

BEFORE THE EXPERT PANEL

FTAA-2507-1089

**UNDER
IN THE MATTER**

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

LEGAL SUBMISSIONS ON BEHALF OF SUSTAINABLE TARRAS

Dated 21 September 2026

Julian Miles KC
Richmond Chambers
miles@richmondchambers.co.nz

SALLY GEPP KC

M +64 21 558 241 — SALLY.GEPP@MILLSLANE.CO.NZ
MILLS LANE CHAMBERS, 3 BROOKSIDE, NELSON 7010
PO.BOX 537 SHORTLAND ST, AUCKLAND 1140. MILLSLANE.CO.NZ

TO THE EXPERT PANEL

1. These legal submissions address legal issues which have emerged since the April hearings, and respond to the closing legal submissions on behalf of Matakanui Gold Limited (**MGL**) dated 14 September 2026.
2. These submissions address legal issues going to both the consentability of the Project and to approval conditions; the latter without prejudice to Sustainable Tarras' submission that MGL has utterly failed to present a consentable application - even under the Fast-track Approvals Act (**FTAA**) criteria.¹

Scope of closing legal submissions

3. Minute 48 of the Panel stated the following with respect to the scope of closing legal submissions:

[11] To be clear, the Panel is not inviting or expecting MGL to provide a submission which readdresses any legal issues which were the subject of comprehensive submissions in the March/April period (and in respect of which advice has already been taken from Ms Carruthers KC). Nor is it inviting a submission which comments on the evidence with a view to persuading the Panel on the merits. The focus is to be on any new legal issues exclusively. The same applies to the permitted responses and reply.
4. Significant portions of MGL's closing submissions are either a restatement of a legal position already expressed to the Panel by MGL or comments on the evidence with a view to persuading the Panel on the merits. Frustratingly, counsel have had to spend a large amount of time reviewing the 57 pages of legal submissions for truly "new" issues, rather than spending their limited resources on the issues themselves.
5. Specific parts of closing legal submissions that breach the Panel's directions are set out below:
 - a. **Economic benefits** (paragraphs 10 – 16): This section comments on the evidence with a view to persuading the Panel that the evidence provides certainty in relation to the Project benefits. It also comments on the discretion to decline approvals, which is not a new legal issue and which has previously been addressed in legal submissions by MGL.² This entire section departs from the Panel's directions.
 - b. **Cultural effects and Treaty Settlement Obligations** (paragraphs 17 – 36): Paragraphs 17 – 24 seek to convince the Panel on the merits of the conditions relating to Kā Rūnaka. At paragraph 25 the submissions comment on there being no right of veto. This was

¹ MGL's planning experts said the project would be "very hard to consent under the RMA" and also accepted that conclusion could be extended to the Reserves Act, Heritage New Zealand Pouhere Taonga Act and Wildlife Act (Planning Hearing Transcript at page 107 – 108). The other planners also stated that project would not get consent under the RMA (Planning Hearing Transcript at 135 – 136)

² Including in legal submissions dated 17 April 2026 from paragraph 46.

addressed in earlier legal submissions from MGL.³ The legal submissions then go on in the following paragraph to engage with the evidence on this issue. The legal submissions go on to submit that the obligations within the apology in the Settlement Act are Crown obligations and address section 7 of the FTA. This too has already been covered in legal submissions by MGL.⁴ This entire section departs from the Panel's directions. Some parts of the closing submissions are strikingly similar to what MGL has stated previously, such as the following (the first from 17 April and the second from their closing legal submissions 7 September):

Extract from MGL's legal submissions dated 17 April:

83. Instead the focus of section 7 is on ensuring compliance with express obligations arising under existing Treaty settlements. In our view this captures obligations expressly set out in the Treaty settlements, rather than any other aspects which may conceivably form part of assisting iwi in exercising the benefits arising from the relevant settlement.

Extract from MGL's closing legal submissions:

34. The focus of Section 7 of the FTA is on ensuring compliance with express obligations arising under existing Treaty settlements. In our submission this captures obligations expressly set out in the Treaty settlements relating to all parties, rather than broader considerations concerning the recognition and implementation of the rights and interests provided for in the Settlement Act.

- c. **Water baseline and effects** (paragraphs 37 – 58): From paragraph 38 MGL's submissions engage with the evidence and seek to convince the Panel that there is appropriate confidence in relation to the effects. The closing submissions address the same case law on adaptive management as was set out in MGL's earlier legal submissions.⁵ The section on 'certainty' describes the evidence and seeks to convince the panel that the adaptive management approach for water related effects is appropriate. So too does the section on 'adaptive management criteria'. The section on 'water quantity' describes the evidence and conditions. These sections do not involve any new legal issues, except where new conditions are proposed.
- d. **Archaeological Authority – Heritage New Zealand Pouhere Taonga** (paragraphs 66 – 76): Paragraphs 66 – 69 repeat MGL's submissions that HNZPT has not applied the correct legal test.⁶ Paragraphs 70 – 71 seek to convince the Panel on the evidence.

³ Legal submissions dated 17 April 2026, paragraph 270.

⁴ Legal submissions dated 17 April, from paragraph 66 including paragraph 84 which refers to the obligations being on the Crown and paragraph 83 which mirrors paragraph 34 of the closing submissions.

⁵ Legal submissions dated 17 April at paragraph 19.

⁶ Addressed in oral reply to the Panel on 30 April 2026, lines 18 – 33.

Paragraph 72 – 76 seek that the Panel certify the Archaeological and Heritage Management Plan. The legal issue of whether the Panel has the power to certify a management plan has been addressed already by MGL.⁷ This entire section is outside the Panel's direction.

- e. **Terrestrial ecology: Cushionfields and Spring Annuals** (paragraphs 77 – 91) and **Lizards** (paragraphs 92 – 98): Paragraphs 77 – 85 and 92 – 98 do not relate to a new legal issue and are focused on discussing the evidence with a view to persuading the Panel on the merits. MGL has already addressed the lawfulness of the CIT Pit conditions.⁸ The only new issue is lawfulness of Spring Annual Compensation conditions (paragraphs 86 – 91). Sustainable Tarras supports the closing legal submissions on behalf of EDS on the lawfulness of Spring Annual Compensation conditions.
- f. **Wildlife Act 1953** (paragraphs 99 – 106): This section too is focused on the evidence with a view to persuading the Panel on the merits rather than addressing a new legal issue. MGL's legal overview and April legal submissions had already addressed the purpose of the Wildlife Act and the Wildlife (Authorisations) Amendment At 2025.⁹ No new issue arises.
- g. **Biodiversity and Heritage Enhancement Fund** (paragraphs 107 – 110): the submissions seek to convince the Panel that the conditions relating to the Fund are appropriate. The Fund was addressed in MGL's April submissions and no new issue arises.¹⁰
- h. **Scope of Battery Hill Sanctuary** (paragraphs 111 - 115): This has already been addressed in legal submissions set out in a memorandum from Lane Neave dated 17 August 2026 (Battery Hill Sanctuary – Scope Considerations) that were filed with MGL's RFI 11 response. Battery Hill raises new legal issues for other parties to address, but no new issue arises for MGL to address.
- i. **Inconsistency with Planning Documents** (paragraphs 116 – 118): The legal arguments set out in this section regarding the relevance of the Project's inconsistency with directive national policy statement provisions have already been set out in earlier legal submissions on behalf of MGL.¹¹ No new issue arises.
- j. **Compliance with the Global Industry Standard on Tailings Management** (paragraphs 119 – 123): Paragraph 120 seeks to convince the Panel that its evidence should be accepted with

⁷ Legal submissions dated 17 April at paragraphs 221 - 224

⁸ A.02B Legal Overview at paragraph 160 and footnote 153

⁹ A.02B Legal Overview at paragraph 86 – 88 and legal submissions dated 17 April from paragraph 133.

¹⁰ Legal submissions dated 17 April from paragraph 237

¹¹ Legal submissions dated 17 April from paragraph 38.

respect to the need to comply with GISTM.¹² This is not a new legal issue.

- k. **Social Impact** (paragraphs 134 – 154): This section of the submissions reiterates MGL's earlier submissions¹³ and seeks to persuade the Panel that MGL's evidence should be preferred. MGL's brief opening submissions on social impact have now been expanded to address effects on property values, insurance, compliance reporting and the community liaison group. Sustainable Tarras has commented on these matters below, where relevant.
 - l. **Bond** (paragraphs 155 to 161): Legal issues concerning bonds were set out in earlier legal submissions on behalf of MGL.¹⁴ This section of the submissions generally does not address new legal issues, except the relationship between the Bond and the Trust which is an evolving/partially new issue.
 - m. **Partial Revocation of the Conservation Covenant** (paragraphs 184 – 207): The legal test was already addressed in MGL's earlier legal submissions.¹⁵ The remainder of this section on the legal test and the section on 'value of regional, national or international significance' is largely a discussion on the evidence and an attempt to convince the Panel on the merits. Paragraphs 184 – 194, at least, do not relate to new legal issues.
 - n. **Validity of conditions** (paragraphs 208 – 211): the legal issues were addressed in MGL's previous submissions.¹⁶
 - o. **Section 83** (paragraphs 212 – 215): addressed in MGL's Legal Overview, no new issues.¹⁷
 - p. **Proportionality assessment and Weighting** (paragraphs 232 to 245): The legal framework has been addressed in detail previously by MGL and is not a new legal issue (as recognised in MGL's closing submissions at paragraphs 234 and 241). These sections are an attempt to convince the Panel on the merits.
6. The above portions of the legal submissions depart from the directions of the Panel and should be disregarded. If the Panel intends to have regard to those parts of the submissions, administrative fairness requires that other parties are also given an opportunity to address the panel on pre-existing legal issues and how the Panel should weigh the evidence.

¹² Sustainable Tarras' Memorandum of counsel dated 7 September 2026 requested that the Panel request the Parliamentary Commissioner for the Environment's recent report on managing the environmental risks of mining (**PCE Report**). The Panel has not done so, so the report is not in evidence. Despite this, MGL makes submissions at 119 and 121 – 123 that the Project is supported by the PCE report.

¹³ Legal submissions dated 17 April from paragraph 390.

¹⁴ Legal submissions dated 17 April from paragraph 398.

¹⁵ Legal submissions dated 17 April, from paragraph 114.

¹⁶ A.02B Legal Overview at 100

¹⁷ A.02B Legal Overview at 100

Legal issues addressed by Sustainable Tarras previously

7. Sustainable Tarras does not intend to repeat its previous legal submissions. **Attachment 1** is a reference table listing legal issues raised previously.

New / reply legal issues addressed by Sustainable Tarras

8. The new legal issues which are addressed in these submissions are:
- a. Water Quantity
 - b. Exploratory drilling
 - c. Battery Hill Sanctuary
 - d. Standard of proof
 - e. Scale for assessment of effects on the Outstanding Natural Landscape
 - f. Certification of Archaeological and Heritage Management Plan
 - g. Ardgour Rise and State Highway 8 Infrastructure
 - h. Lawfulness of a covenant in favour of Central Otago District Council
 - i. Partial revocation of the conservation covenant
 - j. Social Impact Assessment and Conditions
 - k. Bond
 - l. The Trust
 - m. Management Plan conditions
 - n. Consent duration
 - o. New material
 - p. Section 85(3)

Water Quantity / Allocation

9. MGL's closing submissions assert that the proposed conditions "provide assurance that should any unanticipated drawdown effects arise there is a clear and appropriate response framework in place."¹⁸
10. The process outlined by MGL if drawdown effects arise will take weeks, if not longer, before an alternative water supply is provided. In summer, vineyards need water daily or at least every few days. If water supply from nearby bores is constrained, vines in affected vineyards will die. The conditions unlawfully derogate from bore owners' consented water rights.¹⁹
11. The conditions require the consent holder to invite bore owners to provide information on the matters set out in MGL's closing submissions (at 56).

¹⁸ Closing legal submissions at paragraph 56.

¹⁹ *Aoraki Water Trust v Meridian Energy Ltd* [2005] 2 NZLR 268

Any refusal by a bore owner would frustrate the operation of the condition and would mean the condition is not enforceable.

Exploratory drilling

12. The activities authorised by MGL's proposed consents include exploratory drilling. Effects of exploratory drilling have not been assessed. This was confirmed by all of the ecologists during the Ecology hearing.²⁰ A condition limiting exploratory drilling to 3 ha does not substitute for an assessment of effects. Exploratory drilling cannot be approved without its effects having been assessed.

Battery Hill Sanctuary

13. Mr Sole's statement in response to RFI 11 set out the heritage values of the area where the Battery Hill sanctuary is now proposed. He said that the effects of the proposed sanctuary on the values of this area had not been assessed. In reply, MGL produced a statement by Dr Woods, which recommended a change to the fenceline which would have affected an important heritage feature. This proves Mr Sole's point – it is clear that no heritage input was provided before the new sanctuary was proposed. This is a continuing pattern from MGL, of making significant iterative changes to its proposal without considering and addressing all impacts of the change. It is unclear whether or how public access to these heritage features will be provided where they are inside a fenced sanctuary. This is a last-minute change that should have benefited from proper analysis by MGL.

Standard of proof

14. At paragraphs 194(c) and (d), MGL adopts an approach to future effects that treats uncertainty as meaning effects may be less adverse than currently predicted:

“... the evidence demonstrates that spring annual populations are more extensive and widespread than previously understood, with further survey work expected to improve that understanding. As a result, the proportion of the overall known population affected by the revocation may ultimately be smaller than currently anticipated.”
15. The possibility that an effect may be smaller than currently predicted is not how future effects are assessed. In *RJ Davidson Family Trust v Marlborough District Council*, the High Court found that generally, under the RMA, facts - including facts as to the actual effects on the environment - must be proved to the balance of probabilities. However, the balance of probabilities is not an appropriate standard to which future effects must be proved. Rather, in assessing future effects the Court is not required to satisfy itself that an effect is more likely than not, simply that it is likely, which it is entitled to do even if the effect has a low probability.²¹ The possibility that an effect may be smaller than predicted is not relevant – what matters is that significant impacts on nationally threatened or at risk

²⁰ Transcript page 21 pages 42 – 43 and 139 - 140

²¹ *R J Davidson Family Trust v Marlborough District Council* [2017] NZHC 52 at [129]

species are predicted. There is a risk of extinction of those species. Even if that risk is low probability it would have a high potential impact, and that is a relevant “effect” under the RMA and FTAA.

Scale for assessment of effects on the Outstanding Natural Character

16. MGL submits that the differing conclusions reached by the landscape architects are largely attributable to the assessment scale adopted, with different outcomes arising dependent on the scale at which effects on the ONL have been assessed.²²

17. Sustainable Tarras disagrees with that submission, and so did all of the landscape architects including Mr Girvan. In the first Landscape JWS²³ there was no disagreement on the appropriate assessment scale:

All experts consider that a nested approach is the appropriate approach i.e. all different scales have their relevance and have to be considered (starting at a broad level and working down to site level). There is no one landscape scale (refer page/section 5.15 – 5.20 of TTATM).

...

AS, BG, SB, APR, and NP consider that the hierarchy of levels to assist an assessment of landscape effects (i.e. the ‘relevant landscape’) is: ...

RG generally agrees with [22] (a)-(e) above, however he considers that (c) and (d) have similar values and spatial scale.

18. The landscape architects also all assessed effects at those different scales.²⁴

19. Rather the difference appears to be due to Mr Girvan’s unsupported confidence in restoration feasibility, and his failure to address specific identified landscape values or bring to bear cultural landscape effects as part of his assessment.

Certification of Archaeological and Heritage Management Plan

20. In reply to paragraph 72 of MGL submissions, Sustainable Tarras agrees with Heritage New Zealand Pouhere Taonga that there is no statutory basis in the FTAA for the Panel to certify management plans. This issue was addressed (in relation to management plans generally) in Sustainable Tarras’ Outline Submissions for the Cromwell Hearing at [8].

Ardgour Rise and State Highway 8 Infrastructure

Concession to enable vesting where right of first refusal triggered

21. In response to Minute 51, MGL now seeks to revert to the option of a 30 year concession instead of 5 years, in recognition that vesting Ardgour Rise and the SH8 upgrades²⁵ will trigger a right of first refusal which will extend

²² At 64

²³ Dated 18, 27 and 28 May

²⁴ See table under point G in the first Landscape JWS and paragraphs 10, 28 and 31 and Appendix 1 of the JWS dated 19 August 2026 (in relation to the covenant revocation)

²⁵ Paragraphs 129 - 130

the timeframe. MGL submits that “if at the conclusion of this 30-year concession vesting had not taken place, a further concession would be required to be sought by the consent holder”.²⁶

22. The FTAA provides that a Panel must decline an application for a proposed concession that would involve a lease for a term (including any renewals) of more than 50 years that would trigger a right of first refusal, if the holder of the right of first refusal has not provided written agreement to waive that right.²⁷ While that clause may not apply directly, the fact that MGL seeks to vest land that is subject to a right of first refusal (which has not been waived) and acknowledges that its concession may require renewal after the initial 30 year term, must weigh heavily against approval under s 85(3).

Ardgour Rise alignment

23. Sustainable Tarras filed a statement by Jonathan Kennett dated 20 August 2026 which assessed the “latest” version of Ardgour Rise alignment (the version filed in response to RFI 9). MGL’s response to Mr Kennett’s statement was that “Since the RFI 9 response was lodged on 12 June 2026, the proposed Ardgour Rise alignment has undergone substantial refinement through the RFI 11 process” with reference to revised alignment “Rev 5”.²⁸
24. It appears that Rev 5 and the supporting Stantec report was prepared on 29 and 30 July 2026 and provided to CODC at that stage. However, it was not part of MGL’s RFI 11 material and was only provided to the Panel and other parties as part of CODC’s comments on the RFI 11 response. There was no way for Mr Kennett to assess an alignment that was never provided to him.
25. There has been no assessment by landscape experts on the longer, wider, deeper cuts and fill required, most of which is on the ‘front face’ of the hills.
26. This is addressed further below under the heading ‘new material.’

Lawfulness of covenant in favour of CODC

27. The memorandum by Mitchell Daysh dated 28 August 2026 addressing the BOGP conditions recorded the issue as follows:

MGL proposes a covenant over 2,219 ha of the BOGP Consent Area to provide certainty of legal protection in perpetuity in relation to a range of specified environmental outcomes. MGL has consistently proposed that the covenant be in favour of CODC being the relevant territorial authority (in accordance with s.108(2)(d) of the RMA) – an outcome that has been consistently opposed by CODC.

28. Section 108(2) states that a resource consent may include any 1 or more of the following conditions, with s 108(2)(d) being:

In respect of any resource consent (other than a subdivision consent), a condition requiring that a covenant be entered into, in favour of the consent

²⁶ At 130

²⁷ Clause 7 Schedule 6 FTAA

²⁸ Part 2 03 Response to Submissions on RFI 9 Ardgour Rise Road dated 14 September 2026

authority, in respect of the performance of any condition of the resource consent (being a condition which relates to the use of land to which the consent relates).

29. As such the role of a covenant is limited to securing the performance of a condition of a resource consent. Its role is therefore significantly more limited than a conservation covenant. It is not the role of a s 108 covenant to impose obligations going beyond those set out in consent conditions, and nor can the covenant impose obligations on any party who is not the consent holder (such as the CODC).
30. In this case the covenant does not secure performance of any conditions of consent. For example:
 - a. Condition C48 which relates to the maintenance and enhancement of the Ecological Restoration and Enhancement Area only applies for 35 years. This is not proposed to be an ongoing obligation to be secured by a covenant.
 - b. Condition 122 refers to a final Biodiversity Outcome Monitoring Compliance Report at year 35. A final report at year 35 does not align with the requirement to maintain biodiversity restoration in perpetuity. The monitoring that this relates to is not proposed to be an ongoing obligation to be secured by a covenant.
 - c. Condition C134 (which deals with the covenant) details “the environmental outcomes that are to be specified in the covenant”. Condition C134 is not a condition, the performance of which is secured by a covenant. Rather it is a condition setting out what must be included in a covenant. This departs from the requirements for a covenant under s 108(2)(d).
31. Further, the covenant places obligations on CODC. It is important to recognise that a covenant under s 108(2)(d) is deemed to be an instrument creating an interest in the land within the meaning of s 51 of the Land Transfer Act 2017 (s 109(1)(a) RMA). It requires the signing of a deed of covenant by the consent holder and CODC. This cannot be imposed on CODC without a clear statutory basis. CODC has maintained its position that it does not want to be the beneficiary of the covenant, primarily due to a lack of resourcing available for CODC and the responsibility it would place on the ratepayer.²⁹ In those circumstances the Council cannot be compelled to sign a deed of covenant which would come with ongoing and significant monitoring obligations. There is no statutory basis to impose such obligations on the Council under s 108(2)(d) RMA.
32. The applicant has referred to an ability under s 36 RMA to fix charges payable by holders of resource consents for the carrying out by the local authority of its functions in relation to the administration, monitoring and supervision of resource consents, and for the carrying out of its resource management functions under s 35. However this is no answer to the

²⁹ As recorded in the comments on condition C113.

concerns raised by CODC. Monitoring a covenant is not monitoring of a resource consent, nor is it concerned with s 35 functions. Costs for monitoring a covenant cannot be recovered under s 36.

33. A covenant under s 108 also comes with enforcement limitations which make it an inappropriate instrument to address the ongoing direct effects of the project. In particular:
- a. It can only be enforced by the Council (unlike consent conditions, where non-compliance can be enforced by any person using the RMA enforcement order provisions (and their replacement provisions)).³⁰
 - b. A council has a discretion whether to enforce its property interest under a covenant, where-as a Council is obliged to enforce observance of its District Plan. There are many reasons why non-compliance may not be enforced, such as lack of funds.
 - c. Enforcement of non-compliance by the Council is not straightforward as covenants are enforced under property law rather than the RMA.³¹
 - d. There is an added complexity here that if CODC did agree to assume responsibility for the covenant, CODC would be the landowner (through the Matakini Trust) and so would be both covenantor and covenantee. CODC would also be the regulator, and holder of the bond. This multiplicity blurs the boundaries between the respective roles of the Council and raises questions over appetite to enforce it. CODC would effectively be policing itself.
34. In *Granger v Dunedin City Council*³² the applicant had proposed to enter into a covenant with Dunedin City Council for the purposes of protecting and enhancing areas of indigenous vegetation, with the covenant requiring the preparation of a management plan. Although the Court did not express a concluded view on the matter it stated:

...we doubt that a covenant is an appropriate condition where it is proposed as direct mitigation for the adverse effects of a proposal. If approved, could the consent authority monitor the implementation of the management plan? Would not the monitoring and enforcement promises made in a covenant be a private matter as between the parties i.e. Dunedin City Council in its non-regulatory capacity and thus not amenable to RMA enforcement action by third parties?

Partial revocation of the conservation covenant

Nature of the assessment

³⁰ See for example *Clark v Butt* [2025] NZEnvC 163 in which the Court stated that given their nature as a covenant in gross, a consent notice is only enforceable by the Council.

³¹ In *Clark v Butt* it was argued that a consent notice would not provide grounds for an enforcement order as non-compliance with it was not an offence under the RMA. It was not disputed that the Court lacked jurisdiction to make the enforcement order and the proceedings were struck out.

³² *Granger v Dunedin City Council* [2018] NZEnvC 250.

35. MGL submits that overall the values sought to be protected by the BCC will not be compromised in the context of the overall wider area and the BCC objectives will continue to be reflected across this area.³³ That submission does not reflect the criteria for assessing a covenant revocation under the FTAA. This issue was addressed in detail in Sustainable Tarras' comments at 146 – 157. It has also been addressed by counsel assisting the Panel.

Tenure review outcome

36. It is difficult to perceive any legal relevance of the fact that tenure review resulted in imposition of a conservation covenant rather than some other outcome such as public ownership. To the extent the Panel considers that outcome relevant, no weight can be placed on evidence from MGL that the land within the BCC was considered, at the time it was established, to be of lower significance than the areas that were transferred into the public conservation estate.³⁴ That evidence ignores the reality of the tenure review process. The only people who could give evidence about the relative values of land and how that factored into the Bendigo tenure review are the people who negotiated that tenure review.
37. From a heritage perspective, the evidence is that the choice of a conservation covenant could indicate the high value of this area:

[Dr Schmidt] ... So about 180 properties went through the tenure review Land Act process. ... Only 11 of those have covenants relating to heritage. And of those 11, only two are landscape ones particularly, that's Bendigo and Happy Valley.³⁵

...

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

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

...

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

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

³³ At 190.

³⁴ Supplementary Evidence of David Norton, Ian Boothroyd and Rhys Girvan, 12 August 2026 at [10], relied on in MGL legal submissions at 184.

³⁵ Heritage hearing transcript page 8 (Dr Schmidt)

Ms Williams: So coming back to the context here, where we have the covenant and we have the focus on the covenant on the Rise and Shine area and we have adjacent to it the historic reserve. Looking at those ... how do you take that as influencing your assessment of whether or not something is very high or high?

...

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

"...compromise values of regional, national or international significance"

38. MGL submits that "in response to RFI 11 experts on behalf of Matakanui Gold have concluded that the partial revocation of the BCC will not compromise landscape, heritage or freshwater values of regional, national or international significance," relying on the supplementary evidence of Emeritus Professor Norton, Dr Boothroyd and Mr Girvan. Sustainable Tarras submits in response that:

- a. MGL's evidence does not support the submission. As none of those persons are heritage experts, they cannot give an opinion on whether regionally, nationally or internationally significant heritage values will be compromised. Mr Girvan opines on heritage landscape values only and expressly records that his evidence "is confined to the landscape matters within my expertise and does not address or qualify the specialist evidence concerning effects on mana whenua, heritage or ecological values".³⁶
- b. During the heritage hearing on 10 June 2026, Commissioner Sweetman asked the experts directly: "would revocation compromise values of regional, national or international significance?"³⁷ The experts answers were as follows:³⁸
 - i. Dr Woods for MGL initially stated: "I don't think it will change the covenant to be no longer regionally significant." However during cross examination, when asked whether it will compromise values of regional, national or international significance, Dr Woods answered "it will in effect compromise some values of regional significance."
 - ii. Dr Schmidt answered "yes, it would". When asked "all of the three?" he answered "International, regional, national, local, absolutely, yeah."
 - iii. Mr Sole's answer was "Definitely nationally and regionally and I personally believe there's possibly a case for international."

³⁶ At 36

³⁷ Transcript page 36.

³⁸ Transcript pages 36 – 37.

- iv. Dr Jennings answered that he would say regional and national.³⁹
- c. The Norton, Boothroyd and Girvan statement of evidence concludes that the revocation will compromise ecological values of national and international significance (spring annuals).⁴⁰
- d. Mr Girvan's opinion that the revocation will not compromise landscape values at the regional or national scale addresses the wrong legal test:
 - i. The question is whether the values are regionally or nationally significant, not whether such values are compromised at the regional or national scale.
 - ii. His conclusion is based on considering what remains available in the wider landscape, when that is an irrelevant consideration under the criteria.⁴¹

Social Impact Assessment and Conditions

Social Impact Assessment Addendum does not comply with Code of Conduct

39. The statement by Suze Keith on behalf of Sustainable Tarras dated 7 September 2026 raised concerns in relation to the social impact assessments relied on by MGL, including issues regarding the advocacy nature of the Addendum report.⁴² A number of illustrations are given (at paragraph 18 of Ms Keith's statement), which demonstrate that the report authors lack impartiality. For example:
 - a. The statement that: "Where opposition exists, local feedback points to people and organisations outside the district as the main source, but this has not been validated." Ms Keith explains that this statement appears intended to discredit opposition as coming from non-locals and has not been verified.
 - b. The contrast between reliance on a non-verified assessment of "New Zealand based" Facebook group members as evidence of community support while at the same time discounting opposition on the basis it comes from "people and organisations outside the district".
 - c. When referring to the Community Liaison Group (CLG), which is given significant weight in the Addendum's description of feedback themes, the Addendum states that "Sustainable Tarras has an open invitation to join but has not taken this up". The relevant context for the invitation not being taken up is not given.
40. The rules of evidence in Court provide that opinions are generally not admissible evidence unless they are given by an expert. While the Panel's

³⁹ Inaudible in transcript. This answer is based on notes taken.

⁴⁰ At 49

⁴¹ See Sustainable Tarras Comments at 146 – 157

⁴² Just Add Lime Bendigo Ophir Project Social Impact Assessment Addendum

process is not a Court process, other experts have stated their compliance with the Environment Court Expert Witness Code of Conduct. The Code provides that an expert witness has an overriding duty to impartially assist the Court on matters within the expert's area of expertise. This duty to the Court overrides any duty to a party to the proceeding or other person engaging the expert.⁴³ The importance of impartiality was recently highlighted by the High Court in *Sunder v Smith*.⁴⁴ The focus of the Court in that case was independence, which the Court distinguished from impartiality:

[89] As the Court of Appeal explained in *Prattley Enterprises Ltd v Vero Insurance New Zealand Limited*, it is necessary to distinguish impartiality—the primary objective of the Code—from independence. In *Prattley*, the Court recognised an expert witness need not be independent of the party by whom the expert is briefed, explaining:

“Any potential conflict of interest is ordinarily treated as a matter of weight. That is so because independence goes to the relationship between the expert and the party engaging the witness, while impartiality is a behavioural quality, signifying an attitude of neutrality as between the parties. An expert witness who lacks independence may nonetheless behave impartially.”

41. In *Sunder v Smith* the witness' lack of independence, combined with a failure to identify it and articulate it, went to the weight to be attached to his evidence.
42. It is clear that the Addendum report does not comply with the Code of Conduct, and that the author lacks impartiality. If the Addendum report were to be presented in evidence it would be entitled to no, or very little, weight. The Panel should place no weight on it.
43. Additional issues with this Addendum, including highly selective consideration of the Tarras Community Plan, have been addressed in Ms Keith's statement. That statement is not put forward as expert evidence, but as a statement of community expectations and interests.

Social Impact conditions

44. Sustainable Tarras' original comments on the substantive application in April 2026 requested “[c]onsent conditions developed with the community to address social issues arising from the operation e.g. deflated house sales/values; funding for reticulated water supply (flagged in B.03), mine impacted reduced business income insured etc. with funding attached”.
45. MGL's planner did not read those comments⁴⁵, and there has never been a substantive response to the request for meaningful mitigation of social impacts.

⁴³ At 9.2(a)

⁴⁴ *Sunder v Smith* [2025] NZHC 2246

⁴⁵ As confirmed in cross-examination

46. Sustainable Tarras submitted comments on conditions on 7 September 2026 which included a new proposed condition relating to a Tarras-Bendigo Community Development Plan (TBCDP).⁴⁶ This was essentially a more developed version of the social impact mitigation sought in its April comments. The TBCDP plan condition also sought improved access to information, and an enhanced role for the community in mine closure and post-closure planning.
47. This condition has been rejected by the applicant with the “key points to note” stated to be:
- a. Many of the purposes of the plan can be achieved through the CLG (and amendments to conditions requiring greater sharing of information with the CLG).
 - b. The condition is overly onerous and open-ended/uncertain.
 - c. The condition would potentially require further extensive funding and compensation provided without credible evidence or justification.
 - d. Funding is provided to the CODC which is to be spent on the community.
 - e. How the boundary of the ‘Tarras-Bendigo community is defined.’
48. The assertion that many of the purposes of the plan can be achieved through the CLG is incorrect. The CLG is only concerned with information-sharing and discussion. A key feature of the TBCDP is to provide mitigation for social and economic impacts of the BOGP to those most affected, being the Tarras-Bendigo community. This is not a feature of the CLG. Those impacts remain unmitigated. The enhanced community role in planning for the future is similarly not covered by the CLG condition.
49. The condition is clear and certain. It sets out minimum requirements that must be included in the BOGP, and clear objectives. In terms of how the boundary of the Tarras- Bendigo community is defined, this issue does not appear to concern the applicant unduly given it has proposed amendments to condition C9.5(c) including a minimum of two representatives on the CLG “from the Bendigo-Tarras area”.
50. While the two social impact reports do not clearly identify the adverse impacts on the Tarras-Bendigo community, it is clear from the statement by Ms Keith on behalf of Sustainable Tarras (dated 7 September 2026) that there is justification for such a condition based on the social impacts of the proposal as described in the compelling evidence of adjacent landowners, in Sustainable Tarras’ comments, and in the expert evidence.
51. In relation to the reference to funding being provided to the CODC which “is to be spent on the community”, no such funding has been offered. Provision is made for a BOGP Biodiversity and Heritage Fund but this does not address social impacts. Similarly the payment of \$1.25m to CODC is an

⁴⁶ New condition added to D.03 Schedule of Common Conditions to CODC and ORC consents.

access arrangement payment, or access consideration / solatium payment,⁴⁷ and should not be treated as money “to be spent on the community” to address social impacts. As set out previously, CODC has stated that this payment is to go towards the development of a Local Bill to set a minimum flow rate for the Manuherekia River, which adds nothing to mitigate the social impacts of this project.⁴⁸ There are no conditions which explicitly direct funds towards the Tarras-Bendigo community.

Effects on property values

52. Sustainable Tarras disagrees with MGL’s submissions that effects on property values are irrelevant.⁴⁹ While that is established under the RMA, the focus in the FTAA on economic effects means that such effects are relevant. Additionally, there is no “double-counting” of those effects because the direct effects on people living in Thomson Gorge Road have been ignored.
53. Many of those effects also remain unmitigated, for example there is still no condition on mobile lighting. This has a significant impact and is unconstrained.

Bond

54. The extent to which the cost of remediating catastrophic events will be covered by the Bond remains unclear. MGL’s position on this has been contradictory. MGL has said that the bond “will include a conservatively estimated risk cost component sufficient to cover the remediation of any uninsurable events”,⁵⁰ but the bond condition (C141) simply does not reflect that assertion.
55. MGL has also said that the key test that will be addressed by each annual bond recalculation is what would it cost a third party at that point in time to close and rehabilitate the Site in accordance with the current Mine Closure Plan.⁵¹ This does not account for remediating catastrophic events.
56. Sustainable Tarras requested changes to Condition C141 to require the bond to cover:
 - a. Effects resulting from the Consent Holder’s activities “including effects that are contributed to by a natural hazard or other event outside the control of the Consent Holder”.
57. ...the reasonable costs of responding to and remediating credible chronic and catastrophic failure scenarios associated with the BOGP, having regard to the consequences and likelihood of those scenarios and the costs of third-party implementation. MGL rejected those changes on the basis they were “overly onerous and these events may have not direct link to the BOGP or activities authorised by these conditions”. MGL’s rejection of the changes on that basis cannot be reconciled with its answer to the Panel on RFI 11 Question 14.

⁴⁷ Memorandum of Counsel for CODC dated 6 May 2026

⁴⁸ [Local bill to be progressed by CODC - Central Otago District Council](#)

⁴⁹ MGL submissions from paragraph 140

⁵⁰ Response to RFI 11 question 14

⁵¹ Closing submissions at 159

58. A further issue with the bond is that it does not sufficiently cover an event early in the mine life, before sufficient funds are available e.g. a pit slope collapse, an earthquake or landslide, or any other event that may financially compromise the company and leave ratepayers and taxpayers to cover restoration costs.

The Trust

59. MGL has failed, again, to justify why the bond is released once the Trust is established and mine closure is achieved.⁵² MGL submits that “[t]he proposed framework ensures that post closure obligations will remain appropriately funded and that at all times the Councils retain financial assurance to secure the delivery of those obligations”⁵³ but this is patently wrong. The Trust effectively replaces the bond, as shown by condition C145(f) which enables the bond to be reduced based on what funds are held by the Trust. The issues with that approach are addressed very well in the Memorandum of Counsel for the Trevathan family dated 7 September 2026, which Sustainable Tarras agrees with.
60. The Trust conditions are identified as *Augier* conditions, i.e. conditions that would not otherwise be lawful but for the fact that they are volunteered. However, the Trust is effectively replacing the bond (under MGL’s approach) and is therefore in the nature of a bond condition, which is not an *Augier* condition.
61. MGL submits that parties’ feedback suggests that the funding for the Trust is capped at \$50 million, and says this is not the case.⁵⁴ Sustainable Tarras submits in response:
- a. Condition C157 of the CODC/ORC Common Conditions provides for annual payments of \$5 million from year 6 until a maximum of \$50 million is held by the Trust. If gold production ceases earlier than year 16, the Trust will not have accumulated \$50 million.
 - b. While a “top up” is provided for in C157(b) if the annual bond calculation shows the cost of post closure obligations are more than \$50 million, the Panel can have no confidence that the top up will happen in reality:
 - i. At that stage of the project MGL will have no incentive to pass money over to the Trust, particularly if the top up required is substantial – and the new DamWatch and DOC information suggests it could be at least another \$60 million. The Panel is entitled to consider “the degree of confidence it could have about anticipated effects and the ability of proposed conditions to manage those effects”.⁵⁵ Those matters are “directly relevant to assessing effects on the

⁵² MGL submissions at [162]-[177]

⁵³ At [177]

⁵⁴ Paragraph [169]

⁵⁵ *Remediation (NZ) Ltd v Taranaki Regional Council* [2026] NZHC 55 at [93]

environment.”⁵⁶ The case law in that regard was addressed in further detail in Sustainable Tarras’ Comments.⁵⁷

- ii. Nor does the requirement for regulator approval of the land and resource consents transfer to the Trust provide confidence that the long-term management will be adequately funded. If it is rationally in MGL’s interests to walk away from the site and the consents, it will do so.
- c. Cost estimates are speculative, particularly for the water management aspects which are still at the conceptual stage. Sustainable Tarras also supports the evidence of Dr Kaye-Blake that the bonding response takes “an activities-based approach rather than effects-based approach to estimating costs, which removes risk from the applicant and places it with the Matakiniui Trust and the Crown.”⁵⁸

Management plan conditions

62. Case law in relation to management plans is set out from paragraph 115 of the Sustainable Tarras Legal Comments dated 9 April 2026. The latest set of conditions continue to fail to meet the legal requirements for lawful management plan conditions, with a recurring theme being a failure to set clear environmental objectives that must be achieved (and which are capable of being certified), as well as a failure to set triggers in conditions. For example:

- a. C21 states that the consent holder must ensure that all management plans listed in Conditions C17-C19 contain Trigger Action Response Plans. Triggers must be contained in the conditions, not set in management plans. This leaves critical parameters to be developed at a later date.
- b. C38 Landscape Objectives: The objectives remain unhelpfully vague. The lack of any measurable standards means this condition does not meet the basic requirements for a management plan condition.
- c. C64 Habitat Impact Management Plan objective: This also fails basic requirements for a management plan objective. A requirement to “describe measures to avoid or minimise adverse effects” is not an objective, and does not specify an outcome to be achieved.
- d. C67 Avifauna Management Plan objective: This is not a valid condition. A requirement to “avoid or minimise adverse ecological effects on indigenous avifauna species” does not set an outcome to be achieved.
- e. C71 Lizard Management plan objective: A requirement to “detail the methods that will be used to avoid or minimise adverse ecological effects on native lizards..” is not a valid management plan condition.

⁵⁶ *Remediation (NZ) Ltd* at [93] and [99]

⁵⁷ At 123.

⁵⁸ Supplementary statement of evidence of Dr William Henry Kaye-Blake dated 19 August 2026, at page 3.

- f. C75: Terrestrial Invertebrate Management Plan objective: A requirement to “avoid or minimise adverse effects arising from the BOGP on indigenous terrestrial invertebrates” is not a valid management plan condition.
63. The conditions relating to the Mine Closure Plan (C137) also remain uncertain and continue to use vague terms such as “*safety hazards have been appropriately managed, and effective controls are in place*”; “*key heritage values have been protected during closure implementation*” and “*soil contamination caused by the operation is appropriately remedied or managed including the implementation of any recommendations in the Detailed Site Investigation.*” Sustainable Tarras had requested an amendment to require remediation to ‘pre-mining conditions or better’ which would have provided a measurable standard to be achieved, but this was not accepted by MGL on the basis that it was considered to be overly onerous.

Consent duration

64. MGL submits there is no effects-based justification for imposing a 16-year term on the land use consent.⁵⁹
65. Sustainable Tarras submits that many of the effects assessments have been premised on effects being temporary. In particular, the ecology and landscape assessments, and the social impact assessment all rely heavily on a limited active mining period when assessing social impacts. If land use continues for longer, the effects will be different. That is the effects-based justification for the 16-year term.
66. The unlawfulness of a > 6 years water take permit has been addressed by Sustainable Tarras previously.⁶⁰

New material

67. The significant changes to the Project put forward by MGL in its response to comments on RFI11, or which may yet be put forward in response to RFI 12, are new information that the parties have not had the opportunity to comment on. This includes:
- a. The revised Ardgour Rise alignment “Rev 5” discussed above.
 - b. The establishment of a “substantially larger, better-sized pest exclusion fenced sanctuary.” (raised in RFI 12).
68. Sustainable Tarras considers it should have an opportunity to respond to this new information in accordance with the requirements of natural justice. However, even if afforded the opportunity to reply, Sustainable Tarras is concerned that there is no time left for the parties to respond to that new information in a timeframe that could meaningfully influence the panel’s deliberations, again raising concerns of administrative fairness.

⁵⁹ At 230

⁶⁰ Sustainable Tarras submissions to Cromwell hearing dated 29 April 2026 at [2].

69. Surely it has now reached the point that the only opportunity MGL has to amend its proposal is in response to a draft decision declining approval under s 69 FTAA.

Section 85(3)

Securing the economic benefits

70. If the approvals are to be granted on the basis of the claimed economic benefits, Sustainable Tarras submits that consent conditions securing those benefits should be included in the approvals – for example, a condition requiring that a specified number of New Zealanders/people from Otago be employed; a requirement that a specified monetary value be invested in local business; a requirement that the royalty be of a specified minimum value per annum, and so on.
71. Such an approach is consistent with the approach mooted in the draft Panel decision on Taranaki VTM (Trans-Tasman Resources). In that draft decision the Panel stated that if it were minded to grant the approvals it would need to be satisfied that the regional economic benefits accruing to the region from a head office in New Plymouth were secured and signalled that the Panel would seek the applicant's assistance with an appropriate condition.⁶¹

Applicant's own evidence supports decline

72. During the Planning hearing, Mr Chrisp was asked what sort of impact would be sufficiently significant to outweigh the benefits. His responses follow:

Ms Gepp: Just a question to Mr Chrisp: whether you've given any consideration to what sort of impact would be sufficiently significant to outweigh the benefits?

Mr Chrisp: Certainly if you were going to cause the extinction of a species would be a matter that I would've thought might, might be tipping you over the edge, you know.

Mr Muir: Could I suggest if you were to ...[have a] realistic possibility of contamination of the aquifers.

13 Mr Chrisp: Yes, if that was a strong, yes, that absolutely, yes, yes, yeah.

73. There is a clear risk of extinction of spring annual species⁶² and evidence that aquifer contamination is a realistic possibility, in circumstances where contamination is difficult to detect, contain and reverse.⁶³ Even on Mr Chrisp's own evidence, the Project should be declined under s 85(3).

What s 85(3) requires

74. MGL submits that "[u]se of the term "out of proportion" requires an evidential finding that adverse impacts must substantially outweigh and exceed the

⁶¹ Record of Draft Decision of the Expert Consenting Panel; 4 February 2026; at 364

⁶² Statement of Mike Harding at 25

⁶³ Statement of Leanne Morgan in response to RFI 11 information

national and regional benefits unlocked by a project before decline is warranted under Section 85.”⁶⁴ Sustainable Tarras submits that impacts do not need to “substantially” outweigh benefits – if that were the threshold, the FTAA would say so.

75. Sustainable Tarras submits that the adverse impacts of this Project very clearly outweigh the benefits. Sustainable Tarras relies on the Table at pages 50 – 51 of its Comments and submits that the assessments of the significance of impacts and benefits in that Table have generally been borne out by the evidence - with the exception of biodiversity effects which have been demonstrated to be extremely significant rather than significant as the Table stated. This includes effects on spring annuals (addressed above), invertebrates, and lizards. In relation to effects on lizards, RFI 12 refers to evidence that a fenced sanctuary area of at least 250 ha is a more appropriate “lower-bound target for a standalone lizard compensation package.”⁶⁵ The scale needed for a meaningful lizard compensation package demonstrates just how significant the project’s impacts are. Such a sanctuary would be larger than the Zealandia Ecosanctuary in Wellington. According to its annual report, Zealandia had annual operating expenses of approximately \$8.24 million in 2024/25.⁶⁶
76. Sustainable Tarras also highlights in particular the significant unmitigated social impacts which remain and the total misalignment of this Project with the Tarras Community Plan. These are both adverse impacts that need to factor into the Panel’s section 85(3) assessment, and which give further support to the conclusion that consent must be declined.

21 September 2026



Sally Gepp KC
Counsel for Sustainable Tarras Inc

⁶⁴ Closing legal submissions at paragraph 238.

⁶⁵ Referring to evidence of Dr Tocher dated 7 September 2026.

⁶⁶ https://d1xuswh6q35c7x.cloudfront.net/media/documents/2025-09-24_Signed_AnnualReport_Final.pdf

Attachment 1: Table of legal issues addressed in previous ST submissions

Legal issue	Paragraphs
Sustainable Tarras Comments dated 9 April 2026	
Applicable version of FTAA / transitional provisions	[9(a)]
Correct approach to decision-making under s 81 FTAA – separately considering the applicable statutory considerations before applying the statutory weighting; <i>Enterprise Miramar</i> approach	[9(b)]
FTAA purpose and assessment of “significant regional or national benefits” – greatest weight to purpose; Panel must independently assess existence and extent of benefits	[9(c)]
Mandatory decline factors – Treaty settlements; ss 85(1)(b) and 7 FTAA	[8], [9(d)]
Section 85(3) proportionality assessment – meaning of “adverse impact”; effect of s 85(4); meaning of “out of proportion”	[7], [9(e)], [37], [163]
Whether claimed economic matters are legally “benefits” for FTAA purposes – impacts vs net benefits; overseas benefits; disbenefits; regional/national significance	[10]–[36], particularly [19]–[22]
Other approvals and whether claimed FTAA benefits can actually be realised – road stopping / Overseas Investment Act	[35]–[36]
RMA provisions that “direct decision-making” for FTAA purposes – ss 104, 107 and Part 2	[38]–[39]
Section 104(1)(a) – actual and potential effects / adequacy of effects assessment	[39]–[91]
Capability of applicant to implement approvals / relevance to effects and conditions	[41]
Section 104(1)(b) – interpretation and application of planning instruments; directive policies; “avoid”; fair appraisal; conflicting policies / structured analysis	[92]–[94]
Section 104(1)(c) – “other matters”; relevance of Tarras and Central Otago community plans	[95]
Section 104(2EA) – relevance and weight of MGL’s compliance/enforcement history	[96]–[100]
Section 104(6) – inadequate information as a basis for declining consent	[101]
Section 107 RMA – whether discharges are legally capable of consent	[102]

Legal issue	Paragraphs
Part 2 RMA – ss 5, 6 and 7; whether Project is contrary to sustainable management purpose	[103 – [109]
Legal framework for imposing conditions under Sch 5 cl 18 FTAA / RMA	[110]–[114]
Duration of water permits – s 127B RMA	[113]–[114]
Certainty of conditions / unlawful delegation / management-plan conditions	[115]–[119]
Who may certify management plans – Panel has no certification role; local authority / DOC / HNZPT roles	[120]–[122]
Achievability / implementability of conditions – Remediation (NZ) Ltd	[123]
Mine closure – ability to relinquish tenure/obligations and requirement for enduring legal responsibility	[124]–[126]
Bond adequacy and legality / public indemnity insurance conditions	[127]–[129]
Concessions – mandatory considerations omitted from MGL Legal Overview	[130]
Whether FTAA permits MGL to seek easement concessions “in favour of” third parties (CODC/NZTA)	[131]–[142]
Conservation Act Part 3B – other statutory considerations directing concession decisions	[143]
Purpose for which conservation land is held	[144]–[145]
Reserves Act – partial revocation of Conservation Covenant; statutory test	[146]–[157]
Purpose and effect of Conservation Covenant / whether MGL applies correct Reserves Act interpretation	[147]–[155], particularly [149]–[153]
Legal relevance/effect of proposed replacement CODC covenant	[156]–[157]
Wildlife approval – statutory test and purpose of Wildlife Act	[158]–[161]
Archaeological authorities – applicable statutory considerations / HNZPT s 51 report	[162]
Overall s 85(3) proportionality assessment across the various approvals	[163]

Legal issue	Paragraphs
Sustainable Tarras Introductory Submissions	
Relevance of applicant competence, experience and compliance history	Sections 3–4
Whether conditions / adaptive management can safely be relied on given MGL’s compliance history	Section 4
Adequacy of information, including non/late disclosure of material reports	Sections 4–5
Adequacy of assessment of regional and national economic benefits	Section 5
Long-term responsibility and financial liability for the TSF and waste rock	Section 6
Effect of future sale/transfer of consents on long-term liability	Section 6
Sustainable Tarras submissions to Cromwell hearing dated 29 April 2026	
Section 127B RMA – maximum duration of new water permits	[2]
Assessment of regional/national benefits, including economic and employment benefits	[3]–[4]
Applicant capability, compliance history and ability to rely on compliance with conditions	[5]–[6]
Relevance of other approvals required for the Project to proceed	[7]
Conditions – certainty, unlawful delegation and certification of management plans	[8]
Section 81 weighting and s 85 proportionality / meaning of “adverse impact”	[9]
Adequacy of information and assessment of significant environmental effects	[10]–[16]
Relevant planning instruments and s 107 RMA	[17]–[18]
Concessions, including purpose for which land is held and third-party arrangements	[19]
Conservation Covenant – statutory test for partial revocation and replacement covenant	[20]
Wildlife approval – statutory purpose and incidental killing	[21]
Mine closure, enduring liability, bonds and insurance	[22]