubt be a topic for the
5 conferencing.

6 A point that has occurred or reoccurred through several of the submissions that
7 have been filed is this point around adaptive management. So I'd just like to spend
8 some time on that today. And it's a point that I also covered in my – not only have
9 you had my 92 pages of legal submissions, there was also a set of legal
10 submissions we filed with the application, and I'd briefly touched on it in those as
11 well. But it's our case that it is – there is an appropriate level of baseline
12 information in the evidence, in the technical assessments and the evidence that's
13 been filed at this time to address the management of effects. I acknowledge there's
14 again still this further process to go and that will no doubt be added to. But I'd,
15 just as a starting point, submit that, to use of the Supreme Court, this isn't a "suck
16 it and see" approach to effects management.

17 **Mr Muir:** When the consequences of getting it wrong are either, in an extreme case,
18 an inundation from a failed tailings storage facility or probably more realistically
19 a greater focus of attention, pollution of underground aquifers, it can't be anything
20 less. Suck it and see does not work.

21 **Mr Leckie:** Absolutely agree, Sir, and that's not, not what we're putting to you as a
22 submission. This isn't, that is not what's being proposed by the relevant experts
23 and it's certainly not something that I'm putting to you in a legal sense would be
24 appropriate. It's not. Adaptive management is a really important tool in projects
25 like this, but it's not suck it and see and that's not what is being put to you to
26 decide on. So I just – that's an important starting point from the applicant's
27 perspective. And, as the panel's now no doubt very aware, adaptive management
28 has become a very critically used and commonly used tool in large projects in
29 New Zealand. And I'd just add, it is a tool that is sometimes misunderstood, that
30 there is a perception that it can be a "we'll leave that decision making till later".
31 But again, I submit that's not what's being sought here. The panel needs to make
32 a decision in this case and not have later decisions being delegated to future
33 decision makers. That's not an appropriate approach and again not what we're
34 putting to you to do.

35 Commissioner Sweetman I think asked one of the – one of my friends or one of
36 the witnesses if there was a case or a useful guidance on adaptive management,
37 and there's a few. But the *King Salmon* Supreme Court case to me captures quite
38 neatly the relevant judicial guidance on adaptive management and takes you
39 through quite a helpful, not a checklist but a helpful list of what the Supreme Court
40 saw as critical requirements to utilise adaptive management. So that case was
41 *Sustain Our Sounds* and *New Zealand King Salmon*. So it's a 2014 Supreme Court
42 case, and it's a relatively – well, not relatively, it is a very settled area of RMA
43 jurisprudence following that *King Salmon* decision. So what the Supreme Court
44 there identified was that the regime needs to deal with risk and uncertainty. That's
45 what adaptive management is seeking to do; and that's not in an open ended way,

1 it's within very important constructs. And I say that the Supreme Court's
2 requirements for reliance on adaptive management are very helpful in this instance
3 to provide a test to what's being sought here.

4 The first is around the relevance of baseline information and the need for that to
5 be robust. And we say the evidence for MGL provides a high level of baseline
6 information. It has been added to since the application was lodged as well, but
7 that's the starting point of the suitability of the approach is there is an
8 understanding of effects and tools in place to manage those, even if some of those
9 tools, at this stage, aren't known with certainty, and I'll come to that.

10 **Mr Muir:** You heard Mr Hanan this morning or early this afternoon really question the
11 reliability of that proposition so far as the aquifers are concerned.

12 **Mr Leckie:** Yes, and there's several – Mr Jens Reckers – I don't have his name in front
13 of me but the – yeah, I've got the nod from Damian, so. There's quite a lot of
14 evidence from Jens on this, on this point. There's also a further condition that's
15 been proposed which is, which was a suggestion from the Regional Council on
16 this groundwater point which was the point that came up today to provide some
17 more comfort around that ongoing testing and that ongoing - - -

18 **Mr Muir:** Well that's sort of segueing into the issue of conditions, but we're focusing
19 at the moment, aren't we on the baseline information.

20 **Mr Leckie:** Yes.

21 **Mr Muir:** I think it would be fair to say that the panel has some concerns about some
22 areas of the baseline information, just to be, you know, clear about that and to be
23 as, you know, in terms of the natural justice considerations that are in play here
24 about the aquifers.

25 **Mr Leckie:** Mm-mm and again I would – I do rely on Mr Reckers' evidence in relation
26 to the baseline work that's been done. He's a very experienced expert and it is a
27 robust set of information to understand the effects, acknowledging that more
28 information is always helpful. I certainly don't disagree in that case and this
29 additional information gathering condition throughout the life of the project that
30 the Regional Council has very helpfully suggested will, will provide further
31 robustness to that approach. But my submission to you is you do have an
32 understanding, a suitable understanding of that groundwater situation to have
33 comfort that those effects can be, can be managed.

34 **Mr Muir:** I think that possibly one small aspect of the apprehension is that the rather,
35 that the later – this was sort of right on the cusp of us issuing invitations under
36 section 53 and productions of the reports from earlier last year when engaging the
37 Ardour aquifer and where that left us, one of the issues.

38 **Mr Leckie:** Yes, yeah, no, I acknowledge that. I acknowledge that, Sir. Sorry, I just
39 missed – was there a, was the point of that that's what's triggered your – that was
40 triggering your concern?

41 **Mr Muir:** One issue, one of them.

42 **Mr Leckie:** Yeah.

1 **Mr Muir:** Yes.

2 **Mr Leckie:** No, I understand.

3 **Mr Muir:** We listened very carefully to Mr Hanan this morning and there is a deal of
4 concern within the community and amongst the informed community about the
5 adequacy of the groundwater modelling.

6 **Mr Leckie:** Yes, and it'll again no doubt be – I'm sure will be a topic for the
7 conferencing as well, and Mr Reckers very, very aware of that - - -

8 **Mr Muir:** Yes.

9 **Mr Leckie:** And has been listening to the - - -

10 **Mr Muir:** Good.

11 **Mr Leckie:** - - - to the submissions raised as well.

12 **Mr Muir:** Thank you.

13 **Mr Leckie:** So that's probably as far as I can take that point today. And linked to that
14 is – so I'm back on the Supreme Court list of criteria now and that the second one
15 really is around the suitability of technical assessment and testing to ensure that
16 the degree of uncertainty and risk is low. So that links to the point that you're
17 raising around the what if, you know, what if it doesn't go to plan; and again I say
18 that the assessments are robust in that regard and there are methods in place to
19 ensure that those effects can be managed, as the experts on behalf of MGL are
20 putting to you that they, that they can. And no doubt that, again that point is a
21 matter for conferencing as well to work through these differences of opinion on
22 that, on that point.

23 **Mr Johnson:** Just a quick question on that, Mr Leckie. Risks being high or low are
24 quite often a function of who views the context by which the reference is being
25 made. So can you be very clear as you advance those conversations where that
26 reference point is. The perception of risk is actually kind of in the eye of the
27 beholder, so I just need to make sure that there's a qualification in that risk
28 assessment as it runs through.

29 **Mr Leckie:** Absolutely. In my submission that that – who that – who's assessing that
30 risk or identifying that risk to the panel needs to be the people with the appropriate
31 expertise. That's who I would say to you, you should look to, to determining that
32 risk. And it's not to say that other people's concerns aren't relevant, they are. But
33 I think the panel needs to take a scientific and expert evidential basis to this test
34 and apply and put significant weight on the views of the relevant experts who
35 understand that point.

36 **Mr Johnson:** Coming into some of the proportionality questions, I mean, risk is a
37 consequence, is a product of consequence and likelihood, and so perception of
38 likelihood and consequence is quite often a grey space. So I'm just making sure
39 we're clear on clarity on that conversation going forward.

1 **Mr Leckie:** Yes, so – yes, and in terms of perception, I don't see perception as a
2 relevant matter that needs to be considered in that, in that test. I think it's actually
3 - - -

4 **Mr Johnson:** I'm just going to qualify a point there. If you don't have data, then
5 perception is the only thing that carries forward, so just - - -

6 **Mr Leckie:** - - - yes, understand, understand that, yeah, yeah. the – I don't need to go
7 into it in too much detail, I think the panel are obviously very across this point,
8 but the effects that are falling into this category aren't just the water management.
9 Of course, there's other, other disciplines that all this applies equally, equally to
10 in terms of the other engineering controls and things like that across the project.
11 So it applies – this legal test applies equally to all those, all those controls.

12 The third part of the Supreme Court's guidance on adaptive management is around
13 – and it's interesting that this came third. In my mind, this should come after
14 conditions. But they mentioned – they then referenced comprehensive and
15 integrated management plans. Obviously there are a lot of management plans
16 before the panel and they also are going to be the subject of the expert, expert
17 conferencing. So those management plans form a very important part of this
18 adaptive management approach, which links though to the fourth component of
19 adaptive management from the Supreme Court, being the conditions.

20 I'm not on the Supreme Court but I would have personally put the conditions first
21 and then the management plans that follow second, because my submission is that
22 the conditions frame up those critical aspects that then need to fall into the
23 management plans, and it's not that the management plans comes first and then
24 aspects fall out into, into conditions. I submit to you it needs to be the other way
25 around. There – within the conditions set, I've made a note here, there are, or
26 there can be, because I acknowledge this is still to be a matter to be conferenced
27 through, but there are clear performance standards, predetermined trigger
28 thresholds, review and response mechanisms, to manage these, these effects. And
29 really my submission to the panel is just that those aspects need to fall into the
30 conditions.

31 I acknowledge that in some instances, and I haven't got a list but just listening to
32 the feedback yesterday and today, I think there are aspects of the management
33 plans that could more helpfully pull into the conditions, and again I think that will
34 be a matter for conferencing. It's not that they're missing. I think that they can
35 be pulled into, into conditions. But they're really key matters that the panel rely
36 on, for the management of effects that must fall into management plans, should
37 sit within, within conditions. And that's a certainty, a certainty point as well,
38 given that management plans can be varied in the future, and those future
39 variations are tested back to the requirements of the conditions.

40 **Mr Barry:** Mr Leckie, what about if the effects, to quote one of the earlier submitters,
41 are catastrophic and irreversible, or even say there's just a long time between when
42 they happen and when they're picked up under this adaptive management plan. Is
43 an adaptive plan going to be appropriate or sufficient?

1 **Mr Leckie:** Yes, well I think, in my submission, Sir, it would be. The – firstly though,
2 to answer that question, I would urge you to test the evidence on those points as
3 to the likelihood of those effects occurring, and – but to that, to respond to that
4 submitter, there does need to be an action, a method to address an effect if it's
5 picked up. I agree there's no point in monitoring for the sake of monitoring if
6 there's nothing that can be, can be done about it. And I'm certainly not putting
7 that to you as an appropriate approach and it's not the approach that's proposed,
8 proposed here. But the monitoring and response to that is a critical part of this
9 adaptive management approach. And some additional monitoring proposals have
10 been incorporated into the project through the section 53 evidence as well, which
11 again I'd leave to the expert conferencing as to the extent that has addressed the
12 concerns of the experts in that regard, to picking up those, those trends and those
13 changes. But to answer your question, yes, there does need to be a method to deal
14 with what is captured by that monitoring in a timely way. Hopefully I've
15 answered your question.

16 **Mr Johnson:** I think there's a question on timeliness, is that if the effect takes 15
17 years or 20 years to be manufactured from something you did yesterday, how do
18 you adapt to around responding to something that's on a very slow mode, slow
19 motion process?

20 **Mr Leckie:** Yeah, it becomes more difficult, I agree, and that's why picking up these
21 effects sooner is really important to this, to the effective approach of this adaptive
22 management. I completely agree that it's – the sooner something can be picked
23 up, or a trend can be picked up, the sooner it can be responded to. But we're not
24 putting to you a case that is suggesting there will be those effects that can't be
25 picked up for that length of, length of time; and again, I suspect that will be a point
26 of questions for expert conferencing. But really, I'd put to you today that the
27 sooner trends or effects can be picked up, the sooner they can be responded to and
28 addressed, which is the whole purpose of that adaptive management regime. So
29 I'm agreeing to an extent that it's not an effective management tool to rely on
30 something that may take that long to be picked up. But that's not what the
31 evidence for MGL is suggesting. And again, there's been some additional work
32 done by the experts around monitoring points closer to the site, etcetera, to pick
33 up those effects to avoid that, or to reduce the chance of that scenario happening,
34 yeah.

35 **Mr Muir:** Relatedly, is the ability beyond all of our lives probably in this room to
36 ensure that that process goes on, because talking about issues such as groundwater
37 contamination, we may not reach – and acknowledged to the experts – may not
38 reach peak groundwater contamination in our lives.

39 **Mr Leckie:** Yes, and on the, on that point, the reality – well, under the RMA as it stands
40 at the moment, and I – no one knows what the future holds in terms of changes to
41 that, but as long as there is a discharge of a contaminant from this site, that will
42 need to be controlled. In the current regime, that requires a resource consent. So
43 the – that may, and indeed probably will mean, there's a life beyond these current
44 consents – sorry, not a life beyond the current consents - - -

1 **Mr Muir:** Yes.

2 **Mr Leckie:** - - - but there will likely be a need for consents into the future and there
3 will be a need for consents if there are discharges from the, from the site. So
4 nothing that is determined by the panel now would change that in the future. If
5 there was a discharge from the site caused by this activity, it would need, it would
6 need an approval and the effects would need to be, would need to be considered.
7 So - - -

8 **Mr Muir:** Yes, yes, but unless projecting out 50 or 60 years, unless there is a
9 mechanism to ensure that the terms of that new approval can be given effect to at
10 some, someone other than the taxpayers' cost, it's all quite irrelevant.

11 **Mr Leckie:** Which, yes, which then comes back to this, and I don't want to jump ahead
12 because we're on an important topic - - -

13 **Mr Muir:** Yes.

14 **Mr Leckie:** - - - but this bonding, how to manage future, future effects point.

15 **Mr Muir:** Yes. Well, you've heard me enough over the last two, three days about, you
16 know, about although bonding is obviously an inherent part of this process, that it
17 is, it has its limitations in the context of intended consents of this project.

18 **Mr Leckie:** And we'll – I've got a section on bonding, which I'll come to because I've
19 got some thoughts for the panel on that. But fundamentally, the bonding needs to
20 deal with effects of this proposal. And that includes those sorts of, those sorts of
21 effects. So I don't accept that there's a scenario that there's a sort of a walkaway
22 type scenario that could leave those sorts of effects not addressed by the applicant
23 through a bonding or whatever regime ultimately was to be landed on. They're
24 effects of this proposal and, therefore, they would be captured by that bonding
25 assessment and quantum approach. I acknowledge though that those effects need
26 to be able to be known and quantified for them to form part of the bonding
27 approach. Like, I've got a bit of content on that bonding that might help that point.
28 But provided if, if there are effects which are effects of the project, they will need
29 to be captured by that bonding mechanism.

30 **Mr Mulliner:** Can I just ask a related question before we move on. Would you agree
31 that where we are now there's a greater focus on detection and adaptive
32 management and compared to, I don't know, and I use water for an example,
33 compared to downstream compliance, than there was in the initial application?

34 **Mr Leckie:** Yes, yeah, I'd agree with that. I mean, it was the topic of a lot of the, or
35 several aspects of both the RFI evidence and the section 53 evidence. So I agree
36 it's got more focus now. It did – it was assessed and there were management
37 actions proposed in the original application, but I would agree that it's got more
38 focus now as we've gone through that evidence and RFI process. And that's
39 included significant feedback from the regulators as well that has contributed to
40 that focus.

41 **Mr Mulliner:** Yeah. And I guess I'd expect expert conferencing to further develop
42 that - - -

1 **Mr Leckie:** Yes, that similar point really or the point we've really been talking about,
2 I'd agree about how you capture those trends or those risks and then manage them.
3 I'd agree. I think that focus will continue through that expert conferencing
4 process, yeah, yeah, and it has been something that has evolved through ongoing
5 work with the regulators as well, yeah.

6 **Ms Sweetman:** Mr Leckie, are you saying that the proposed bond conditions would
7 extend into the long-term - - -

8 **Mr Leckie:** Yes. So, I've briefly jumped ahead - - -

9 **Ms Sweetman:** - - - because I'm just looking at proposed C128 of the joint CODC
10 and ORC conditions - - -

11 **Mr Leckie:** - - - what was the - - -

12 **Ms Sweetman:** - - - where it says C128. So that's your part 403D.04, schedule 1,
13 common conditions, which says that the Councils must release the remaining bond
14 on the completion and/or achievement of the objectives and outcomes set in the
15 mine closure plan.

16 **Mr Leckie:** Yes, I understand the question. So that, that isn't saying that the bond, or
17 it's not intended to be saying that the bond is released at that – all the bond is
18 released at that point. That condition needs to be interpreted in addition to
19 condition C116, which is just a few pages earlier, and the mine closure plan is
20 only one part of the actions that are making up the bond. There are other actions
21 and those actions can go further than the life of the, the life of the consents. So
22 the bond doesn't have a "must finish" at the end of the term of these consents
23 requirements. There will be actions that go beyond the life of those, those
24 consents.

25 **Ms Sweetman:** I think we'll add that to the list of things for expert conferencing.

26 **Mr Leckie:** For conferencing.

27 **Mr Muir:** Is it even bankable. Is that sort of bond even bankable. I mean, look, you
28 may well – you don't need to answer the question but if it's contemplated that
29 from the revenues of this operation some large cash sum is deposited somewhere
30 which could conceivably be drawn on in 75 years' time, that's one thing. But
31 that's typically not how this would be, not typically the commercial response to
32 this sort of bonding issue. There would be, there would be an arrangement with
33 insurers or bankers.

34 **Mr Leckie:** Yes, and I can't answer. I don't have any expertise in bonding, so I can't
35 specifically answer that question. But I do know from other experiences with
36 other projects that there are different ways bonds can be provided. Some, some
37 applicants use cash bonding, for example, rather than bank guarantees bonding.
38 The conditions intentionally don't lock in the particular bonding mechanism. But
39 I couldn't, I couldn't take that point much further, sorry, Sir, in that I'm not sure
40 what a bond – there – if a – there would need to be a bond. There's an obligation
41 within the condition for that. If a bond couldn't be obtained from a provider, there
42 would need to be another solution, whether that be a cash bond, or, or I'm not sure

1 what the other solution would be. But a cash bond would be an obvious
2 alternative.

3 **Mr Muir:** Well it might be something for the applicant to usefully think about before
4 we even move into expert conferencing about just what is bankable and what is
5 not, because clearly the panel has concerns about how adequately to ensure that
6 in the event of, for example, elevated groundwater contamination levels in 50 or
7 60 years' time, there is a mechanism by which it's the cost of some party other
8 than the taxpayer that can be adequately remedied.

9 **Mr Leckie:** We'll take that away and progress with the applicant. I hear your point
10 and it's really around ensuring that there is a mechanism that can mean these
11 conditions work in practice.

12 Right, the last part of the adaptive management arm framework from the Supreme
13 Court that I was working through – sorry, I probably haven't moved at the speed
14 I was hoping to take the panel to. I will tie off adaptive management. It is a really
15 important, an important point and it is a theme that's come up and it, in a way, it's
16 something we've discussed already in our exchanges now, but it's the importance
17 of monitoring and that feedback, feedback loop, as to what you do with that
18 monitoring. So it's really a point that we've been having dialogue with already
19 and just ensuring that that's also enshrined in the conditions, the need for that
20 loopback, what is the information you're gathering and what do you do about it.
21 So I think that's the point that we've been discussing. So that's that last
22 component from the Supreme Court, which again, an important test as we work
23 through, or as the experts, sorry, work through these adaptive management
24 proposals and the conditions.

25 I won't deep dive evidence. I think that's best left to the experts and in the expert
26 conferencing sessions that are coming. I just would like to briefly mention in
27 relation to the tailing storage facilities, Dr – and like others I struggle with his
28 surname as well – Dr Matuschka and his evidence. And Dr Matuschka is a
29 recognised expert in this field, and I would urge the panel to give his evidence
30 significant weight. He also has significant international experience which he's
31 drawn on in terms of his recommendations for this project. And again, a matter
32 for conferencing, but I would urge the panel to put weight on his evidence,
33 including criticisms regarding not following other international standards. And
34 that is something Dr Matuschka has considered, and that's both within the original
35 report but also his section 53 response at paragraph, or from paragraph 10.

36 **Mr Johnson:** Can I just make a comment leading into that. One of the claims that
37 Mr Matuschka talks to, remedial measures that could be considered, in the early
38 application, some of those remedial options if things happened and the what if
39 scenario weren't that well developed. So those "what if" conversations I think are
40 really important to be developed as part of the adaptive management plan because
41 that might be seen as missing in some of the conversations as the adaptive plans
42 evolve.

43 **Mr Leckie:** That's a helpful steer, thank you. I'll pass that on to Dr Matuschka to be
44 incorporated into that conferencing discussion.

1 **Mr Johnson:** Because I think it's the "what if" is not very well addressed and the
2 concerns sit around the "what if" conversations.

3 **Mr Leckie:** Thank you. Moving through some more potentially discrete points but just
4 to tie them off, hopefully. There was some concerns raised by the District Council
5 regarding cost of monitoring, or reasonable costs in monitoring and enforcement.
6 And I'd just point the panel to the common set of conditions, condition 131, that
7 has a cost recovery mechanism where all those costs are to be paid by the
8 applicant, and the applicant entirely agrees that's an appropriate, appropriate
9 approach to that ongoing monitoring and enforcement.

10 Moving now to the Department of Conservation, who made some comments
11 regarding the biodiversity inherited enhancement fund proposal. This is the
12 proposal that sits – or that has been amended through the process but is the
13 payment of a million dollars a year during gold production for particular actions,
14 and the comment from DOC was some concerns over that sitting within a trust
15 and not having a role – or DOC, sorry, not having a role in that, in that trust. That
16 – in the application as lodged, that – the regulatory agency that the applicant had
17 proposed to provide the actions of spending the money in that fund was DOC.
18 That was the initial proposal. That the local, the local office of DOC would
19 manage that fund. There were some concerns raised by DOC at the workshopping
20 exercise around the ability for DOC to do that. That really is the reason that this
21 separate trust approach has been proposed with the proposed trustees. It's not an
22 intentional move to take DOC out of that conversation, and again I suspect it could
23 be a topic for further expert conferencing, but that's the reason that the fund was
24 taken away from DOC's control, with some reluctance from DOC to manage it.
25 But again, the original proposal by MGL which left that with DOC was entirely
26 supportable by MGL too. So it's really a point that I think could do with some
27 further discussion if there's a different way DOC would like to manage that.

28 **Mr MacGibbon:** Perhaps just for clarification and maybe it's something you take back
29 to your technical team, is that fund going to be part of the compensation package
30 for ecology or not, because it's my understanding currently it is not, but there's a
31 lack of clarity there.

32 **Mr Leckie:** Yes, and I understand the question. So the fund sits separate to the
33 remainder of the offsetting and compensation package. So it's an additional
34 response, a positive ecological response that isn't pure offsetting and
35 compensation, and in a legal sense the reason for that is that the actions that will
36 eventuate from that fund aren't known at this stage. They're not, they're not
37 actions that the panel would be consenting through this, through this authorisation.
38 So I'd describe it as an additional positive effect that's come further down the
39 effects management hierarchy than the offsetting and compensation package, but
40 it has some very specific points that it's intended to address. But to answer your
41 question, Commissioner, it's not – I wouldn't describe it as offsetting and
42 compensation.

1 **Mr MacGibbon:** No, I guess it leaves it in a tricky, or us in a tricky position on that.
2 Technically it's not contributing to addressing the residual ecological effects, is
3 it?

4 **Mr Leckie:** No, no. So it's – it has some direct purposes written into the condition
5 around ecology and heritage, and you can give that some weight, but you can't
6 give it as much weight as you could an offsetting and compensation action that
7 can be delivered through the conditions and through the approval of this project.
8 But it's really being proposed by MGL to do more to address those, those effects.
9 But I acknowledge the constraints that puts on the weight that will, that you can
10 give to it. It's a similar point for the potential future translocation of those very at
11 risk species into the predator enclosure areas, and there have been – that potential
12 has been considered by the ecologists in their reports, but they haven't put any
13 particular weight on it, or relevance on it in terms of offsetting and compensation,
14 and that's partially on advice from us, because that process would be for the future
15 and can't be approved at this point in time because it's not known what that
16 translocation would look like. So yes, it's the intention, and everything is being
17 proposed in the hope that that will happen and the ecologists on behalf of MGL
18 have put – see real value in that happening. But it's not something that the
19 applicant team is relying on in terms of a particular action to address that residual
20 effect.

21 **Mr MacGibbon:** So again, I think we're going to have disregard it until there's
22 something more – unless something more concrete is submitted.

23 **Mr Leckie:** Yes, I think it's just – it's a potential positive effect but I don't think you
24 can give it particular weight as a guaranteed deliverable from this project because
25 we can't – I can't sit here and submit to you that it can definitely happen because
26 it needs future approvals, etcetera. But on the fund, the guaranteed action that will
27 happen is the payment of that money to deliver those objectives, which are both
28 heritage related and ecology related. So I say it is still a relevant positive effect
29 that the panel should consider, and the FTA gives us some more leniency for that
30 to be relevant, I say, than perhaps the RMA does.

31 **Mr MacGibbon** Perhaps it's something for the conferencing but there are examples
32 where DOC has been granted funds from a project to undertake specific offset or
33 compensation work and they are administering it. So perhaps that's something
34 that could be taken back to them as well. I'm quite happy to furnish those
35 examples if it's required to help that process.

36 **Mr Leckie:** I think that would be really, really useful and from my perspective, and
37 this was a point canvassed at workshopping as well, so from MGL's perspective,
38 if there are projects out there that need funding that address these points, then it's
39 certainly something that MGL and the experts who have recommended this trust
40 would be keen to align – align those actions with that funding. So again,
41 something for expert conferencing which would be an extended conversation to
42 what's already been workshopped by the experts.

43 To a slightly different topic, which is the relatively minor point, which is the
44 NZTA upgrade works. This is around that additional construction of a right turn

1 lane which has then triggered the need for this additional approval due to the fact
2 that the actual alignment of that road isn't currently aligned to the legal paper road.
3 So there's a misalignment which has triggered the need for this concession for
4 these works to be completed. What, following – so that's been, that was applied
5 for in the application and it's just a point really, we heard from NZTA yesterday
6 who are supportive of what's proposed. A few amendments that were made
7 following workshopping with NZTA that I just wanted to bring to the panel's
8 attention. One was to split that concession into two different authorities because
9 in the future when the – ultimately the land is vested back in the authorities,
10 there'll be land vested with CODC, some of it's their road, and then land vested
11 with NZTA where it's the state highway network. So that's the reason for that
12 split.

13 The other change which I've briefly touched on now already, the original
14 concession duration sought was 30 years for – to allow for the construction and
15 use of this road. As we heard yesterday, that's now been sought to be reduced to
16 five years to enable the works to take place but then for that vesting process to
17 occur, which once the roads have been vested, there won't be a need for the
18 concession anymore. So that's just some background to that.

19 The only other NZTA point that I briefly wanted to raise was there was some
20 discussion yesterday on would a development agreement approach be suitable to
21 deal with this, and the applicant, or MGL, is certainly supportive of that, and that's
22 been the discussions to date with NZTA, as I understand it, have anticipated there
23 would be a development agreement to deal with this. But that doesn't do away
24 with the need for the concession through the FTA to actually enable those works
25 to take place.

26 Moving back to management plans – sorry, I should have grouped this together.
27 Just a point of clarification. In the application as lodged, there was a condition, it
28 was a deemed certification of management plans which was a condition
29 essentially saying if the management plans weren't certified by a set date, they
30 were deemed to be approved by the relevant regulator, and that condition was
31 removed. So I just wanted to clarify that. That's not being sought by the applicant
32 at this time, or not being sought by the applicant. It was in an earlier version of
33 conditions.

34 The other point on management plans is the fact that the applicant is seeking the
35 panel to certify the management plans, as has been sought in the application. We
36 say that that is a very appropriate outcome, given the robust work that's been done
37 by regulators and the applicant to date on the management plans and the process
38 that's to come, including the workshopping, or sorry, expert conferencing and
39 workshopping proposed, and processes that could follow that. I think the panel,
40 or I submit the panel can have confidence that those management plans will be in
41 appropriate condition for approval by the panel through this FTA process.
42 Commissioner Sweetman?

1 **Ms Sweetman:** Mr Leckie, that was a proposal put to the Waihi Mine fast-track panel
2 which they didn't take up as a proposition. What are the different circumstances
3 in respect to your client's proposal to that proposal?

4 **Mr Leckie:** I'd agree that the panel in Waihi North didn't approve the certification of
5 the management plans. I'd note, as I've noted before, that you're not bound by
6 that, by that decision. The panel in the Bledisloe Wharf decision did approve one
7 management plan. So there are decisions that have approved management plans.
8 I don't have a level of detail with that Waihi North project as to what the particular
9 concerns of the panel were in not approving that – those management plans. But
10 what I think is important for the panel here is that the management plans are well
11 progressed and through the processes that will follow, I think the panel can have
12 comfort that they will be in a position to be certified.

13 I just added some thoughts here around the fact that those management plans are
14 not stuck as they are now in the moment in time. They're going to be the subject
15 of further refinement, further work by MGL and the relevant regulator experts
16 through expert conferencing, and then likely through condition workshopping that
17 could follow. There's also, in the event the panel issue a positive draft decision,
18 there's the further step of condition feedback, which I say in this case could very
19 helpfully include management plan matters. So one difference for this panel is
20 that you have more time than they did in Waihi North, but I'm not sure if time was
21 the concern of that panel.

22 To answer your question, Ms Sweetman, I don't know why the panel didn't do it
23 in that case. But my submission is that those management plans can get to a place
24 of your comfort to enable that approval. And from MGL's perspective, given the
25 collective works that's gone into those management plans with the regulators, the
26 efficiencies and certainty that having them approved with the main approval
27 brings is very, is very important to the delivery of the project. So that's the driver
28 from MGL's perspective to that.

29 Another thought, and again it's ultimately a decision for the panel, but there's a
30 category of management plans which if the panel are not comfortable with the
31 content of the management plans, in my submission it would be entirely
32 appropriate for you to issue in your decision what you wanted or what you
33 determined they should be saying, or what changes you determined should be
34 made to those management plans. And if that was a direction of the panel through
35 the decision, that could inform that later certification process, in the event the
36 panel did have concerns with the management plans, even after that earlier process
37 had gone through. So what I'm saying is it's not's an all or nothing. It's still
38 certainly the desire of MGL for those management plans to be approved by the
39 panel. But if the panel had remaining concerns, I think it would be entirely
40 appropriate for those to be addressed in your decision to direct what changes
41 needed to be made to be the management plans which could then be certified by
42 the relevant regulators.

43 Moving now to the concern or point that has been raised by Sustainable Tarras,
44 and it came up again this morning from the Schoolhouse Terrace Services

1 Company, regarding the social impact assessment. So MGL did commission a
2 social impact, a social impact assessment that was prepared. There was a concern
3 from MGL regarding the methodology of that social impact assessment, and it
4 therefore ultimately wasn't included in the application. So it's really for the
5 purposes of the panel's consideration. It's not before you, it's not part of the
6 application. But what I do say in response to that is things have moved on a long
7 way from the time that social impact assessment was prepared, and the panel has
8 a range of views on social impacts before you, and in my submission, they're
9 entirely relevant and important to your consideration. And some of those views
10 are in support of the project, and some of those views are in opposition to the
11 project.

12 So my submission on this point is that as a panel, you have evidence and
13 submission before you as to those social impacts. I don't see that it's material
14 whether they're within a social impact assessment or whether you hear them
15 directly from the relevant affected, the relevant parties. So the fact there is no
16 social impact assessment within the application, I don't say is a material gap or a
17 gap in your assessment. I think there's a – due to the scale of the section 53
18 invitees in particular, and also the engagement done by MGL which has been
19 detailed in evidence, I think there's a full raft of views before you on the project
20 for your consideration, and I don't think that that would be helped or hindered by
21 another social impact assessment.

22 **Mr Muir:** It probably doesn't take the matter any further but surely as a panel we
23 would be entitled to take some inference – where that leads us I don't quite know
24 at the moment – from the fact that one was commissioned but is not produced.

25 **Mr Leckie:** Yes, well that, yeah, that would be the panel's prerogative that the – I
26 actually haven't read the social impact assessment so I can't make comments,
27 make comment on its conclusions, but that, that would be a matter for the panel.

28 **Mr Muir:** Yes, but you know, we've heard at firsthand some of the direct social
29 impacts in the context of evidence over the last couple of days. Are you generally
30 – is this a point at which you want to discuss generally social impacts or just the
31 absence of the report.

32 **Mr Leckie:** I'm happy to take questions on the social impacts more generally. The
33 point I just wanted to make here on the absence of the report is that I think
34 feedback that you've heard from parties who have made comment is I think more
35 relevant to your consideration than whether there's a social impact assessment or
36 whether that feedback was included in a social impact assessment. So that was
37 just the point I wanted to make.

38 **Mr Muir:** Well just to put the social impact question squarely, perhaps you might say
39 confrontationally, when we hear people like Professor and Dr Kearsley or
40 Mr Reinecke this morning, are these sort of people simply to be regarded as
41 collateral damage?

42 **Mr Leckie:** Not – no, I don't think they're to be regarded as collateral damage. Their
43 views are still relevant to your considerations of this project. I don't think their

1 views are irrelevant, and that's certainly not what MGL are saying. They – their
2 views are relevant.

3 In terms of economic or potential economic impacts, they have been assessed by
4 Mr Patterson, including in his response, his RFI evidence, to test his assessment
5 further in regard to those potential economic costs that weren't part of his original
6 application, so they're certainly not those, that – those perspectives aren't being
7 disregarded by MGL and I'm not saying to you that they're irrelevant. They have
8 been, they have been assessed. Mr Benji – Mr Patterson's testing of those
9 potential worst case economic costs on those parties in terms of viticulture and
10 tourism led to some, I think, helpful conclusions in terms of the economic impacts
11 of the project and potential worst case impacts on those industries. Again I think
12 that's relevant to your consideration. But no, the perception of those neighbours
13 is – oh sorry, I shouldn't have said perception, their views are very relevant to
14 your consideration. I don't say that's not the case.

15 Right, moving through now to briefly touch on archaeology, I'll just get the Act
16 in front of me. So again, archaeology will be the subject of expert conferencing,
17 so I just wanted to make some brief comments in a legal response to the feedback
18 you heard from Heritage New Zealand yesterday, on Wednesday. And in my
19 submission, the panel needs to be cautious with the point put to you by Heritage
20 New Zealand that the archaeological authority should be declined. And the reason
21 I say that is that I – Heritage New Zealand have not applied the required tests in
22 clause 4 of schedule 8, which are the tests for your consideration in relation to
23 archaeological authority. In Heritage New Zealand's view, they've considered
24 the first limb of that test, the purpose of the Act, as outside their expertise, which
25 I respect. I understand that. But the fact that they haven't included the part of the
26 legal test for removal of an archaeological authority, that needs to be given the
27 greatest weight by you, does present an issue in them still coming to an ultimate
28 determination that the archaeological authority should be declined because they
29 haven't considered a key part of the test before you. So my submission on that
30 point is the panel will need to apply those relevant requirements from clause 4 in
31 testing the granting or decline of the archaeological authority. And I'd submit that
32 you shouldn't put any weight on the ultimate conclusion that was put to you by
33 Heritage New Zealand that it should be declined because I don't think the correct
34 test has been applied in coming to that conclusion.

35 Moving now briefly to the stream ecology evaluation, and this is really just a point
36 of clarification, and again I expect it will be a discussion for conferencing, but I
37 just wanted to give some context to that report, which is a bio-researcher's report.
38 That report was commissioned following feedback from the Regional Council that
39 the report would be beneficial in addition to Dr Ryder's assessment that he had
40 made regarding aquatic ecology. So that was the trigger for that report, was a
41 request from the Regional Council, and that's why that report was provided in the
42 section 53 feedback period. Fish and Game don't place, or they seek you don't
43 place reliance on that report. In my submission, the report provides further helpful
44 assessment, but it isn't intended to do away with or undermine Dr Ryder's main
45 assessment which is relied on by the applicant.

1 I'll move now to the conservation covenant. Just for some context to start on the
2 conservation covenant, there was the comment made by DOC that the partial
3 revocation of the covenant is a novel point, or an untested point. And I don't think
4 this is of any moment to the panel's conclusions, but I'd just like to point out to
5 the panel that in 2001, 710 hectares of this covenant was removed from land and
6 that this has happened before. As I understand it, it was ultimately, the land, the
7 relevant land was ultimately subdivided and planted in viticulture, but it was
8 previously covered by this same conservation covenant.

9 **Mr Muir:** So it extended beyond the area of really what we now regard as the ONL
10 and originally into the area of the terraces.

11 **Mr Leckie:** Yes, into those, into that lower land terraced area. And, as I understand it,
12 it was 710 hectares of that area.

13 **Mr Muir:** There certainly is an issue sitting in the back there about the appropriateness
14 within a tenure review context and the imposition of a conservation covenant as
15 to whether the change of circumstance in a willing mine company that sees a
16 significant advantage in pursuing other opportunities on the land and is prepared
17 to offer a handsome price for it. Do you then get your proverbial cake and eating
18 it?

19 **Mr Leckie:** Yes, well the mechanism sits within the Act to apply for that, with a
20 prescribed statutory framework that needs to be tested in that situation. So, in my
21 submission, it's entirely open to an applicant to apply for that, just as it was in
22 2000 and in 2001 when the covenant was previously uplifted over land. I think
23 the response to that uplifting is relevant, to answer your question because the
24 covenant was put in place for a particular reason and that's recorded within the
25 covenant. But I'd submit that it's entirely within an applicant's right to apply to
26 have it, have it uplifted as well.

27 The key legal point I just wanted to touch on, on the conservation covenant is a
28 difference of opinion, a difference of legal opinion I have compared to the view
29 of Forest and Bird on the conservation covenant. So we heard yesterday from
30 Forest and Bird that they had a concern or raised an issue with the fact the Minister
31 of Conservation hadn't approved the mining activity to occur, or this activity to
32 occur within the conservation covenant area. And I don't agree with that
33 interpretation, and if I could just briefly explain why. There's a mechanism within
34 the covenant itself and it's at clause 3.

35 **Mr Muir:** Sorry, clause?

36 **Mr Leckie:** Clause 3. And that mechanism provides for certain activities to take place
37 but only with the Minister's approval. So that includes erection of certain fences,
38 cultivation, tree planting and, relevant here, mining – prospecting and mining.
39 And as I understand the criticism from my friend at Forest and Bird, that approval
40 from the Minister hasn't been sought in relation to the activities that are proposed
41 to be undertaken in accordance with this proposal. Now my submission to this
42 point is that requirement obligation doesn't apply here because the covenant's
43 sought to be uplifted.

1 **Mr Muir:** Yes.

2 **Mr Leckie:** It's sought to be removed. So I don't agree that approval from the Minister
3 is required when you're seeking to uplift - - -

4 **Mr Muir:** At the [inaudible] time at which this decision was passed down were it in
5 favour of the application and at that point in time, so it's necessarily the covenant
6 would have to be uplifted, it's no longer apposite. Is that the basic argument?

7 **Mr Leckie:** That's the basic argument and there's a mechanism, the mechanism in the
8 Act, and I'd almost call it mechanical, which really follows your decision, which
9 is that the Minister must then uplift the covenant from the titles. So an engage –
10 yeah, an engagement with LINZ in relation to that. But I don't think that final
11 action of the Minister is sort of the Act's attempt to get a decision from the
12 Minister on the uplift. I think it's a mechanical action that must be undertaken by
13 the Minister once the panel's made their determination on the covenant.

14 There was some feedback suggesting that the applicant was running an evidential
15 justification for the uplift of a particular area of the covenant, simply justified by
16 the basis of the area of the proposed new covenant, as in a comparative area
17 argument. And I'd just submit to the panel on that point that the particular values
18 to be protected that the covenant seeks to protect, and the particular values that
19 are proposed to be included in the areas to be protected by the new covenant have
20 been thoroughly assessed by the applicant's expert team, and it's certainly not just
21 a matter of us saying to you, "well, a larger area of the covenant" – "a larger area
22 is to be protected by a covenant in the future, therefore, it's okay to uplift the
23 current covenant". It's been a much more forensic analysis than that, and that's
24 included both Dr Woods from a heritage perspective and also the ecologists,
25 several of the ecologists, but primarily Professor Norton, and also Mr Girvan from
26 Boffa Miskell for the landscape aspects, which is the other aspect of the covenant.

27 We say that the scale of that area to be protected is certainly a relevant
28 consideration in your determination of the uplift of the covenant, but what I'm
29 saying is it's not justified solely on that basis. The values to be protected have
30 also been assessed. And on those areas, just as a reminder, the conservation
31 covenant proposed to be uplifted represents 11 per cent of the area of the total
32 conservation covenant currently registered on the title. And of that, three per cent
33 is within the DDFs, the DDF being the direct disturbance footprint of the mining
34 activity. So three per cent of the total covenanted area.

35 **Mr Muir::** Within the direct disturbance area?

36 **Mr Leckie:** As the direct disturbance area. That's right.

37 **Mr Muir:** Yes.

38 **Mr Leckie:** And outside the direct disturbance area are other activities that aren't direct
39 disturbance. So to pick some examples, the sanctuaries, for example, sit on land
40 that the covenant needs to be uplifted from but they're not within the DDF.
41 They're not within that three per cent.

1 **Mr Mulliner:** So do you consider the overall values and heritage, conservation and
2 landscape of the removed covenant area is replaced in the proposed covenant
3 areas?

4 **Mr Leckie:** Yes, that's the – well, that's the evidence that we rely on from the expert
5 team that have concluded that. And I'd just like to add that though the criteria
6 within clause 45 of schedule 6 gives some specific matters relevant to that
7 assessment, and that also includes whether the amendments or revocation will
8 comprise values of regional, national, or international significance. So that's also
9 been assessed by those experts in them coming to their conclusion on the
10 appropriateness of that, of that uplift. So yes, to answer your question, that's the
11 position of the applicant, yeah.

12 The last point, or sorry, an additional point that's come up in relation to the
13 covenant that I just wanted to briefly touch on because I think it would be useful
14 to signal it for conferencing, is there is access to Mount Moka at the upper end of
15 the project site, and the covenant – sorry, I'll go back a step. There's a four-wheel
16 drive track at the moment, as I understand it, that provides access to Mount Moka,
17 and that four-wheel drive track doesn't follow the legal paper road. So there's a
18 – we heard a concern yesterday, and I just don't have in my notes, sorry, which
19 submitter raised the concern, but the concern was raised around would the uplift
20 of the covenant impact on access to Mount Moka, because one aspect of the
21 covenant is that it expressly allows for that access within the terms of the covenant.

22 So I acknowledge that the impact of the uplift of the covenant, which was
23 unintentional, is that the enablement of access to Mount Moka would be removed
24 if there's no covenant, if people can't use that existing track because it doesn't
25 form part of the paper road, or it's not directly aligned with the paper road. And
26 I just wanted to signal now, and it's something that needs further thought at our
27 end, but MGL hear that feedback and don't intend – or it's certainly not the desire
28 to prevent that access. So we'll turn our minds to whether there could be an
29 alternative legal mechanism to provide that access to Mount Moka, in the absence
30 of the covenant, because that's not the intention to prevent that access.

31 **Mr Johnson:** Can I just ask a quick question on the covenants and the percentage
32 area. You've got only three per cent is underlined disturbance area, but the
33 covenant is in place to protect different values - - -

34 **Mr Leckie:** Yeah.

35 **Mr Johnson:** - - - and so some of those values are the archaeological sites and they
36 are largely within that three per cent, is that correct? So if you look at the different
37 values, you'd vary that percentage. So the three per cent is on a total area, rather
38 than - - -

39 **Mr Leckie:** Yeah.

40 **Mr Johnson:** - - - specific attributes that are being valued?

41 **Mr Leckie:** That's right. Three per cent is a relatively general – well, not relatively,
42 it's a generalised number of total area – absolutely agree, Commissioner – within

1 that. There'll be different values affected, and heritage would be mostly, I'd have
2 to double-check, but mostly within that DDF.

3 **Mr Johnson:** And that would be up and down the Rise and Shine Valley?

4 **Mr Leckie:** Yeah, that's right, that's right, yeah. But there are, of course, heritage
5 features elsewhere within the covenant, but the ones we're very focused on, of
6 course, are the ones impacted by the project, yeah.

7 But again a matter for evidence, and I won't spend too much time on it, but the
8 key aspects relied on by the applicant ecologists in terms of the difference between
9 what the covenant, what protection the covenant provides for that land in an
10 ecological sense, separate to the heritage protection, and what's – what will be,
11 what is proposed in terms of ecological responses in the new covenant areas. So
12 the areas where the ecological enhancement will take place, the offsetting and
13 compensation through this project is that the covenant as it stands it at the moment,
14 if I could describe it, it is relatively passive. It doesn't, it doesn't force many
15 obligations of active management or active planting or active pest control. It has
16 some broad terms in clause 2 around, so far as practicable to the lay term, to keep
17 land free from gorse, broom, sweetbriar. So it's quite a broad obligation.

18 Keep land free from rabbits and vermin, to ensure compliance with some Acts,
19 the Agricultural Pest Destruction Act, and keep land free of rubbish and offensive
20 material. So quite broad, vague obligations. And I think an important, a very
21 important difference in terms of the areas, the restoration, offsetting and
22 compensation areas proposed through the project are the much more prescribed
23 and enduring obligations in terms of ecology that don't sit within the covenant as
24 it's currently proposed. So that's, in terms of applying the relevant legal tests to
25 the uplift of the covenant, I say a very relevant matter for your consideration is the
26 difference in effect between what would be achieved under the covenant versus
27 what's proposed under the relevant restoration enhancement areas of the project.

28 I shouldn't haven't left scope further down my list, sorry, but I wanted to briefly
29 address scope, which was a concern raised by EDS and their basic concern that
30 the concessions sought, so outside the two stations, are outside the scope of the
31 schedule 2 listing. And we disagree with that, with that statement. I'll just get the
32 schedule 2 listing up here.

33 **Mr Muir:** It's the schedule to the Act.

34 **Mr Leckie:** That – I've given some more analysis on this point in our legal submissions
35 responding to that feedback. But I just wanted to briefly explain the reasons that
36 I disagree that there's a scope issue for the panel, for the panel here. The first is
37 that the geographical location used to describe the activity is expressly an
38 approximate geographical location. And that word "approximate" is very
39 important, in my submission. It can be general or indicative and it's not precise,
40 or doesn't need to be, need to be precise.

41 The second reason that I say there's no scope issue as claimed by EDS. In terms
42 of the project description, so the column to the left of the approximate
43 geographical location, the concessions fall within the definition of project, which

1 is a definition that sits within the FTA, is they support and are subsidiary to the
2 listed project. And I think it's relevant there as well that those activities, subject
3 to the concession, aren't mining activities. They're relatively minor activities,
4 includes portions of the alternative access, some areas of water monitoring, some
5 pedestrian access, and the state highway work. So I say they squarely fit as
6 activities supporting and subsidiary to that main project description, and the scale
7 of the activities relevant to your consideration of that. My friends at EDS said
8 that the fact they require different approvals somehow means they don't fall within
9 that broader definition of supporting the project, and I don't consider that's a
10 relevant matter when determining whether the activities fall within that project
11 description. I don't think what particular approval they need is relevant to that
12 consideration. And I just emphasise here as well that the project obviously has
13 well progressed through the EPA's completeness test that includes consideration
14 of matters of scope. So I say the panel can have comfort that that further reinforces
15 that that scope issue isn't a relevant one for your consideration.

16 **Mr Muir:** Sorry, Mr Leckie, I just missed that last submission.

17 **Mr Leckie:** Oh sorry, I should – I moved back from my microphone.

18 **Mr Muir:** Yes.

19 **Mr Leckie:** The last submission I was making to give, I say the panel can have further
20 comfort to my position on scope because the EPA confirmed that the project
21 passed the completeness test, which is a test all projects need to go through, and
22 that completeness test includes consideration of scope. And the EPA confirmed
23 the project passed that test, which provides further support for the panel, but they
24 don't see a scope issue here that you need to confront.

25 **Mr Muir:** Mr Leckie, just having a bit of a check-in here with you, we're probably
26 getting quite close now to the one and a half hours that we allocated for this.
27 We've got a little bit more flexibility, but we have got a number of flights that
28 have got to be caught later in the day. How much longer do you anticipate?

29 **Mr Leckie:** I estimate I could get through the remaining points in 10, 10 to 15 minutes,
30 if that worked for the panel's logistics.

31 **Mr Muir:** That's absolutely fine. Well what I'm going to suggest, you know, having
32 been here for a couple of hours in the hot afternoon sun, is that we have a quick
33 cup of tea and we come back at 10 past three.

34 **Mr Leckie:** Okay.

35 **Mr Muir:** And we'll give you that additional time.

36 **Mr Leckie:** And I'll work to a 20 past 3 hard deadline.

37 **Mr Muir:** Yes, well if we could be certainly concluded by half past three - - -

38 **Mr Leckie:** Thank you.

39 **Mr Muir:** - - - we would appreciate it.

40 **Mr Leckie:** Thank you, Sir.

1 **Mr Muir:** Thank you.

2 **Hearing adjourned**

3 **Mr Muir:** Mr Leckie.

4 **Mr Leckie:** Thank you, Sir. There were just two further points that I wished to address
5 the panel on. The first was a question that came up at the start of yesterday around
6 the payment to the CODC and the use, or what is the use of that payment. So just
7 as a refresher, this is the – I think it was a question from Commissioner Barry –
8 it's the payment that sits within the access arrangement with CODC, and it's an
9 annual payment of 1.25 million. Ultimately – so that's a, that's a payment in
10 accordance with the access arrangement for use of that CODC land. So the
11 ultimate decision on use of that land, of that money, sits with CODC. It's the
12 intent, or the discussions have been that it is for the benefit of the community.
13 That's the intent of the payment. It's not a recovery of cost payment, which
14 hopefully provides the clarification Commissioner Barry was seeking.

15 **Mr Barry:** Exactly, thank you.

16 **Ms Sweetman:** Just before you go off that point, Mr Leckie, does the recent Court
17 of Appeal case, *Ours Not Mines v Hauraki District Council*, impact on this
18 application at all?

19 **Mr Leckie:** No, so - - -

20 **Ms Sweetman:** Or, firstly, are you aware of that case?

21 **Mr Leckie:** - - - I'm aware of the case, and the case related to licences to occupy. So
22 quite a different mechanism to the access arrangement that's in place with CODC.
23 So no, I don't consider it's relevant to the arrangements in place. Yeah, that's the
24 Waihi North case that you're referring to I assume.

25 **Mr Muir:** This is the mineshaft case, is it?

26 **Mr Leckie:** Yeah, that's right, yeah, yeah. So to tie off that point in terms of "so what",
27 in my submission that payment is a relevant matter to the positive side of the
28 ledger when you're considering your section 85 analysis.

29 **Mr Barry:** Thank you, exactly. If it is community payment, then it might be able
30 regarded as a net benefit.

31 **Mr Leckie:** Yeah, that's, my understanding as well, Sir. So the last topic I wanted to
32 address the panel on, for today at least, was this question of bonding and certainty
33 on long term outcomes. And I appreciate we've had some exchange on it already,
34 so I'll attempt to not, to not repeat myself. But I just wanted, ahead of
35 conferencing, to walk the panel through the proposed bonding conditions, if that
36 would assist, at a relatively high level, and that they have been the subject of
37 several amendments made through Mr Chrisp's section 53 evidence. And I'd just
38 like to talk to the key points of that and take any questions. I'd also refer the panel
39 to Mr Lane's evidence. Mr Lane, Malcolm Lane, is really New Zealand's pre-
40 eminent bonding expert. To be fair, there aren't a lot of bonding experts in New
41 Zealand, but Mr Lane has a lot of experience, including in the mining industry.

1 So he's provided some evidence more around the mechanics of what would be the
2 output of these conditions, but Mr Chrisp has provided planning evidence in
3 support of these conditions.

4 So the starting point for the key parts of the bonding conditions is C115, which
5 was an amendment made to the conditions in response to feedback from the
6 regulators around the fact that in the original application as sought, the preparation
7 of the mine closure, or the certification and approval of the mine closure plan,
8 came right at the end of the life of the mine, and there was some concern with that,
9 with that approach in that essentially was it too late by that point to effectively
10 achieve the outcomes of the mine closure plan. So that's been the driver for C115,
11 which is the additional condition proposed by Mr Chrisp. That plan is now
12 required to be updated and submitted for certification by the regulators every three
13 years over the life of mining. The purpose of that being linked to some of the
14 exchange we've been having this afternoon, to ensure that that ultimate end
15 objective is being tested along the way, rather than being proposed at the very end.

16 **Mr Johnson:** Can I just ask a question on that because the bonds get complex. Some
17 of those bonds are "if we close today, this is what I'd have to do for closure versus
18 some of the bonding for what will happen going forward and every three years
19 that value changes in terms of the closure plan. So that's the ultimate closure plan,
20 or is it if something went wrong and we close now, what would the closure plan
21 look like? So we need clarity on that.

22 **Mr Leckie:** Yeah, that, that's a good question. I'll make a note of that. I may get to it
23 and if I don't, I might just speak to Mr Chrisp on that point. I understand the
24 question though. My understanding is it's the actual closure plan, but I would like
25 to check back on that point if I could.

26 Well condition 116 potentially starts to answer that question, which are the
27 minimum requirements of the mine closure plan and, importantly, it includes the
28 full final landform being geotechnically stable, which is a topic that's come up
29 today, and it also includes all the water quality, water management points. So
30 they would all get incorporated into that, into that mine closure, mine closure plan.
31 It also includes at K, which was an additional added, additional condition added
32 through section 53. It includes the ongoing responsibilities for the environmental
33 outcomes that go beyond the life of this consent, so quite an important addition to
34 be expressed, but it includes those offsetting and compensation management plans
35 actions, for example, that go beyond the terms of these, of these consents. So it's
36 an important hook in terms of providing the certainty needed for these bond
37 conditions. Previously the condition referred to closure implementation, which I
38 acknowledge was vague and the intent is to be more specific about the particular
39 actions that fit within that.

40 So in terms of the mechanics of the bond, I wanted to raise with the panel, or alert
41 the panel to C120, which is that the Councils must approve the form of the bond.
42 So that's an ultimate decision of Councils. The second point, the bond must be
43 registered on the titles so that the bond has tenure, regardless of who owns the
44 land. And the third point that the guarantor of the bond, if it's not a cash bond,

1 must be approved by the Councils. So an important safety check as to the
2 appropriateness of that bond holder.

3 **Mr Barry:** Just a quick – are the Councils the best peoples to represent who might be
4 qualified to hold that bond?

5 **Mr Leckie:** I suspect – I couldn't speak for the Councils. I suspect they would
6 need to engage an expert. I'm not sure, and again I – this is my assumption – I'm
7 not sure they would have in-house expertise to make that decision. But the cost
8 recovery mechanisms in the condition I alerted you to earlier would include
9 engagement of that, that person, or that suitably qualified person. But we – there
10 has been the addition made throughout some of these bond conditions to reference
11 to a suitably qualified expert, and it's really a matter for conferencing, but I could
12 see some benefit in that being added to that condition as well. Rather than just
13 the Councils, it could be a suitably qualified person appointed by the Councils, or
14 words to that effect, yeah.

15 **Mr Muir:** The PCE suggests that we might struggle within the country to obtain that
16 necessary expertise on a project with the unique features of this one. I mean,
17 bonding is, you know, it's par for the course in so many different projects, but this
18 long term performance issue is almost unique to this project.

19 **Mr Leckie:** Understood, and Mr Lane does give some helpful evidence on this point
20 because he's, he has been the person who has implemented condition sets such as
21 this for mining projects in New Zealand. So I would, I would encourage you the
22 panel to have a read of Mr Lane's evidence in relation to that. I think he's very
23 well placed and, of course, he'll also be participating in conferencing. And that
24 he's got tangible practical experience in this, in this space.

25 Condition 123 is where the – what the bond covers, discussion really gets its, its
26 teeth. So this is where the annual works programme mine closure plan, all the
27 various ecological management plans, all get referenced within the condition to
28 pull those actions into the bond and into the outcomes that are to be captured by
29 the bond. So that's, that's been added to in the section 53 updated set of
30 conditions.

31 And then the remainder of the conditions are around more the mechanics of the
32 bond. So if there's disputes regarding the bond, and they're all relatively standard
33 conditions that we see in resource consenting, resource management projects
34 throughout. The additions that have been made to these conditions since – in the
35 section 53 response have been the addition of the suitably qualified clarity over
36 who makes these decisions. So it's not MGL making these decisions.

37 The last point on the bond, and again it's just to tie off something that I mentioned
38 earlier. That although the conditions do anticipate a guarantored, guarantee bond
39 arrangement, there is the option of a cash bond as well. So this – the conditions
40 don't direct that it must be one or the other; it could be, it could be either, or
41 something else. But that ultimately would be a matter that would need to be
42 acceptable to Councils, regardless of where that landed in the future.

1 And lastly, the last point I wanted to make on the bonds, and acknowledging the
2 Chair, your comments about needing to find a financial institution willing to take
3 on the bond, but once a bond is in place, I would submit it provides a high level
4 of certainty to the panel of the ability of that money to be used for these, for these
5 actions. I think in terms of the expert conferencing and the work ahead, I think –
6 to me, it's not around a bond being inappropriate, it's more around ensuring that
7 the conditions clearly capture the relevant matters to be contained in that bond and
8 how that's to work, and the applicant team is certainly aware of that and has made
9 several amendments in the latest version and, no doubt, that will continue through
10 the conferencing.

11 **Mr Barry:** Could I just explore that for a bit in terms of the level of confidence and
12 certainty, you know, that the panel and the community can have. It seems to me
13 there's two types of cashflows associated with the post-settlement risks. One are
14 sort of more like an annuity, fairly, you know, constant and regular and perhaps
15 in perpetuity, or certainly long-term - - -

16 **Mr Leckie:** Yeah, yeah.

17 **Mr Barry:** - - - and that's relatively straightforward in my view, if we can quantify it
18 and find a low risk depositor, that's fine. But it's more the long tail ones that I
19 think we're perhaps more concerned about, and the long term long tail ones, and
20 is it possible to look to provide some sort of bond around those, for example,
21 perhaps is it – could you explore the possibilities for insurance arrangements
22 around those risks?

23 **Mr Leckie:** And I've seen on other projects, Sir, so not in the context of this project,
24 but I've seen in other projects conditions that list the various options to address
25 those longer tailed actions, so insurance or a bond or a trust. Well they were the
26 – they're the three really that come to mind, as different mechanisms to get to that,
27 to get to that end point. So I've seen done that in other projects.

28 **Mr Barry:** Maybe it's something that can be explored at the experts' conference.

29 **Mr Leckie:** Agreed. And as – not to over-complicate this any further but that – we'd
30 need to ensure the conditions, in the event there were those options, that those
31 options talked to each other. So presumably the insurance would reduce the need
32 that would otherwise have been bonded, for example. But that's, from my
33 perspective, all achievable mechanically. But I agree it would be a worthwhile
34 point for expert conferencing.

35 **Mr Muir:** So the original proposal excluded a long term management cost beyond five
36 years. Just refresh my memory. The updated proposal is what?

37 **Mr Leckie:** It doesn't have a – there's no, there's no cap on the timeframe that the bond
38 would - - -

39 **Mr Muir:** So that the bond has to sit effectively in perpetuity?

40 **Mr Leckie:** - - - yeah, it goes with the actions, that's right. So that's the – a key change
41 that's been made to these, these conditions, acknowledging those actions do
42 continue. So the effect of that is that the bond will have – well, the bond or

1 whatever arrangements in place will likely have a tenure well beyond this, this
2 consent, and that's certainly the expectation of MGL, and a very intentional
3 change because we understand the need for that, yeah, yeah.

4 **Mr Johnson:** I think the qualification plays through it's one of the – quite often you
5 argue the bond down because of the probability conversation, but when the bond
6 is called on, the probability is one and there's not enough money in the bond, so
7 you need to think a little bit about that.

8 **Ms Sweetman:** Something that's just vexing my mind a little bit, Mr Leckie, is, as
9 we know for a discharge permit, it's a 35 year maximum. Obviously the CODC
10 elements are forever, unless limited.

11 **Mr Leckie:** Yeah.

12 **Ms Sweetman:** So what's vexing me is just the Regional Council components of an
13 ongoing bond if the consent effectively expires, bearing in mind the discharges
14 will continue, and new consents will be required.

15 **Mr Leckie:** Yeah.

16 **Ms Sweetman:** But if you can, yeah, it's just the chicken and egg - - -

17 **Mr Leckie:** Yeah.

18 **Ms Sweetman:** - - - of it is slightly vexing me.

19 **Mr Leckie:** And I understand, I understand that. Legally, under the RMA, the bond
20 can have a life beyond the duration of that discharge consent. So that's a key, a
21 key point, and the tenure of the discharge consent doesn't end the life of the bond.
22 And indeed, that's why they're registered on titles and need to have another
23 mechanism that goes beyond that actual discharge consent. In a practical sense,
24 if or when a new discharge and regional consent was needed to be applied for to
25 replace the one that was expiring, it would need bonding mechanisms or whatever
26 mechanisms in place, and they would likely rely on the same mechanisms that are
27 sitting within these consents. But that would be a matter for that future, that future
28 consent.

29 The third point that I hope would give you some comfort is because the bonds are
30 recorded on the title and the mechanics of that can sit within that document, that's
31 what provides that longevity in the event there won't be a – theoretically could
32 not be, a discharge consent in place. Very likely there would be for a long period
33 of time but there might not be. So you'd rely on that, on that bond itself.

34 **Mr Muir:** Just – we've been focusing a lot on groundwater in that context. Just then
35 talking about vegetation maintenance and weed control, has that similarly changed
36 from a five year limit to an open ended one?

37 **Mr Leckie:** Yes, that's right, and the amendment – one of the amendments I referred
38 to earlier which, just for your notes, was C116K, was intentionally to capture that
39 precise point, which are the ongoing environmental outcomes required to be
40 maintained beyond the term. So again, quite an intentional clarification that it's
41 to capture those ongoing obligations.

1 **Mr Muir:** Yes. I think that I'm not talking out of school to suggest that the panel thinks
2 that the five year period was optimistic, if not heroic.

3 **Mr Leckie:** I tend to agree and, hence, the change that's been made is because the five
4 years didn't align with the expected timeframes to achieve those outcomes, and
5 they need to align, those – I entirely acknowledge that.

6 **Mr Muir:** So the Parliamentary Commissioner of the Environment talks about a, you
7 know, a distinction between planting the tussocks and making sure that the
8 tussocks are still alive in five or 10 years' time in this, you know, high altitude,
9 frost-prone, semi-arid environment. This is a significant concern.

10 **Mr Leckie:** Yes, and it's a point that's been tested and assessed by the various
11 ecologists who have provided reports and evidence, and ultimately those
12 outcomes will need to be achieved. They'll be required to be achieved by these,
13 by these documents. So that, those objectives or those goals do have an evidential
14 technical basis for them, and I think the panel can put weight on that. I
15 acknowledge the comments from the Commissioner for the Environment who
16 hasn't put the same weight on that, but I say that you can.

17 **Mr Muir:** So in practical terms, the planting goes in, you know, year 14 or 13 or
18 whatever it's going be and a year later half of it has died. In practical terms, a
19 bond responds in a way that requires re-planting.

20 **Mr Leckie:** Yes, and in the practical terms but to that example is there's quite
21 prescriptive planting and maintenance requirements on a year by year basis within
22 a lot of these management plans and conditions. So that is a protection that a lot
23 of these actions aren't left till right at the very end. They come in early and they're
24 the subject of ongoing monitoring and action, replacement, maintenance, all that
25 kind of thing. So it's certainly not a situation that the planting can be done and
26 then, and then nothing else happens.

27 **Mr Muir:** It's sort of underpinned by the premise that, slightly facetiously, short of
28 growing banana palms, you can actually not – you can do anything up there
29 provided you've got the time and the resource, and you can achieve, with money,
30 an appropriate outcome.

31 **Mr Leckie:** Yes, yeah, in accordance with the outcomes that those technical experts
32 have carefully considered and consider are achievable. So yes, that's right, that
33 those outcomes will need to be, will need to be achieved. That's – and the
34 evidence supports that.

35 **Mr Muir:** And what's the current timeframe for that?

36 **Mr Leckie:** Oh, I'd have to – sorry, I don't have the management plan in front of me
37 but there's a range of timeframes for the different actions. So in terms of both the
38 rehabilitation on the mining DDF area itself and then also the broader offsetting
39 and compensation actions that sit in the broader project area. There's a raft of
40 different timeframes about when different actions need to be - occur. But in a
41 general sense, the offsetting and compensation actions come first because they can
42 take place while mining is taking place. The rehab then obviously has to come
43 later, yeah.

1 **Mr MacGibbon:** Just – I might correct you a little bit there. You said the experts have
2 said these things can be achieved. I think there’s an element of doubt. question
3 about quite a few aspects of the rehabilitation particularly, but also some of the
4 offset planting expressed by all the experts, including the applicant’s experts. So
5 there is an element of doubt, and I would suggest that in the bonding side of things,
6 provision for repeated attempts but then provision when those repeated attempts
7 fail for something else - - -

8 **Mr Leckie:** What next.

9 **Mr MacGibbon:** - - - which is yet to be stated or to be clarified I think is pretty
10 important.

11 **Mr Leckie:** No, thank you, and sorry, it wasn’t my intention to mislead there. It’s –
12 we’ll look back on that point. I understand the question and the challenge on the
13 “what if that doesn’t work”. So I’ll take that away - - -

14 **Mr MacGibbon:** Yes.

15 **Mr Leckie:** - - - to the team to think about. And again I suspect it’s a topic that will
16 need to be progressed at conferencing, yeah. Sorry, Mr Spring and I were just
17 discussing the mine closure plan which I raised earlier and the change to the three
18 yearly update provides that additional certainty as well, that there’s this very
19 active ongoing check which I say the panel can put a lot more weight on than
20 leaving it to the very end when it may be too late.

21 **Mr Johnson:** So perhaps what might be quite useful in some of those plans is to show
22 how your development experimental lots and how they’re progressing in the early
23 stages so that confidence can be given to those closure plans.

24 **Mr Leckie:** Yes. No, I agree. I’ll make a note of that.

25 **Mr Muir:** Wouldn’t we really also to have some more specificity in terms of the type
26 of instrument before we got to decision making? There’s a probably very real
27 difference in terms of, you know, in terms of a cash bond or a, you know, a parent
28 guarantee, or insurance bond. I mean, they have different risk profiles to them.

29 **Mr Leckie:** The – provided that there is a mechanism in place that’s robust, and I
30 acknowledge that the panel would need to be comfortable with the robustness of
31 that mechanism, I don’t see that needs to be decided now because that may change
32 in the future and any, any change or if a different mechanism is used, provided
33 there is the appropriate requirements of what that needs to be, and that is approved
34 by the relevant regulator, then I think that’s entirely appropriate to not necessarily
35 have to land now. But it’s certainly something I can take away and talk to the
36 team about. But I would be anxious to not land on one particular option now if
37 there might be a better or different option ultimately, provided we can give
38 certainty that either of those options are appropriate.

39 **Mr Muir:** Some of the Australian States, Queensland, Western Australia, they require
40 independent review of the financial assurance calculations. Is that something
41 that’s contemplated?

1 **Mr Leckie:** Yes, and I'm just looking for the condition. Sorry, just to clarify your
2 question, Sir, is it in relation to the institution itself or the - - -

3 **Mr Muir:** No - - -

4 **Mr Leckie:** - - - quantum of the - - -

5 **Mr Muir:** - - - quantum.

6 **Mr Leckie:** - - - bond, yeah.

7 **Mr Muir:** Quantum.

8 **Mr Leckie:** Quantum. Sorry for the delay. That is sitting in the conditions. I just don't
9 have it in front of me. But I can answer your question – oh, 123. Oh yes, sorry,
10 12 - 123, 124, where it's the suitably qualified independent expert appointed by
11 the Councils. So that independent check is what's setting the bond. So that is
12 providing that independent, that independent check. So it wouldn't be MGL's
13 own expert unless the Councils appointed that, that person. But that does provide
14 that certainty that there is that check.

15 I'm conscious I've gone well over time, panel. I'll just check my notes. They
16 were the key points I was keen to raise today, acknowledging that there's a lot to
17 come, but I've appreciated the chance to talk on those.

18 **Mr Muir:** Well no, you don't need to apologise for going over time, Mr Leckie,
19 because, you know, we've been quite interactive with you as the afternoon's gone
20 on and we've probably consumed about at least a third of your available speaking
21 time. But while we have you here, we certainly don't want to miss an opportunity
22 for any further questions that the panel has of you.

23 **Mr Leckie:** Absolutely.

24 **Mr Muir:** Right, well thank you very much. Oh sorry, Mr Barry.

25 **Mr Barry:** I did have a couple.

26 **Mr Muir:** Yes, thank you.

27 **Mr Barry:** One, if I might be bold enough, is to pick up on the Chair's question at the
28 start of this exercise which was what changes, if anything, would you propose in
29 your approach in the light of the hearing, the last two days?

30 **Mr Leckie:** Across the board, or?

31 **Mr Barry:** As many as you wish.

32 **Mr Muir:** Do you have any specific takeaways from the last three days which you
33 think could benefit from, you know, further consideration, refinement, additional
34 research - - -

35 **Mr Leckie:** Yeah, nah, I understand - - -

36 **Mr Muir:** - - - or anything of that nature?

37 **Mr Leckie:** - - - the question. So starting with what we've just been talking about, I
38 think the – I certainly see benefit in this - what is the best way to ensure these long
39 term outcomes are deliverable, and what gives the panel comfort, the most

1 comfort, that they are deliverable, I see as a really important workstream, an expert
2 led workstream. So I think that's a point that we certainly take on board. On the
3 – I hear the panel on the water quality theme, and there were considerable
4 amendments made to conditions and additional assessment work done in the
5 workshopping and section – and then ultimately through the section 53 process.

6 But I hear the panel around your concerns that remain. So I would see that as an
7 important point for the MGL team to consider in regard to – particularly in regard
8 to that broader receiving, receiving environment. I take that on board. The – I'm
9 just pausing on any other key, key points. The, I guess, mechanics between
10 management plans and conditions I think needs some forensic analysis as in what
11 sits in a management plan, what sits in the condition and does the condition give
12 that appropriate framework for the management plans that sit within it. So I think
13 that's going to be another really important workstream that's going to come
14 through this expert, expert conferencing. The - - -

15 **Mr Muir:** And could I suggest that sitting in over and above all of those, or equally
16 relevant with all of them, issues of mana whenua engagement?

17 **Mr Leckie:** Oh yes, sorry, Sir, I hadn't left that out intentionally. That's the top of the
18 list from my perspective, and Mr Spring and I have had that same conversation
19 several times over the last two days, and I can assure the panel that it's certainly
20 something the applicant is taking very seriously and is very aware of the
21 importance of it. So I can hopefully reassure the panel that it's certainly something
22 that is top of the list and a real – a very important point that needs progressed. So.

23 **Mr Barry:** On the social impacts, again can I be blunt. Do you have any plans because
24 there's – does Santana have any plans to compensate neighbours for losses they're
25 incurring as a result of the mine if it goes ahead?

26 **Mr Leckie:** I don't have any instructions on that point. I mean, that point was
27 progressed quite a bit today or discussed quite a bit today, and we'll certainly take
28 it away. I don't have instructions on the compensation point. Santana or MGL
29 are very committed to this ongoing engagement with neighbours and other parties,
30 and that will continue. I'm not sure if there's anything else you want to add,
31 Damian, but I'd need to take instructions specifically on that point. I don't have
32 any at the moment.

33 **Mr Muir:** Well I hope, if nothing else, the hearing's put a very human face to that.

34 **Mr Leckie:** Yes, no, I agree. So they're probably the key. Look there's, there's a lot
35 that can get progressed at conferencing and just because I haven't said, raised a
36 point, doesn't mean I don't think it needs to be progressed. There's a lot out there.
37 But they're the key, they're the key things that are at top of mind for me at this
38 stage.

39 **Mr Muir:** Anything else from anyone? Very good. Well, I now close this hearing of
40 MGL's application. Shortly, as I've flagged, a minute will issue from the panel
41 in relation to expert conferencing. We are fortunate indeed to have experts in the
42 facilitation of such conferences available to us and you will shortly be hearing
43 from Chancery Green with specifics of the conferencing, and we will be obtaining

1 very regular reports from Chancery Green as to how that process is progressing
2 and whether reconvened conferences are going to be necessary on subsidiary
3 points as they emerge. Our minute will, to the best that we can, identify those
4 areas where we as a panel are currently exercised, but it is inevitable in the context
5 of something such as this that when the experts are together, other issues will
6 emerge and it is not meant to be prescriptive in that sense. And in the interim
7 period, we will be focusing on a number of other issues, including legal issues,
8 that can be given attention while that process is being undertaken.

9 Thank you. And I want to thank all those who have appeared before the panel
10 during the course of the last two, indeed the last three days, for the civility with
11 which the proceedings have been conducted – all the more useful for us that they
12 were, and that we weren't having to be exercised with other issues. It's been an
13 extremely valuable exercise from our perspective. As I've said to a couple of
14 people, if you'd asked me a month or so ago about public hearings in the context
15 of this application, I would have always said utterly essential for transparency
16 purposes, so that those who must live with this decision, whatever way it is, can
17 see the process that we are working through and the matters that are exercising us.
18 But it has gone way beyond that, in the panel's assessment. We have gained an
19 enormous amount of very valuable information over the last three days. It has
20 added immeasurably to our understanding of the issues that are exercising people,
21 and unfortunately, it just seems, from my present perspective, to make our
22 challenge even greater. But that's the task we've accepted and are about to embark
23 on. Thank you very much indeed. Thank you members of the public for your
24 attention and the way in which the hearing has been conducted. Thank you. We'll
25 adjourn.

26

27 **Hearing adjourned**