

**BEFORE THE EXPERT CONSENTING PANEL APPOINTED BY
THE ENVIRONMENTAL PROTECTION AUTHORITY**

UNDER the Fast-track Approvals Act 2024 (the
FTAA)

IN THE MATTER of an application by Matakanui Gold Limited
(MGL) for approvals associated with the
Bendigo-Ophir Gold Project [FTAA-2507-
1089]

**MEMORANDUM OF COUNSEL FOR CENTRAL OTAGO
DISTRICT COUNCIL IN RESPONSE TO FURTHER
INFORMATION FILED BY MGL IN RESPONSE TO MINUTE 54**

Dated 9 October 2026

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May it please the Panel

1. This memorandum is filed on behalf of Central Otago District Council (CODC). It responds to the memorandum dated 2 October 2026 filed by MGL addressing Minute 54 and the updated transport conditions, principally the proposed Ardgour Rise replacement route and the alternative route through Shepherds Valley.
2. The accompanying letter from Dave Smith of Abley dated 9 October 2026, entitled Bendigo Ophir Gold Project – Review of Transportation Conditions, is filed as Attachment 1. Its detail is not repeated here.

Ardgour Rise and certainty of public access

3. CODC acknowledges the applicant's attempt to respond to the Panel's concern regarding the section of Ardgour Rise that crosses public conservation land. However, CODC does not consider that the proposed amendments provide the certainty required by the Panel, or the certainty required by CODC as road controlling authority.
4. CODC's position has been clear throughout this process. The replacement route for Thomson Gorge Road must be constructed, certified, legally available for public use, and vested in CODC as road before Thomson Gorge Road is closed to the public. CODC does not accept that a concession over public conservation land is an adequate long-term substitute for a legal road. Nor does CODC agree to become the concession holder for that part of the route.
5. That position has been raised consistently by CODC, including in its section 53 comments and at the hearing in Cromwell. It is not a new concern. It goes to the basic structure and certainty of the proposal. The project depends on closure of Thomson Gorge Road. That closure should not occur unless and until the replacement public road access is legally and practically secured.
6. Abley confirms that CODC's 7 September 2026 feedback requested vesting before road stopping. The reference in that feedback to "Ardgour Road" was an inadvertent error; it should have referred to "Ardgour Rise". CODC seeks the corrected requirement at the end of condition 71: "Ardgour Rise must be vested prior to the road stopping of Thomson Gorge Road". This clarifies CODC's existing position.

7. MGL's response does not provide that assurance. On the contrary, it confirms the uncertainty. MGL acknowledges that there is no absolute guarantee that the vesting process, including any right of first refusal process under the Ngāi Tahu Claims Settlement Act 1998, will be completed within the 30-year concession term. The applicant then seeks to address that uncertainty by proposing a further alternative route if vesting has not occurred by Year 25.
8. In CODC's submission, that is not an adequate response to the Panel's concern. The issue is not whether there may be some possible alternative access solution 25 years from now. The issue is whether the Panel can be satisfied, now, that before Thomson Gorge Road is closed there will be certain, enduring and lawful public vehicle access to replace it.
9. The proposed Year 25 trigger does not provide that certainty. It leaves public access over the DOC land dependent, for a very substantial period, on a concession rather than a vested public road. The proposed conditions also leave unresolved the consequences if, under the concession's terms, it is surrendered, cancelled, terminated for default, or otherwise ceases to provide the necessary legal authority before vesting occurs. A concession is not the same as a legal road and does not provide CODC with the same level of certainty, control, durability or public-road status. Further, condition 71A is triggered 25 years after commencement of the consents, but contains no express deadline requiring the alternative route to be completed, certified and legally available before the concession expires. It does not provide an earlier trigger if concession-based access is lost before then.
10. Nor can CODC be required to accept a transfer of the concession. CODC has made clear that it does not wish to be, and will not agree to become, the concession holder. A condition that assumes, encourages, or provides for transfer of the concession to CODC does not resolve the issue. It merely shifts the uncertainty and responsibility to the road controlling authority in circumstances where CODC has not agreed to accept that role.
11. CODC is also concerned that reliance on the Shepherds Valley closure-plan route as the public-road fallback has been introduced very late in the process as a solution to a fundamental legal and practical issue. It is not simply a minor condition refinement. It is proposed as a different long-term access solution, with its own design, safety,

construction, maintenance, legal availability, public access, landscape, heritage and closure implications.

12. CODC understands that the proposed route is described as following haul roads intended for retention under the Landscape Closure Plan. That does not make it an adequate substitute for a fully assessed, legally available public road replacement for Thomson Gorge Road. Retention of haul roads through that framework does not itself demonstrate that the route can meet the required public-road standards or be made available when needed.
13. Abley advises that the alternative alignment has not been identified or discussed with CODC, and raises concerns about compliance with agreed design standards, geometric feasibility, road safety and assessment of landscape and ecological effects. MGL relies on the route's inclusion in the Landscape Closure Plan and the disturbance already assessed for mining. In CODC's submission, that does not establish its suitability as an enduring public road. Nor does adoption of a design and acceptance process already accepted for Ardgour Rise demonstrate that this different route can meet the required standards.
14. The proposed alternative route also appears to be tied to future closure-stage works and long-term covenant or consent mechanisms. That again does not answer the immediate issue: public vehicle access must be secured before the existing public road access is removed. A future closure-plan route cannot retrospectively cure uncertainty that exists at the point of road closure.
15. Further, the proposed alternative route has not been presented as the replacement route on which the application has proceeded. Its proposed use as a substitute public road has emerged at the end of the process as a fall-back response to the Panel's concern that the proposed Ardgour Rise vesting pathway may not be legally or practically certain. In CODC's submission, that reinforces rather than resolves the problem. The Panel is being asked to accept a contingency pathway for a fundamental public access issue, rather than a certain replacement road solution.
16. In CODC's submission, the proposed amendments therefore do not provide the Panel with the certainty required. They instead defer a fundamental access issue into the future and rely on a cascade of contingencies: a 30-year concession, a hoped-for

vesting process, external statutory processes, possible right of first refusal issues, a Year 25 trigger, future construction of a different route, future subdivision and possible vesting of that route, and ongoing management by the consent holder or associated entity if vesting does not occur. Condition 71B requires a subdivision application after construction and makes vesting conditional on that consent and other necessary approvals. It therefore does not secure vesting before the route is needed. The advice note contemplating covenant-based access if vesting does not occur confirms that vesting remains contingent.

17. That is not an appropriate foundation for closing Thomson Gorge Road. The existing public road should not be closed unless the replacement access has already been secured to the necessary standard and legal status.

Other outstanding transport conditions

18. Abley acknowledges that several matters in CODC's earlier feedback have been satisfactorily addressed. Two other concerns remain. For condition 66, Abley recommends removing the third-party landowner approval qualifications from clauses (1) and (4). Those qualifications could delay the widening needed to address significant road safety effects. CODC supports their removal so that the 12-month delivery and certification requirements run from commencement of the consents, with necessary landowner approvals progressed separately by Council.
19. For condition 68, Abley is not aware of an existing Developer Agreement / Transportation Deed or a Council commitment to enter one. Requiring an agreement within 12 months leaves the condition dependent on future agreement between the parties. CODC supports Abley's recommendation that, if Council is willing to enter such an agreement, its terms should be settled before consent is issued, rather than leaving this unresolved through condition 68.

Conclusion

20. CODC therefore asks the Panel to remove proposed conditions 71A and 71B and add the corrected vesting requirement to condition 71, as recommended by Abley. The proposed fallback does not resolve the uncertainty identified in Minute 54.

21. If approvals are granted, CODC's position is that the conditions must require, as a precondition to the closure of Thomson Gorge Road and any mining activity that depends on that closure, that:

- (a) Ardgour Rise has been fully constructed and certified as meeting the applicable road design and safety requirements;
- (b) Ardgour Rise is legally available for public vehicle use;
- (c) the whole of Ardgour Rise, including the section crossing public conservation land, has been vested in CODC as legal road; and
- (d) CODC is not required to accept, hold, administer, or be transferred any DOC concession as a substitute for vesting.

22. If that cannot be achieved, CODC's position is that the Panel cannot be satisfied that the proposal provides a certain and enduring replacement for Thomson Gorge Road. In that circumstance, the closure of Thomson Gorge Road, and any mining activity dependent on that closure, should not be authorised to proceed.



Jayne Macdonald

Counsel for Central Otago District Council

9 October 2026