

BEFORE THE EXPERT PANEL

Under	The Fast-Track Approvals Act 2024 (the Act)
In the Matter	of an application under section 42 of the Fast-Track Approvals Act for the Bendigo-Ophir Gold Project
Between	MATAKANUI GOLD LIMITED Applicant
And	TREVATHAN FAMILY Party invited to comment

**MEMORANDUM OF COUNSEL ON BEHALF OF THE TREVATHAN
FAMILY**

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MEMORANDUM OF COUNSEL

May it please the Panel:

1. Firstly, thank you to the Panel and the Applicant for an opportunity to provide comments at this stage. It is apparent that the application has evolved and is continuing to evolve extensively during the course of the process.
2. The Trevathan Family are grateful for the opportunity to contribute further at this stage.

Key issues of concern

3. At the original hearing the Trevathans expressed their concerns regarding the risks of the proposal and in particular the high impacts that would arise if the consents were not exercised correctly, or in the event that site conditions were not as expected, or unanticipated adverse events occurred such as a large earthquake or high rainfall events. As further information has emerged it would be fair to say that those concerns have not been ameliorated.
4. It remains of particular concern to the Trevathans that:
 - (a) The bond conditions are adequate.
 - (b) The Matakinui Trust mechanism is robust enough.
 - (c) That there is appropriate and proximate monitoring of ground water to ensure that their health and farming business is not affected by contamination arising from the mining activity.
 - (d) That they are appropriately protected in the event that a low probability, high impact event was to occur.

5. With those key concerns in mind, we provide the following feedback in relation to the conditions.

What are bonds for?

6. Before providing comments on the conditions specifically Counsel considers it appropriate to reflect on what the purpose of a bond is. A bond condition is expressly designed to secure the performance of consent conditions. Section 108A specifically states that bonds may continue after the expiry of the resource consent to secure the ongoing performance of conditions relating to long-term effects.¹
7. The information provided by the Applicant confirms that the effects of the proposed mine will persist many decades into the future. They are also proposing ongoing mitigation, offset and compensation measures that need to persist 'in perpetuity'. It is submitted that if the panel is to rely on these measures, it must have complete confidence that they can be delivered over the required time periods. In order for the Panel to get to this point Panel must be satisfied that:
 - (a) The proposed bond, or any alternative mechanism being offered secures performance of the post-closure obligations. They cannot simply provide compensation after the fact or be dependent on the applicant's solvency or goodwill.
 - (b) The quantum must be based on properly costed estimates including contingency and cost escalation (which is particularly difficult given the very long-time frames in this case). The quantum cannot be some arbitrary or under capitalised figure.
 - (c) The legal structures must be capable of continuing as long as the relevant adverse effects may arise or continue. They must also

¹ Section 108A(1)

be legally secured against changes in ownership or corporate structure.

- (d) The mechanisms need to be subject to periodic review to ensure ongoing adequacy against updated costs and circumstances that may exist from time to time.

The Bond must clearly extend to post-closure obligations

8. On its face, Condition C119 and the associated Bond conditions appear to secure compliance only up to the end of the closure phase. No bond is proposed to secure the ongoing monitoring and management works that will be required during the post-closure phase. This is despite an acknowledgement that there will be ongoing consent requirements during the post closure phase and effects that will require management beyond the life of the consents. We understand these will be *inter alia* ~50 years of active water treatment followed by an additional ~100 years of passive treatment.
9. It is our submission that whilst MGL may in due course transfer the relevant property and consents to the Matakinui Trust (the **Trust**), the Trust should continue to be required to provide a bond in respect of the post-closure obligations it will be responsible for as consent holder. Those obligations are extensive and will persist for an extended period, and there is no principled reason why the regulators financial assurance mechanism should fall away at the point at which the Trust assumes responsibility for long-term outcomes. The Trust is a no more or less reliable consent holder than the Applicant.
10. MGL's response to further information requests regarding the bonding states that the bond is the project's 'core financial assurance mechanism', and that it will include the ongoing costs associated with any offsetting and compensation beyond the life of the operation. If that is correct, it is not presently reflected in the drafting. The interaction

between the Trust and the Bond as currently drafted appears to suggest that the Trust's funds are intended to replace the Bond at the end of the closure phase. This means that the 'core financial assurance mechanism' is not available to the regulators during the post-closure phase, despite significant environmental risks still requiring management for many decades. This is further reinforced by the addition of Condition C123(f) which appears to require that funds held for the benefit of or by the Trust to 'offset' the level of the Bond required even during the operational and closure phases of the project.

11. Similarly, Condition C123 (and the related provisions concerning the methodology for fixing the amount of the bond) and Condition C129 (concerning bond-related costs) appear to limit their application to the closure period. The Trevathan Family consider that these conditions should explicitly refer to post-closure requirements, so that there is no question that post-closure costs are included in the calculation and scope of the Bond. The same clarity is needed in relation to the release of the Bond under Condition C128, which must be crystal clear that release will not occur until post-closure works, and not merely closure works, have been completed to the Councils' satisfaction.
12. It is acknowledged that at some point the Trust may assume responsibility for those obligations, but that does not eliminate the need for the bond as the 'core financial assurance mechanism' for the regulators to remain in place.
13. It is our view that it is necessary for the Trust to be adequately capitalised to complete the post-closure works, but the regulators must also be provided with a Bond to ensure that it has access to necessary funds in the event that the Trust cannot, or does not satisfy its obligations. Simply capitalising the Trust does not address this appropriately given the ongoing uncertainty that will exist regarding the works that the Trust will be required to fund in order to achieve compliance with the conditions it inherits.

The Matakinui Trust conditions require greater specificity and financial protections

14. Turning to the new Matakinui Trust conditions, our clients raise the following points.

Insurance.

15. The condition addressing the Trust's obligation to take out insurance² cover is too vague. The condition should specify the types and magnitude of insurance that needs to be held.
16. The Trevathan Family seek a specific, named insurance policy in respect of their property, rather than a general and effectively discretionary obligation to obtain "reasonable insurance cover". There can be some flexibility regarding the point at which this obligation may be able to come to an end. For example, at the point there is assurance as to the operation of the passive water treatment system.
17. So far as we can tell the conditions do not include an obligation on either MGL or the Trust to provide proof that necessary insurances are held. In light of this, it is submitted that no confidence can be had that necessary or reasonable insurance will be held.
18. It is further submitted that there is currently no evidence available to demonstrate insurances would be available given the extended period for which they will be required. This creates a significant risk and places even more importance on the need for post closure works to be secured by a bond and for the Trust to be adequately capitalised.

² Matakinui Trust first NEW condition (c).

Bond obligation on the Trust.

19. Our clients consider that the Trust, which will become the consent holder once the relevant consents and land are transferred to it, must itself be required to maintain a bond, calculated in accordance with the same methodology as the existing bond conditions.
20. Whilst it may be that a bond would be required by a future regulator in any event, our clients consider that this should be placed beyond doubt in the conditions of this consent. Without an express bond obligation on the Trust, the capital funds transferred to the Trust may be even more inadequate, and what is transferred will be at risk of erosion due to the need for the Trust to fund bonds that did not form part of the calculation of the necessary capital. This would leave the Trust unable to fulfil its extended ongoing obligations

Sufficiency of Trust capital.

21. Our clients have not been able to take independent advice regarding the financial information provided by the Applicant as justification for the proposed \$50M capitalisation of the Trust. However, a 'back of the envelope' exercise points to the strong possibility that the proposed level of funding will not be sufficient in the long term given the extensive programme of works the Trust will be responsible for. This 'back of the envelope' conclusion has been borne out by the review conducted on behalf of the Otago Regional Council³ which suggests that the proposed \$50M capitalisation is likely insufficient but at least 50%.
22. Inadequate account appears to have been taken of the effects of inflation given the extended life of the Trust. Firstly, the Applicant's calculations rely on long run general CPI. It is not clear whether

³ Damwatch Engineering – Matakinui Trust Funding Adequacy Review dated 25 August 2026 (redacted version).

general CPI is appropriate given the nature of the works that need to be completed by the Trust. For example, construction price

23. This risk is compounded under the conditions as currently drafted, because the Trust's capital could be further eroded if it is required to fund additional, unanticipated remedial works arising from a failure of infrastructure or systems. This is a further reason why the Bond should remain in place to protect against that risk so that the regulators have access to funding in the event the Trust is unable to fund its obligations.
24. Finally, we expect that the Applicant would respond to many of these concerns by pointing to the condition that requires it to top up the Trust if \$50M is not enough⁴. It is submitted that considerable caution needs to be applied in relying on such a condition.
25. At the time that the Trust is transferred the Land and associated consents, mining will be complete. The Applicant will no longer be generating income; it is likely that its revenues will have been transferred to its Australia based parent company. No financial guarantees are being offered that can give the panel confidence that the Applicant will be able to satisfy its obligations to top up the Trust. Frankly, it would be entirely rationale for the Applicant company to claim insolvency at this point. This is particularly concerning given the extent of the top up that the Otago Regional Council's review suggests will be necessary.
26. Further, no confidence can be taken from the fact that the Trust will receive land. The land will be unable to be used as security because it (presumably) cannot be sold during the post closure phase and is unlikely to generate any meaningful income to fund debt repayments.

⁴ Matakinui Trust NEW condition 6(b)

Therefore, the benefit of section 109(5) cannot be relied upon in this instance as a way for the regulators to recover funds.

27. Given the fundamental importance of appropriate capitalisation of the Trust this should also be subject to its own Capitalisation Bond. We note that the Waihi North conditions provide for a specific capitalisation bond.⁵ The MGL proposal appears to rely heavily on those conditions for inspiration but has missed this critical component of the conditions package in Waihi North.

Timing of Trust establishment and escrow arrangements.

28. We do not understand the rationale for the proposed escrow mechanism, under which funds are accumulated in escrow. In our clients' view, it would make more sense, and better protect the interests of our clients and the wider community, for the Trust to be established at the earliest opportunity and charged with growing its own capital base from the outset, at a time when it does not yet hold responsibility for carrying out works. This would allow the capital base to benefit from a longer period of investment growth before the Trust's obligations crystallise.

Power of appointment for landowners.

29. Our clients consider that the registered proprietor of the Trevathan Land should have a power to appoint a trustee to the Trust if it wishes. As presently drafted, the power of appointment is confined to Kā Rūnaka, the Central Otago District Council, the Otago Regional Council, the Department of Conservation and MGL (for the duration of the closure phase only with discretion beyond that). Given the direct and long-term interest that affected landowners such the Trevathan's

⁵ https://www.fasttrack.govt.nz/_data/assets/pdf_file/0015/20265/Appendix-B1-Combined-HDC-and-WRC-Conditions-5-February-2026-Tracked.pdf refer condition C86-C95

have in the Trust's performance of its functions, our clients consider that the Trust Deed should be amended to give the registered proprietor of the relevant land an equivalent power of appointment.

Complexity.

30. Whilst we recognise that a Trust is likely to be the most appropriate mechanism to manage the long-term obligations it will not be straight forward or fool proof. The drafting of the Trust Deed will be critical to its success, and we consider that there are many matters which the conditions do not engage with that need to be thought through before the Panel can have confidence about the robustness of the Trust mechanism. For example:
 - a. Is charitable status likely? The post-closure obligations are indicated to persist for ~150 years. This is beyond the lawful life of even a Perpetual Trust. Therefore, for the Trust to be able to satisfy the in-perpetuity obligations it is being given it must gain charitable status and be established under the Charitable Trusts Act.
 - b. Will it be feasible to maintain the necessary trustees and how will trustee liability be dealt with given that the Trust will be required to hold and exercise resource consent permits for which Trustee's will be unable to insure against fines. It is for this reason that the Trevathan's are concerned that MGL do not appear to consider it a priority for it to have a power of appointment. That is the one appointment that MGL can exercise some control over to secure the ongoing performance of the Trust.
31. Given the complexity of these arrangements and how critical they are to the effectiveness of the conditions we consider that the Trust Deed should be drafted prior to the grant of consents so that all parties that are required to take a role in its operations can be clear on how it will operate prior to being committed to it.

Groundwater Effects

32. As previously highlighted by the Trevathan Family, they are concerned about the potential for groundwater contamination. Their farm sits over the aquifer most likely to be affected by activities at the mine. The Trevathan's have had the benefit of reviewing draft Supplementary Statement of Evidence of Dr Leanne Morgan, Groundwater Hydrology – Response to RFI 11 and the Statement of Evidence of Jennifer Webster-Brown concerning matters pertaining to water quality in RFI 11 dated 7 September 2026.
33. That evidence indicates that the fundamental questions about the risks to groundwater remain outstanding with the information provided by the Applicant in RFI11 leaving a number of significant unanswered questions regarding the environmental risks of the project. It now appears likely that there will be contaminant exceedances at key monitoring locations. There remains a lack of clarity on what the effects of that may be on the aquifers, but the RFI11 response suggests that water quality will be affected both with respect to domestic supply and irrigation uses. This is discussed in the evidence of Ms Webster-Brown.
34. For the Trevathan's this is a significant concern. If their domestic and livestock supplies are contaminated that will give rise to significant effects on them, and their business. It may give rise to adverse health effects. A partial response to this has been their request for specific insurance.
35. They also seek that additional ground water monitoring bores are installed along their boundary so that they can have confidence that the water traveling into the ground under their property and relied upon by them is good quality.

36. Beyond that they simply seek to reinforce their concern regarding this issue and ask that the Panel carefully evaluate the evidence presented to it, which is trite to say.

Summary of requested amendments

37. In summary, our clients request that the following amendments are made to the Conditions:
- (a) expressly extend the Bond to cover post-closure phase and remove any suggestion that the Trust's capital is intended to substitute for the Bond at the end of the closure phase;
 - (b) amend Conditions C123, C129 and any other conditions that presently refer only to the closure period so that they expressly capture post-closure requirements and costs;
 - (c) Remove C123(f).
 - (d) clarify that release of the Bond under Condition C128 will not occur until post-closure obligations, and not merely closure obligations, have been satisfied;
 - (e) require the Trust to obtain a specific, named insurance policy in respect of the Trevathan's property;
 - (f) impose an express obligation on the Trust to maintain the bond.
 - (g) Increase the capitalisation requirements for the Trust to that it can confidently cover the costs associated with the extensive ongoing obligations it will inherit.
 - (h) Impose conditions requiring a Capitalisation Bond to be put in place so that the capitalisation of the Trust is secure.

- (i) reconsider the escrow mechanism so that the Trust is established at the earliest opportunity with an express mandate to grow its capital base until it receives transfer of the land and the consents.
 - (j) Require groundwater monitoring bores to be installed along the boundary of the Trevathan's land and that they be regularly monitored as part of the ongoing groundwater monitoring programme for the mine with results reported directly to the Trevathan's.
38. Without these changes the Trevathan Family must oppose the granting of the consents sought.

Dated 7 September 2026



Bridget Irving

Counsel for the Trevathan Family