

**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:	29 April 2026
Panel:	Hon Matthew Muir KC (Chair) Gina Sweetman Phillip Barry Roger MacGibbon Tim Mulliner Peter Kensington Douglas Johnson
Central Otago District Council:	Jayne Macdonald Ann Rogers Fiona Garrett
Department of Conservation:	Pene Williams Marie Payne
Otago Regional Council:	Dave Randal Jenny Ross
Heritage New Zealand Pouhere Taonga:	Melanie Russell Emma Clifford
NZ Transport Agency:	Helen Dempster Stephen Cottrell
Environmental Defence Society:	Rob Enright Jen Vella
NZ Fish and Game Council & Otago Fish and Game:	Sally Gepp
Santana Mine Supporters Group:	Bill Sanders
Forest and Bird:	Tim Williams
Sustainable Tarras Inc:	Julian Miles Sally Gepp
Central Otago Winegrowers Association:	James Gardner-Hopkins Carolyn Murray
Chinaman's Terrace Service Company Limited (CSTC):	Paul Pujol (video submission)
Ardgour Strawbale B&B:	Prof Geoffrey Kearsley Dr Claire Kearsley

Table of Contents

JAYNE MACDONALD FOR CENTRAL OTAGO DISTRICT COUNCIL.....	5
PENE WILLIAMS FOR DEPARTMENT OF CONSERVATION.....	11
DAVE RANDAL FOR THE OTAGO REGIONAL COUNCIL	18
MELANIE RUSSELL FOR HERITAGE NZ POUHERE TAONGA.....	32
HELEN DEMPSTER FOR NZ TRANSPORT AGENCY	36
STEPHEN COTTERELL FOR NZ TRANSPORT AGENCY.....	37
JEN VELLA FOR ENVIRONMENTAL DEFENCE SOCIETY.....	39
ROB ENRIGHT FOR ENVIRONMENTAL DEFENCE SOCIETY	46
SALLY GEPP KC FOR NZ FISH AND GAME AND OTAGO FISH AND GAME	54
BILL SANDERS FOR SANTANA MINE SUPPORTERS GROUP.....	63
TIM WILLIAMS FOR FOREST AND BIRD.....	66
JULIAN MILES FOR SUSTAINABLE TARRAS INC	71
SALLY GEPP FOR SUSTAINABLE TARRAS INC	74
JAMES GARDNER-HOPKINS FOR CENTRAL OTAGO WINEGROWERS ASSOC	82
CAROLYN MURRAY FOR THE CENTRAL OTAGO WINEGROWERS ASSOC ...	83
PAUL PUJOL FOR CHINAMAN’S TERRACE SERVICES COMPANY	87
PROFESSOR GEOFFREY KEARSLEY FOR ARDGOUR STRAWBALE B&B.....	90
DR CLAIRE KEARSLEY FOR ARDGOUR STRAWBALE B&B	92

1 **The hearing commenced at 10.00 am**

2 **Mr Muir:** This is an application by Matakau Gold under the Fast-track Approvals
3 Act 2024. I'm going to start with some introductions. I'm Matthew Muir, but
4 with respect to the rather august legal company that I'll be keeping over the next
5 couple of days, I'm sure you're far more interested in the highly qualified
6 technical experts on this panel than you are in its lawyer Chairman.

7 So I'm going to start with Tim Mulliner, who is immediately to my right. Tim is
8 a highly qualified environmental scientist with particular experience in the mining
9 industry, where he has specific technical focus. His specific technical focus has
10 been on geo chemistry, hydrogeology, hydrology, and mine water management.

11 To his right is Gina Sweetman. She will be someone known to many of you as a
12 highly experienced planner, starting with a first class Masters degree from the
13 University of Auckland and has a strong background knowledge in all aspects of
14 the Resource Management Act, natural resources planning generally and with
15 particular interest in, and expertise in, matters relating to Treaty settlements.
16 She's also a highly experienced hearings Commissioner with a Chair
17 endorsement. And if I'm struck by a bus in the next three or four months, will no
18 doubt be the person who assumes my role.

19 To her right is Peter Kensington. So Peter is an expert resource management
20 practitioner with 30 years practice experience in landscape architecture and
21 planning and, like Gina, he has extensive experience as a hearings Commissioner
22 for both Auckland and Far North Councils, and recently that experience has
23 extended also to a point where he's a panel member for the Queenstown Lakes
24 District Council in relation to its proposed introduction of priority area landscape
25 schedules. This is Peter's third appointment as a panel member on a fast-track
26 application, so he is starting to be an old hand at this. I suspect, however, that this
27 particular assignment somewhat eclipses the size of the other two.

28 To my immediate left is Doug Johnson, and he's a principal consultant and
29 technical director with leading engineers Tonkin and Taylor, a firm which will be
30 familiar to all of you I'm sure. He's a specialist engineering geologist with vast
31 experience across complex geological terrains for a range of quarry, mining, and
32 civil infrastructure projects. That experience covers site investigation, ground
33 modelling, soil and rock mechanics, slope stability, groundwater, and natural
34 hazard evaluation.

35 To his left is Phil Barry. He's our resident economist with 30 years' experience
36 providing economic and financial advice to leading private sector corporates and
37 public sector entities. He's a former director of the New Zealand Treasury and
38 advises the Department of Prime Minister, and Cabinet, and a member of the
39 IMF's panel of fiscal experts. So we really are very privileged to have one of New
40 Zealand's leading economists on our panel. A Fellow of the Law and Economics
41 Association of New Zealand and he sits regularly on the High Court as a lay
42 member in relation to Commerce Act cases.

1 And then to his left, Roger MacGibbon would have to be one of New Zealand's
2 most senior restoration ecologists. He's relevantly experienced in most areas of
3 terrestrial and freshwater ecology and has particular experience in the restoration
4 of natural, modified, and damaged sites. He is fluent in the fast-track process,
5 having participated as an expert advisor or witness on six applications now.

6 In describing those various technical qualifications, I really undersell the
7 combined talent suite that is available to me as Chairman on this panel. I have
8 now worked with this panel for nearly two months. I am privileged to do so. Their
9 level of intellectual curiosity, their ability to range in an interdisciplinary way
10 across all of the specialities which are reflected on the panel, and which all
11 necessarily need to be interrogated in the context of an application such as this, is
12 truly remarkable. Their capacity for work is extraordinary. We are working, as
13 everyone knows, within a relatively tight timetable. But it's my considered view
14 that the public need not concern themselves about the quality of the exercise which
15 this panel is conducting, and that is attributable directly to those who I work with.

16 This is a hearing. It is a hearing conducted in public because we regard
17 transparency as an important part of the credibility of this process. The press are
18 also – are present. They will be taking an audio of the proceedings today but not
19 to be used in a broadcast sense, simply for accuracy. They will during the course
20 of the day take some still shots of the panel and they have asked – and the
21 applicant's counsel and witnesses have agreed that they may take still shots of
22 them. They may, they may ask others during the course of the day if they can
23 have a photograph of them and people's preferences in that respect will be
24 respected.

25 What I emphasise at the outset, however, is that although the hearing is conducted
26 in public, it is not, as the panel has emphasised in Minutes published in relation to
27 it, it is not a public meeting. It is being conducted as a judicial process effectively,
28 where we hear from invitees under section 53 of the Act and then, as the Act
29 requires, at the conclusion of the exercise there will be an opportunity for the
30 applicant to respond. They have indicated to me that they don't wish to open the
31 evidential part of the proceedings with their own statement and that their time
32 which is, as we know, reasonably limited over the next couple of days, is better
33 utilised at the end of the process.

34 There's a couple of things that flow from the fact that it is a hearing and not a
35 public meeting. Obviously, we have a significant contingent from the public
36 present, and no doubt others will join us during the course of the next couple of
37 days. We ask that the public acknowledge the nature of the judicial process, that
38 they remain quiet throughout, and that there be no interjections or anything of that
39 nature.

40 We understand on the panel that divisions run reasonably deep in respect to this
41 application but for this to be a useful, rather than simply performative process, we
42 need to hear from people, be given the opportunity to interrogate them as required,
43 and to receive the applicant's responses. That is what is useful to us in what is an
44 exceptionally difficult job ahead of us; and so I ask that that process be respected,

1 and that people listen in a respectful way to what might be opposing views.
2 They'll each be given their opportunity to respond in due course.

3 Yesterday, we were privileged to be guests at the Ōtāku Marae in Ōtepoti, and it
4 was almost a blueprint for how these sort of exercises should be conducted in a
5 totally respectful environment but where people were quite unconstrained about
6 the issues that they wanted to bring before us, participated freely during the course
7 of the day and responsibly – responsively to the panel's requests but all within a
8 dignified, highly dignified, and respectful environment. And I ask no more or less
9 of this group of people over the next two days.

10 I think in the rather rigorous timetable that we have set up, I was given 10 minutes,
11 and I have probably exhausted those now. So without further comment, I am
12 going to commence the formal part of the hearing and I'm going to do so by
13 inviting, firstly, Central Otago District Council, and I understand Ms Macdonald,
14 is that correct?

15 **Ms Macdonald:** Yes.

16 **Mr Muir:** Ms Macdonald. Yes, thank you, Ms Macdonald.

17 **JAYNE MACDONALD FOR CENTRAL OTAGO DISTRICT COUNCIL**

18 **Ms Macdonald:** Yes, good morning. Good morning, Sir; good morning
19 Commissioners, Panel Members. I'm appearing as legal counsel for the Central
20 Otago District Council and with me today I have Ms Ann Rogers and Ms Fiona
21 Garrett, who are both senior planning managers with the Council. I must admit to
22 not having been intimately involved in the preparation of the Council's comments
23 on this application and my two colleagues have been much more involved than I
24 have. So as we go through, there may be questions that they are better placed to
25 answer than myself during the presentation.

26 **Mr Muir:** Yes, Ms Macdonald, and I do acknowledge ODC's request that this hearing
27 be rescheduled for the reasons you have just touched on. Unfortunately, that was
28 not possible within our schedule and we thank you for, for filling in.

29 **Ms Macdonald:** That's quite alright. I think that was the Otago Regional Council's
30 request - - -

31 **Mr Muir:** Oh, this is their Regional Council, my apologies.

32 **Ms Macdonald:** - - - their principal person wasn't available but - - -

33 **Mr Muir:** Right.

34 **Ms Macdonald:** - - - thank you all the same. The CODC is certainly grateful to be
35 able to assist the panel at this stage of the process and we acknowledge the
36 expertise of the panel and the immense task before you in hearing this application
37 and determining the issues. I think it's fair to say that where we are at the moment,
38 there's been quite a distilling of the issues and they, they are all lining themselves
39 up probably quite nicely for the next formal stage with, with conferencing. We
40 had prepared an overview and summary paper for you which we filed yesterday

1 in accordance with your directions. I'm not sure if you've had an opportunity to
2 read that. Okay.

3 **Mr Muir:** We didn't get in from Dunedin until about half past 11.

4 **Ms Macdonald:** Oh dear. Oh well, yes. Okay, well I'll briefly take you through that.
5 It has been filed. So the purpose of the Council's paper was to identify, or is to
6 identify, at a high level the matters that remain we think most material to the
7 panel's assessment to the certainty of the proposal and workability of any
8 conditions that might ultimately be considered. Our paper has summarised the
9 Council's position on key areas of evidence and issues the Council considers
10 remain live following the applicant's reply material.

11 Just briefly touching on CODC's role and its overall position. We approached
12 this proposal in our capacity as a territorial authority for the district, with a focus
13 on the matters that fall within its – our responsibilities and expertise, as distinct to
14 the Regional Council for example, but fully appreciating that there are some areas
15 of overlap.

16 The Council recognises this proposal is significant. It also recognises there will
17 be a range of views within the community, as you've already alluded to, Sir,
18 including views about the economic opportunities it may provide and views about
19 the potential effects it may generate. The Council's role in this process is not to
20 speak for every individual view in the district. Its role, as it sees it, is to assist the
21 panel by identifying district level issues that require careful consideration. These
22 include infrastructure, public access, local road safety, landscape and amenity
23 values, heritage, ecological matters, where they intersect with district
24 responsibilities. And I think the evidence, or the reports and evidence that the
25 Council has commissioned speak to those very things, and you will be familiar
26 with those having, having read those before coming here today.

27 The Council also accepts the project may generate economic benefits and at the
28 same time the Council's comments identify a number of potential adverse effects
29 that may be long term difficult to reverse or dependent on future management
30 rehabilitation, offsetting or bonding arrangements.

31 The Council's position in short is that today the panel would be assisted by some
32 focus being brought to some of the key assumptions and condition frameworks
33 that underpin the proposal. The key issues as the Council sees them, and I'll come
34 back to these, but in summary, transport, particularly Ardgour Rise and public
35 access; landscape; terrestrial ecology; historic heritage; bonding; closure; and long
36 term responsibility; and economics. And these are all set out in the summary
37 statement that, that we have filed.

38 We do just wish to spend a bit of time around transport and Ardgour Rise and
39 public access, and I appreciate that these are going to be topics that will be the
40 subject of expert conferencing and conditions that flow out of that. But the
41 Council does wish to emphasise that transport and public access remain the
42 clearest examples of issues where some early clarity is needed. At the outset, I
43 want to say that there is no agreement between the Council and the applicant in

1 regards to some of these fundamental design aspects and upgrading requirements
2 for Ardgour Road and Ardgour Rise. So they're very much at large in the period
3 leading up to lodgement of the application and the period that has followed. We
4 haven't been able to reach agreement with the applicant and we – what we really
5 want to see out of this process is certainty in the conditions. The conditions, as
6 drafted at the moment, are somewhat vague and don't pin down the required, not
7 technical design, but the design guidelines that the Council certainly wishes to see
8 and which its expert traffic evidence has referred to.

9 Ardgour Rise, of course, is a replacement road of some importance. It is, as my
10 understanding, a road required for resilience in the event of natural disaster and it
11 is not merely some back country four-wheel drive track that is enjoyed in that
12 context.

13 The Council's also somewhat concerned by the applicant's description of
14 replacement with a like for like road. That road was built some 100 years ago,
15 and the Council's position is that a like for like road is simply not going to be
16 appropriate. We don't want a new road being constructed on the basis of
17 something that was designed 100 years ago and would not be within the
18 parameters of a replacement road built up to standard today. We're not calling for
19 a state highway but we certainly - - -

20 **Mr Muir:** Or wishing, or wishing to diminish the enjoyment of those who choose more
21 back country routes.

22 **Ms Macdonald:** Quite right. But we certainly do wish it to be constructed in
23 accordance with today's standards. So that, again, it's something for conditions,
24 it's something for conferencing, but it is a point that we wish to emphasise today.

25 Just a minor correction, well a reference – Mr Leckie in his reply submissions
26 referred to that road being constructed by the Council and I think to be fair, given
27 the time available to him to respond to comments, that is an error. The road is in
28 fact going to be constructed by the applicant, not by the Council.

29 The other point I just thought I might touch on in regards to roading, you may well
30 have noticed that there is a development contribution that is referred to in the
31 Council's comments. That of course is quite a different proposition to works
32 required for a specific project. So it was in the event really to clarify in case the
33 panel thought the Council might be double-dipping with requiring widening of
34 Ardgour Road and then the imposition of a development contribution. So they're
35 two quite different things and serve quite different purposes.

36 **Ms Sweetman:** So just to clarify there, they're not included in your – in the Council's
37 development contributions policy, in terms of the road widening works?

38 **Ms Macdonald:** What's not included in the development - - -

39 **Ms Sweetman:** I assume by saying that you're saying that the road widening isn't
40 included in the Council's development contributions policy.

41 **Ms Macdonald:** Yes, that's correct, yes.

42 **Ms Sweetman:** Yep.

1 **Spokesperson:** It's not in the programme of works - - -

2 **Ms Sweetman:** Yep.

3 **Spokesperson:** - - - that's subject to the development contributions.

4 **Ms Sweetman:** Thank you.

5 **Ms Macdonald:** Just turning quickly to landscape. This is an area where there does
6 remain a focused but important expert difference, and I'm sure that you'll hear
7 from the other submitters today because there's a great deal of, of overlap between
8 the parties around landscape effects. From the Council's perspective, the issue is
9 not whether landscape effects arise, but the issue is the scale and significance and
10 the consequence of those effects. And it's particularly on the wider scale, if you
11 like, for the Dunstan mountains outstanding natural landscape. Mr Brown, who's
12 prepared expert comment for the Council's concern is that the affected area isn't
13 peripheral, it's a central and visible part of the Dunstan range, and that the
14 proposal would materially affect the naturalness, cohesion, aesthetic appeal and
15 public face of that landscape. So again, that, that's a matter of some difference
16 between the experts and, and again I expect will be subject to some detailed
17 discussion and debate during the conferencing for the experts.

18 Just touching further on landscape in terms of lighting, Mr Brown's assessment
19 again is that the effect of lighting on the night time character of this otherwise dark
20 rural and mountain landscape will also have quite significant effects.

21 Turning just to briefly talk about terrestrial ecology, this is an area where it appears
22 that the applicant's reply material narrows some matters and also confirms the
23 seriousness of effects. So it seems to us there is quite a degree of agreement
24 between the experts on the effects of vegetation removal from the direct
25 disturbance footprint and that there are some values that will suffer high or very
26 high residual effects, and some vulnerable or irreplaceable values that can't be
27 demonstrably offset or compensated. So again, I think the experts will come
28 together with their conferencing and refine those issues further. The Council's
29 experts are – maintains the position that he has set out in, in his assessment
30 following the reply material, that ecologically the most appropriate effects
31 management outcome would be simply to avoid the area. So again, ecological
32 effects remain a significant impact of the proposal and those – that will be an issue
33 that will weigh obviously in your proportionality test there.

34 I have made some comment about – in my paper – the covenant that has been
35 referred to as having the Council as the beneficiary of. I think “beneficiary” is
36 potentially quite unhelpful language. The Council isn't in principle opposed to a
37 covenant being used as part of the condition package, but it doesn't want to be
38 characterised as the beneficiary of, of that covenant. It doesn't want to have any
39 suggestion that it might be responsible for any carrying out of works or monitoring
40 or anything of that nature. So our concern has been that there, there hasn't really
41 been any discussion with us about a covenant, but it is accepted that it is a
42 mechanism under the Resource Management Act condition framework for
43 conditions to be incorporated into a covenant and registered on the title so that

1 there is future certainty that those, those conditions are transparent and on the title
2 for future landowners to know about and be bound by.

3 I think in all of this, one of the concerns for the Council is that if consent is granted
4 to this proposal, there is going to be quite a huge amount of work for the Council
5 in monitoring and potentially enforcing these conditions. So their – one of their
6 greatest concerns is that that shouldn't fall on its ratepayers and that the conditions
7 should adequately ensure that they are fully compensated by the applicant for
8 technical advice and assistance that they may need to employ to satisfactorily
9 carry out those obligations as the consenting authority.

10 I've touched in my paper on historic heritage. Again, I think the issues that are at
11 large between the experts are sufficiently clear probably following the exchange
12 of evidence. Again, the applicant's reply narrows some matters but leaves
13 important issues unresolved. The Council's concern is that the proposal affects
14 more than just isolated archeological features and relates to the mining landscape
15 in total and the historic sequence for which the area is recognised. And this is
16 another significant loss of an important physical part of the historic landscape if
17 the proposal is to proceed – again going to your proportionality test.

18 Just quickly on bonding, closure and long-term responsibility, obviously issues of
19 some significance there. We have shared our expert assessment with the Regional
20 Council, and I expect they may speak to that today as well. But our position really
21 is there is quite a bit more technical detail required of the conditions in order for
22 a bond to be able to be adequately valued and quantified.

23 **Mr Muir:** Does the Council have any view about the adequacy of a bonding as a long
24 term mechanism to ensure the ongoing maintenance of a rehabilitated landscape?

25 **Ms Macdonald:** Provided there was sufficient financial assurances with a reputable
26 guarantor – uhm - -

27 **Mr Muir:** This is an unusual bond given the fact that one might be talking about
28 implications for the landscape over 50 or more years - - -

29 **Ms Macdonald:** - - - yes.

30 **Mr Muir:** - - - possibly even a hundred. Bonding is an unusual mechanism in that
31 context.

32 **Ms Macdonald:** Well I think tenure's obviously relevant to the extent to which this
33 bond is going to remain in place. It's new territory for the Council. It's the first
34 time that I'm aware of that it's dealt with a project of this magnitude with such
35 enduring effects and for a requirement for a bond to be in place for that length of
36 time. I - - -

37 **Mr Muir:** The Council hasn't given any consideration to perhaps alternative
38 mechanisms like long term endowed – long term endowment of a trust or
39 something of that nature.

40 **Ms Macdonald:** Not at this stage, no.

41 **Mr Muir:** Thank you.

1 **Ms Macdonald:** Briefly touching on economics, again this will all go towards
2 conferencing of the experts, but I think one major point of difference with
3 Ms Hampson, who is the Council's economic expert, and the applicant, is the
4 significance of benefits. Ms Hampson is firmly of the view that they don't quite
5 reach the level of national significance but are rather at the – they do – she does
6 accept they are regionally significant. There are a few points of difference
7 between her and the applicant's economist, but I think those will be able to be
8 addressed through conferencing. They don't, they certainly don't take away from
9 the ultimate position that she has reached with respect to regional benefits, yeah.

10 **Mr Barry:** Just one question if I might on the benefit side, I understand the applicant
11 and the Council have agreed to a payment of around \$1.25 million per annum
12 post-production, once production starts?

13 **Ms Macdonald:** Yes.

14 **Mr Barry:** Just, just, I'm wanting to understand the extent – are you able to advise on
15 the extent to which that payment is to cover additional costs that the Council might
16 incur, or is it more in the nature of a community benefit, in which case it would
17 sort of count as a net benefit of the project.

18 **Spokesperson:** My understanding is it's compensation for – in relation to the roading
19 matters.

20 **Mr Barry:** To what?

21 **Spokesperson:** To the roading matters, the matter of Thompson's Gorge, and it was
22 through the – through that agreement. That's my understanding.

23 **Mr Barry:** So more like a contribution - - -

24 **Spokesperson:** But we can seek clarity.

25 **Mr Barry:** - - - a contribution levy almost then.

26 **Spokesperson:** It's separate to this process, and it was related to – my understanding is
27 – negotiations between the Council and the applicant in relation to access to
28 Thompson's Gorge Road and the use of Council land effectively.

29 **Mr Barry:** So to recover costs basically? I only ask because it could be more of a net
30 benefit, like a royalty payment, which is fine, but I just wanted to understand that.

31 **Spokesperson:** We, we can seek further clarity, yeah. I wasn't involved with those
32 negotiations. That is just my understanding from reading the papers. But we can
33 see further clarity.

34 **Mr Muir:** Mr Leckie, perhaps you could also note that as a matter for response, thank
35 you.

36 **Mr Leckie:** Yes Sir.

37 **Ms Macdonald:** The other matters that I've touched on in my paper just really
38 summarise where we've got to with noise and vibration and lighting. There's
39 nothing really of significance there that I want to emphasise to you today. I think
40 again that through the exchange of expert assessments, the issues have become

1 quite narrowed and refined and are capable of adequately being resolved with
2 conditions through conferencing.

3 So I think those are the matters really that I think we wanted to highlight for you
4 today. As I said, I think the – through – where we are now, the issues are starting
5 to crystallise and I, you know, I think that there's going to be a great deal of benefit
6 obviously from the conferencing that is going to occur in further narrowing those
7 issues for the panel.

8 **Mr Muir:** Yes, well in identifying 140 days for delivery of the report Ms Borthwick
9 was, I think, significantly influenced by the requirement to set aside at least four
10 to six weeks for conferencing and that with it's allied hot tub hearings that we may
11 well conduct at the end of conferencing is what we are anticipating.

12 **Ms Macdonald:** Yes, yes.

13 **Mr Muir:** So most, well of all of May and quite a bit of June. Thank you.

14 **Ms Macdonald:** If there are any panel – questions, sorry, that that the panel has, we're
15 more than happy to answer those.

16 **Mr Muir:** Does the panel have any questions of Ms Macdonald?

17 **Mr MacGibbon:** Just a point of clarification. With the process of certification of
18 ecological management plans in particular, is that a District Council – going to be
19 a District Council responsibility, a Regional Council one for biodiversity, or a
20 combined effort?

21 **Ms Macdonald:** That's a good question. My colleague who's speaking in a couple
22 of turns after me might be able to shed some light on that. At the least, I would
23 expect that it could be joint, but certainly I expect that the District Council will
24 have some involvement in that, yes.

25 **Mr MacGibbon:** Thank you.

26 **Mr Muir:** Look, thank you very much, Ms Macdonald. That's most helpful. The next
27 presentation is by the Department of Conservation. I understand Ms Williams
28 will submit on the Department's behalf.

29 **PENE WILLIAMS FOR DEPARTMENT OF CONSERVATION**

30 **Ms Williams:** Aroha mai. Tēnā koutou e te pae whare whakawā. Tēnā koe e te
31 tiamana.

32 **Mr Muir:** Thank you, Ms Williams.

33 **Ms Williams:** Ko Pene Williams tōku e kawa. So, I am Pene Williams. I am counsel
34 for the Director General of Conservation, the Department of Conservation, Te
35 Papa Atawhai.

36 **Mr Muir:** In deference to my declining hearing, could you get the microphone a little
37 closer. Thank you.

38 **Ms Williams:** Sorry. That might be easiest. Aroha mai.

1 **Mr Muir:** That's better.

2 **Ms Williams:** So, Pene Williams tōku e kawa. Pene Williams, counsel for the
3 Director General of Conservation, Department of Conservation, and with me I
4 have Marie Payne, and Marie is a fast-track senior programme lead.

5 **Mr Muir:** Good morning, Ms Payne.

6 **Ms Williams:** Again, aroha mai, we haven't prepared a summary document as much
7 as anything else because we took the view that you have plenty of paper and
8 perhaps you won't need another one.

9 **Mr Muir:** That we do.

10 **Ms Williams:** So, really just – these are comments, these are not legal submissions.
11 This is not evidence, this is comments, just to make that clear, and we took this as
12 being an opportunity to provide a little bit of context and high level issues that the
13 Department sees that the panel needs to be thinking of moving forward.

14 So, just in terms of the Department's role, our organisational purpose is to promote
15 the conservation of New Zealand's natural and historic resources in accordance
16 with section 4 of the Conservation Act and our obligations as a Treaty partner, as
17 an honourable Treaty partner. So, we have outcomes which include improving
18 the condition of threatened species and ecosystems, maintaining historic heritage
19 and maintaining public Conservation lands and waters for the people of New
20 Zealand.

21 Under the Fast-track Approvals Act, DOC has some roles as a relevant
22 administering agency, so in this particular process we have four types of DOC
23 approvals, which I'll talk to in a bit, and we also have a role to offer comments
24 under section 53. So I'll be speaking to both of those. And similar to the District
25 Council, we do see our role as being to support and assist the panel to reach a
26 robust decision, whatever that decision may be.

27 So coming to the Bendigo-Ophir Gold project, DOC has focused on, I guess, the
28 DOC stuff, if I put it that way. So we have focused on conservation values, natural
29 environment, biodiversity, heritage, recreation; and we did take the view that some
30 other aspects, which are of course relevant and potentially controversial and where
31 there's disagreement between experts, we're for some of the other Councils and
32 agencies to provide advice on. So that's one of the reasons why DOC didn't offer
33 landscape evidence. We knew that the District Council had a reputable landscape
34 expert and we're happy to take and rely on that evidence as part of our case, if I
35 put it that way.

36 DOC also has not provided hydrology, water quality, geochemistry. Those are
37 not matters which are within our core expertise and we rely on the Regional
38 Council for that. We do obviously have an interest in aquatic matters and in
39 freshwater fish in particular, and that is addressed in the evidence which has been
40 provided for the complex freshwater fisheries activity.

41 So in terms of the DOC approvals, I might start with the complex freshwater
42 fisheries activity because that's the one where there's no real concerns. There

1 might be a few matters of conditions to be worked through but it's pretty
2 straightforward really. We would want to re-examine if there was going to be a
3 change in the location of the culvert or if the stream diversions were going to also
4 change location and potentially the dispensation which is sought there in terms of
5 fish passage might need to be re-addressed.

6 In terms of the concessions, Council has already talked to you about the Ardgour
7 Rise road replacement for Thompson Gorge, and that is, I guess, one of the more
8 significant concessions that together with the State Highway 8 interchange, and in
9 its section 51 comments, DOC was concerned about essentially taking on public
10 infrastructure on public conservation land and that was not something that we
11 sought to do. And I do acknowledge that the applicant has said that they are
12 proposing to reduce the terms of those concessions to five years on the basis that
13 the applicant will be responsible for construction to the standards required and
14 then there will be other processes used outside the fast-track process to vest those
15 – that infrastructure in the appropriate authorities. So that is – that is good to see.
16 DOC is supportive of that.

17 We do have a residual concern about risk to the Crown from liability of having
18 that. I note in particular in relation to Ardgour Rise that the current farm track
19 easement which is proposed to be, I guess, the basis for the replacement road, the
20 Crown currently has no obligations in terms of maintenance for that easement, and
21 there is – it discourages public use of that easement. It's explicit in the terms of
22 the easement that it is not public use. So that's quite a change. I do echo the
23 Council in terms of like for like replacement and terms of design. That's a matter
24 where the Council has more expertise than DOC. So we would follow them with
25 that.

26 In terms of the remaining concessions, we have essentially ancillary and
27 mitigation activities for the project. The willow management needs more
28 conditions worked through, but I'm comfortable with the concept. Similarly, with
29 the water monitoring and access concession. DOC does not support the proposed
30 Come in Time access concession, and there is, I guess, potentially a legal issue in
31 terms of whether or not when DOC doesn't support the proposed route whether
32 having a condition which says "or some other route as we might agree in the
33 future" is certain enough for the panel to grant approval. So that's a question
34 which needs to be addressed.

35 Moving to the wildlife approvals, there's a degree of overlap with section 53
36 comments here as well. One of the issues which DOC is having with fast-track
37 approvals is around wildlife management plans and how those intersect with
38 wildlife management plans and resource consents, and I don't think we have a
39 clear answer to that, and I don't think we have a clear answer to that here either,
40 and that might be something that needs to be considered as part of the expert
41 conferencing in future conditions workshopping. We also have some issues
42 particularly with the lizards. So actually, just to cover off, so avifauna, DOC is
43 reasonably comfortable and it can be addressed with conditions. But the lizards
44 is – it's significant, it's unprecedented, and we actually still have a lot of
45 unknowns and disagreement. Some of that is, I have no doubt, going to be

1 addressed through the expert conferencing and potentially the hot tubbing that the
2 panel wishes to engage on. But we do have issues here.

3 There's been comparison drawn with Macraes. Macraes is a project which has
4 been running since the early 90s and because I have been working for DOC for
5 quite some time, I can tell you that, I think I've dealt with another Macraes'
6 application every three years or so, and there's been a wildlife approval which has
7 gone alongside every three years or so. So there's never been a one-off application
8 which has been at the scale that is proposed for this project.

9 There was a suggestion, and I think it is built into the District Council consent
10 conditions, that there be translocation of some species which are not currently
11 threatened – currently present but which are, I guess, considered high value
12 species which originally would likely have been present in this landscape and in
13 these ecosystems and, on that, that's not part of the current wildlife approval that
14 is sought. That would need to be a separate application in due course, and it would
15 then need to meet the purpose of the Wildlife Act and be something which would
16 be in accordance with the best needs of that species. So it shouldn't just – it's not
17 a zoo. You can't just put animals into a sanctuary because, you know, you want
18 to have a zoo, and you want to have the animals there. It actually needs to benefit
19 the species to be appropriate.

20 **Panel member:** So just for clarification on that, you're talking about the Grand and
21 Otago skinks.

22 **Ms Williams:** Yes, the Grand and Otago skinks, and the jewelled gecko.

23 **Panel member:** Okay.

24 **Ms Williams:** Yep. So yes, it needs to be in accordance with an appropriate recovery
25 plan for the species as well as, I guess, at place.

26 There is still some work to do on the wildlife conditions more generally, and I
27 guess that again is something that can be worked through.

28 And lastly, we have the covenant and, as flagged in the legal submissions, this is
29 novel. This is not a situation that the Department on behalf of the Minister has
30 faced before. I would like to remind the panel that in its section 51 reports, DOC
31 is not directed to consider the purpose of the Act. DOC is directed to other criteria
32 in the decision making criteria but is not expected to address the purpose. So that
33 is a matter for you. There's a memorandum which did go in about weighting and
34 that also ultimately is a matter for you.

35 In terms of the covenant, I acknowledge that the applicant in its response to the
36 request for further information has put in some more evidence, I suppose, about
37 the covenant. In my view, this still does not actually address the objectives of the
38 covenant properly, as is required under the Act, because that is the test, is to
39 consider the objectives, the purpose and the objectives of the covenant. There's
40 also still this, I guess, "oh, the covenant remains in some other areas and values
41 are protected there". That also is not the proper test. The proper test is what are
42 values that are going to be impacted if the panel grants partial removal of the
43 covenant. That is the test.

1 Part of the covenant, and again this overlaps to some extent with section 53,
2 there's emphasis on landscape values, there's emphasis on natural environment
3 values, there's emphasis on wildlife habitat, there's emphasis on historic heritage
4 and heritage landscape values. So those are the things that the covenant is
5 protecting currently. It's also protecting and providing for some public access,
6 and the amount of the covenant which is proposed to be revoked is greater than
7 the direct disturbance footprint that the applicant has identified, and the direct
8 disturbance footprint includes buffer zones. So we've already got allowance for
9 "rather than being here, we might want to go a little bit more further over there".
10 That's already built into that direct disturbance footprint. That's what the
11 applicant's evidence tells us. They're seeking this broader revocation which
12 seems to be a convenience in terms of cadastral boundaries. That does have
13 impacts in terms of what is currently preserved for public access, particularly into
14 the Bendigo Conservation Area past Mount Moka up to the east of the covenant.
15 There's a proposal to replace that by a consent condition. So you're getting
16 something which is currently enshrined and it's becoming a consent condition
17 which potentially could be negotiated away. We also have the applicant telling us
18 that the activities they propose outside the direct disturbance footprint would have
19 no greater impact on the values which are to be preserved and protected than the
20 current activity, which is essentially grazing. As set out in the legal submissions,
21 there have been approvals granted for prospecting and activities, and that's
22 something which the applicant has the ability to come back and apply for if it
23 wishes to again.

24 So I just wish to point out to you that you need to consider the values of the place
25 where it's proposed to be removed, whether that is required for the project and if
26 not all of it is required, whether there could be some other mechanism in terms of
27 amendment to conditions which could be considered.

28 And also on the covenant, there are no conditions which are proposed which relate
29 specifically to the covenant. I think the applicant is taking the position that this is
30 kind of part of their overall package addressed through the resource consent
31 conditions. But with the covenant through the RMA, that would be a consent
32 conditions covenant whereas a conservation covenant has that conservation
33 purpose inherent in it. And that's quite a difference, in my view.

34 Turning into section 53, we do have, as I've already indicated, some significant
35 concerns and issues around particularly the lizards and the herpetofauna,
36 terrestrial ecology, terrestrial spring annuals which are a particular thing in the
37 Central Otago landscape. The presence of *ceratocephalus pungens* which is a
38 nationally critically endangered plant. There's been a bit of criticism perhaps that
39 DOC has said that this is at risk of extinction if the project proceeds. But if a
40 plant, if its status is threatened nationally critical, that's because it is at risk of
41 extinction. So that's the reason that that is put in there.

42 There are also concerns with the proposed restoration plans being untested and
43 untried at scale in this very dry landscape. It's good that we do have
44 Mr MacGibbon on the panel because that's a matter that he will, I have no doubt,
45 be able to consider.

1 We also have concerns about invertebrates and we have concerns that there are
2 going to be inevitable losses and whether the residual effects have been
3 appropriately and adequately assessed. And you've got the statement and report
4 from – I'm never quite sure how to say her name – but Doctor G, which is in the
5 section 53 comments.

6 The applicant has proposed a biodiversity and heritage enhancement fund in. In
7 its reply, it's proposed to double that to one million for a maximum of 10 years
8 during productive life of the mine. That previously had been flagged to, I guess,
9 be addressed by the Department, or managed by the Department. Now it proposes
10 that instead this be managed and administered by a committee. There is provision
11 for an Iwi representative, Ka Runaka representative, on the committee but
12 otherwise all the committee members would be appointed by the applicant, and
13 there's no role for Councils, the Department or others. So that is a concern.

14 There has previously been mention made of whether money which was provided
15 to the Department would remain tagged, if I put it that way, to the specific project
16 or the specific outcome sought. And I can advise that the Department absolutely
17 has processes in place so that if money comes to the Department for particular
18 purposes, it is held in the relevant accounting structure so that it can only be used
19 for those purposes. It does not disappear into the great Crown.

20 What else? In terms of management plans, coming back to that, the applicant has
21 proposed that these be certified by the panel. With respect to the panel, the
22 applicant has also proposed quite a lot of adaptive management, and that is not
23 something which the Department would support. We do have particular issues,
24 as I've already flagged, with wildlife management plans and the overlap between
25 the Director General's responsibilities, or the panel in place of the Director
26 General's responsibilities under the Wildlife Act for the wildlife approval and
27 Council's responsibilities. And our preference is for a dual certification process
28 with those wildlife management plans certified by DOC for the wildlife approvals
29 and by Council for its resource – or Councils – for their resource consents. We
30 also have an interest in management plans where these relate to the concession
31 areas, because this is DOC as a landowner and administrator on behalf of the
32 Crown wanting to ensure that those plans are appropriate. We're not seeking a
33 certification role in relation to those because those are matters where the Councils
34 probably hold the expertise more, but we do expect to have the opportunity to
35 provide some comment and have that considered.

36 And other than that, I think, from DOC's perspective overall, the effects on
37 conservation here are significant. This is a greenfields project which ultimately
38 does mean that there will be significant effects. There are effects on landscape,
39 there are effects on the natural environment, there are effects on terrestrial
40 ecosystems, there are effects on heritage, and that is a matter where particularly
41 there is some difference between DOC's view in terms of the heritage landscape
42 that is protected for by the covenant and the applicant's expert, and we agree with
43 the Council that there seems to have been this bitsyness, rather than an
44 acknowledgement that you have to view the landscape as a whole and as an
45 opportunity to understand the way in which the mining technology developed over

1 the 70 odd years that it was occurring previously. And that is what is preserved
2 by the covenant. So acknowledge the applicant's point that ultimately there would
3 be, if granted, a 21st century component to that. That's actually not what the
4 covenant protects. The covenant protects and preserves the existing heritage
5 landscape.

6 DOC is wanting to and willing to continue to work with the applicant and work
7 collaboratively. As I say, the bond – the applicant acknowledges that the bond
8 should include DOC. We don't, as yet, have any idea what that would look like.
9 So that's something which also needs to be worked through and addressed and
10 also with the Councils. And again, concerns about if the project is granted
11 consents, the long term management and ensuring that there is – I think you've
12 been talking about a sustainable endowment fund or something. There needs to
13 be something in place to ensure that. That's part of DOC's concern with the
14 sanctuaries is that it's all very well to get these set up but then what. What happens
15 when the applicant finishes, reaches close of mine, walks away. Then what
16 happens to those sanctuaries. What is in place to ensure that their ongoing
17 management and those biodiversity gains are continued.

18 So thank you for giving us the opportunity to present our concerns. I acknowledge
19 that some matters, including the legal issues over the covenant, probably need to
20 be fleshed out in another way, and we're really open to your direction on how you
21 want to do that.

22 **Mr Muir:** Yes, thank you, Ms Williams. We're currently turning our mind to that and
23 how the various legal issues that have been identified in the context of the invitee
24 responses are appropriately addressed. Suffice to say that the framework within
25 which we work means that if there is to be a hearing in relation to it, it will be a
26 confined process and very directed. Thank you very much indeed for that, Ms
27 Williams. Any questions from the panel for Ms Williams? Yes, thank you, Mr
28 MacGibbon.

29 **Mr MacGibbon:** Look, thank you for your evidence. Can you sort of clarify a little
30 bit for me, you've mentioned the fact that you've got concerns about the wildlife
31 management plans. You also said for the general ecological management plans,
32 you have a preference that the panel certifies those.

33 **Ms Williams:** No.

34 **Mr MacGibbon:** No?

35 **Ms Williams:** No, absolutely not.

36 **Mr MacGibbon:** You don't?

37 **Ms Williams:** That's proposed by the applicant.

38 **Mr MacGibbon:** Right.

39 **Ms Williams:** That's not what DOC supports.

1 **Mr MacGibbon:** Okay. So when you say you prefer that DOC was the certifier for
2 the wildlife management plans, that aligns with the – okay, thank you, that
3 clarifies that.

4 **Ms Williams:** Aroha mai if I was confusing you.

5 **Mr Muir:** Anything else? Thank you, Ms Williams.

6 **Ms Williams:** Thank you.

7 **DAVE RANDAL FOR THE OTAGO REGIONAL COUNCIL**

8 **Mr Muir:** Mr Randal, you submit on behalf of the Otago Regional Council?

9 **Mr Randal:** Yes, sir, that's right.

10 **Mr Muir:** And my apologies that it was you to which I owe thanks for accommodating
11 our schedule, not ODC.

12 **Mr Randal:** Not at all, Sir. Thank you indeed for having us here. Thank you to the
13 panel. Kia koutou katoa. Yeah, Dave Randal is my name. I'm a lawyer assisting
14 the Regional Council, and with me is Jenny Ross, who's a team leader in the
15 consents team at the Council. Sir, I sent in a document yesterday which you won't
16 have had a chance to read. It's – but I have, I have copies here for you. I know
17 it's a slippery slope offering hard copies. I'm sure the panel isn't minded to work
18 off hard copies but I do have copies of that if anyone doesn't have that to hand.

19 **Mr Muir:** I think the mountains of paper would be so high you'd never see us.

20 **Mr Randal:** Yes, indeed. Anyway, I better lend you one and take it back afterwards.
21 But I do propose to work briefly through that document in the time available.

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

23 **Mr Randal:** I present that to you. I'm indebted to my learned friends, Ms Macdonald
24 and Ms Williams, for going before me and really setting the scene for a
25 presentation that is along similar lines from the Regional Council's perspective.
26 Certainly gratitude to be here, cognisant of the Regional Council's role in this
27 process, which is one of commentor, and ultimately of course if the panel is
28 minded to grant approvals, then as, you know, the regulator, monitor, enforcer of
29 conditions relevant to any regional resource consents granted, and that's a, you
30 know, that's a weighty matter as you've alluded to, Sir, and the Regional Council
31 has approached this application and it continues to do so and will continue to do
32 so, accordingly, you know. Its, its role is one of rigorous reviewer as it sees things
33 and, yeah, the Council's comments already prepared and provided to you reflect
34 that.

35 At paragraph 2 of my document, which is – the document's called legal
36 submissions although there's not a whole lot of law in there I confess. There is
37 one additional legal matter I might touch on at the end if there's time, Sir, which
38 is about the duration of regional – of water permits that can be granted by the
39 panel, which isn't touched on in this document, but I'll come back to that if time.
40 At paragraph 2, Sir, I just orient the panel to the comments that ORC has provided

1 which, I say, you know, reflect its approach of very thorough review. The panel
2 will have seen there is an overarching comments document that was prepared by
3 Shay McDonald, and thank you, Sir, for acknowledging Shay's absence. I too
4 acknowledge her and the very hard work she put into compiling that document,
5 synthesising all the information and corralling the team of experts, independent
6 experts, that the Regional Council has engaged to assist it with this process.

7 So there's that overarching document which itself is very detailed. And then it
8 appends, that the panel will have been probably mortified to see, 51 appendices
9 there. Just to explain that, the Regional Council, you know, was involved prior to
10 lodgement of the application and engagement with the applicant or vice versa. I
11 explained to the panel convenor at the convenor's conference that the Regional
12 Council only saw those, the complete application documents at lodgement so, you
13 know, it had been provided with certain technical reports or draft reports, materials
14 in advance of that, but only on lodgement was able to see the entire suite, and the
15 Regional Council didn't sit back and wait for its opportunity to comment on the
16 application but rather actively sought clarification of certain matters that it thought
17 required clarification from the documents as lodged, and a number of documents
18 ensued in that process and they helped shape the Regional Council's comments
19 and assessment of the documents as lodged. And so for full transparency,
20 appended to those comments, you know, there are a number of documents that
21 relate to that process, documents the applicant's provided post-lodgement. Since
22 then of course, the applicant itself has responded to the comments and to the
23 panel's request for further information. So a number of those materials may well
24 have been superseded, overtaken by events, but the Regional Council wanted to
25 make sure, as I say, for full transparency, that those were before you. So that's a
26 number of the appendices, and the balance of the appendices are the technical
27 reviews undertaken by the independent experts, as I mentioned, engaged by the
28 Regional Council and their reports are there for you to consider.

29 At paragraph 4 I note, just as my learned friend Ms Macdonald did for the District
30 Council, but you know, that ORC's focus is on the matters within its jurisdiction,
31 in the sense that it's focused on issues relevant to the regional resource consents
32 that this applicant is seeking from you, panel. So there are a number of issues that
33 it hasn't traversed in its materials because they're, they're less relevant or
34 irrelevant to the regional consents matters I've listed there, like roading, with some
35 exceptions, heritage, noise and vibration, lighting, and recreation. So our
36 commentary on the application shouldn't be seen as comprehensive of all the
37 issues before the panel of course, more focused on the regional matters.

38 At paragraph 5 I note that nor has ORC sought to assess on its own account
39 cultural effects, the potential for this proposal to adversely affect cultural values.
40 The Council obviously recognises that those are matters best addressed by mana
41 whenua and I acknowledge the comments provided for and on behalf of Ka
42 Runaka and associated entities in that regard.

43 It will be clear, as I note at paragraph 6, that the Council has been guided by expert
44 advisors in forming its position. It's devoted considerable time and resources to
45 understanding the application to identifying key issues and proposing ways in

1 which some issues could be narrowed as between the Council, as the applicant
2 acknowledging of course that there are other perspectives that the panel is tasked
3 with synthesising in its decision making.

4 In preparing for this hearing in the time available, the Council has reviewed the
5 applicant's response to comments and the panel's request for further information.
6 Its team of experts has very quickly mobilised and has been looking at those
7 matters in the five or six working days since, since those materials came available
8 to us. And they are preparing in earnest for expert conferencing, to the extent
9 they'll be directed to participate; and more generally the Council stands ready to
10 assist the panel with any matters that it can help with through the balance of this
11 process.

12 I acknowledge by way of overview, and I'll get into some of the details, that in
13 the applicant's response there is some constructive stuff in there. The applicant
14 has responded in a constructive way to some issues raised, but overall the Council
15 considers there a number of matters that remain outstanding, and overall the
16 Council remains concerned that the project will have large scale residual adverse
17 effects on numerous indigenous biodiversity species and values and on landscape
18 values and risks having poor water quality, aquatic ecology and other
19 environmental outcomes. So that's one broad overarching concern.

20 The second concern relatedly is that the proposal will be inconsistent with the
21 planning instruments that are in effect in the Otago region for which the Council
22 is responsible and national level instruments and other RMA planning
23 instruments. The Council is cognisant of the, the law applying to the panel's
24 weighting of various matters, and the Council certainly hasn't sought to – didn't
25 think it would assist you to try and undertake that weighting for itself. It's left
26 that matter to the panel. However, while mindful of that weighting exercise and
27 those requirements on you, I think it is important to note that planning instruments
28 serve a very important environmental regulation purpose and function in our
29 world, in our RMA world, in our natural world, and inconsistency with those is a
30 matter that should be given appropriate weight by the panel in its decision making.
31 So that's a second overarching concern that the Council still holds.

32 And thirdly, again I'll get into some points of detail on this. It's a very complex
33 proposal and a lot of reliance is placed on resource consent conditions, as well as
34 the conditions of other approvals that are being sought, and management plans,
35 and that includes reliance on future mechanisms to verify what are current
36 assumptions in respect of the proposal, and that all, you know, that adds
37 complexity and risk and the Regional Council and its expert advisors are looking
38 very carefully at those matters to see if risks can be reduced to an appropriate
39 level.

40 So that's a general introduction. As I say, there's this document which I've titled
41 "legal submissions" where I'll provide a sort of current snapshot on certain issues.
42 But in terms of future steps, I've touched on these at paragraphs 8 and 9. We've
43 talked about conferencing. As I say, the Council fully supports that process and
44 is invested in it. At paragraph 9 I've noted that from previous processes the

1 Council has also seen great value in workshopping on conditions. I'm obviously
2 mindful that the Act has certain requirements in terms of the issuing of a draft
3 decision and conditions and I'm not suggesting that that process can be changed.
4 But the suggestion is that there might be processes leading into that that create
5 efficiencies for all parties where everyone's working, you know, discussing one
6 sort of set in a common forum, rather than, you know, each commenting on 20
7 different sets. That then creates some difficulties for an applicant or indeed the
8 panel in synthesising all those inputs. So we'd support that sort of process if the
9 panel was minded to run it.

10 The balance of my document is divided into three sections. The first two sections,
11 one is, as I say, an acknowledgement where the applicant's response has engaged
12 constructively with the critique of the Regional Council. So acknowledging some,
13 some steps forward in that regard. The second section is – focuses on the key
14 outstanding issues, so where the applicant perhaps hasn't accepted the critique or
15 pushed back, framing up, you know, what I say are key issues for the panel to
16 enquire into in the rest of its process. I would say there is a slightly subtle
17 distinction between those two sections of this document because even where
18 there's been, you know, constructive response from the applicant and steps
19 forward, there remains some uncertainty as my, you know, as you've noted, Sir,
20 my planner's not around at the moment, and there are technical details to be
21 worked through in respect of condition drafting other things where conferencing
22 would assist, I'd say. And that's also the case where there are outstanding issues,
23 again conferencing, you know, there are uncertainties there and conferencing may
24 assist to narrow matters further. So those are two sections: constructive
25 engagement, outstanding issues. And lastly, briefly, I touch on the Council's
26 position on the key matters going to your – the exercise of your discretion under
27 section 85, whether or not to approve or decline approvals here.

28 So the section of this document where – which lists the matters where the applicant
29 has responded constructively to the Regional Council's critique, I propose to take
30 that largely as read. It starts at paragraph 11 of the document and, as I say, there
31 are matters of detail that still need to be worked through in respect of each of them,
32 but the Regional Council does acknowledge that a number of, call them
33 concessions or, as I say, constructive responses have been provided in respect of
34 a number of geotechnical matters. Those are set out from paragraphs 12 to 15 in
35 respect of ground control management plans, land stability beyond the pit crest,
36 and subsidence, and an assessment report to be prepared. There are also some
37 helpful advances in respect of hydrological, hydrogeological matters. Those are
38 set out from paragraphs 16 to 19. They relate to, for example, the engineered
39 landform management plan and the issue of – the important issue of oxygen
40 ingress, the risk of oxygen ingress through the cap into the material held there.
41 And in respect of turbidity, there have been steps forward there as well. Likewise
42 in respect of water quality and aquatic ecology. The document covers those at
43 paragraphs 20 to 22, and in respect of air quality, which is at paragraphs 23 to 25.
44 And lastly, in terms of ground water – ground water monitoring to ensure that
45 there are no unanticipated future effects on wetlands. Again, there have been some

1 improvements made to the proposed conditions in those regards. That's set out at
2 paragraph 26.

3 That brings me to the second section of this document around key outstanding
4 issues.

5 The first of those generally relates to management plans, and perhaps I can pick
6 up on Mr MacGibbon's questions in that regard to the extent they haven't already
7 been answered by my learned friends for DOC and the District Council. So – I'm
8 at paragraph 30 of the document now. As a general proposition, and it is a very
9 general proposition, the Regional Council is comfortable in principle with the use
10 of management plans to flesh out the detail of how things will be done on the
11 ground, of how matters specified in consent conditions will be, you know, given
12 effect. So as a mechanism for a large scale complex proposal like this, the
13 management plan obviously is acceptable, but the Regional Council doesn't – is
14 very strongly of the view that the draft management plans put forward by the
15 applicant for your certification are not currently fit for purpose and nor are the
16 conditions that support those. So there is a lot of work to be done in the Council's,
17 in my submission, on conditions and management plans. The general issues I've
18 set out there at paragraph 30 include activities being described in overly general
19 terms, complex interactions between sets of conditions, management plans, and
20 so on.

21 The difficulty of implementing actions in the ecological management plan. This
22 is a – perhaps I can make a more general themed submission there. The panel will
23 be live to this I know but in our – for complex projects like this, it's not enough
24 simply to specify an outcome and a condition that must be achieved and then sort
25 of hope, hope for the best. And I don't mean to be too pejorative. That's not,
26 certainly not the system that Mr Chrisp would endorse or has put together here
27 either and so there's not going to be any controversy around that statement, but
28 there are issues on which perhaps there's some overreliance on, you know,
29 specifying an outcome and a future process to verify assumptions without – with
30 more thought required as to the contingencies, what might happen next, what if,
31 what if later verification shows some unexpected outcome, where does that leave
32 this proposal, or aspects of it. So that's sort of a thematic point - - -

33 **Mr Muir:** A cascading set of trigger points and consequences.

34 **Mr Randal:** Exactly, Sir, yes, yes, that's right, that's right. So I think, yeah, more work,
35 more work is required on those things. And in the conditions set as well and the
36 draft management plans, we've seen some over-reliance on an allowance for
37 management plan content to be amended in a sort of substantive way, you know,
38 with management plans later on resubmitted for certification with changes, but
39 without enough prescription in the conditions to guide the Council's task of
40 recertifying. So, in other words, yeah, amendable content within the management
41 plan itself that could be changed in a way that erodes environmental controls or
42 management measures, supplied for recertification but without enough
43 prescription on how that recertification should be done. And that's a, you know,
44 that's a bit of a no, no, in a legal sense, for obvious reasons. It's really, you know,

1 leaving for a Council officer down the line too much discretion in whether a
2 certain thing proceeds or not.

3 At paragraph 31, reading the applicant's response to some of these criticisms, I
4 think the general response is – includes some acknowledgement that further work
5 would be useful and they've pointed to the upcoming expert conferencing process
6 as a good way to improve the robustness and detail of the management plans and,
7 as I say, we're up for that as well and also support that process. But I would say,
8 and this comes back to the question from Mr MacGibbon earlier. You will have
9 understood, Sir, that for certain key management plans, including ecological
10 management plans, the applicant is inviting the panel to certify those. Mr Chrisp
11 has explained to me that – so sorry, I'll pause there. The Regional Council doesn't
12 agree with that proposal and wishes to have a certification role in that plan and all
13 of the relevant management plans. That's important for a number of reasons and
14 the timing of that certification is important as well.

15 In my submission, for something as complex as this, really certification of the
16 management plan like that, to have full confidence, one needs to have the best
17 information available. That will become available as detailed design of the
18 project, if it proceeds, is undertaken and, you know, so that's the point of time
19 prior to construction commencing, or whatever, whatever the relevant milestone
20 is. The best information at that – available at that time should be reflected in the
21 management plan certified at that particular time. It is too big an ask on this panel
22 to certify something in a more conceptual way in the absence of that more detailed
23 information that inevitably becomes available later on.

24 My learned friends for the applicant in their legal submissions that accompanied
25 their response, they have pointed to the expertise among the panel members,
26 which of course is quite evident, Sir, as you've covered off this morning, but
27 perhaps, perhaps in a slightly pejorative way – I'm sure this was unintended – but
28 towards the Regional Council and a comment I think is made that these are highly
29 technical documents where there might not necessarily be all that technical
30 expertise available within Council. I would say to that that these are management
31 plans ultimately that the Regional Council will be required to monitor and enforce.
32 So that's not an answer for that point. The Council can certainly tool itself and
33 inform itself as to how to certify, you know, detailed technical management plans
34 like that and that's its normal role of course under the RMA.

35 Just last point, Mr MacGibbon, on your question around – Mr Chrisp has
36 explained to me that, for example, the ecological management plan, if updated
37 after this process, on the applicant's – so the applicant's proposal is that you
38 certify. If the management plans are later on updated, they would be reissued,
39 resubmitted to both Councils, I believe, for recertification in that case. That's the
40 applicant's proposal. I think that's probably enough on management plans for
41 now.

42 Hydrogeology is the next matter dealt with at paragraph 35. There is a key
43 hydrogeological issue that the Council considers remains outstanding. That's the
44 efficiency of the proposed groundwater take. So the applicant has – proposes to

1 take groundwater for various purposes, including dust suppression. There is
2 allocation available under the Regional Plan for water in that respect. So water
3 availability is not the issue but, as always, water efficiency is an important
4 consideration, i.e., that the applicant shouldn't be able to take more water than it
5 needs for its – reasonably needs for its operation. In the applicant's response it
6 has provided more detail to support the amount of water that it's applied for, and
7 the Council's experts are considering that carefully with a view to getting into
8 conferencing to talk about that.

9 Moving to terrestrial ecology. So my learned friends have covered this off and no
10 doubt a number of other commentators will as well. The Regional Council sees
11 effects on terrestrial ecology as being among, you know, the most significant
12 outstanding issues that remain in respect of this proposal. And I've listed at
13 paragraph 36 some key issues from the Regional Council's perspective. They
14 include the ecological value of certain vegetation communities, a technical matter
15 as to, you know, how high valued certain communities are, which then flows on
16 to what's an appropriate response in terms of effects on those, those communities.

17 Vegetation rehabilitation outcomes. Again, coming back to that theme, there's a,
18 you know, a meritorious suggestion to salvage and store tussocks, up to 25,000
19 tussocks for later re-use. Just to give one example of a wide ranging, you know,
20 suite of proposed measures by the applicant to address ecological effects. The
21 question of what happens if, you know, storing those for re-use proves to be
22 impossible or, you know, it's those sort of what ifs in the contingencies that I think
23 requires some more thought and expert guidance.

24 The degree of indigenous biodiversity loss again is a matter that will be covered
25 by many commentators. It seems, I think, not really in dispute that there will be a
26 significant net loss of indigenous biodiversity for several habitats and numerous
27 species. The Regional Council has recommended that some additional
28 information be provided to you on quantifying that loss, and Council remains of
29 the view that that's important for your decision making.

30 Lizard effects management is another broad topic where the Council remains
31 concerned with the proposal, including for reasons touched on by my learned
32 friends already.

33 Offsetting and compensation for invertebrates is another issue. There's a, I think
34 there's a technical dispute between the ecologists as to whether the outcome for
35 inverts should be classed as uncertain or if a net loss should be assumed. I'll leave
36 that for the ecologists to debate but from a legal perspective, I'd suggest that given
37 the uncertainty – I think everyone – those experts all agree that the outcome is at
38 least uncertain, if not more likely than not a net loss. But from a legal perspective,
39 I don't think the applicant yet has discharged its evidentiary burden to show that
40 the proposal's adverse effects on invertebrates are going to be acceptable. So
41 there's an evidentiary burden point there perhaps to overlay on a technical dispute
42 between ecologists as to how to, how to classify certain outcomes.

43 **Mr Muir:** Just run that one again for me please, that issue. I just didn't quite grasp
44 what you were saying there.

1 **Mr Randal:** Yes Sir. So there's probably not too much force in the point. But there is
2 – I was noting there that there is technical dispute between ecologists - - -

3 **Mr Muir:** Yes.

4 **Mr Randal:** - - - as to how the proposal might affect, adversely affect, invertebrates.

5 **Mr Muir:** Yes.

6 **Mr Randal:** You know, in the ground, for example, and how the proposed measures to
7 address those effects, whether, and the extent to which, those will be successful.
8 So how to describe that from an ecological perspective. The debate is whether
9 that leads to an outcome termed "uncertain or if it's a net loss outcome - - -

10 **Mr Muir:** Yes.

11 **Mr Randal:** - - - that you put in the adverse effects pot for consideration.

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

13 **Mr Randal:** I'm suggesting that there's a technical debate to be had by those experts
14 but from a legal perspective, I say that the applicant's got a burden to show you
15 that the effects of its proposal are acceptable. And in respect of invertebrates, that
16 expert evidence, irrespective of whether it's uncertain outcomes or if it's a clear
17 net loss, they lead you to the same point. You can have no comfort that effects
18 are going to be acceptable at this stage.

19 **Mr MacGibbon:** Just for clarification, Mr Randal, on that one, so you're suggesting
20 in the absence of information to make either a positive or an uncertain
21 proclamation, that they should automatically assume that there's going to be
22 negative effects because there's nothing to show otherwise. Is that what you're
23 trying to say?

24 **Mr Randal:** It's more or less that, Sir. Yes. It's a – you're dealing with the balance of
25 probabilities. What's more likely than not to be the outcome here?

26 **Mr MacGibbon:** Right.

27 **Mr Randal:** And I think, I think the evidence on that will be that there are – there will
28 certainly be adverse effects.

29 **Mr Muir:** This proposes a burden to negative the existence of adverse effect.

30 **Mr Randal:** Yes.

31 **Mr Muir:** An overall burden within the context of the hearing to negative that, rather
32 than for that issue to be established by - - -

33 **Mr Randal:** Yes.

34 **Mr Muir:** - - - solicitors?

35 **Mr Randal:** Yes, yes.

36 **Mr Muir:** And so where, where does that come from. Can you just tease that one out
37 slightly. Where does the Act suggest that there is that positive, positive burden
38 on the part of the applicant to disprove negative effects?

1 **Mr Randal:** Well it's – the negative effects are proven.

2 **Mr Muir:** Yes.

3 **Mr Randal:** And then the applicant's putting forward to you measures to address those
4 effects.

5 **Mr Muir:** Yes.

6 **Mr Randal:** And it still carries of showing to you that those measures are more likely
7 than not to each to have some sort of - - -

8 **Mr Muir:** Yes, yes, if it's responsive to something, then it gets over the evidential
9 threshold as you're postulating - - -

10 **Mr Randal:** Yes.

11 **Mr Muir:** Then yes, it's got to bring the gauge back on the other side.

12 **Mr Randal:** Yes.

13 **Mr Muir:** Yep.

14 **Mr Randal:** Yes, and I think, I think if you're looking for a home in the Act for that, or
15 certainly in the Resource Management Act and Part 2 of that Act around
16 sustainable management of natural and physical resources and demonstrating that,
17 that adverse effects have been avoided, remedied or mitigated in a satisfactory
18 way, I think that's a - - -

19 **Mr Muir:** Yes. You're just really referring to how, in any context, the burden can shift
20 during the course of a process - - -

21 **Mr Randal:** Yes.

22 **Mr Muir:** - - - once a certain evidential foundation has been established for a
23 proposition.

24 **Mr Randal:** Yes.

25 **Mr Muir:** Not an overall general obligation on the part of the applicant to come in here
26 and to disprove every potential negative effect.

27 **Mr Randal:** That's right, that's right, that's right, Sir, and yes, as I said, not a huge
28 amount of force in that point, so it's a bit of a throwaway.

29 **Mr Muir:** Thank you.

30 **Mr Randal:** Lastly on biodiversity, as my learned friends have done, I acknowledge the
31 applicant's new proposal to establish a biodiversity and heritage enhancement
32 committee, which the Regional Council is certainly considering closely as well
33 and will be able to discuss at conferencing.

34 In terms of wetlands, there are some significant issues that the Council considers
35 are remaining. One is around the feasibility of establishing new wetlands, and the
36 Council has recommended there that the applicant provide more information about
37 the likely success of remediating swamp and marsh wetland in this way by
38 creating new wetland. It will be helpful to see some track record from around the
39 country including in similar habitats of those things working. Offsetting and

1 compensation for wetland loss, the applicant I think accepts that in terms of hill
2 seepage and gully fen wetlands, you know, recreating those isn't feasible and so
3 has sort of left those as residual adverse effects that it doesn't really propose to
4 address and, yeah, the question is whether that's right, whether any other measures
5 can be offered by way of compensation, or if those just fall to be weighed by the
6 panel in its overall assessment.

7 Surface water quality. There are some outstanding issues as well which I list at
8 paragraph 38. I think the main point is at "A", point A, which is about nitrate,
9 nitrogen and ammoniacal nitrogen limits. I think, the applicant has modelled
10 potential effects on water quality from contaminants entering water, and then has
11 – but has – and has assessed those to be of a certain relatively low level, but has
12 sought to embed in the conditions limits by reference to higher level planning
13 documents that would allow further degradation than its models show are
14 expected to occur. The Regional Council doesn't consider that's appropriate and
15 seeks limits that have some tolerance in them from what's been modelled but that
16 are more closely – more closely resemble what the predicted effects of the
17 discharges here are. And unless that happens, if the limits proposed by the
18 applicant are adopted, then the Council's expert advisor, Dr Greer, considers it's
19 likely to be, yeah, there are nuisance periphyton effects are likely to occur which
20 will have certainly bad ecological outcomes for those relevant water courses.

21 **Mr Muir:** Mr Randal, I'm just a little conscious of time - - -

22 **Mr Randal:** Yes, me too, Sir.

23 **Mr Muir:** - - - and the panel will obviously get to this clearly very helpful paper - - -

24 **Mr Randal:** Yes.

25 **Mr Muir:** - - - probably by the end of the week. I'm happy that you have an extra five
26 minutes, which I'll get no thanks from my panel, but we'll crib it out of our
27 lunchtime break. But it would be, I think, very useful to us if you could move to
28 the third of your overall topics, which is Council's position on the key matters that
29 go into the balancing exercise.

30 **Mr Randal:** Thank you, Sir, I will do that.

31 **Mr Muir:** Thank you.

32 **Mr Randal:** And this is a brief section of my presentation in any event because the
33 panel's well aware of the framing of section 85(3) and the ultimate task before it.
34 It's well aware that there's the benefits side of the ledger which it needs to
35 carefully consider, and it's well tooled to do that. Dr Lees is the economist
36 engaged by the Regional Council. He's said his piece and has been actively
37 considering the comments of other economists in the process and stands ready to
38 conference with them about those things. But the Council does acknowledge that
39 this proposal will have benefits that it considers are significant at at least a regional
40 level, if not a national level.

41 **Mr Muir:** At least regional level?

1 **Mr Randal:** Yes. Based on Dr Lees's advice. I think the applicant suggested there will
2 be ecological benefits of the proposal that fall onto that side of the ledger as well
3 and the Regional Council does not agree with that, for the reasons set out in its
4 comments.

5 **Mr Muir:** Obviously there will be some ecological benefits in its proposals but, netted
6 out, they do not represent a positive net benefit, is that the position?

7 **Mr Randal:** That's right, Sir, yes. Thank you. And on the adverse impact side of the
8 ledger, well these are the points I've been touching on on the way through, the
9 outstanding matters of concern around terrestrial ecology, wetlands, landscape,
10 surface water quality, and so on. Which is not to say that the further work we've
11 talked about, the next steps in the process won't assist in narrowing those issues
12 further, or potentially going some way further to addressing some of those
13 concerns but they are still held by the Regional Council now.

14 **Mr Muir:** I use every opportunity when I've got good lawyers who spend most of their
15 practice life in this area to ask this question and did yesterday. Just in terms of
16 the phrase "out of proportion", what do you understand that that means?

17 **Mr Randal:** It's a very good and interesting question, Sir, one that all the practitioners
18 are thinking hard about. I don't think it's the case that any of the panels to date
19 have engaged with that word in as much detail as I would have liked them to, to
20 inform an answer to that question.

21 **Mr Muir:** Well that is because so many of the decisions and the ultimate result is that
22 the impacts are sufficiently insubstantial as not ultimately to engage the
23 comparative analysis.

24 **Mr Randal:** Yes.

25 **Mr Muir:** Whereas I think I'm not speaking out of turn in suggesting that that is
26 unlikely to be the case here.

27 **Mr Randal:** Yes.

28 **Mr Muir:** That we will be squarely faced with assessing whether net ultimate
29 disbenefits we'll call them, or effects or impacts as the statute calls it, are out of
30 proportion to the acknowledged at least regional benefits. So, I mean, and I've
31 been trying to interrogate this issue myself from whatever source I can, and there's
32 not a lot of assistance on it.

33 **Mr Randal:** No Sir.

34 **Mr Muir:** I suspect, and this was the acknowledgement yesterday from Ngāi Tahu
35 counsel, that it doesn't simply mean a bare advantage.

36 **Mr Randal:** No, I was going to make that submission, Sir, and I would like to make it
37 clear that this is – this doesn't reflect the Council's position. I don't have any
38 instructions on this at all but – from a technical or legal perspective – I think it is
39 telling that the legislature hasn't used the words "greater than" for example. Yeah,
40 "out of proportion to" I think does suggest some additional tolerance, but that's
41 just on a, you know, on a first principles statutory interpretation basis. The

1 ordinary meaning of those words, read in light of the purpose of the Act, of course
2 as we must.

3 **Mr Muir:** Yes, right. Thank you very much, that's most helpful.

4 **Mr Randal:** Thank you, Sir. So that concludes my presentation. I could address you
5 briefly now or in writing later on, or perhaps the panel doesn't even need any
6 assistance on it, on this issue of the six year maximum term of new water permits
7 in the Otago region.

8 **Mr Muir:** Right. Yes, you better address us on that because you say it's not in the
9 paper, or - -

10 **Mr Randal:** It's not in, it's not in this, the legal submissions paper, Sir, that's right.

11 **Mr Muir:** Right.

12 **Mr Randal:** In the Council's comments, the Council's view has been recorded there.

13 **Mr Muir:** Yes.

14 **Mr Randal:** The view is that the panel is not – sorry, the panel is able to grant a new
15 water permit in the Otago region as sought by the applicant for a term of greater
16 than six years. In an ordinary RMA process there are two barriers to that, which
17 I say don't apply to the panel. One barrier is a policy barrier. So the Otago, you
18 know, the regional plan water for Otago has a policy, a directive policy,
19 prohibiting new water permits being granted for a term of greater than six years.
20 That's not a barrier to you because there are various indications in the Act that
21 directive planning policies such as that might require you to turn down a proposal
22 for example, are not determinative for you. The planning provisions are lower in
23 the hierarchy of considerations, the weighting you need to give, than the purpose
24 of the Act for example and the, you know, the RMA, standard RMA
25 considerations require less weight than that.

26 **Mr Muir:** Yes.

27 **Mr Randal:** And there is – there's been a previous decision in Otago by a fast-track
28 panel. It's the Homestead Bay one where that was the approach taken, and I think
29 the analysis in that decision focused on that policy. So that's a good place to look
30 if you'd like an explanation of that.

31 There is another barrier though to overcome and that's in section 127B of the
32 Resource Management Act. So there's not only a policy prohibition but there's
33 also a legislative one, yeah, which prohibits the granting of a consent for a duration
34 of more than six years for a new water permit in Otago. In my submission, that
35 doesn't apply to you either and that's by operation of clause 17(7) of schedule 5
36 to your Act, we'll call it. This is arguable I think and it's quite a technical point.
37 But that provision says sections 123 and 123A of the RMA apply to the panel's
38 decision on a consent. 123 of the RMA is about duration of consents. So, for
39 example, it says that a regional consent can't be granted for more than 35 years.
40 123A doesn't apply here. It's about agriculture consents.

1 If one reads section 123 of the RMA, it begins with the words, “Except as provided
2 for in section 123A, 123B, 125 or 127B”. So 127B is this Otago-specific six year
3 prohibition. As I say, section 123 does apply to you, and it says, “Except as
4 provided for in”, these other sections including that one, the term of a regional
5 consent must be no more than 35 years for example. So there could be an
6 argument where your Act tells you to apply 123. 123 says, “Except as provided
7 for in” these other sections. It might somehow bring those into your process, but
8 I say that’s not the better argument. The better argument is that that one doesn’t
9 apply to you, 127B. And the best indication for that I think is again in clause 17(7)
10 of schedule 5 which refers to both sections 123 and 123A. If you just had to apply
11 section 123 and all the other provisions it refers to, the Fast-Track Act wouldn’t
12 have to refer to section 123A because section 123 brings it in automatically.
13 Sorry, that’s a very technical point I understand.

14 **Mr Muir:** Yes, I see. It’s a statutory instruction point.

15 **Mr Randal:** Yes.

16 **Mr Muir:** Section 123 brings in section 123A.

17 **Mr Randal:** Yes, and 127B.

18 **Mr Muir:** Right, and B.

19 **Mr Randal:** That’s right.

20 **Mr Muir:** And the simple point is that it had to be the legislative intention. If 123B
21 was incorporated in this part of the analysis, then it too would have - - -

22 **Mr Randal:** You have it, Sir, yes.

23 **Mr Muir:** - - - would have been specified.

24 **Mr Randal:** Yes, thank you, thank you, yes. And the purpose of the Fast-track
25 Approvals Act I think supports that interpretation as well.

26 I apologise for taking more time than scheduled but thank you for your attention.

27 **Mr Muir:** Of course, we have run over a little but are there any questions of the panel
28 of Mr Randal? Good.

29 **Mr Johnson:** Mr Randal, thank you. I just want to go back to the management plan
30 conversation. There’s a lot of them and you’ve highlighted the point of work as
31 imagined versus work done, and when we have very little data, the imagination is
32 large and can become quadrilly disparate with what actually happens. So as
33 information becomes available, the plans need to be developed. But I suppose
34 there’s a question – do you see a different way of managing the large number of
35 plans and the hierarchy of plans because as mining progresses, when things go
36 wrong the plans very quickly become, or as things change, plans very quickly
37 become out of date and the updating of those plans requires a lot of work on both
38 parties to advance those. So I suppose I was just trying to reflect, in your
39 experience is there perhaps a more efficient way of getting the key plans into the
40 right reference areas with the right people and allowing some of the more

1 functional plans to be more easily administrated at a different level? Do you
2 follow my question?

3 **Mr Randal:** I do and what you say sounds eminently sensible, yes, but I'm struggling
4 to think of – you know, there's obviously an art to framing conditions like that
5 and, as you say, they need to be able to adapt to information as it arises and it's
6 always the case that new things are discovered and proper environmental
7 management requires an adaptable response.

8 **Mr Johnson:** Well technology changes and things like that.

9 **Mr Randal:** Yes.

10 **Mr Johnson:** Or, you know, we find unforeseen ground conditions, so the mine
11 design changes quite radically quite quickly.

12 **Mr Randal:** Yes.

13 **Mr Johnson:** The intent of the plans may still be achieved but the actual detail of how
14 they work might be quite different.

15 **Mr Randal:** Yes.

16 **Mr Johnson:** I suppose I was trying to explore if you've got any experience or
17 thoughts of maybe actually thinking about a slightly different way of framing, or
18 working with the people who frame, is slightly different, more efficient way of
19 actually getting the key matters to the right places without having to bog down
20 massive amount – I mean, I think there's 40 odd plans for this. Some of those
21 plans will be relatively straightforward and some of them will be incredibly
22 complex.

23 **Mr Randal:** Yes.

24 **Mr Johnson:** And yet they're all – I suppose it's just trying to think of a way of how
25 the Council might view that in a different framework.

26 **Mr Randal:** Yes. Well, we'll certainly – I mean, no, no silver bullet answer springs to
27 mind, I'm sorry, Sir, but we've certainly taken – we'll note this for the Council's
28 planner to be thinking about and no doubt Mr Chrisp for the applicant and others
29 – other planners in the room will be taking that point on board and thinking quite
30 hard about it, yeah, yeah. But, yeah. I can probably leave it there but - -

31 **Mr Johnson:** I don't know the answer either. I spend a lot of time in management
32 plans and, as a consultant, it's great, you know.

33 **Mr Muir:** Well, thank you very much, Mr Randal, and I'm sure I speak on behalf of
34 the whole panel in saying how useful that contribution from ORC is, thank you.

35 **Mr Randal:** Thank you very much, thank you.

36 **Mr Muir:** And Ms Ross. We intend next to hear from Heritage New Zealand, and I
37 think Ms Russell, thank you, and with you Ms Clifford?

38 **Ms Russell:** Yes.

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

1 **MELANIE RUSSELL FOR HERITAGE NZ POUHERE TAONGA**

2 **Ms Russell:** Tēnā tātou kia huihui mai nei, e whaka kānohi ana ahau e Pouhere Taonga
3 ko Melanie Russell ahau. I'm conscious that it's almost lunchtime, so I'm
4 hopefully going to give you a cheat sheet in order to understand our position and
5 how that relates to the archaeological authority and show you, using our evidence,
6 what things need to be taken into consideration to help with you with your decision
7 making.

8 **Mr Muir:** Could we just make sure that we just get the microphone just as close as
9 possible. Thanks very much. Just move across a little. You'll end up like me
10 bridging two tables if you're not careful.

11 **Ms Russell:** Okay. So Heritage New Zealand - oo yeah that's much louder - Heritage
12 New Zealand is the administering agency for the Heritage New Zealand Pouhere
13 Taonga Act. As part of the Fast-track Approvals Act process where an
14 archaeological authority is applied for, Heritage New Zealand provides a report to
15 the expert panel in order to – sorry – pursuant to section 51. The section 51 report
16 must be prepared in accordance with clause 3 of schedule 8, which states that it
17 may recommend the authority is granted pursuant to conditions or it is declined.
18 In this instance, Heritage New Zealand has recommended that that approval be
19 declined, and the reasons for that are set out in the section 51 report. In support
20 of this recommendation, Heritage New Zealand relies on the expertise of Ms
21 Emma Clifford, Manager, Archaeology, at Heritage New Zealand. Ms Clifford
22 authored the internal assessment that I'll refer to as the Clifford assessment, and
23 that informed that section 51 report, and she also prepared a statement of evidence
24 dated 23rd of April 2026. So as I go through the matters relating to the
25 Archaeological Authority, I'm going to direct you to relevant pages or paragraphs
26 of the section 51 report, the Clifford assessment, or Ms Clifford's evidence; and I
27 have filed these. So you don't have to write it all down.

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

29 **Ms Russell:** Okay, so the legal framework. Modification or destruction of an
30 archaeological site or in this case several archaeological sites requires permission
31 and that permission is in the form of an archaeological authority to be granted
32 prior to any works commencing. In a non-fast-track world, an archaeological
33 authority is applied for under the Heritage New Zealand Act, with Heritage New
34 Zealand making the decision whether to grant with conditions, or decline. In order
35 to make that decision, expert staff review the assessments, complete their
36 assessment of the matters set out in section 59(1)(a) of the Heritage New Zealand
37 Act and we must not act inconsistently with statements of general policy. In the
38 fast-track process, an applicant may apply for the authority, and under this process
39 we carry out the same assessment, however, instead of making the decision, we
40 make a recommendation to you, the expert panel, and pursuant to section 81, the
41 expert panel must decide whether to grant.

42 So when making that decision, section 81 requires that, among other things, you
43 must consider the applicable clauses set out in subsection (3). For an authority –
44 sorry – for an approval described in 42(4)(i), an archaeological authority, those

1 applicable clauses are 4 and 5 of schedule 8. So clause 4 sets out the criteria for
2 assessment, and clause 5 provides the ability to impose any conditions. So clause
3 4 states – oh, actually I’ve set it out. In my submissions I’ve set out what clause
4 4 requires and it is the panel must take into account the purpose of the Act, giving
5 that the greatest weight, the matters set out in section 59(1)(a) of the Heritage New
6 Zealand Act, the matters in section 47(1)(a), (2) and (5) of the Heritage New
7 Zealand Act, and a relevant statement of general policy. We do – Heritage New
8 Zealand does not provide any assessment with regard to (a) the purpose of the Act
9 because it is well outside its area of expertise. So we’ll focus on the other relevant
10 matters.

11 The next paragraph in my submissions I set out the matters of section 59(1)(a). I
12 don’t propose to read them out to you today. The statements of general policy –
13 he tauake Kaupapa here whānui – these are the current and relevant statements of
14 general policy adopted in October 2025, and they’re attached as appendix B to
15 Ms Clifford’s evidence. The purpose of these statements are to provide guidance
16 to Heritage New Zealand in order to achieve the purpose of the Act and assist it
17 in carrying out its functions, including advocating for historic places and issuing
18 authorities in accordance with the Act. So the section 51 report includes an
19 assessment of those matters to assist you.

20 In December last year, the panel convenor issued a minute directing us to prepare
21 our section 51 report. I’ve set out what we were asked to provide. And the
22 purpose of that report, which was filed on 25th of March of this year, was to
23 respond to those matters and also provide the assessment of the relevant clause 4
24 criteria to assist you.

25 So Ms Clifford reviewed the applicant’s Heritage assessment and disagreed with
26 the fundamental approach taken in that assessment, specifically that the
27 assessment evaluated each individual site discretely rather than recognising them
28 as part of a larger archaeological complexes, so a collection of interconnected
29 sites, and those form an archaeological landscape. This approach, Ms Clifford
30 argues, has resulted in understating the archaeological values and significance of
31 the area and therefore any assessment of effects on those values is also flawed.
32 As such, Ms Clifford prepared her own assessment in order to then assess the
33 clause 4 criteria. That is attached to her evidence as appendix A. Ms Clifford
34 concluded that the BOGP will result in significant adverse effects on
35 archaeological and broader historic heritage values. The section 51 report also
36 considered archaeological management plans and stated that they are essential in
37 order to ensure mitigation of any adverse effects should an authority be granted.
38 This is often achieved through the recording of information collected and analysed
39 after the modification and destruction of archaeological sites. However, in this
40 instance, Heritage New Zealand concluded that it did not consider there were any
41 mitigation measures or conditions that could be imposed that would ever
42 compensate for the modification or destruction of the 28 archaeological sites that
43 contribute to a significant archaeological landscape.

44 It is also acknowledged in the Clifford report that Heritage New Zealand has
45 granted an authority, 2025 574, which is located within an area of the BOGP fast-

1 track application. So that authority is limited to the destruction of four
2 archaeological sites and modification of two. At the time the application was
3 assessed, it was considered that the loss of these sites was acceptable in
4 consideration of the ability of the remaining sites of the archaeological landscape
5 to maintain and present the story of the area's mining history.

6 Any archaeological authority that is granted inevitably is authorising the
7 modification or destruction of archaeological sites. As such, when Heritage New
8 Zealand grants an authority, it does not do so lightly, and it acknowledges that a
9 loss will occur. That is the legal pathway provided through the Heritage New
10 Zealand Act, where after consideration of the section 59(1)(a) matters, it is
11 concluded that it may be appropriate to grant that authority.

12 The BOGP fast-track application is destruction and modification on a much larger
13 scale, resulting in the loss of an intact and interpretable mining landscape. As
14 such, it would be incorrect to consider that the granting of authority 2025 574
15 would in any way justify any further authorities causing more cumulative effects
16 on that archaeological landscape.

17 The clause 4 criteria. The relevant clause 4 criteria for the BOGP application that
18 you must take into account – and I will read these. So the purpose of the Act, the
19 matters in 59(1)(a), and the reason I want to just go through them is because at (c)
20 it states 47(1)(a)(ii) and (5) of the Heritage New Zealand Act. So these aren't
21 relevant to this application. They are only relevant to an authority applied for
22 under section 44(1)(b) where the effects will be no more than minor. This is not
23 an application under section 44(1)(b), it is section 44(1)(a). So the relevant
24 matters that Heritage New Zealand has considered and presented to you in the 51
25 report are the matters in section 59(1)(a) of the Act and the relevant statement of
26 general policy, and we leave the purpose of the Fast-Track Act for you. So when
27 making a determination, we consider those section 59(1)(a) matters under the
28 Heritage New Zealand Act, also the same under the Fast-Track Act. As Manager,
29 Archaeology, Ms Clifford oversees and undertakes those assessments on a regular
30 basis. Ms Clifford sets out her consideration of these matters in pages 21 to 25 of
31 the Clifford assessment and summarises her opinion in paragraphs 45 to 57 of her
32 evidence.

33 In sum Ms Clifford is of the view that the historical and cultural heritage values
34 of the application area are unique and justify protection. Protecting the sites and
35 their high archaeological values also protects the historical and cultural heritage
36 values of the wider area. The avoidance of two sites within the application area
37 has not been driven by considering the relevant values and is not enough to
38 safeguard options for present and future generations. The modification and
39 destruction of such a high number of high archaeological sites is not consistent
40 with the purpose and principles of the Heritage New Zealand Act. Protecting the
41 archaeological sites does not prevent reasonable use, both for current and future
42 of the land. The land is currently used for recreation, tourism and farming
43 activities and these activities may continue whilst also protecting those
44 archaeological sites. There are conflicting interests in relation to persons directly
45 affected by the decision and it is recognised that declining this authority will

1 greatly impact the BOGP. However, the protection of very significant
2 archaeological values should take primacy.

3 The statements of general policy. So the Heritage New Zealand Act requires
4 Heritage New Zealand to have statements of general policy in place for all of the
5 matters listed in section 17, including the administration of archaeological sites
6 and the statutory role of advocacy. These statements are reviewed every 10 years,
7 and section 20 of the Act says that Heritage New Zealand must not act
8 inconsistently with those statements. There are two statements that are relevant,
9 as you can tell by the matters in section 17. They are the archaeology statement
10 and the advocacy statement. Ms Clifford has considered those statements of
11 general policy and concluded that the BOGP is inconsistent with several policies
12 within those statements. Those policies are set out in paragraphs 58 to 60 of her
13 evidence, with additional commentary and consideration woven throughout the
14 Clifford assessment.

15 So, taking into account her assessment of the relevant clause 4 criteria, Ms
16 Clifford then reached the conclusion that the BOGP application for archaeological
17 authority should be declined. This recommendation is translated into the section
18 51 report and endorsed by the Chief Executive of Heritage New Zealand under
19 delegation.

20 It is also noted that Dr Woods for the applicant agrees with Heritage New Zealand
21 that, and I quote: “The BOGP will have a major adverse effect on archaeology
22 and heritage values.” However, she goes on to say that New Zealand Heritage
23 properties supports the application for an authority subject to sufficient mitigation
24 as outlined in the applicant’s heritage assessment B34(b). Heritage New Zealand
25 does not consider that there are any measures appropriate to mitigate such
26 widescale destruction and modification of archaeological sites.

27 Expert conferencing. Ms Clifford is the expert on behalf of Heritage New Zealand
28 who will be partaking in conferencing and hot tubbing. It is clear through reading
29 all of the evidence statements that Ms Clifford and the archaeological experts for
30 the Department of Conservation, Central Otago District Council and Sustainable
31 Tarras all disagree with the methodology and approach of Dr Woods on behalf of
32 the applicant. However, rather than focus the discussion at conferencing solely
33 on those differences, Heritage New Zealand considers that it would be essential
34 to include the clause 4 criteria as a key topic in expert conferencing. Thank you.

35 **Mr Muir:** That concludes your submission, does it?

36 **Ms Russell:** Yes. Yep.

37 **Mr Muir:** Thank you very much indeed. Are there any questions of Ms Russell?
38 Great. Thank you very much indeed, Ms Russell and Ms Clifford for coming.
39 We’re going to adjourn for lunch now and we’re going to return at 10 to one.

40 **Hearing adjourned for lunch**

41 **Mr Muir:** Yes, thank you. We’re now going to be joined by the NZTA remotely.
42 Thank you. Is that Mr Cottrell is it?

1 **Mr Cotterell:** It is yes.
2 **Mr Muir:** Yes, good afternoon Mr Cotterell. Are we to be joined by - - -
3 **Mr Cotterell:** Afternoon.
4 **Mr Muir:** - - - Ms Dempster too?
5 **Ms Dempster:** That's correct.
6 **Mr Cotterell:** Yes.
7 **Ms Dempster:** Good afternoon.
8 **Mr Muir:** Yes, we've got Ms Dempster there, thank you. Very good. Ms Dempster,
9 do you intend to lead off, or Mr Cotterell?
10 **Ms Dempster:** I can lead off. I'm happy to.
11 **Mr Muir:** Yes, thank you very much.

12 **HELEN DEMPSTER FOR NZ TRANSPORT AGENCY**

13 **Ms Dempster:** So, thank you. So my name is Helen Dempster. I'm a Principal Planner
14 working in the Environmental Planning Team at the New Zealand Transport
15 Agency. I'm joined today by Stephen Cotterell. Mr Cotterell and myself, as well
16 as a colleague of ours, Mr Roy Johnston, who's a Safety Engineer for NZTA,
17 submitted written statements of evidence last week. I'm assuming that the panel
18 have had an opportunity to read those written statements of evidence, such that
19 Stephen and myself can just provide a high level summary of what our evidence
20 covered?

21 **Mr Muir:** Yes. Yes, that's the case.

22 **Ms Dempster:** Yes? Wonderful. Great. So prior to the substantive application being
23 lodged, representatives of the applicant and NZTA met and agreed that an upgrade
24 to the intersection of Ardgour Road and State Highway 88 was necessary, and a
25 right turn bay was agreed upon as the appropriate upgrade to that intersection.
26 NZTA provided formal comments on the substantive application, and in those
27 formal comments we sought some amendments to our condition wording that
28 related to that intersection upgrade.

29 Mr Metherell, for the applicant, has subsequently provided a response and sought
30 – while there's been largely alignment between ourselves and the applicant around
31 the condition wording there has been one key area of disagreement, I guess, and
32 that relates to the timing of the intersection upgrade. So my evidence primarily
33 focuses on that. I rely upon the evidence of Mr Roy Johnston, the Safety Engineer,
34 as the basis for the condition wording that I have put forward in my evidence.

35 So NZTA's position is that it's our preference that the intersection upgrade would
36 occur prior to the commencement of the mine being constructed. However, we
37 note that the seasonal constraints around when roadworks can be undertaken, so
38 in paragraph 5.4 of my evidence I've suggested amendments to the wording of
39 condition 43, that lead by saying that it's our preference that the upgrade occurs

1 prior to mine commencement. But if that's not practical, for the construction of
2 the intersection upgrade to occur concurrently with the mine being constructed.
3 Sort of at the start of the mine construction period so that the benefit of the
4 intersection upgrade can be effectuated for most of the mine construction period.

5 I have also sought some changes to the wording of condition 44(b) to remove the
6 reference to providing documentation prior to the construction of the mine,
7 recognising that NZTA is now prepared to have some flexibility around when that
8 intersection upgrade occurs. And I've also sought some changes to condition 45
9 and 44(b) to refer to agreed actions, because that's terminology that Mr Metherell
10 has put forward in tracked changes, and I support that. But it would just be useful
11 to have that consistent wording. So hopefully you have copies of my evidence in
12 front of you, and you'll see with the colouring that I've used to show the suggested
13 changes that I'm now advancing and suggesting to the Panel.

14 So that was the main point of disagreement between NZTA and the applicant.
15 Mr Johnston and my evidence covers off that upgrades to the Red Bridge and the
16 State Highway 8 Lindis Bridge aren't considered necessary.

17 Sorry, just to go back to condition 45, we also supported Mr Metherell's
18 suggestion that the agreed actions arising from the post construction safety audit
19 could be undertaken within two months, or another timeframe agreed between the
20 Council and the NZTA, and the applicant.

21 So that's a very quick and high level summary of my evidence. I'm happy to take
22 questions, or if you'd prefer for Mr Cotterell to speak to his evidence first and
23 have questions later? I'm happy to go with whatever you'd like.

24 **Mr Muir:** Let's proceed with Mr Cotterell.

25 **STEPHEN COTTERELL FOR NZ TRANSPORT AGENCY**

26 **Mr Cotterell:** So my [inaudible] the road as a piece of property, as opposed to a piece
27 of tarmac and street lights. The situation with ultimate ownership of the roads that
28 we don't – we don't accept temporary status, like a concession, or a lease, or any
29 such situation provided. It's got to be freehold Crown land. The land is Crown
30 land at the moment, administered or in the stewardship of DOC and the land will
31 be Crown land afterwards in the ownership – in the stewardship of the NZTA. So
32 the land actually never changes ownership. It's Crown to Crown. We've got this
33 kind of artificial situation where different people have stewardship over it and we
34 pay, we do actually pay money for things sometimes in between the Crown.

35 But the problem for the developer is that DOC can't sell land to a private party.
36 So it's got to stay within the Crown ownership. So we've got several procedural
37 ways we could do that. The simplest one is for the developer to reach a suitable
38 arrangement with DOC to be able to build the road and then identify the piece
39 that's been built on and then they survey that off, DOC signs a section 114 consent
40 to vest it as road, and we gazette it as state highway. So procedurally the land
41 goes from DOC's stewardship to NZTA's stewardship, but it never leaves Crown
42 ownership.

1 But that's it – that's it in entirety really. The property side of things, we are a
2 service of the process. So the decision whether something can be done or not is
3 primarily a network safety and efficiency. So if the road users' safety and the road
4 users' convenience is catered for, then the property side of things is a kind of make
5 it so, after the event situation.

6 **Mr Muir:** Thank you very much Mr Cotterell. Any questions from the Panel from
7 either Mr Cotterell, or Ms Dempster?

8 **Ms Sweetman:** Ms Dempster, can you hear me all right?

9 **Ms Dempster:** Yes, I can yep.

10 **Ms Sweetman:** Great. Is it normal for NZTA to allow a private entity to undertake
11 roadworks on its State Highway network?

12 **Ms Dempster:** Oh sorry. Can you repeat that. I could hear someone else's voice
13 coming through my headset and it made it hard to hear you?

14 **Mr Cotterell:** There's quite a bit of background noise at mine [inaudible 14:12]

15 **Ms Sweetman:** Is it normal practice for NZTA to allow a private entity to undertake
16 roadworks on its own State Highway network?

17 **Ms Dempster:** That does sometimes happen. Ordinarily NZTA would enter into a
18 developer agreement with the party, which is a legal agreement that sits outside
19 of a consenting process. And then through that agreement the roles and
20 responsibilities, and expectations are laid out. But, it has to be suitably qualified
21 and experienced people to actually undertake the physical works and that's
22 covered off in that developer agreement.

23 **Ms Sweetman:** So is that something that you've considered in respect to this matter?

24 **Ms Dempster:** It's something that we've raised with the applicant, the expectation that
25 we would want to have a developer agreement in place. That developer agreement
26 is still, my understanding is it's being drafted. It's being undertaken by a party
27 that is not here at this hearing.

28 **Ms Sweetman:** Could such developer agreement address Mr Cotterell's concern, well
29 Mr Cotterell's concerns about the transfer of land from Crown to Crown?

30 **Mr Cotterell:** Yeah. Yeah, we'd set out the process and the fact that they would need
31 to cover all this, all the public [inaudible 15:32] so we could.

32 **Ms Sweetman:** Thank you.

33 **Mr Muir:** Anything else of this party? No. Thank you very much Mr Cotterell and
34 Ms Dempster for joining us. It's very useful, thank you.

35 **Ms Dempster:** Thank you for your time. Appreciate it.

36 **Mr Cotterell:** Yeah, thank you.

37 **Mr Muir:** Right, well Mr Enright, you'll pleased to know that we're running a little
38 ahead of schedule. It's for one of the most comprehensive submissions to be filed

1 under section 53. So on behalf of the Environmental Defence Society would you
2 like to lead off?

3 **Mr Enright:** Thank you, Mr Chair, and we've delegated – we've divvied up the
4 functions here and Ms Vella will speak first on the evidential matters, bearing in
5 mind the Chair's opening comments at the start about really the substantive
6 evidence is obviously a critical component, and we'll deal with the legal issues –
7 I'll deal with those subsequently, thank you.

8 **Mr Muir:** Yes. Yes, thank you Mr Enright, and thank you Ms Vella. We gave some
9 encouragement in the minutes relating to this hearing that the legal issues, and
10 there are a number of them that are identified in your submissions, and in those of
11 others, would not have primacy within the context of this hearing today. But, let's
12 hear from you to the extent that you wish, thank you.

13 **JEN VELLA FOR ENVIRONMENTAL DEFENCE SOCIETY**

14 **Ms Vella:** Thank you Mr Chairman. Tēnā koutou katoa. Is my microphone working
15 okay for you? Great. EDS filed, in the context of our section 53 comments, both
16 as you say comprehensive legal submissions and also five statements of evidence.
17 I've also – we've also filed yesterday what will hopefully be – it's more paper,
18 but it's hopefully helpful paper. There's a sort of a potted summary, I suppose, of
19 EDS' position and legal submissions in a covering document. But hopefully the
20 most helpful part of this is a series of tables and two appendices, Appendix A and
21 Appendix B.

22 And what we've tried to do there is essentially, in table format and in short form,
23 identify the key issues in the left-hand column, a summary and a bullet point sort
24 of sense in the middle column, and references to either legal submissions or the
25 relevant evidence, the relevant paragraph numbers, in the right-hand column. And
26 we're hoping that that essentially operates as a bit of a cheat sheet for you, despite
27 the fact that EDS' evidence has quite good summaries in the documents
28 themselves. This might help navigate you to the relevant places in those
29 documents.

30 So as Mr Enright said, I will address you on the technical matters and the key
31 issues outstanding in the evidence. And what I would just say, at the outset, is
32 that while we have had the opportunity for some of our experts to provide some
33 high level comment on the applicant's response to EDS' comments, they haven't
34 given us, just yet, a comprehensive response. And we're anticipating that
35 obviously that would come through expert conferencing.

36 **Mr Muir:** Yes.

37 **Ms Vella:** So we've provided a high level comment where we've been able to, but
38 haven't necessarily been able to be very comprehensive in that regard in the short
39 timeframes.

40 **Mr Muir:** Yes.

1 **Ms Vella:** So we've approached this as a sort of an issues orientation to EDS' case for
2 you. Now the covering sort of potted summary of EDS' legal submissions, et
3 cetera, does contain a very high level overview in the first couple of pages of EDS'
4 position. But I will start, in case you have it in front of you, around about page 4
5 which addresses the evidence.

6 So I start with the economic evidence. So EDS has Dr Bill Kaye-Blake providing
7 economic evidence for it. He's a Principal Economist at NZIER. The key issue,
8 or one of the key issues, that Dr Kaye-Blake raises relates to whether the fact that
9 a cost benefit, a full cost benefit analysis hasn't been undertaken. And there's a
10 question as to whether - - -

11 **Mr Muir:** You mean a national cost benefit analysis?

12 **Ms Vella:** A cost benefit analysis, as opposed to an economic impact assessment. And
13 so the economic impact assessment quantifies economic benefits and a cost
14 benefit analysis would enable the panel to better understand the quantitative
15 impacts of things such as environmental impact, social impacts, and landscape or
16 amenity impacts. And so in terms of your section 85(3) consideration - - -

17 **Mr Muir:** Monetising the externalities [over speaking 21:05]

18 **Ms Vella:** That's – that's exactly right, yes. That's right.

19 **Mr Muir:** Yes.

20 **Ms Vella:** So there's a question - - -

21 **Mr Muir:** I understand that is done, but to what extent is it ultimately helpful for us?
22 I mean as many cases have recognised, section 85 requires ultimately this panel
23 to weigh what has been described as “incommensurables”.

24 **Ms Vella:** That's right. So - - -

25 **Mr Muir:** And some of these are, you know, in that category?

26 **Ms Vella:** Yes.

27 **Mr Muir:** I mean there will be some areas where the impacts can be monetised in this
28 way. The viticultural industry, for example, suggests that, and you can actually
29 put, they suggest, some numbers around the impact of creating what they call, you
30 know, an industrial scale mining development in the middle of a viticultural area.
31 But there isn't, at least from my perspective and I'm sure others on the panel have
32 different views, but a certain artificiality always about monetising some of the
33 issues that you would theoretically add into your mix. Cultural impacts, and the
34 like.

35 **Ms Vella:** And there'll certainly be some effects or impacts that can't or shouldn't be
36 monetised, as you say. And in that case they can be considered under section 85
37 as one of those incommensurables. What Dr Kaye-Blake says is that there is some
38 – there are some ways of quantifying some effects, such as environment and he's
39 got an appendix to his evidence, Appendix A, which explains how he has
40 approached that, or how it could be approached. So environment, amenity and
41 landscape, and social impacts. So that's in Appendix A to his evidence.

1 And what he said – he draws on other literature that does quantify some of those
2 impacts. And what he’s really saying is, at least if you were able to – and he
3 recognises that they may be imperfect – but if you were able to assess those things
4 on the same footing, it would give you a more well rounded or better information
5 about what the impacts are that you’re actually assessing in terms of section 85.
6 And obviously it would be for the economists to determine which ones are
7 appropriately quantified and which aren’t. But I guess what he’s saying is, you’ll
8 have a more well rounded view of what those impacts are if you were able to do
9 that cost benefit analysis.

10 **Mr Barry:** Just a side comment if I might. There’s two important differences between
11 an economic impact analysis and a national cost benefit analysis. One is what
12 we’ve been discussing, which is the monetising the intangible values. But the
13 other is, even just for the monetary values, there’s quite fundamental economic –
14 differences in methodology. The economic impact analysis has a role, but a cost
15 benefit analysis would be more consistent with a standard methodology, I believe.

16 **Ms Vella:** And I think that’s what he’s really saying, and he’s also suggested that, for
17 example, there might be the significant ecological effects, for example, can be
18 essentially quantified and when you weigh those up against the benefits, he’s
19 actually done – he’s got some assumptions made in there, but he’s done an
20 assessment that says, well you might actually find at the end of the day that there’s
21 an overall negative economic outcome as a result of this particular project. So
22 obviously that’s based on some assumptions, and as I said, the experts would need
23 to agree on what was sort of in and what was out, or what was able to be quantified
24 in that way.

25 But as you say, as Mr Barry says, Dr Kaye-Blake says that that will give you a
26 more well rounded view of what the actual impacts of the project are. Did you
27 have anything to add to that?

28 **Mr Enright:** Just one point. We agree that you can’t double count. So if you, to the
29 extent that you were to incorporate adverse impacts into a net cost benefit analysis,
30 you couldn’t then double count it as also an adverse impact. And that’s one reason
31 why the Chair’s point remains salient.

32 **Mr Muir:** You’re just taking them all in above the line, as it were?

33 **Mr Enright:** Yes, that’s right. So you have to – there are, we certainly agree there
34 are some things that shouldn’t be monetised, intrinsic values, cultural values,
35 there’s a bunch of them.

36 **Mr Muir:** Yes, I don’t think Ngāi Tahu would take terribly fondly to you - - -

37 **Mr Enright:** No.

38 **Mr Muir:** - - - trying to monetise their cultural values.

39 **Mr Enright:** Indeed. But, Commissioner Barry’s point is equally one that Dr Kaye-
40 Blake makes, that in terms of pure economics it’s appropriate to look at the net
41 benefits and – and that involves obviously looking at the assumptions made here,
42 where there’s quite a big difference still of between – sorry I don’t remember the

1 exact figures, but once you make, is it 3.8 billion versus 5 odd billion, Dr Kaye-
2 Blake points out where you apply Treasury assumptions so to net present value.
3 We can double check that, those two numbers for you. But anyway that's all I
4 need to say, thank you.

5 **Ms Vella:** Sorry, I think what Mr Enright is saying is that with the discounting the net
6 present value is 3.1 or 3.3 billion as opposed to 5.8. But I think that is, now that
7 Mr Patterson has done the discounting, I don't think there's too much difference
8 between those figures. Just in terms of – so I think that's the main point that Dr
9 Kaye-Blake is making.

10 In terms of the other, just a high level overview of the other issues that he sort of
11 raised, is he has found it not possible to undertake a full peer review because
12 there's some missing information and data. He, in particular, says that the
13 economic dislocation, i.e., the impact that this project would have on the sort of
14 surrounding economy in terms of is there the labour force available, et cetera, to
15 facilitate the project and the industries surrounding that project, is that possible in
16 this region, or has that been properly assessed? He doesn't think it has been.

17 He also thinks the regional benefits are overstated. And in particular, he suggests
18 that you seek further clarity on where the benefits will actually land. Where they'll
19 be distributed. So are they national benefits, inland Otago benefits, Central Otago
20 benefits, or local benefits? So his view is that the adverse impacts really are highly
21 localised, but the benefits are not so much local, and they're more on a wider scale.
22 So he suggested that further information is provided on that particular point. And
23 he's also got some concerns around the sensitivity analysis, and in particular,
24 considering the various different sensitivities and ultimately developing a picture
25 of what's the best case scenario. What's the worst case scenario, based on those
26 various sensitivities.

27 He does also mention, he does also make some comments on the bond, but I think
28 they're probably being addressed quite well by the District Council and the
29 Regional Council. But essentially his position is that even where there might be
30 a low risk, if it's high impact it will, say, for example, the tailing storage facility,
31 should be economically valued and should make sure the bond is covering that.

32 In terms of terrestrial ecology, I think again you've heard from the Regional
33 Council and the District Council, and DOC, that there are significant concerns in
34 relation to terrestrial ecology. And in particular, that there's no dispute over the
35 fact that there will be significant adverse effects resulting from the project even
36 after offsetting and compensation. And so that shoots through obviously to the
37 section 85 side of the ledger. And your job really is to determine what's the
38 significance of those and are they sufficiently significant, in combination with all
39 of the other effects, to be out of proportion to the benefits of the project.

40 A couple of key points from Mr Heads' evidence. He thinks that the use of the
41 EIANZ methodology, or sometimes referred to as the ECIAG methodology,
42 essentially undervalues the significance of the site and also downgrades the
43 overall assessment of effects. The applicant has suggested that this is a standard
44 approach, that's generally widely accepted. But Mr Head doesn't accept that, at

1 least in relation to this particular set of circumstances, and this particular site,
2 particularly where there are species of high value. So his concern is that,
3 acknowledging of course that there are significant adverse effects, that even those
4 may be underestimated by the assessment of ecological effects.

5 That, of course, has knock-on effects for identifying what an appropriate level of
6 offsetting and compensation is. And so there's question marks then over whether
7 the offsetting and compensation package is therefore sufficient. And that's
8 obviously something that will – should be addressed in caucusing or conferencing
9 as well.

10 I just pick up on some comments made by Mr Randal for the Otago Regional
11 Council, and he mentioned that there's inconsistencies with the regional planning
12 instruments that the Regional Council's obviously required to manage. And I just
13 mention too that, of course, we've got the National Policy Statement for
14 Indigenous Biodiversity or the NPSIB, which is national level direction. That
15 document essentially sets out, in a resource management context, what we as a
16 nation, want to see in terms of indigenous biodiversity for the country. And what
17 that really seeks to do is to avoid biodiversity loss.

18 And it sets out a framework, a policy framework which is highly relevant, we say,
19 to the panel's consideration, acknowledging, of course, that inconsistency with a
20 policy, or not achieving an environmental bottom line essentially that's set in
21 policies, is not something that automatically means that the project should be
22 declined. But that doesn't mean that it's not highly relevant. And in fact, it could
23 be a basis upon which the panel decides that it should be declined, if, for example,
24 there are significant, as there are, adverse effects on ecology, and you consider
25 that the inconsistency with the national policy statement is sufficiently significant
26 alongside all the other adverse impacts to be out of proportion to the benefits of
27 the project.

28 So it's highly relevant and it sets out a framework in which, generally speaking,
29 adverse effects on significant indigenous biodiversity are to be avoided. It does
30 contain a carve out, essentially, for mining activities with a functional need to be
31 located in the area of this indigenous biodiversity. And in that case requires the
32 application of what's called the effects management hierarchy. So there's already
33 a carve out for mining. If it wasn't a mining activity, it would need to be avoided.
34 The carve out for mining comes with a proviso, which is you have to apply the
35 effects management hierarchy.

36 The effects management hierarchy says, and these are set out, it's actually in the
37 definition of effects management hierarchy in the NPSIB. But what it says is, you
38 must first try and avoid, where practicable; and if you can't do that then you
39 remedy; if you can't do that, then you mitigate; and if you can't do that, then you
40 offset; and if you can't do that, then you compensate. And if you can't
41 compensate, because it's not appropriate to do so, and there are circumstances in
42 which it is not appropriate to do so, for example, where your indigenous
43 biodiversity is irreplaceable, if it's not appropriate to compensate, then you – then
44 you avoid altogether. The project is avoided altogether.

1 That's how the national level direction works. And the reason I point that out is
2 because while it hasn't been ignored in the application documents, it has been
3 recognised in the application documents, there is a number of places, for example,
4 in the summary tables that were provided in response, that says, "Oh inconsistency
5 with the NPSIB doesn't preclude granting approval to the project". And that is –
6 it doesn't necessarily preclude it, but it does leave the door open for – the door is
7 open to decline the approvals on the basis that the effects are significant, and the
8 inconsistency with the national level direction that has been set for indigenous
9 biodiversity is also significant.

10 I just wanted to pick up on – there's also been sort of discussion around the
11 conditions and the fact that there's quite a lot of work to be done on conditions,
12 and in particular management plans. And I don't want to reiterate that
13 conversation, but I just thought I'd pick up on a couple of examples relating to
14 indigenous biodiversity because Mr Head does – does say that the conditions
15 aren't sufficient to ensure that the outcomes promised by the project will actually
16 eventuate.

17 And so, for example, condition 98 which relates to the Biodiversity Outcome
18 Monitoring Plan, says that "the BOMP must include specific limits and standards
19 described below, which must be complied with". So on the face of that, that
20 suggests that there are some specified standards that need to be complied with by
21 the applicant. And then goes on to say, "Well these are a list of targets". So I
22 think the applicant has recognised in their response that perhaps the framing there
23 is not appropriate to require that compliance. So targets, what do you do with a
24 target? You can seek to achieve that target, but is there – what's the outcome if
25 the target is not achieved?

26 And the condition goes on for a number of pages, but – or the relevant conditions
27 go on for a number of pages – but one of the requirements is to do Biodiversity
28 Outcome Monitoring Compliance Reports, and that kind of thing at regular
29 intervals. But at the end of condition 102 it says at year 35, if your final
30 Biodiversity Outcome Monitoring Compliance Report shows that the outcomes
31 that it was intended to – that were intended to be met haven't been achieved,
32 despite implementation of adaptive measures, so you've set out your outcomes
33 that you're trying to achieve, you've got monitoring and compliance, and adaptive
34 management along the way, but you've got to year 35 and actually you haven't
35 achieved what you said you would achieve. Then what condition 102 says is that
36 "contingency management and associated monitoring measures will be required
37 to be developed". But it's not clear what the contingency measures are, or are
38 intended to achieve.

39 And so this is 35 years out, the consent – many of the consents have expired, it's
40 extremely unclear what those contingency measures are intended to – what the
41 applicant's going to do now. So if those – if those outcomes are that uncertain we
42 say that in your consideration of the issue, you actually need to treat those as – as
43 not being able to be achieved. Because otherwise you're in a situation where we
44 don't know if those are going to be achieved or not.

1 **Mr Muir:** Or conditioned with some other mechanism?

2 **Ms Vella:** Sorry sir?

3 **Mr Muir:** Or conditioned with some other mechanism?

4 **Ms Vella:** Yes, provide some certainty in the conditions is really what I'm saying, yes.
5 And Mr Head also addresses the Come in Time open pit, and makes specific
6 reference to this condition in his evidence too, and I just wanted to point this one
7 out as well.

8 So it's now condition 107. What that says is, "You can't mine, aside from the
9 small bit that can be mined early, you can't mine the CIT pit unless you find that
10 the spring annuals in that area are less than one per cent of the population across
11 the wider ecological district. And you can do that either by propagating that
12 species, so rehabilitation, or discovering further populations. There's nothing in
13 this condition that provides any oversight of that. So at what point, who decides
14 that you can do that. There doesn't seem to be anything in here that says, "You
15 need to submit something to the Council. The Council says, "Yes you can" or
16 "No you can't go". There's no, yeah, so there's no oversight of that.

17 So I guess like just a few examples of some quite loose conditions that I think do
18 need some further work, and support the idea that those conditions would be
19 worked, you know, might be workshopped with experts over time.

20 I'll just turn to water. Obviously the management of water on the site is quite an
21 important aspect of the project. There's significant dewatering associated with
22 mining pits, there's potential contamination obviously resulting from the
23 contaminants in the seepage from the tailing storage and the ELF et cetera. If I
24 could summarise, I guess, Dr Morgan, who is the hydrogeologist, and Professor
25 Webster-Brown who's a geochemist, their concerns in a nutshell, it is that there's
26 not enough information at this stage to assess whether – to properly understand
27 the groundwater hydrology. The connection to surface water and impacts on
28 streams and wetlands and seepage of contaminants, at this particular stage of the
29 project.

30 So, for example, Dr Morgan says there's been limited data collection on
31 hydrogeology and that has not enabled a robust conceptual model of the site in the
32 way that water works on the site to be developed. And I just note there that the
33 applicant's response to her comments mentioned that she has referred to, the
34 insinuation it's inappropriately referred to a hydrological conceptual model from
35 Hope Downs, which is a mine in Australia. But she has simply provided that as
36 an example to show what she would expect, at this particular point in time, for a
37 project of this type. So she hasn't used that to illustrate that. For example, she
38 hasn't used that to illustrate what the conceptual model might look like in this
39 particular environment. She simply uses that as an illustrative example to help
40 explain to the Panel what she would expect it might look like, or the information
41 that might be provided.

42 She's also suggested that the modelling used – the modelling used is what she
43 calls, well not – what she has assessed as a Class 1 low confidence model. So

1 she's saying that, or at least that it has features of a low confidence model. So
2 she's saying the model isn't an appropriate type for a project with such high risk
3 effects, and she would've expected a more robust model, essentially, to be used.
4 Now I note that the applicant has said there are no rules around modelling, what
5 models to use, and models are just a tool, and that is right. Models are just a tool,
6 but Dr Morgan's position is that the model that has been used is inappropriate.

7 Mr Enright's nudging me because I've taken too long already, and he'd like some
8 time to speak. So I will move as quickly as I can.

9 Just to quickly capture some key issues from Dr Morgan's evidence, her concern
10 is around – she has concerns around the estimates of flows to pits drawn down
11 and stream depletion, effects of the draw down on wetlands. She's concerned that
12 the stream augmentation proposal is uncertain, and in fact the applicant's response
13 has suggested that the further information around whether or not the stream
14 augmentation is possible is actually yet to come. So they say it holds promise.
15 But there seems to be quite some uncertainty around whether or not that will
16 actually work.

17 So it's just again another example of information that's yet to come, that is not
18 here at the moment, that Dr Morgan and Dr Webster-Brown say, “we don't have
19 enough information to really assess the effects of the proposal at this particular
20 point in time”. And the knock on effect of that is that there's not a sufficient
21 evidential foundation to actually use adaptive management at this particular point
22 in time. Further information is needed before you know, and Mr Randal alluded
23 to this as well, before you know whether or not you can actually use an adaptive
24 management process to be sure that the effects are appropriately managed.

25 So I'll very, very briefly address landscape, because I think Ms Steven is in the
26 same place as essentially as Mr Brown for CODC and other landscape experts.
27 And she says that the effect in particular on the outstanding natural landscape is
28 so significant that it would affect the naturalness of that landscape to an extent
29 that it would no longer be considered outstanding, at the very least until the land
30 is rehabilitated with vegetation et cetera.

31 So she agrees with Mr Brown on that particular point and has also raised questions
32 around the adequacy of the contextual information that has been used to undertake
33 the landscape assessment. So she says, for example, that it hasn't appropriately
34 considered heritage, some key documentation, including the Conservation
35 Management Strategy, viewpoints from public conservation land, and public
36 walking tracks, and that kind of thing. And so she comes to ultimately a different
37 view on the overall effects to what the applicant's landscape architect comes to
38 because of that.

39 I'll pass on to Mr Enright.

40 **ROB ENRIGHT FOR ENVIRONMENTAL DEFENCE SOCIETY**

41 **Mr Enright:** Thank you, and just in the time available I'll deal with five points. The
42 first, I'd like to try and answer the Chair's question about proportionality

1 referenced in section. 85(3). Second, the key point for EDS is that the statutory
2 purpose does not confer a presumption of approval. I'd like to deal briefly with
3 section 85(4) which is around how you should treat environmental bottom lines in
4 the policy instruments as well as statutory framework. EDS has raised two
5 technical jurisdictional points. One relating to section 127(b) RMA, around the
6 duration of water permits, and the second around the scope of the project within
7 jurisdiction. So I'd like to deal with that, and just briefly the road access point.

8 So just on proportionality. It's not something I'd sort of prepared for in advance,
9 but if one turns back to 85(3), obviously the language used, those adverse impacts
10 are sufficiently significant to be out of proportion to the benefits, the regional and
11 national benefits, my submission is that essentially it's a relativity exercise. So
12 you have to decide what's more important. And I submit it's not a second
13 threshold. You already have a threshold in there around whether the adverse
14 impacts are sufficiently significant. So not a separate threshold, and essentially -
15 - -

16 **Mr Muir:** Well the significance – sufficiently significant is only significant in so far
17 as it is out of proportion. The issue is whether, on a – on a zero to 100 range, 50.1
18 per cent sufficiently significant is out of proportion to 49.9.

19 **Mr Enright:** Mm, mm.

20 **Mr Muir:** I have some concerns about that proposition and although I cannot find
21 anything that's directly on point, if you interrogate the proposition out of
22 proportion generally, and I'm not suggesting for a moment that AI is the answer
23 to this, but it does suggest that it is not a question of bare advantage. And that
24 seems to be consistent with the overall framework of the Act, which is
25 emphasising that, in particular section 81(4), when taking the purpose of the Act
26 into account, we must consider the extent of the regional and national benefits,
27 and the frequent references in the schedules to the priority that must be given to
28 that aspect of the calculus.

29 Are you suggesting a bare advantage establishes something to be out of proportion
30 with something else?

31 **Mr Enright:** I'm submitting that if you decide that that is sufficiently significant to
32 be out of proportion, then yes, it does cross the threshold, and you should decline.
33 So it's really an evaluative decision by the panel. And I'm sure the Chair will
34 appreciate the – I mean it's a helpful example actually the mathematic, you know,
35 50.1, but at the end of the day, your combining qualitative and quantitative adverse
36 impacts and so it really falls to you to make an evaluative judgement. I do submit
37 that you could decline on the basis of a bare outweighing of adverse over regional
38 and national benefits. That would be your, obviously your decision to make.

39 It not necessarily directly on point, but you may wish to consider the decision of
40 Justice Whata in the Dome Valley landfill litigation, and I can give you the
41 reference. It's [2024] NZHC 3794, and particularly paragraphs [228] to [236], but
42 it's sort of sprinkled throughout. That decision of Justice Whata was an appeal
43 against a decision of the Environment Court, including His Honour Judge Smith

1 and Judge Dickey, where the Environment Court had used the expression
2 “proportionality” in relation to – in understanding the meaning of certain
3 avoidance type bottom line worded policies, and also used the expression
4 “pragmatism” and “proportionality”. And so Justice Whata refers to
5 proportionality as meaning commensurate at [233]. So it’s a different context, of
6 course, but you may find - - -

7 **Mr Muir:** Yes, it’s when you – it’s when you put the words “out of” in front of it.

8 **Mr Enright:** Mm, mm.

9 **Mr Muir:** Yes, as to whether that changes that meaning.

10 **Mr Enright:** Yes. So, my submission is – well you’ve heard my submission on that
11 point. At the end of the day it is expressing the reality that it’s an evaluative
12 assessment for you, the panel.

13 **Mr Muir:** Yes.

14 **Mr Enright:** And balancing incommensurables, as you said earlier, Mr Chair. So,
15 that may assist, or not.

16 But just dealing second with the issue around statutory purpose, and there’s a point
17 of difference here as between EDS and the applicant’s legal submissions on
18 whether there’s a presumption of approval conferred both by the statutory purpose
19 in sections 81 through 85, and EDS submits that there’s no presumption that you
20 must approve. And we’ve made two points here around the statutory purpose in
21 section 3, which of course is to facilitate the delivery of projects with significant
22 national and regional benefits. We’ve made – the first limb is to say, well
23 facilitates more in the nature of procedural rather than the substantive position.
24 But the second point is to say, facilitating delivery does not mean it’s
25 automatically to be approved, and again - - -

26 **Mr Muir:** Well clearly not, because section 85(3) puts you back into this balancing
27 exercise.

28 **Mr Enright:** Yes.

29 **Mr Muir:** Not everything that gets scheduled under the Act gets a tick, as we’ve seen
30 already from the fast-track process.

31 **Mr Enright:** Indeed.

32 **Mr Muir:** Yes, and so look, this could be slightly semantic, I think. I don’t think that
33 the panel is under any illusion that the Act weighs – the Act gives significant
34 weight throughout to the issue of national and regional benefits, but it does not
35 make them the exclusive focus, and clearly recognises their ability to be outshone
36 by one or more combination of adverse effects or impacts, or whatever you want
37 to call them.

38 **Mr Enright:** Yes. And that’s probably a sufficient point for me to leave. Because
39 it’s addressed in detail in the written submissions. And of course, notwithstanding
40 the language in – if we’re picking on RMA consents, as we are here, Schedule 5,
41 clause 17, says “greatest weight to the purpose of the Act”. But again, that doesn’t

1 eliminate the requirement to have, you know, to balance out adverse versus
2 benefits, as - - -

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

4 **Mr Enright:** - - - probably the point the Chair's just made really. So that's – I'll
5 leave that otherwise to our written submissions.

6 The next point relates to the interpretation of 85(4) and it sort of – the point we
7 wish to pick on here relates to the use of the word “solely” because there's a
8 question here around if you have more than one environmental bottom line set out
9 in a policy instrument such as the NPSIB, so you have two or more, does that
10 mean you, the panel could rely upon the two or more environmental policy bottom
11 lines as a basis to decline, as distinct from if there were only one. And we say it's
12 the first. So you can rely on two or more environmental bottom lines.

13 However, it's a potentially academic issue in one sense, which is you generally
14 don't trigger environmental bottom lines, including particularly NPSIB, unless
15 there's evidence that you're not offsetting. There's no net benefit, you're not
16 adequately compensating. So generally your evidential findings will mirror the
17 bottom lines in the policy instruments. But I did want to bring that debate to your
18 attention, because again it's a point of difference.

19 **Mr Muir:** Yes. Yes, I understand that the submission and really the applicant's
20 position is that a contextual reading of section 84 really is something along the
21 lines of solely on the basis that any one or more adverse impact is inconsistent
22 with, or contrary to the provision of the specified Act. Whereas you are suggesting
23 that the use of the singular locks you into one only.

24 **Mr Enright:** Is deliberate, given how incredibly carefully all of sections 81 to 85
25 have been drafted, and it's appropriate to take that plain reading of it. However,
26 I do make that collateral point that again we're not going to be looking – you are
27 not looking at the environmental bottom lines set out in the policy instruments on
28 their own. You are also looking at the effects and how they match up. So that's
29 the point to make there.

30 So, my next issue was - - -

31 **Mr Muir:** So even if you had – you had an inconsistency of a relatively minor nature,
32 of one specified Act, that effectively is the limit of the inconsistencies that you
33 can condition away, or allow to be overridden by a national or regional benefit?

34 **Mr Enright:** Yes, however – yes, however, of course we're not saying, you know,
35 you could make a finding that there are 10 environmental bottom lines in policy
36 instruments that are – where a proposal is not consistent. But, of course, you could
37 still approve it. So it's not a fetter in that sense, if that – just to make that clear.

38 **Mr Muir:** Okay. I understand the argument.

39 **Mr Enright:** So moving to jurisdiction, EDS I think alone has raised the scope issue,
40 around – well query whether you can grant approval to consents that are on
41 publicly owned land. These are the concessions which are not part of the
42 description in Schedule 2 to the Act. And I'm sure the panel will be familiar with

1 the lead authority on this topic of – it’s essentially the scope and meaning of
2 Schedule 2.

3 **Mr Muir:** Yes.

4 **Mr Enright:** Because it’s a listed projects. Let me find you the page number here
5 somewhere.

6 **Mr Muir:** Albeit that that considered – that focused on a project description scope
7 whereas your argument is premised on a geographical location scope.

8 **Mr Enright:** In part. I accept that the facts in the Ngāti Kuku decision, which was
9 the Stella Passage case, are stronger than here because we are relying on the
10 description of approximate geographical location. However, in addition to that,
11 in the examples we’ve given you are in our written submissions dated 10 April at
12 paragraph 28, where there are at least some listed projects in Schedule 2 where
13 the project description cross-references DOC land, for example, Waihi North was
14 one example in the project description column. So where it was intended that
15 approvals on DOC land were to be enabled by the project description. So
16 obviously there’s a spectrum here between the Ngāti Kuku decision, yes the
17 argument was strictly around the project description column, whereas here we are
18 relying on the absence of any reference to Conservation land in the project
19 description, combined with the description used in the geographical location. So
20 it’s a different scenario, I suppose.

21 **Mr Muir:** So the fact that the use of – that column is headed up “approximate
22 geographic location” is not in itself determinative against your proposition
23 because you say even if approximate, it still needed to specify the Conservation
24 land?

25 **Mr Enright:** Correct. But also we’ve drawn some reference to other examples where
26 the listed projects, to the extent that they require approvals to undertake work on
27 DOC land, specify that in the project description and here we have the absence of
28 that specification.

29 **Ms Sweetman:** Did you have a look at the applicant’s response to your comment, and
30 do you have any further comment on that?

31 **Mr Enright:** Yes I did, thank you Commissioner. And I accept it’s a narrow
32 technical argument, but clearly jurisdiction often is a narrow technical issue, and
33 so we’re - - -

34 **Mr Muir:** It would be odd if this entire application stood or fell on this issue.

35 **Mr Enright:** No it would. And it doesn’t, because, of course, we’re not saying you
36 don’t have jurisdiction as to, for example, the RMA approvals. This is solely
37 about the approvals relating to, what they call the concessions sorry, which are on
38 DOC land. So we would say you must carve that out. However, that would have
39 implications for the applicant, understandably, because limbs of the - - -

40 **Mr Muir:** Almost fatal implications.

41 **Mr Enright:** Well potentially yes.

1 **Mr Muir:** Yes.

2 **Mr Enright:** That's right. And so I think the other argument made by the applicant
3 is around the definition of listed project in, I think it's section 2 of the Act, the
4 description used in Schedule 2 does not have to include subsidiary elements. And
5 so there's a question for you around, well in any event are these subsidiary, are
6 the concession subsidiary elements, which means they don't need to be in the
7 Schedule 2 listing. I agree that's an issue before you. The answer, we say, is
8 they're not subsidiary because they trigger a different legislative regime. They
9 trigger approvals under a different regime and a different schedule, so that means
10 they're not subsidiary. So that's probably the only other additional point I could
11 make, thank you Commissioner for the question.

12 So again bearing in mind time is short, the only other point to make and this – it
13 may be there's a bit of common ground here as between EDS and the applicant –
14 is on the question of roading access, and where I think the two parties do agree is
15 that this panel does not have jurisdiction to make decisions on the stopping of
16 public roads, whether they're paper roads or full roads. That is outside of your
17 jurisdiction and needs to be dealt with by way of a separate process. EDS accepts
18 that does not prevent you from continuing with this process and making your
19 determinations. It's more a risk factor, if you like, for the applicant who will have
20 to secure those road stopping approvals under, we say, the Local Government Act,
21 and I think the applicant would prefer to rely on the Public Works Act. But in any
22 event, that's a point of common ground.

23 The other issues here relate to the proposed alternative access, which are really
24 substantive issues around whether it's appropriate to grant approval to the
25 proposed alternative access which, from memory, is Ardgour Rise, when it's
26 uncertain whether the existing access will be closed. But, you know, that's just a
27 statement of the need for a new consent really. So there's not – it's potentially
28 not a – I mean we've addressed it otherwise in our written submissions for your
29 assistance.

30 **Mr Muir:** Yes.

31 **Mr Enright:** One point though we do make to you, which is the applicant in its
32 written submissions for this hearing, or sorry, in reply I should say, to EDS's
33 submissions relying on and produced both the Deed of Agreement with CODC
34 and also the access agreement and we say, well if they're going to rely on that as
35 a support of their position then they should provide an unredacted version of that
36 agreement, because it's difficult to judge whether the assertions they make in
37 reliance on that are made out. So we have made a point to you in our written
38 submissions around your ability to direct a non-redacted version, if the applicant
39 wishes to rely on those two documents further.

40 Sorry, finally section 127(b), and again we've addressed this in our written
41 summary we've provided to you. But, in many ways the best answer is that we
42 rely on Schedule 5, clause 18, and if I could just ask you to refer to that.

43 **Mr Muir:** Schedule 5?

1 **Mr Enright:** Yes, so Schedule 5 and it's my friend for the Regional Council
2 referenced for you clause 17(7).

3 **Mr Muir:** Schedule 5, clause 18?

4 **Mr Enright:** Yes. So just a prefatory point, there's an argument around whether
5 section 127(b) can be relied on because of clause 17(7), which you'll recall refers
6 to sections 123 and 123(a) and the argument is around, does that mean section
7 127(b) is excluded because it's not referenced?

8 **Mr Muir:** Even though it's gathered up under 123?

9 **Mr Enright:** Indeed, 123(1). But there's probably a better answer which side-steps
10 that debate, which is simply to rely on clause 18 of Schedule 5, because you'll see
11 it reads:

12 When seeing conditions on the consent, the provisions of here part 6
13 that are relevant to seeking conditions applied to the Panel subject to the
14 necessary modifications.

15 So part 6, of course, includes 127(b). There's no qualification statement in this.
16 So, we say that is available to you, or actually fetters your power. In terms of the
17 water take consent, you can, if you decide to grant approval, you can only grant a
18 six year consent for that.

19 **Mr Muir:** Right.

20 **Mr Enright:** Because that's a provision in part 6 that applies to the panel. And we
21 say it's bespoke to Otago. It's not a situation that arises elsewhere, but it does
22 arise here. EDS also submits you're not bound by the prior panel determination
23 on this.

24 **Ms Sweetman:** Just with that Mr Enright, Mr Randal did refer to a recent fast-track
25 consent for Homestead Bay that was granted which had a longer duration than that
26 six years. Were you involved in that matter?

27 **Mr Enright:** No I was not, and thank you for referencing that. So we make the
28 orthodox point that, of course, you're not bound by prior panel decisions,
29 especially where they're wrong in law, with respect.

30 Those are our submissions, and we're happy - - -

31 **Mr Muir:** Yes, well thank you Mr Enright. EDS's legal submissions have been very
32 comprehensive and you raise a number of issues which are exercising the panel at
33 the moment. Just before I let you go, EDS contemplates, in its submissions, that
34 there be some form of a legal hearing, a hearing focused on legal issues.

35 **Mr Enright:** Yes.

36 **Mr Muir:** Why do you say that is necessary, given the comprehensiveness of the
37 written material that is before us? And could I add in that context, that the panel
38 is highly likely to engage a very senior counsel assisting to give us advice, not
39 determinative obviously of the legal issues, we decide them. But to give us advice
40 in that respect, and there would be facilities, one way or the other under the Act
41 as we delve further and deeper into those issues, to seek further submissions in

1 writing on them, just in the way that I might've in my former career if, when I
2 came to write a judgment, I needed counsel to address me further. It very
3 frequently happened. Why is a hearing, per se, necessary do you think?

4 **Mr Enright:** Thank you for the question, sir. We accept that hearings are time
5 expensive for the panel, and you don't have a lot of time sadly for a very major
6 project. So obviously it's a matter of discretion. However, some of these are
7 fairly fundamental questions, and I submit it would probably benefit the panel to
8 have that opportunity for Q and A with counsel, or representatives on some refined
9 questions.

10 I can draw on at least one other example that comes to mind, and I think
11 Ms Gepp KC was the advising counsel to the Taranaki - - -

12 **Mr Muir:** TTR, yes.

13 **Mr Enright:** TTR. And in that case - - -

14 **Mr Muir:** Ms Gepp I think.

15 **Mr Enright:** Yes, that's right, who's about, as you know, about to present.

16 **Mr Muir:** Yes.

17 **Mr Enright:** And in that case the panel prepared a list of questions that it wanted
18 answers from on counsels, that you may have seen.

19 **Mr Muir:** It did for a half day hearing.

20 **Mr Enright:** That's right, yes. So it could be fairly efficient, and in fact that process
21 worked really well, in my submission. I presented there for EDS.

22 **Mr Muir:** Yes.

23 **Mr Enright:** So that's the type of efficient process we'd submit may be of assistance.

24 **Mr Muir:** Right.

25 **Mr Enright:** But, of course, we would certainly take up an opportunity to deal with
26 it on the papers if that's the panel's ultimate decision.

27 **Mr Muir:** Well let's just see how this develops. Just without committing the panel in
28 any way, I think it's highly likely that, as we explore these legal issues further,
29 probably at the same time that the expert conferencing is occurring, this is an
30 available opportunity for us. I mean we are limited in what we can do until the
31 product of expert conferences is produced. But lets just use that lacuna now to
32 concentrate on some of these issues, which we will do with counsel assisting, and
33 then we will decide how best we think further submission is necessary, whether a
34 hearing might be contemplated. If it is, it will be a short and efficient process, just
35 like TTR.

36 **Mr Enright:** Thank you, sir. That's all we would ask, thank you.

37 **Mr Muir:** Okay, thank you. Thank you both very much. Oh sorry, before I let you go
38 I haven't asked my panel, and I'm quite certain that there are issues, ecological
39 issues down there that you wanted to raise.

1 **Mr MacGibbon:** Just a question for you Ms Vela, and I don't want to drill down into
2 technical stuff as it's not appropriate for here, but you did make mention of the
3 fact that Mr Head, and he has in his submission been critical of the use of the
4 EIANZ Affects Management Hierarchy. I note he calls it non-statutory. I'd have
5 to make a comment there it isn't a statutorily required method anyway. But what
6 would be helpful I think, if you could pass to him for any conferencing, is to
7 nominate an alternative, well used, well, you know by ecologists I guess, method
8 if he thinks that the EIANZ one is inappropriate. Just really a comment. I don't
9 expect a reply now, but if you could pass that on, that would be appreciated.

10 **Mr Enright:** Thank you.

11 **Mr Muir:** Yes, Peter.

12 **Mr Kensington:** And just from me, from a landscape point of view, thank you for
13 your submissions today. You've suggested in your commentary some agenda
14 items for the landscape architects, and one of them is to do with the compensation,
15 you know, and monetarising landscape. That was our discussion earlier on, and
16 when you first started presenting. Do you think there's any benefit in the
17 landscape architects and the economists getting together and sharing their
18 thoughts on that, or are landscape architects equipped to make those sort of calls,
19 I guess is the question?

20 **Ms Vella:** Yeah, that's a good question. I'm not sure that a landscape architect
21 necessarily is. Dr Kaye-Blake has got, as I said, at the back of his evidence an
22 appendix which has a bit of a blurb on how he would assess amenity effects from
23 a monetary perspective. So my gut feeling would be, it would be for Dr Kaye-
24 Blake, but we can always ask that question and come back to you as well.

25 **Mr Kensington:** Thank you.

26 **Mr Enright:** Sorry, but just to chip in on that, also obviously the landscape experts
27 can certainly address the efficacy of what's proposed. It is novel to suggest you
28 can compensate for the loss of ONL. And, of course, the aligned point around can
29 we actually – well is it deliverable, what's proposed in terms of remediation. So
30 that will certainly be an appropriate topic. Thank you.

31 **Mr Muir:** Anything else? Thank you very much indeed, Mr Enright and Ms Vela.
32 We'll hear now from New Zealand Fish and Game Council, and the Otago Fish
33 and Game. Yes, thank you Ms Gepp. I make a very quick disclosure at the outset,
34 Ms Gepp and I are in the same set of chambers in Auckland. I don't think that
35 that would be an issue which would in any way worry anyone. But I just raise it
36 if it is a matter you wish to explore further, or file any submission on. Thank you
37 Ms Gepp.

38 **SALLY GEPP KC FOR NZ FISH AND GAME AND OTAGO FISH AND GAME**

39 **Ms Gepp:** Thank you sir. Good afternoon, and good afternoon to the members of the
40 panel. Thank you very much for having us before you today. I'm here with Mr

1 Nigel Paragreen, who is the Environmental Officer for Otago Fish and Game
2 Council.

3 I have filed some written submissions. You probably don't have them. I'm not
4 sure if you have them before you yet. I do have hard copies if you would like
5 them, but it sounds like you are happy to work off electronic. What do you prefer?

6 **Mr Muir:** Because I haven't read them it just might be useful if you've got the hard
7 copy there.

8 **Ms Gepp:** Absolutely, thank you.

9 **Mr Muir:** And then we'll probably bin those as they come through and we - - -

10 **Ms Gepp:** That's not a problem. No offence taken. And we've got copies for Mr
11 Leckie and a few extras as well.

12 Just by way of introduction, the New Zealand Fish and Game Council is a
13 statutory body established under the Conservation Act and its responsible for
14 management and enhancement of sports fish and game resources in New Zealand.
15 And then the relevant regional council is the Otago Fish and Game Council and
16 the two entities have statutory functions relating to representing the interests of
17 anglers and hunters in statutory planning processes, and advocating for the
18 protection of fish and game habitat, and monitoring ecosystems for their suitability
19 as fish and game habitats.

20 So its comments on the Bendigo project focus on the project's effects and risks in
21 the short to long term on fresh water quality, aquatic ecology and sports fish and
22 game resources, and it has no position on mining, per se. So the approach I've
23 taken in these submissions is to summarise the issues raised in Fish and Game's
24 comments, and to the extent I've been able to, to review the reply material and
25 incorporate a position on where things are sitting on those issues, taking into
26 account the reply and the RFI material.

27 So I've sought to identify where things remain a live issue in terms of assessment
28 of water bodies within the mining site, the ecological value of streams within the
29 site does remain a live issue. The applicant has described water quality within the
30 site as impacted, and Dr Ryder has maintained that view in his reply evidence,
31 whereas Fish and Game's witness, Ms Kate McArthur, maintains that the
32 available monitoring results indicate that this is good quality water. This is
33 expected to be an issue to be addressed at conferencing.

34 Dr Ryder has also placed significant weight on the lack of fish within the site.
35 Fish and Game disagrees that the presence or absence of fish is of any particular
36 moment. There has been no comparison with appropriate reference sites in order
37 to determine whether the absence of fish is indicative of poor habitat value, or
38 simply the type of stream. This assumption that lack of fish means low habitat
39 value has also arisen in the new Boffa Miskell Stream Ecological Valuation
40 Assessment, the SEV assessment, and that's been presented as part of the
41 applicant's reply documents.

1 So this SEV assessment is something that was developed by Auckland Council
2 for assessing the ecological value of Auckland streams, and assessing impacts on
3 those streams. And the author of that report has acknowledged – sorry, the author
4 of the SEV report for this project has acknowledged that because of that you need
5 appropriate reference sites in order to apply that methodology locally. That hasn't
6 happened the author says due to time constraints associated with this assessment,
7 reference SEV reaches were not assessed. Instead surrogate reference scores have
8 been estimated based on the potential condition of Shepherd's Creek, Rise and
9 Shine Creek, and Bendigo Creek, and they acknowledge this to be what they call
10 a relatively bespoke approach, ie, not one that the method recognises.

11 So those potential scores have been – included the assumption that these streams
12 should contain fish, and therefore used to justify giving those streams a low
13 ecological assessment. But Fish and Game's submission would be that no reliance
14 can be placed on that assessment because of those methodological flaws in the
15 way it's been undertaken.

16 In terms of the wider receiving environment beyond the site, the project is situated
17 upstream of water bodies that have good water quality and significant freshwater
18 values, both in terms of in-stream values, so a trout fishery and indigenous fish,
19 and human use values, irrigation, frost control, water, drinking water. And Mr
20 Trotter and Mr Paragreen have provided statements that describe the sports fish
21 and game resources in those habitats.

22 Fish and Game's comments noted that there are some water quality issues
23 impacting the Lindis River, but the provision of an enhanced minimum flow,
24 which is coming into force in October 2026, is expected to reduce the current
25 abstraction impact. So the water take impacts that that river is experiencing. It's
26 submitted that when considering the project's effects, it's important to think about
27 that river as it will be, with that consented increased minimum flow in place.

28 Dr Ryder says that it is good to see Fish and Game acknowledge this improvement
29 because they argued strongly in the Lindis Environment Court hearing that this
30 would not occur. Now that criticism is a bit of a side issue, but Fish and Game
31 does want to respond to that contention that it takes different positions in different
32 planning and consenting processes, because it's not correct. Fish and Game's
33 position in that Lindis consent hearing was that the consent conditions should
34 provide for the minimum flow that had been specified in Plan Change 5A, rather
35 than the much lower minimum flow that had been sought by the irrigators. So it
36 wasn't ever arguing that there would be no improvement, but it was seeking a
37 greater improvement. So that's the position it took. It's not saying anything
38 inconsistent in this process.

39 Existing water quality in the surface and ground water systems in the receiving
40 environment was not described in the application documents. And the adequacy
41 of that assessment remains a live issue. The applicant has now provided additional
42 data regarding potential concentrations that would occur in these surface water
43 bodies via contaminants discharged from Shepherd's Creek in the reply evidence.
44 And that addition of contaminant – the new information about that is addressed

1 below. But before I get to that, just to note I'm at paragraph 11, in relation to
2 game bird resources, Mr Trotter and Mr Paragreens' statements describe the game
3 bird, so water fowl and upland game resources that are hunted in the area
4 surrounding the project site, including in Bendigo Wildlife Management Reserve.
5 And those matters of game bird values don't appear to be disputed based on the
6 reply evidence.

7 In terms of effects on water quality, freshwater ecology and human health.
8 Starting with water quality, the application materials did not include an assessment
9 of concentrations of potential contaminants of concern in downstream water
10 bodies. The application materials did not assess the project's impacts on in-stream
11 and human use freshwater values and overlooked critical impacts, including the
12 potential for bio-accumulation of contaminants in trout or other fish and game
13 birds, which may be harvested and eaten by people.

14 The applicant has now, in the reply evidence, modelled maximum predicted solute
15 loads from years 50 to year 200. So that's in Dr Weber's response to comments.
16 And then that has been converted, those loads have been converted to
17 concentrations at medium flows and mouth in the Lindis at the Ardgour and
18 Clutha, and that's in the evidence of Dr Ryder. Ms McArthur has requested the
19 data used to inform that load modelling. She requested that on 23 April but she's
20 yet to receive that information. Dr Weber has advised that MGL is pulling the
21 data sets together and will provide them sometime this week. So at that point the
22 accuracy of that load modelling, and the associated concentrations that have been
23 based on that load modelling, those remain live issues.

24 The modelled load outputs depend on assumptions as to seepage capture,
25 treatment effectiveness and groundwater movement, which also remain in dispute
26 and be potential for seepage of untreated contaminants to enter the receiving
27 environment via groundwater has not yet been addressed.

28 So uncertainty remains, with respect, to the applicant's ability to treat and meet
29 modelled concentrations and loads in the receiving environment, and with respect
30 to the potential for localised effects in the Mata-au Clutha and Bendigo Wildlife
31 Reserve where contaminants will not be mixed with the full flow of the Clutha
32 River.

33 There's a really key piece of new information that has come through the reply
34 evidence which I set out at paragraph 15, and that is that Dr Weber has reassessed
35 the peak solute load year as year 85. It was previously year 27. So the peak solute
36 load year has been pushed out by a factor of several generations. And on that
37 basis, he advises that active water treatment will now be required until year 85.
38 Or elsewhere in his evidence he also refers to year 90. So this is a very significant
39 increase on the duration of active treatment that was described in the application
40 materials, which has implications for the certainty of effective, active, and passive
41 treatment over such a long duration, as well as the closure conditions, the long
42 term project costs, and the bond. The appropriateness of authorising an activity
43 with such an enduring contaminant profile, requiring ongoing management for
44 more than three generations also remains a significant issue.

1 Turning to bio-accumulation. Bio-accumulation risks were raised in two contexts.
2 One was contamination of trout, game birds and sediment in downstream
3 receiving environments beyond the site, and the other was contamination of game
4 birds from direct contact with contaminated pit lake water.

5 Dr Ryder addresses the downstream contamination issue, and he contends that
6 downstream bioaccumulation is unlikely to be an issue due to the large turnover
7 of water in the Clutha River, and he says it will be addressed by the monitoring
8 that's being proposed by Dr Rekker. In response, Fish and Game observes that
9 Dr Ryder is not an ecotoxicologist. This is a specialist area, and one in which Fish
10 and Game would strongly recommend and respectfully request that the panel seek
11 independent specialist ecotoxicology advice.

12 Secondly, as noted above, many of the slow moving back waters within the
13 Bendigo Wildlife Management Reserve don't experience that same turnover as
14 the main stem, full flow Clutha River.

15 Thirdly, Dr Rekker doesn't actually propose tissue toxicity and bio-accumulation
16 monitoring, so it doesn't address the issue that's been raised. And fourthly, Dr
17 Ryder says that the risk of contaminants accumulating in the reserve, this is the
18 Bendigo Wildlife Management Reserve, is low, very low, as outlined in the
19 evidence of Dr Paul Weber. But Dr Weber's evidence only says that the build up
20 of contaminants in sediment is to be addressed by a monitoring programme. So
21 again, not an answer to the issue that's been raised. As such, bio-accumulation
22 risk in the receiving environment remains a live issue.

23 Bio-accumulation in game birds from contact with the pit lakes, which was raised
24 in Dr Webster-Brown's evidence as well as Mr Paragreen's evidence, and the risk
25 that those birds may then be harvested, which is described in Mr Paragreen's
26 evidence, is addressed optimistically in the applicant's legal submissions, with
27 reference to their – one of their terrestrial ecologists, Mr Lurling, who considers
28 that if it did result in a minor level of effect, it could be addressed by modifying
29 the shallow margin where the haul road enters the pit lake, such as by putting large
30 rocks there.

31 Mr Lurling doesn't actually assess the risk of bio-accumulation or the potential
32 effect. He acknowledges that elevated concentrations of trace metals, such as
33 arsenic, are known to bio-accumulate, and can adversely affect birds with
34 subsequent impacts. But he then says that bio-accumulation is outside his
35 expertise. So there's no assessment as such. He notes the potential to modify
36 shallow pit lake margins as a mitigation measure, but he doesn't provide any
37 opinion on the effectiveness of that in actually deterring birds' use of pit lakes,
38 and it might be a trite observation, but in Fish and Game's experience, birds fly
39 and land on lakes regardless of the depth of the water. So bio-accumulation
40 following direct contamination remains a live concern.

41 Turning to effects on trout. Dr Ryder considers that trout spawning values are
42 unlikely to be affected because the majority, if not all, of the spawning takes place
43 upstream of the lower Lindis, and under high flows when concentrations are more
44 diluted. It's correct that the majority of spawning takes place in those areas. Not

1 all spawning. There is some spawning that occurs in areas that interact with
2 groundwater that would be groundwater from Shepherd's Creek.

3 In addition, those lower reaches that interact with the groundwater from
4 Shepherd's Creek are important juvenile rearing habitat and trout that are
5 migrating, in order to spawn, need to pass through those areas. So the extent of
6 risks to trout is a live issue and it's also contingent on the question of water quality
7 limits, which is a very significant issue and one that Fish and Game was pleased
8 to see a number of questions about in the panel's request for information.

9 So, turning to those proposed water quality limits. These limits do a huge amount
10 of heavy lifting in terms of managing the adverse effects of discharged water
11 borne contaminants on the receiving environment. They have multiple
12 compliance and monitoring purposes. They identify when significant effects are
13 likely to arise. They define upstream treatment systems. They inform adaptive
14 management, they appear intended to inform closure criteria. So if they're not set
15 at the right level, or if non-compliance is not picked up, or if non-compliance is
16 picked up but then a response is not able to be put in place quickly and effectively,
17 then the environment risks being significantly impacted.

18 So, there are a number of fundamental concerns about the limits that have been
19 proposed. The limits – Mr Randal said this for Otago Regional Council – that the
20 limits allow for substantially greater contamination than the modelled inputs of
21 contaminants. So the inputs of contaminants have now been modelled, but the
22 limits are set at a much higher level than what is anticipated to be going into the
23 environment. So it's the limits that will control what can occur once this, if this
24 project is consented and we have all gone away, and where in 10 years, 20 years,
25 100 years time, it is those limits that control the extent to which leaching can – the
26 contaminant level, the leaching can go up to. They're also set much higher than
27 existing water quality in almost all respects.

28 Just in the interests of time, I'll just move past paragraphs 22, 23 and 24, because
29 these are all issues with the limits that I anticipate will be the subject of aquatic
30 ecology conferencing. So, I'll move through those. Also, same issues with 25,
31 26, 27, but suffice to say that the issues with the species protection level proposed
32 of 90 per cent, as opposed to 95 per cent remains a significant difference between
33 the water quality experts.

34 Paragraph 28. I just make the, I would say with respect, a very orthodox point,
35 that if the approvals are granted, it's essential that the limits are set in the consent
36 conditions, not in the management plan as currently proposed. Water quality is
37 an essential parameter that must be fixed by the panel and not delegated to a
38 management plan certifier.

39 Monitoring sites, paragraph 29, seems to be an issue that is largely now acceptable
40 in terms of surface water monitoring sites that have been proposed recently. Site
41 management and water treatment remains a significant issue in dispute and the
42 effectiveness of active water treatment, which is now anticipated to be required
43 until at least year 90, and the lack of any detail as to what passive water treatment
44 entails, remain live issues.

1 So I'll just move down to paragraph 32. The applicant has submitted that section
2 107 of the Resource Management Act is not engaged, and they give three reasons
3 for that. Fish and Game disagrees with each of those propositions, and submits
4 that whether the Panel can be satisfied of the matters in section 107 remains a live
5 issue and that section 107 should be given significant weight by the panel, given
6 that in a RMA context it would be a pass/fail criterion with a very high certainty
7 threshold requiring the decision maker to be satisfied that particular effects will
8 not eventuate.

9 Fish and Game maintains that the applicant's approach to adaptive management
10 is inconsistent with the requirements outlined by the Supreme Court and I rely on
11 the earlier comments for the details on that point.

12 And then the other aspect of Fish and Game's case has related to the tailings
13 storage facility, and failure risk managements, and its comments raised issues with
14 the extent to which information should be before the panel for determination now,
15 rather than being deferred to post-consent process assumptions regarding
16 relinquishment of responsibilities and mine closure criteria and those issues are
17 not resolved.

18 The assumptions about mitigation to be delivered through detailed design
19 underpin conclusions about dam failure risk, and these matters are, in my
20 submission, too fundamental to leave to a later stage. Fish and Game contends
21 that consistency with the Dam Safety Guidelines should be demonstrated before
22 consent can be granted.

23 My submissions, or my earlier comments for Fish and Game relied on the *Eyre*
24 interim decision, which required an applicant to convince it that its proposal was
25 consistent with the Dam Safety Guidelines and required a level of detail that might
26 normally be considered more appropriate at detailed design stage. The applicant
27 has submitted that the *Eyre* decision can be distinguished, but Fish and Game
28 disagrees with the points that have been raised, and I've included a response to
29 each of those points in paragraph 38 of my submissions.

30 Turning down to – I'll move past those to paragraph 39 – with respect to the
31 outstanding information that Fish and Game submits should be required now
32 rather than later. The first is about the waste rock, the ELF raising and how that
33 matches the tailing storage facility construction. And Dr Matuscha – and I'm not
34 sure if I've got that pronunciation right – Dr Matuscha confirms that there will be
35 enough waste rock to buttress the initial tailings dam prior to deposition of tailings.
36 But it doesn't go on to confirm there'll be enough rock to buttress each of the
37 tailing storage facility raises, and there is no condition requiring this. So there's
38 still a remaining uncertainty there.

39 Despite saying on a number of occasions that a minimum factor of safety of 1.5
40 will be achieved, the applicant has not volunteered a condition requiring this, and
41 it's not clear whether it is currently achieved near the RAS Pit bordering
42 Conservation land. And also, despite the application documents identifying that
43 there will be a post-earthquake factor of safety of 1.2, none of the applicant's
44 experts address how that will be increased to 1.5 if an earthquake occurs post

1 closure, and no factor of safety limit is given as a closure criterion. So this is not
2 so much an issue with what the scientists, or what the experts are saying is
3 achievable, but just having the certainty that it will be achieved, and how it will
4 be achieved.

5 Thirdly, mitigation for landslide risks. There is agreement that landslides present
6 a risk of failure while the tailing storage facility is being constructed and during
7 operations, but landslide mitigation is to come at detailed design stage, which Fish
8 and Game contends needs to be firmed up now, and addressed in consent
9 conditions.

10 And the last point relates to effective emergency preparedness and response
11 procedures and planning, and provision for closure being more fully developed.

12 Last point, the mine closure conditions. All relevant details are deferred through
13 these conditions to the Mine Closure Plan, which I submit is an unlawful
14 approach. The completion criteria and the Mine Closure Plan itself are vague and
15 the applicant accepts they're considered preliminary. These issues are not
16 remedied by the new proposal to require the Mine Closure Plan to be prepared at
17 an earlier stage.

18 The applicant's legal submissions say that there is certainty that the transition from
19 active to passive water treatment can only occur once contaminant loads have been
20 demonstrated to have reduced to predetermined levels that are known to be
21 manageable by passive treatment systems, and that this provides certainty that
22 active treatment will remain in place until the identified limits are met and
23 provides certainty that downstream water quality limits will be met. But there are
24 no predetermined levels, and there's nothing requiring that those levels are known
25 to be manageable by passive treatment systems, and there are no identified limits
26 for closure. So there is no certainty that downstream water quality limits will be
27 met, or that those limits, and as I've said above, those limits are set well above
28 existing contaminant concentration levels in receiving water bodies.

29 Sorry, there is one more point to make in substance, and that is about bonds and
30 insurance. That the applicant has provided additional details of how the bond
31 would operate and has broadened the proposed scope. Fish and Game remains
32 concerned that the matters that Mr Lane says will be covered by the bond are not
33 actually required by the consent conditions. The bond scope doesn't provide for
34 tailing storage facility, or engineered landform repairs, which could involve very
35 substantial costs, and condition C123 still provides that the bond methodology
36 will follow the Lane Report, but the Lane Report, which doesn't actually contain
37 a methodology section, is completely unsuitable as the basis for a comprehensive
38 bond.

39 Everything here rests on the future owner of the site and the bond guarantor, given
40 the applicant's stated intention to relinquish the site and its responsibilities and the
41 applicant says it will obtain insurance, but the conditions do not require this, or
42 set out any scope for what that insurance must cover.

1 On the other points, the covenant revocation I've got nothing to add to Fish and
2 Game's comments that were in its original comments document. Fish and Game
3 maintains that the project involves very significant adverse impacts that may be
4 sufficiently significant to be out of proportion to the project's benefits as set out
5 in its comments.

6 Thank you.

7 **Mr Muir:** Thank you very much Ms Gepp. Any questions from the panel?

8 **Mr Johnson:** Just a question on your closure plan. In the absence of the development
9 of designs, et cetera, the closure plans in detail will be largely fictitious, if I could
10 be so bold to say, because they won't actually know what the final might look
11 like. But are you referring to actual development of those plans or are you turning
12 to the philosophy of closure and what closure criteria are defined by?

13 **Ms Gepp:** The issue is with the criteria that enable closure to occur. So those, I submit,
14 are actually things that need to be in the conditions.

15 **Mr Johnson:** No I agree with you. I was just trying to clarify what you meant by
16 detail in closure plan, that's all?

17 **Ms Gepp:** Whether a plan is prepared now is not really the issue. The question is what
18 do – do we have certainty about the point at which closure - - -

19 **Mr Johnson:** Can be defined, yes.

20 **Ms Gepp:** - - - is identified and how do we move from closure to post-closure. That is
21 the question. Those details ideally in the condition – well not ideally, they need
22 to be in the conditions, not in the management plans.

23 **Mr Johnson:** Okay, just clarifying what you meant.

24 **Mr Muir:** The proposition that a statutory body, which is established to enhance sports,
25 fish and game bird resources in New Zealand and which advocates for the
26 protection of, among other things, fish habitats, taking a position in relation to
27 water courses which seasonally, and in some cases simply run to ground, and
28 therefore do not sustain fish habitats, does seem on the face of it unusual.

29 **Ms Gepp:** The downstream water courses are significant - - -

30 **Mr Muir:** Oh absolutely.

31 **Ms Gepp:** - - - trout habitats.

32 **Mr Muir:** Not an issue whatsoever about your submissions from paragraph 12
33 onwards.

34 **Ms Gepp:** Oh about the streams within the receiving, within the site itself?

35 **Mr Muir:** Yes. Yes.

36 **Ms Gepp:** Well Fish and Game has engaged an independent ecologist who determines
37 – who provides her independent opinions on the matters that she assesses as
38 relevant to her area of expertise. So whether those are specifically Fish and Game
39 fish habitats - - -

1 **Mr Muir:** Responsibilities, yes, yes.

2 **Ms Gepp:** - - - is not, in my submission, the primary issue. Having become involved
3 in this process and advocating broadly for, in accordance with its statutory
4 functions, it has produced expert evidence and Ms McArthur has provided an
5 opinion on other matters.

6 **Mr Muir:** So essentially we should look at Fish and Games' evidence in relation to all
7 of these matters even though some of it, on the face of it, looks a little bit beyond
8 brief?

9 **Ms Gepp:** Well respectfully - - -

10 **Mr Muir:** Outside the – outside statutory brief.

11 **Ms Gepp:** - - - respectfully I submit that it is not the panel's role to decide what the
12 scope of Fish and Games' statutory functions are.

13 **Mr Muir:** Right.

14 **Ms Gepp:** The other, in terms of the values of the streams within the site, there is a link
15 as well to downstream water bodies in the sense that those, the values of those
16 streams within the site are being used to determine the protection criteria levels
17 which set the limits for which are then applied to downstream water bodies. So
18 in terms of protecting habitat, it's not just the place where the trout live and are
19 swimming around. It's all of the water bodies that feed into those habitats as well.
20 Particularly when those - - -

21 **Mr Muir:** Well obviously to the extent that those other water bodies could contaminate
22 the habitats of fish and, well in this case fish?

23 **Ms Gepp:** Yes.

24 **Mr Muir:** Yes.

25 **Ms Gepp:** Yes, and the site itself, the values of the site itself are being used to set the
26 downstream water quality limits, by reference to the species protection levels.

27 **Mr Muir:** Well thank you very much, Ms Gepp. Very valuable presentation and I
28 think that we're absolutely right on time at 2.35. Thank you.

29 **Ms Gepp:** Great, thank you.

30 **Mr Muir:** Thank you. I'd like to now invite the submission or presentation by
31 Mr Sanders, and I think you may have another with him, on behalf of the Santana
32 Mine Supporters Group. Thank you Mr Sanders. Just when you're ready Mr
33 Sanders.

34 **BILL SANDERS FOR SANTANA MINE SUPPORTERS GROUP**

35 **Mr Sanders:** Thank you. Chair, Panel Members, thank you for the opportunity to
36 speak today. I'm here representing 10,000 people, not organised campaigners, but
37 working locals, families and businesses with a direct stake in what happens next.
38 People who live within the economic reality of this region every day. If you've
39 been reading the headlines, especially the local paper, you'd think this project isn't

1 wanted here. That's wrong. Flat wrong, because in 12 weeks, no fundraising or
2 funding, no celebrity backing, no media support, we grew to over 8,000 people.
3 Now, 10,000. We've hit 10,000 members just today. You don't accidentally build
4 a community of that size, if the region's against something.

5 So we tested it within our group with a survey. Eight hundred and fifty two people
6 put their names to that survey, and it showed 95 per cent fully support it, 99.4 per
7 cent support the project with conditions, 99.8 say it will have a positive economic
8 impact. Over half – over half have lived or worked here long term. Nearly a third
9 have mining or resources experience. They aren't armchair warriors. Those are
10 the people living streets away from this hearing.

11 You see the quiet majority don't speak up lightly here. There's a cost. One of our
12 members was targeted publicly by a journalist for backing this project. He took it
13 to the Media Council and won. But most people see that and stay quiet. That's
14 why this group exists, because it gives those people somewhere to stand together.

15 That same guy, that was targeted, flies to Australia every month to work. He
16 leaves his wife and toddler behind just to keep the family going. If this doesn't
17 go ahead he's not coming back here. He'll move his whole family to Australia,
18 and he's not the only one. Our survey shows nearly half see people leaving as a
19 real issue. A third say this project would help bring them back. And this is what
20 this decision is about. Families. Where the people get to live where they're from
21 or not. I want my kids to come home. They're both in Australia, they want to be
22 here, we'd love this project to be the reason for that to happen.

23 Let me be direct about what life looks like here. We've got Central Otago house
24 prices and wages that don't match. Here in Cromwell we've got seasonal workers
25 and service workers who travel to Queenstown every day. People working hard,
26 but they're stuck. Wine and tourism are not going to save us. They are important
27 industries, they are, but full employment on lower wage jobs does not get you into
28 home ownership. We've got skilled workers right on the cusp of leaving and if
29 they go they don't come back.

30 We are grateful this is an evidence led process, because what we've seen publicly
31 has been emotion and low fact. I've never done anything like this in my life. But
32 if there was ever evidence something was wanted and desperately needed, it's this.
33 I stand here – I'm sitting here proudly representing the 10,000 people who are
34 behind this. We are the evidence.

35 We've heard this line, this mine will be a short term sugar hit. That doesn't stack
36 up against the numbers. Using figures contained in the application, this project is
37 tens of millions of real money into the region every single year. We're talking
38 about workers and families spending millions locally on rent, groceries, fuel,
39 trades, the basics that keep towns alive. And that's not the full picture. If you
40 layer in local contractors and suppliers, earthworks, transport, engineering,
41 maintenance, and you're looking at tens of millions a year turning over in this
42 district. Great. That's not a sugar hit. That's a backbone.

1 This is based on \$786 million in wages over the life of the project, flowing through
2 real households into real businesses in places like Cromwell, Alexandra and right
3 across Central. It's the money that keeps shops open, keeps tradies busy, it keeps
4 families here. Because when people earn here they spend here. And that's how
5 you build a local economy that actually lasts. If this project is green lit, and we
6 hope it is, the ripple effect will be enormous. We bring our people home, we
7 upskill locals, we give families a real shot and we send a clear signal, this place is
8 open for business and growth, and prosperity.

9 This isn't blind support. People understand the risks. They've raised concerns,
10 and they expect monitoring, enforcement, accountability. This isn't a group
11 asking you to wave it through. It's a group asking you to get it right. The
12 frustration is the gap between reality and the story being told. The project hasn't
13 as much divided this community as the story telling around it has.

14 I'll finish on the lizards. You've heard a lot about them, and that matters. That
15 should. But today I'm here for the locals, the people who live here, work here,
16 and they raise families here. Not in Wellington, not in Dunedin, not in Hollywood,
17 here. Now don't get me wrong, the wildlife matters. And so do people. Right
18 now it feels like the lizards have a full legal team and the locals they've got me.
19 So please don't forget about us, because this is a once in a generational opportunity
20 to bring people home, to grow this region, and to give ordinary people a future
21 that they can actually stay for.

22 Thank you very much.

23 **Mr Muir:** Yes, thank you very much Mr Sanders. Are there any questions from the
24 Panel?

25 **Mr Johnson:** Mr Sanders, just in terms of your percentage of your survey that wanted
26 conditions, or did they have any clarification as to the extent of what those
27 conditions would focus on?

28 **Mr Sanders:** About 25 per cent currently from Central Otago strongly support spread
29 across the local towns.

30 **Mr Johnson:** No it's not where they're from, it's what the conditions would be on,
31 you know like water quality and all those. Did they have any specification around
32 those, or is that something that we could get later from you?

33 **Mr Sanders:** Well, what was that again sorry?

34 **Mr Johnson:** The question is, you had a number of people that said they agreed with
35 the project, with some conditions on the project around controls. Did they provide
36 any guidance what kind of controls they were looking to see?

37 **Mr Sanders:** Well they want it done right. And doesn't everybody? And that's what
38 they've said to me.

39 **Mr Muir:** Is their expectation that this panel, rather than others later, define the use
40 with such particularity that their expectations are met. Are they looking to this
41 Panel for that?

1 **Mr Sanders:** Well I wouldn't expect this panel to take anything less than good
2 guidance, good - - -

3 **Mr Muir:** Best practise.

4 **Mr Sanders:** Best practise, yes. That's - - -

5 **Mr Muir:** Yes.

6 **Mr Sanders:** - - - that's what we would expect. We don't want anything going wrong
7 in our community. We want things done right. That's what we're here for.

8 **Mr Barry:** Just a question from me. You mentioned the concerns currently about
9 house prices in the region and how they're relative to wages. Do you have any
10 concerns about possible upward pressure on house prices with the mine and new
11 workers coming into the region?

12 **Mr Sanders:** Well seriously a \$140,000 wage creates real intergenerational
13 opportunity and it will help give people a lift up and it's a long lasting thing. It's
14 not going to be a thing that's going to be a flash in the pan. This is going to last.

15 **Mr Muir:** Well we've got another nominally just on 400 people chasing
16 accommodation. Some of them, of course, will move from one job sector into
17 another higher paying job sector. They may not be new folk to Cromwell or
18 Central Otago. But there will be almost inevitably some new people coming into
19 the area adding upward pressure on house prices.

20 **Mr Sanders:** Yes. That's – yeah that will happen. It happened back in the days when
21 the dam was here too. There was a lot of demand on houses as well. But
22 Cromwell's been through that before. I should know a wee bit about that, because
23 I'm in the accommodation business myself. So I know how much demand there
24 is on that, and I've been campaigning for that as well. So, yes. But with good
25 wages, people can afford to buy good housing and it's something that young
26 families need to do here. They need to have good wages so that they can afford
27 to pay a mortgage. And that's how I see it, really.

28 **Mr Muir:** Well, thank you very much Mr Sanders. We're now going to take a quick
29 break for about 10 or 15 minutes and then we'll resume with a remote submission
30 from Forest and Bird. Thank you again.

31 **Mr Sanders:** Thank you very much.

32 **Afternoon break**

33 **TIM WILLIAMS FOR FOREST AND BIRD**

34 **Mr Muir:** Good afternoon Mr Williams. You join us from some parts distant on behalf
35 of Forest and Bird. Thank you.

36 **Mr Williams:** I'm a senior environmental lawyer employed by Forest and Bird. Can
37 you hear me okay?

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

1 **Mr Williams:** My apologies that I couldn't be there in person today. Thank you for
2 making remote submission possible. In addition to legal submissions, which I'll
3 come back to, Forest and Bird has provided the panel with evidence from Chelsea
4 McGaw setting out the concerns of our local branches, ranging from effects on
5 invertebrates, birds and terrestrial ecology to potential tailings dam failure, and
6 also expert evidence on lizards from Samuel Purdie, who generally agrees with
7 DoC's assessment on lizards and concludes that the applicant's assessment is
8 flawed in various respects and that the proposed mine poses a significant and
9 potentially unprecedented threat to native lizards in Central Otago. Together with
10 Sustainable Tarras, Forest and Bird also jointly instructed Dr Mead, who has
11 provided expert evidence on economics. This evidence is addressed in detail in
12 the comments of Sustainable Tarras. Forest and Bird adopts those comments,
13 together with the evidence of Dr Mead, and any questions on this subject would
14 be better addressed to counsel for Sustainable Tarras.

15 Numerous parties have commented on this application and a large volume of
16 expert evidence has been produced. In terms of how this evidence should be
17 considered and weighed by the panel, Forest and Bird agrees that the legal position
18 is as described by counsel for Sustainable Tarras. Overall, as we've stated in our
19 written comments, Forest and Bird considers that the adverse impacts are out of
20 proportion to the project's regional or national benefit and that the application
21 should be declined in accordance with section 85(3) of the Fast-Track Act.

22 My submissions today focus on issues surrounding the Bendigo conservation
23 covenant which were raised in Forest and Bird's written comments and on the
24 applicant's response to these comments. There are four parts to my submissions
25 today. Firstly, some further comments on conservation covenants generally.
26 Second, comments on the relevance of specific terms of the covenant in a fast-
27 track context. Thirdly, comments on clauses 45 and 46 of schedule 6 of the Fast-
28 Track Act and how these should be interpreted and applied by the panel, and
29 finally some comments on the applicant's approach to assessing and responding
30 to adverse effects on covenanted values.

31 So on conservation covenants generally, conservation covenants are an important
32 and valuable tool in conservation and resource management. As stated in our
33 written comments, allowing covenanted values to be traded off risks undermining
34 public confidence in 10 year review processes and conservation covenants more
35 generally. This has been dismissed by the applicant in its response to comments
36 as hyperbole. However, I ask the panel to note that similar concerns have also
37 been raised by the Minister of Conservation, who states in his comments that
38 revoking or amending the covenant in a way that is contrary to the covenant's
39 objectives, particularly if no direct compensation or mitigation is offered by the
40 applicant, could set a precedent and undermine confidence in the process used to
41 set up such covenants beyond the fast-track process. And he also says that there
42 is a risk that a 10 year review process could be seen as undermined if changes that
43 were contrary to the covenant's objectives were approved without alternative
44 protection or mitigation in place. Notably, the Minister's comments haven't been

1 referred to by the applicant in its criticisms of similar points made by Forest and
2 Bird.

3 In my submission, the relevant considerations are even wider than just ensuring
4 that we can have confidence in conservation covenants. There is an important
5 issue in play about how we honour the agreements that we make and this point
6 leads into the second part of my submissions, which is about how specific terms
7 of the covenant apply to this fast-track application.

8 As the applicant has pointed out in its response to comments, each covenant exists
9 in a distinct legal and factual context. In my submission, what is essential is that
10 the expert panel, so far as possible under the Fast-Track Act, honours the specific
11 agreement that was made between the Bendigo landowners and the Minister of
12 Conservation.

13 There is a degree of subtlety to the way in which the Fast-Track Act impacts on
14 the covenant. To begin with, clause 3 of the covenant requires the landholders to
15 seek the Minister's prior approval before allowing mining to be carried out on
16 their land. The landholders did not seek prior approval and must therefore be
17 relying on the Minister's approval to be provided as part of the fast-track
18 approvals process before mining commences. In the absence of approval by the
19 Minister, the landowner consent provided by the Bendigo landowners would be
20 unlawful.

21 The applicant has argued in its response to comments that clause 3 of the covenant,
22 which I have just referred to, doesn't apply because the applicant is seeking the
23 partial revocation of the covenant as opposed to approval under the covenant
24 itself. However, as the applicant also acknowledges, the covenant is protected by
25 registration, therefore it is only revoked when the encumbrances are removed from
26 the land register and it remains in force until this final step has been taken. This
27 means that the applicant's position on clause 3 of the covenant must be wrong.
28 The final step under clause 47 of schedule 6 requires the Minister of Conservation
29 to give effect to the panel's decision by applying for the removal of the covenant
30 from the identified pieces of land and by doing anything else necessary to revoke
31 the covenant.

32 In my submission, this creates a degree of legal tension for the Minister which the
33 expert panel should be mindful of. On the one hand the Minister is required by
34 the Fast-Track Act to give effect to the panel decision. On the other hand, he
35 remains bound by the terms of the covenant, including its conservation purposes.
36 The only way that this tension can be satisfactorily resolved is by the panel
37 ensuring that it has properly had regard to the Minister's obligations under the
38 covenant while fulfilling its own functions under the Fast-Track Act. Crucially,
39 this is entirely consistent with the relevant provisions of the Fast-Track Act, which
40 is the topic for third part of these submissions focusing on clauses 45 and 46 of
41 schedule 6.

42 In addition to the purpose of the Fast-Track Act, clause 45 requires the panel to
43 take into account the purpose of the covenant and the conservation values of the

1 land concerned and whether the amendment or revocation will compromise values
2 of regional, national or international significance.

3 Clause 46 enables the panel to set conditions relating to amendment or revocation
4 of covenants. In the case of revocation, this includes the protection by the
5 applicant of equivalent land outside the area of the covenant. In my submission,
6 when the Fast-Track Act refers to equivalent land, this must be referring to land
7 with equivalent conservation values. It cannot simply be referring to an equivalent
8 amount of land because this would not help to address the assessment criteria in
9 clause 45.

10 On this basis, the applicant for revocation of a covenant should therefore be able
11 to demonstrate that areas proposed for alternative protection have equivalent
12 conservation values. However, I have not been able to find evidence which
13 establishes that the applicant has done this. Instead, the applicant consistently
14 focuses on the area of alternative land that would be protected, which is larger in
15 terms of hectares, and on the proposed management of the land which is more
16 intensive in terms of biodiversity management than is required under the terms of
17 the covenant. This approach is particularly concerning when applied to nationally
18 significant habitats and species that would be lost on the covenanted land,
19 including in this case the loss of cushion field habitat and spring annuals, which
20 the applicant acknowledges would not be offset or compensated for under its
21 proposals. Contrary to the applicant's response to comments, the issues raised by
22 the existence of the covenant mean that the proposed offsetting and compensation
23 areas cannot remove the need to impose conditions under clause 46.

24 The key point here is that clauses 45 and 46 specifically require the panel to take
25 into account the purposes of the covenant and the covenanted values that would
26 be compromised, and whether land with equivalent values can be protected in
27 exchange. What is required, and is still currently missing, is an assessment of
28 whether the proposed offsetting compensation areas have equivalent conservation
29 values to those that would be lost. If it isn't possible to provide for protection of
30 an alternative area with equivalent conservation values, for example because the
31 values are very rare, this should weigh heavily against the revocation of the
32 covenant. Granting revocation in such circumstances would also seriously risk
33 undermining public confidence in conservation covenants more generally.

34 Finally, some comments on the applicant's approach to the covenant. In its
35 response to comments, the applicant has reiterated its position that an assessment
36 of the covenanted values has already been provided in the substantive application.
37 However, when it comes to assessing the impacts of the project on these values
38 and any proposed methods of addressing those impacts in the substantive
39 application, the applicant simply refers again to its proposed offsetting and
40 compensation measures that have been provided in the context of its application
41 for approvals relating to the RMA. Essentially, the applicant's position appears
42 to be that the existence of the covenant does not mean that it needs to do any more
43 than it would be doing anyway for its application for approvals relating to the
44 RMA. In my submission, the applicant is wrong to take this position.

1 Notably, as previously mentioned, the applicant's RMA assessment concludes
2 that the proposed activity will result in the permanent loss of certain values. The
3 applicant has not attempted to address this permanent loss with reference to the
4 covenant, nor has it provided any option for the protection of equivalent values on
5 land elsewhere.

6 In its request for further information, the panel requested an assessment of the
7 proposed revocation of that part of the covenant over the project area against the
8 documents referred to in the recital of the covenant. In terms of ecological values,
9 a response was provided by Professor Norton on behalf of the applicant, who
10 acknowledged the very high conservation values that would be lost through the
11 proposed revocation of the covenant. Professor Norton's conclusion that open
12 cast mining will not diminish the conservation values appears to be primarily
13 based on a comparison of the size of the proposed offset area to the size of the
14 covenant area that would be lost, and the relatively intense approach to
15 biodiversity management that is proposed. In my submission, this is not the
16 correct approach. The focus should be on whether equivalent land to be protected
17 outside the area of the covenant includes equivalent conservation values to those
18 found on the covenanted land.

19 In conclusion, the panel should attempt to honour the terms and conservation
20 purposes of the covenant to the greatest extent possible under the Fast-Track Act.
21 In my submission, the panel can do so by, firstly, considering the purpose of the
22 covenant and the conservation values of the land fully, including the specific
23 objectives set out in clause C of the recital to the covenant, and secondly, because
24 of the high conservation values that are at stake here, only granting the application
25 for revocation if it is satisfied that conditions can be imposed that would ensure
26 the protection of land with equivalent values outside the area of the covenant.

27 Thank you, those are my submissions.

28 **Mr Muir:** Thank you very much Mr Williams. Does the Panel have any questions for
29 Mr Williams.

30 **Ms Sweetman:** Thank you Mr Williams. Do conservation covenants in general usually
31 include the clauses such as requiring the approval of the Minister for works to be
32 undertaken or anything else?

33 **Mr Williams:** My understanding is that's quite a common construction.

34 **Ms Sweetman:** Right. So do you think in that regard then what the provisions are in
35 the Fast-Track Act were written specifically to override conservation covenant
36 conditions requiring the Minister's approval?

37 **Mr Williams:** I don't think that that's what's - I don't think it's quite as simple as that.
38 The Fast-Track Act doesn't specifically override the terms of the covenant. What
39 it does do is sets up a process whereby the application for amendment or
40 revocation is considered by the panel and then the conservation - the Minister of
41 Conservation is then obliged to give effect to that decision.

42 **Ms Sweetman:** So in effect - - -

1 **Mr Williams:** So what – the prior approval is provided at the end of the process, if you
2 like, but before the mining has commenced.

3 **Mr Muir:** Any other matters? Thank you very much indeed Mr Williams for joining
4 us this afternoon and that very useful if dense submission. Thank you. Well,
5 Mr Miles and Ms Gepp, you appear for Sustainable Tarras. Good afternoon
6 Mr Miles.

7 **JULIAN MILES FOR SUSTAINABLE TARRAS INC**

8 **Mr Miles:** Good afternoon sir. Well, Ms Gepp and I are going to share the comments
9 this afternoon. Not equally though. I'm being given a 10 minute slot.

10 **Mr Muir:** Well Mr Miles, you were always the most efficient advocate ever to appear
11 before me in the High Court and I imagine that like a good Bendigo Pinot you
12 only improve with age.

13 **Mr Miles:** Well, I'd like to think so. There's got to be some advantages in age as it
14 were. What my role is, and I'm planning just to stay with the 10 minutes if I
15 possibly can, is really to give an overview of six issues. And then Ms Gepp will
16 step in and deal with the very significant analysis of the evidence and the legal
17 issues. So I will need to progress perhaps a little more quickly than I have done
18 sometimes in the past but I need to get through those six issues within the time
19 I'm allotted.

20 So the first is who Sustainable Tarras is. It represented a relatively small group
21 initially that was local and very concerned about the implications of the mine site.
22 It quickly morphed into quite a substantial organisation. Bears some similarity to
23 the previous witness as a matter of fact. The current number is 10,600. More
24 significantly, however, there is a groundswell. That group is increasing literally
25 at a rate of about 1,000 a fortnight. And my sense is that this groundswell is
26 fuelled by, firstly, a growing realisation of the extent and potential damage by the
27 mine to the environment and, secondly, perhaps a growing scepticism over the
28 proposed benefits. I just want to emphasise that this group is not opposed to
29 mining per se, just opposed to this mining.

30 My second point, the Panel only has one opportunity to get this right, and this was
31 a point emphasised by Simon Upton when producing his report. What interested
32 me is that when looking at the New Zealand implications, not only is this the first
33 application for a major extractor project in an outstanding landscape, but it's
34 actually the first dealing with the revocation of a perpetual conservation covenant
35 under the FTA.

36 And thirdly and significantly, this is obviously going to be a precedent for a
37 significant number of miners that have already been issued with exploratory and
38 inspecting permits covering Central Otago and Otago generally. Essentially,
39 when you look at a map which was prepared – well, certainly included in Professor
40 Hyams' evidence, and I do invite you to have a look at that when you've got a
41 moment, because you'll see the extent of the mining permits across Otago.
42 There's no question this is a stalking horse for a significant number of future

1 applications. And hence the importance, which obviously I don't need to stress,
2 but the importance though of insisting on the highest possible standards –
3 standards which, for the reasons that we have tried to express, this application gets
4 nowhere near.

5 Now the third point, the immaturity of the New Zealand regulatory landscape.
6 MGL has repeatedly told the Panel that its project is designed to be regulated to
7 highest standards. We say that's not borne out by the application. The mining
8 regulatory system in New Zealand is relatively loose, it's relatively immature and
9 it compares unfavourably with the more formal and restrictive and experienced
10 requirements in Australia and Canada. Specifically, they require pre-approval for
11 tailing facilities, specifically for full disclosure of cost estimates independently
12 verified by the regulator, a key failure for MGL. Secondly, demonstrable operator
13 competency. My only point here – MGL never built or operated a mine anywhere
14 in the world. It seems difficult to see how they can possibly comply with those
15 requirements should you as a panel consider that they are relevant to the
16 application. The global industry standard on tailings management standards – the
17 GISTM – is the international benchmark for the design and operation of tailings
18 dams. Now I accept that it's voluntary. There's no requirement in New Zealand
19 to join it.

20 My point though is that that's now the international best standard available and
21 some hundreds of mining companies have joined internationally. More
22 specifically Oceana, the largest of course and most successful, probably really the
23 only really significant gold mining company left in New Zealand, has signed up.
24 It seems inconceivable to me that the Panel wouldn't accept – would accept
25 anything less than the international benchmark for an application as serious as
26 this. And the New Zealand guidelines recommend that companies should follow
27 them. The applicant's general response to this is "well, our application is similar".
28 But without actually signing up to these standards, the words are meaningless.
29 There is no legal requirement to do so, there are no sanctions involved, and I say
30 - we say - that the refusal to join is deliberate.

31 Now these systemic failures are probably, we say, impossible now to get over.

32 The fourth point, the competence and trustworthiness of the applicant. Now that's
33 essential because there's a good deal of trust placed in this fast-track application.
34 All the traditional checks and balances, the time spent on applications, cross-
35 examination, appeals, all the orthodox systems that are set in place to ensure that
36 panels and judges get the right result, have largely been overruled for this, and
37 underpinning this is a sense that there is considerable trust in the application.
38 Because only with that trust really can a panel determine what the likely outcome
39 might be. And when assessing credibility, it is important to look at the way in
40 which the applicant has behaved in the preceding five or six years and how it's
41 handled the application. And we say there are three strands of evidence here that
42 are going to be of some assistance.

43 Now the first is the regulatory compliance history. In the previous five or six
44 years, there's been at least two significant breaches of the OI Act, one in 2020

1 where it acquired the company that morphed into the present company. It simply
2 didn't seek the OIO consent when it should have. Secondly, at least five district
3 plan breaches, as a matter of fact, just in the last nine months. Three of them in
4 June 2025 which was the subject of a formal warning by the CODC. And as late
5 as March this year, another abatement notice requiring MGL to remove a
6 communications tower. What I say is that here is a consistent pattern of behaviour
7 that indicates a certain irresponsibility – a certain reluctance – by the applicant to
8 comply with its legal obligations. And that's fundamental in assessing whether
9 this is an application to proceed.

10 Secondly, the gaps in the evidence, the failures to respond to key questions,
11 particularly posed by the panel, and the either non-disclosure or late disclosure of
12 key reports, also a crucial element in assessing credibility. And what I'm referring
13 to is the specific and very late disclosure from the applicant of the costs involved
14 in the running of the business and the price of gold that is necessary to cover those
15 costs. This is obviously a crucial factor in assessing the credibility of the
16 application. And what it turned up is that the price of gold necessary to cover the
17 cost – US\$2,131 an ounce – which turned out to be a mere four per cent below
18 MGL's base or most probable case of the likely figure of what gold will reach –
19 \$2,220. And an issue of four per cent difference between the viable and the non-
20 viable in the context of so many unknowns and so many heroic assumptions by
21 the applicant is far too low. And it puts the whole issue of the viability of the
22 company directly in issue.

23 And of course the next point – the social impact assessment which they obtained,
24 refused to disclose, even at the suggestion of the panel. The obvious inference,
25 it's conceded damaging effects that can't be rectified. But it's also a trust issue.

26 And the third issue involving trust, the engagement with the community. And that
27 has been woeful. In the view of my client, there's been no meaningful engagement
28 at any stage. And the most obvious point is that as a result of a series of frustrating
29 meetings, they issued a list of about 50 questions in June last year – a substantial
30 number of those which have never been answered. So we say there's essentially
31 been no meaningful engagement.

32 Now that lead – comes to my fifth and second to last point that when you look at
33 the economic benefits to New Zealand, which of course goes to the heart of one
34 of the key issues here, what you can look at is the reality of how Oceana, the
35 primary gold producing company in New Zealand, how they have coped with the
36 last few years and what profitability they've managed as a result of mining here.
37 And I've given you the figures here. In 2021, they paid no tax, royalties
38 \$4 million. In 2022, a mere \$2 million in tax. In 2023, no tax. In 2024, \$6 million
39 tax. In 2025, the bonanza of course, by the current price of gold, which historically
40 is anomalous, and of course a direct result of the current difficulties around the
41 world, the profits rocketed to \$170 million. But just compare that with the
42 previous four years and you get a sense of how unreal the economic projections
43 are by the applicant.

1 But that's the real world when you're testing projections, see what has actually
2 happened by an actual player.

3 And the last, the tailings dam and waste rock dump, likely become a permanent
4 Crown liability and that's a direct consequence of the corporate structure. A
5 subsidiary which has applied for the licence has all the responsibilities and the
6 obligations. A parent company takes all the profit. No guarantees from the parent
7 company. A subsidiary that would be walking away in 12 years' time when the
8 mining ceases and ongoing substantial obligations to maintain what is there,
9 looking like now for another 70 or 80 years. And that creates all sorts of long
10 term issues. And as a consequence, we say that there is a real risk – a risk that
11 actually cannot be coped with legitimately, that the obligations will finish up
12 either with the Crown or the ratepayers.

13 Well, thank you, that's my overview. And then I'm passing it to Ms Gepp to deal
14 now with the specifics.

15 **Mr Muir:** Thank you Mr Miles.

16 **SALLY GEPP FOR SUSTAINABLE TARRAS INC**

17 **Ms Gepp:** Thank you Mr Miles. I would like to start with a point that Mr Randal
18 addressed for Otago Regional Council and that is this question of the six year
19 statutory limit on water permits in Otago. I take a different interpretation from
20 Mr Randal. In my submission, the starting point is that under the fast-track, the
21 applicant can apply for a resource consent that would otherwise be granted under
22 the Resource Management Act. Now a resource consent that would otherwise be
23 granted under the Resource Management Act to take water would normally be a
24 resource consent for 35 years maximum. In Otago, it's a resource consent for six
25 years. So what could even be sought under the Resource Management Act is the
26 starting point. So section 127B applies in my submission because the applicant
27 has to first of all ensure that it's applying for something that could be applied for
28 under the Resource Management Act.

29 So then the other aspect of that is Mr Randal's interpretation of clause 17(7) and
30 how that refers to sections 123 and 123A but doesn't refer to sections 123B and
31 127 of the Resource Management Act. Now in my submission there's an easy
32 explanation for that and it's not because they weren't intended to be included. It's
33 because they were added in 2025 after the Fast-Track Act was written. So
34 nobody's gone back and updated it to refer to those additional provisions, but
35 they're nonetheless captured through the reference in section 123 to accept as
36 provided for in those other provisions, including 127B. So I submit that that is a
37 fundamental problem for this application. It can only seek a six year water permit
38 and all of its other consents need to be considered in terms of the viability of
39 granting those permits and the benefit of the mine when it can, at most, obtain a
40 six year water permit. The Homestead Bay fast track decision doesn't mention
41 this in any detail at all and even if it did, I agree with my friend Mr Enright that
42 that is not relevant to your decision today.

1 The next point I would touch on is in relation to the project's benefits. The
2 economic benefits have been vastly overstated and all of the key issues that were
3 raised in the economic evidence for Sustainable Tarras from Mr Mead,
4 Mr Bertram, Mr Miller and Mr Harris have essentially been borne out by the
5 applicant's response to the panel's request for information. We can see that this
6 benefit hinges on an unsupportable and an unsubstantiated very high gold price,
7 certainly not one that is conservative. Everything was based on - - -

8 **Mr Muir:** Not what the gold futures markets would say. And isn't that the – probably
9 the best assessment of hundreds of thousands of people that trade in future markets
10 as to what those – their assessment of where the gold price will be in two, three or
11 four years' time – appreciably higher than it is now?

12 **Ms Gepp:** I would ask – that's not a matter within my legal expertise. I would ask that
13 the economists address the question of the relevance of the gold futures market.

14 **Mr Muir:** But you did make the – advance the proposition that it was at unsustainable
15 levels at the moment.

16 **Ms Gepp:** I rely on Mr Mead's evidence for that proposition and the significant
17 analysis he has undertaken.

18 **Mr Muir:** Yes, well that will probably have to be tested in the expert conferencing.

19 **Ms Gepp:** But as you say sir, that would be an issue for conferencing. It may well be
20 something that is factored in but it's not – it wouldn't be determinative in my
21 submission and it's certainly not something that was determinative for the panel
22 considering the Waihi – the price of gold for Waihi, which adopted, for the Waihi
23 mine, a much lower \$2,000 per ounce figure.

24 **Mr Barry:** Just to add to that, I mean the current forward market for gold is around
25 US\$5,000 over the next five years. It's only one source of information but it is an
26 independent market test.

27 **Ms Gepp:** Yes, absolutely, it's a piece of information to factor into the picture. But to
28 simply adopt the spot price, as has been done in the Paterson report, without
29 looking at why it is currently at that level and what is going to happen in the longer
30 term is not an appropriate approach.

31 **Mr Muir:** Yes, well, futures markets are quite – they are a fully distributed way of
32 analysing that in that they are reliant on so many people and their assessment of
33 all of the factors that have been sustaining a high gold price over the last couple
34 of years and the likelihood of them continuing into the future.

35 **Ms Gepp:** I've taken a note for the economic experts for Sustainable Tarras to consider
36 that and ensure that should you direct conferencing, that it is part of their
37 consideration. There are other issues in terms of the – as Mr Miles has noted –
38 the all-in sustaining cost and how close that is to Matakanui Gold's base case
39 projection. There is an issue with the extent of impacts – overseas economic
40 benefits being brought into the analysis and they need to discount that for back to
41 benefits to New Zealand. There is the issue with the extent to which the costs of
42 long term management requirements have been assessed and identified. The –

1 most recently there was a request from the panel as to whether the post-closure
2 costs had been incorporated into the net present value and there was an answer in
3 Mr Spring's evidence – RFI evidence – saying yes, it has been. Going back to
4 have a look at that, the way that those post-closure costs have been incorporated
5 is to offset them against salvage values. So it has been assumed that the cost of
6 selling plant will cover any costs of long term maintenance of the dam,
7 maintenance – treatment of water and so on. So whether that is an appropriate
8 way to build in post-closure costs is something that I would expect the economists
9 to look at in their conferencing. Especially with the – what we now know about
10 the extended duration of water treatment that will be required.

11 There's issues as to the way that disbenefits have been treated or whether they've
12 been assessed at all or how they've been treated – whether they've been treated as
13 benefits such as post-closure spending which Mr Paterson says is essentially a
14 benefit to the region. There's an issue with the way that impacts on Bendigo's
15 wine and tourism industries has been addressed and valued and again I just note
16 that as an issue for those experts to consider. But certainly I'd submit that it's not
17 appropriate to just look at an impact as a – what is the percentage of this industry
18 to the region – in terms of the region and then to apply a cost to that.

19 The issue of the cost-benefit analysis versus an economic impact assessment, and
20 I've said in my notes here so I was very pleased to hear Mr Barry say, it's not just
21 about whether you monetise environmental and social impacts, it's also about the
22 use of input-output multipliers, how you treat costs, how you – the methodology
23 that you use to assess economic impacts and that, in my submission, and Mr Mead
24 would say, makes a cost-benefit analysis a more useful tool for assessing benefits
25 as opposed to impacts, because it's able to factor in things like the increased cost
26 to other suppliers – to other businesses of supply costs increasing which are not
27 factored into the pure economic impact assessment.

28 There is evidence from Sustainable Tarras that the long term economic prosperity
29 from gold mining is an illusory concept. Mr Harris has specifically looked at how
30 towns that supply mining workforces fare in other parts of New Zealand and how
31 the employment rates and the average wages in those places have changed over
32 time. And it doesn't support the proposition that this is building a long term
33 sustainable wealth base.

34 Government revenue. Even setting aside the issues with assessing the profit, there
35 are then issues with the way in which the tax and revenue matters have been
36 assessed, which are addressed in Mr Miller's evidence and again I expect will be
37 covered at conferencing.

38 Employment benefits. It's clear now from Mr Paterson's response to the RFI
39 questions that there is a need to look at the – because of the very low employment
40 in this area, and because of the already higher than average wages in this area,
41 then there is – the employment benefit is more like a 75 per cent opportunity cost
42 as opposed to the full opportunity cost that – the 100 per cent opportunity cost that
43 had been initially assessed by Mr Paterson. Again, an issue for conferencing and
44 the other issue that was touched on by the panel in questions earlier about high

1 housing costs and what that means in terms of both benefits to new employees
2 coming to the region – to the district – and to existing residents in the district who
3 are needing to deal with those high housing costs.

4 **Mr Barry:** Just to clarify, I think Mr Paterson assumed zero opportunity costs rather
5 than 100 per cent. But I understand what you're saying.

6 **Ms Gepp:** Yes, thank you. Sorry, I've said it the wrong way round. That's why I'm
7 not going to economics conferencing. So in terms of the applicant's capability
8 and compliance record, Mr Miles has already addressed you on that but this set of
9 conditions that we have before us really is a high trust model that is sought by a
10 low confidence, essentially start-up applicant, and you can take the non-
11 compliances into account. You have the legal ability to take those into account
12 under section 104 and, in my submission, you should be placing significant weight
13 on that, particularly that recent abatement notice that's been issued.

14 You are not obliged to assume that the applicant will act legally and adhere to all
15 conditions. You are entitled to be satisfied that the conditions are reasonable and
16 workable, so I am submitting this in response to the applicant's submissions that
17 a decision called *The Strand*, which was referenced in their legal submissions,
18 obliges you to assume that the conditions will be complied with. But more recent
19 authority – the High Court decision, *Remediation NZ v Taranaki Regional*
20 *Council*, which I provided to the EPA staff, which just came out a couple of weeks
21 ago, is authority that you are entitled to enquire into whether the conditions are
22 feasible and whether they can be complied with and will meet the outcomes that
23 they're seeking to secure.

24 I just want to note in response to the applicant's legal submissions, this is not a
25 case of perceived risk. This is a case of assessed effects that – and the concerns
26 of Sustainable Tarras are based on the expert evidence that they have received and
27 what they've seen and the applicant's evidence, not perceived risk. So the case
28 law relating to discounting perceived risk has no place in this context.

29 Other approvals that are needed. The only – the way that I submit those other
30 approvals that are needed are relevant and whether the applicant can, for example,
31 get title to, or get the ability to use the road, is that if the project commences and
32 some of the adverse impacts arise and then it can't actually proceed because it
33 cannot get the approvals that it needs under those other authorities that are not
34 before you, then there is an issue with having adverse impacts without the
35 compensatory benefits that you have relied on in granting approval. So at the very
36 least, I would have thought that it would be worth the panel considering whether
37 there is a need to put conditions in place requiring that those approvals are
38 obtained before any works commence.

39 In terms of the conditions, you've heard a lot about the conditions, the pattern of
40 pushing key details to future processes when that information should be before the
41 panel. And in terms of certification, whether it's a good idea or whether there are
42 benefits to the panel certifying the management plans or not, in my submission is
43 irrelevant because the panel has no function of certifying management plans.

1 There is no provision of the Fast-Track Act that would enable you to certify the
2 management plans that you have before you.

3 In terms of who is involved in certification, certainly the Councils should be but
4 also the Department of Conservation and Heritage New Zealand have sought to
5 be involved in relevant management plans and in my submission that is
6 appropriate and was the way that it was approached in the Waihi mine panel
7 decision. So should you reach that point of deciding that you can grant, then that
8 would be an appropriate approach to certification.

9 Deemed certification is another thing that is proposed here where if we don't hear
10 back from a certifier in a particular time, we can assume that things have been
11 certified. That is not an approach – that's not a lawful approach. There are myriad
12 court decisions which I've cited in the submissions that you can rely on to the
13 effect that deemed certification is not lawful.

14 **Ms Sweetman:** Ms Gepp, can you point to some of the direction of some case law
15 which is helpful in terms of best practice towards management plans?

16 **Ms Gepp:** Yes, absolutely. So in the – do you have my written submissions that look
17 like this?

18 **Ms Sweetman:** Yes.

19 **Ms Gepp:** So under point 8, and off to the right-hand side, you have the *New Zealand*
20 *Transport Agency-Waka Kotahi* decision, that would be one. But also further up,
21 directly across from point 8, I've noted the Environment Court practice note at
22 10.4(e), which has specific requirements for draft conditions that are presented to
23 the court and includes conditions about how management plans – conditions for
24 management plans. So that would be a useful place to start. But I can certainly
25 provide additional authorities if that would assist the panel as well.

26 **Ms Sweetman:** Please proceed.

27 **Ms Gepp:** Thank you. In terms of the weighting and section 85 assessment, I would
28 just echo what Mr Enright said, that an adverse impact is broader than simply an
29 environmental effect or a cultural effect, and it does include inconsistency with
30 law or policy, provided that you're not dealing solely with one inconsistency. And
31 I develop that submission further in the comments from Sustainable Tarras.
32 Further that – the panel has asked about the phrase “out of proportion”. And I just
33 note, it's not in my written submissions, but that was addressed in the *Trans-*
34 *Tasman Resources* decision at [242] to [247]. So they specifically - - -

35 **Mr Muir:** Sorry, which decision?

36 **Ms Gepp:** The *Trans-Tasman Resources* fast-track decision.

37 **Mr Muir:** TTR, yes.

38 **Ms Gepp:** The TTR decision.

39 **Mr Muir:** At?

40 **Ms Gepp:** [242] to [247]. And then also just noting that the only other reference I
41 could find to a similar phrase in other legislation is the phrase “out of all

1 proportion” which is used in the Sentencing Act. And there’s case law, including
2 Court of Appeal case law, on that Sentencing Act phrase “out of all proportion”
3 which I can provide references to the panel if that would assist.

4 **Mr Muir:** Just summarise for me briefly what the TTR panel said at [243] to [247].
5 I’ve got the decision somewhere in my computer.

6 **Ms Gepp:** The panel said that it relied on – sorry, if I can just refresh my memory
7 because I’ve got it in my – I’ve got one part of it in my comments. It said that
8 “The panel found the framing by South Taranaki District Council useful that ‘out
9 of proportion’ means that the identified adverse impacts after mitigation are larger,
10 worse or more important than the benefit”. So a fairly straight-up approach, but
11 that is just one – that’s just one part of that longer phrasing. And it addresses what
12 the applicant submitted and then what the other party submitted. Thank you.

13 **Mr Muir:** Just while we’re on section 85(3), this is sort of a question at a slightly
14 conceptual level. Mr Miles describes this application, although not in this exact
15 word, but in terms that it was irredeemable effectively. And that’s your position?

16 **Ms Gepp:** Certainly in terms of the – there are adverse impacts that clearly outweigh
17 the benefits therefore reaching the section 85(3) threshold, yes, which then
18 triggers your discretion.

19 **Mr Muir:** Okay. We of course have got to take into account section 85(3)(b)(i) and
20 (ii) in that analysis which places all the participants who oppose this application
21 in the unenviable position really of having to bank their opposition and then
22 actively assist in expert conferencing and otherwise in the – in formulating what
23 conditions might conceivably so mitigate the adverse impacts as to change the
24 proportionality assessment.

25 **Ms Gepp:** Yes.

26 **Mr Muir:** Do we have Sustainable Tarras’s commitment in the expert conferencing
27 phase to assist in that respect?

28 **Ms Gepp:** Absolutely. And all of the Sustainable Tarras expert witnesses have
29 confirmed their compliance with the Environment Court code of conduct, which
30 would oblige them to do so. So, absolutely. And some of them have put forward
31 already in their written statements suggestions.

32 **Mr Muir:** Thank you.

33 **Ms Gepp:** And they are all available for expert conferencing and I’ve given the staff
34 their availability. So in the time available, I’d just like to focus on a couple of
35 points and a couple of remaining points. There is the issue of – so Sustainable
36 Tarras has produced evidence from Mr Lottermoser – Dr Lottermoser and Dr
37 Emmerman around tailings relevant risks and risk management and best available
38 techniques and international guidelines. Now that evidence has had very little
39 response from the applicant. So the issues that they have raised around dam design
40 versus international experience and what has been experienced overseas and the
41 concepts of management in perpetuity of these structures has really not had much
42 of a response other than to just point to the bond and the guarantee. So in my

1 submission that's not an acceptable response. It doesn't provide certainty as to –
2 that these risks will be appropriately managed.

3 **Mr Johnson:** Can I just ask a question there.

4 **Ms Gepp:** Yes.

5 **Mr Johnson:** And there's a lot of conversation around the standards. Trevor
6 Matuschka from Engineering Geology I think is recognised as an international
7 expert in actually tailings dam stuff. When we're doing the conferencing, can we
8 please make it clear in the conferencing what differences might arise out of the
9 standards that are put forward under the international tailings dam guidance and
10 how they may differ or be supported by the high [?] New Zealand Dam Design
11 Guidelines – safety guidelines. I just want to be clear there because there's
12 apparent – I'm familiar with both, but I'd like to make sure that the conference
13 actually covers those areas.

14 **Ms Sweetman:** In a specific way, yes.

15 **Mr Johnson:** And I think there's a few other areas on conferencing later on where
16 you're talking about rock strengths being different. Just that the two designers are
17 using two different – the strengths you use for slope stability are different to what
18 were used for foundation. I just need to make sure that the experts are talking
19 about the right things with each other when these comments are coming forward.

20 **Ms Gepp:** Thank you. In terms of hazardous substances and installations, the
21 information is very minimal on what is going on in the processing plant aspects
22 of this project, particularly with respect to cyanide, the cyanide destruction
23 facility. So if that was being consented by itself, you could expect a whole lot
24 more information on those aspects of the project, which haven't been provided,
25 and those are assessed in detail in Mr Lottermoser's evidence – Professor
26 Lottermoser's evidence. Matters of heritage landscape and night sky effects are
27 essentially – plus biodiversity effects – I think are areas where there are significant
28 differences remain between the experts for Sustainable Tarras and the applicant's
29 experts. The experts for Sustainable Tarras essentially lining up with and
30 supporting the evidence from DoC and Heritage New Zealand and in most parts
31 the Councils.

32 Social effects is an area that remains really very undercooked in this application.
33 It is of significant concern to Sustainable Tarras that having participated in the
34 preparation of a social impact assessment that the applicant commissioned, they
35 have never then seen that social impact assessment, despite requesting it, and the
36 panel hasn't seen it either. So this is not a matter where, as the applicant says,
37 there's no need for a social impact assessment because it's assessed in the
38 economics evidence and there were – and the effects are well understood from
39 drop-in sessions. This is an area where there has been an assessment, presumably
40 it doesn't say what the applicant wants it to say, but we haven't seen it.

41 There's probably – in order to keep to time I think I need to probably end at that
42 point. The only – the last point I would say is just in relation to mine closure
43 bonds and insurance. You've heard from me and from others on that point but

1 just to reiterate that everything here hinges on this guarantor concept that these
2 very, very long term risks and obligations can be guaranteed by a guarantor and
3 we haven't seen any evidence of what those arrangements would look like and
4 whether it is feasible to obtain a guarantee that would last for that kind of –
5 essentially in perpetuity. The panel has mentioned a few times the endowment
6 concept and that's something that Sustainable Tarras would certainly be interested
7 in understanding more about and whether that is something that could assist. At
8 the moment we don't have any information to go on on that – in relation to that
9 concept.

10 **Mr Muir:** Thank you Ms Gepp. Questions of Ms Gepp or Mr Miles? Yes Peter.

11 **Mr Kensington:** Good afternoon to you both. My question is about some
12 commentary you made in your formal comments – legal comments at paragraph
13 166 about site visits.

14 **Ms Gepp:** 166?

15 **Mr Kensington:** Yeah, 166. There were three suggestions that you made for us to go
16 and have a look from certain locations.

17 **Ms Gepp:** Yes.

18 **Mr Kensington:** I just wouldn't mind a bit more explanation about that and whether,
19 you know, how logistically we might make that happen. In your mind whether
20 we should do it or the experts should do it?

21 **Ms Gepp:** This was based on - written just after the panel had done its site visit and
22 had identified the points that it had looked at. So in terms of the – it was just
23 considered that first point A would provide the panel with the best overview of
24 the site, and particularly the way that wind and dust would move around the site
25 and over the back towards the Matakanui Station.

26 **Mr Kensington:** Just on that one, we went close to that point on our site visit but not
27 quite there.

28 **Ms Gepp:** Alright, thank you. And certainly our experts have been – the relevant
29 experts have been to that site. I am sure that the applicant's have so they may be
30 in a position to address at conferencing how that – to ensure they are factoring that
31 in in conferencing. In terms of B, yes, I think it is very important for the panel to
32 understand what the night lighting effects of this project are. The – Sustainable
33 Tarras did it – produced its best scenario of what it could do to emulate what this
34 lighting might look like, just using some fixed and some vehicle lighting, and you
35 have the evidence about that. The applicant has critiqued that but really we don't
36 – I mean we've got no certainty around things like the lumens that are going to be
37 used by the applicant so I submit that that is still a very valid and useful tool to
38 assist in your assessment. But there is nothing like standing below the site and on
39 Shepherds Creek – sorry, the name of the road – Thomson Gorge Road – and
40 seeing the extent to which the lighting is visible. Acknowledging there will be
41 mitigation but it's an important view that is very different to what you can see
42 when you're there in the daytime.

1 That was the three I think. And then the other suggestion was going to Macraes
2 Mine to just have that understanding of a different working mine.

3 **Mr Kensington:** Thank you.

4 **Mr Muir:** Any other points? Well, Ms Gepp and Mr Miles, the Fast-Track Approval
5 Act comes in for its fair share of criticism but the quality and comprehensiveness
6 of Sustainable Tarras's response somewhat belies that fact. I know that it would
7 have been under considerable pressure of time but you have brought material
8 before this panel which is obviously very significant in terms of our assessment
9 of this very difficult, complex problem and we thank you very much.

10 **Ms Gepp:** Thank you.

11 **JAMES GARDNER-HOPKINS FOR CENTRAL OTAGO WINEGROWERS**
12 **ASSOC**

13 **Mr Muir:** Mr Gardner, you join us remotely on behalf of the Central Otago
14 Winegrowers Association.

15 **Mr Gardner:** Yes, thank you. Can you hear me.

16 **Mr Muir:** Yes, thank you, loud and clear.

17 **Mr Gardner:** Excellent. Well, look, I appear as counsel for the Winegrowers
18 Association. I intend to make a few brief opening remarks but leave the majority
19 of the presentation or if you like the submissions or detailed overview to the
20 Winegrowers GM, Ms Murray, who you have before you in person. And also
21 Mr van der Westhuizen, who is also part of the Winegrowers Association, is
22 available to provide technical support in case questions arise of that nature. And
23 look, that's because they both have been more closely involved in the
24 development of the evidence, although I've obviously had some input and
25 guidance into it. But they know it best and so that's the approach that we have
26 chosen to adopt.

27 In terms of, if you like, legal issues, the memorandum that I provided that
28 accompanied the comments made by the Association was largely focused on
29 procedural matters, which in the end have essentially been addressed by the
30 panel's direction as to the steps that it is taking, including this particular hearing,
31 and the process for expert conferencing and potential hot tubbing.

32 The only matter that I would add to that is if, as a consequence of either this
33 hearing and in combination with the expert processes, the panel had specific legal
34 questions, simply to suggest that if it would be assisted by putting specific legal
35 questions to counsel, then that might be one further appropriate step in the process.

36 **Mr Muir:** Yes Mr Gardner, we've discussed that possibility in the context of earlier
37 submissions today and suffice to say is we're on board with that. We are going to
38 go through some processes now over the next month to six weeks while the expert
39 conferencing is taking place. We intend to engage counsel assisting and once we
40 have managed to focus in on the issues that are involved, if we think that further

1 assistance is usefully obtained from counsel, either by further written memoranda
2 or a short and focused hearing, we will do so.

3 **Mr Gardner:** Thank you. Much appreciated. And look, at this point in a broad sense,
4 I have had the opportunity to read the submissions of Mr Enright and Ms Vella
5 for EDS and Ms Gepp and Mr Miles for Sustainable Tarras, and I generally do
6 support their position in terms of the overall legal framework. But, yes, if there
7 were specific legal questions that the panel wished to be addressed on, would
8 appreciate the opportunity to do that for the Winegrowers Association.

9 So, look, I don't want to cover ground that's been covered already by other
10 counsel today. I suppose I would just summarise the current position of the
11 Winegrowers Association. It is not opposed per se to mining but it does presently
12 have concerns with the current proposal, including because of size, intensity,
13 information gaps and it is looking forward, for want of a better word, to having
14 the issues tested through this process. It does harbour some concerns about over-
15 reliance on management plans and there's been some discussion on that already.
16 And I suppose also the risk of harm to the winegrowers of the region. And that's
17 both potentially as a result of direct effects in terms of dust and potential impacts
18 on water quality in the aquifers, and that's something that we have some expert
19 evidence on, as well as the potential simply for reputational impact. And I suppose
20 I have to acknowledge that some of those effects may be, at least using RMA
21 terms, remote but potentially significant and I would say you are still entitled to
22 take those effects into account.

23 And my last comment is even though some of those effects would be difficult in
24 a cost-benefit or economic impact assessment to monetise. And there's been some
25 discussion on that today already. So I won't go into more detail on that. I just
26 wanted to flag those as key issues for the winegrowers and then hand over to
27 Ms Murray, unless there were any immediate questions for me or questions can
28 wait for the end and the appropriate person can then answer them.

29 **Mr Muir:** Thank you Mr Gardner. We'll come back to you at the end I think, if we
30 need to. Thank you Ms Murray.

31 **CAROLYN MURRAY FOR THE CENTRAL OTAGO WINEGROWERS ASSOC**

32 **Ms Murray:** Thank you for the opportunity to present today. As we've said, my name
33 is Carolyn Murray and I appear on behalf of Central Otago Winegrowers
34 Association as the General Manager and also with the support of New Zealand
35 winegrowers. At the outset, I want to be really clear. This is not a submission
36 against mining in principle. The question before the panel is much more specific.
37 Whether a project of this scale, in this location, and the inevitable effects it will
38 have, both actual and perceived, is compatible with an existing high value, place
39 based industry that depends on environmental integrity and long term certainty.

40 Central Otago is one of New Zealand's most distinctive and internationally
41 recognised wine regions. It is the country's leading producer of premium Pinot
42 Noir and it plays a critical role in establishing New Zealand's reputation in the

1 global fine wine market. It is not a high volume industry. It is a high value one.
2 Across the region, there are over 200 vineyards and wineries with a capital
3 investment estimated at \$600 million. The industry supports more than 1,000
4 direct jobs with many more across tourism, hospitality and supporting services.
5 Wine is deeply integrated into the regional economy. It drives tourism, it supports
6 hospitality and accommodation, it underpins Central Otago’s regional identity and
7 brand. And importantly, it is not just an economic activity. It is a defining feature
8 of place. Visitors come for the experience of a pristine landscape expressed
9 through wine.

10 Wine is not a commodity. It is a product of place. Its value is derived from terroir,
11 landscape, authenticity and reputation. Central Otago is a geographical indication.
12 This is a protected mark of origin and quality. You cannot separate the wine from
13 the land or how that land is perceived. Central Otago is also a young region. It is
14 a region developing its global identity, building a reputation, discovering the full
15 potential of its soils and of its sub-regions. As one expert describes it, it is a region
16 in the middle of its story. That makes it more vulnerable and means decisions
17 now will have long term consequences.

18 This brings us to the economic question. There are two fundamentally different
19 models before the panel. On one hand, a renewable, long term industry built on
20 reputation and compounding value over generations. On the other, a finite
21 extractive project with a lifespan of approximately 15 to 20 years. Independent
22 economic evidence is clear. The wine industry is an important contributor to the
23 regional economy. It is closely linked with tourism, the region’s most important
24 sector. And both are at risk from environmental and landscape damage.

25 It is also important to note that Mr Benji Paterson himself acknowledges, in his
26 response to the submissions, that there will be economic impacts on wine and
27 tourism in the immediate vicinity of the mine and to quote him “especially for the
28 subset of vineyards with organic certifications”. Those impacts are not trivial.
29 They are material and should not be dismissed. Central Otago prides itself upon
30 achieving 30 per cent of vineyards under organic management – by far the highest
31 in the country. So even the direct impacts that Mr Paterson deems inevitable will
32 be significant on existing businesses.

33 However, his analysis stops there. It does not account for the way a fine wine
34 region actually functions in the market. Central Otago operates under a single,
35 unified, regional identity, reinforced through its geographical indication.
36 Reputation is not localised. If the Bendigo sub-region is affected, Central Otago
37 as a whole is affected, which also means New Zealand wine as a whole is affected.
38 The risk that the region is tainted with the same brush in export markets and in
39 tourism perception is a broader region-wide impact that is not captured at all in
40 the applicant’s modelling.

41 The panel has heard detailed technical evidence on arsenic. In summary, baseline
42 levels are currently very low. There is potential for contamination of vineyards
43 via dust and water pathways. And there are uncertainties in monitoring and long
44 term management. Even where effects are managed to regulatory standards, the

1 issue remains – wine is an ingestible product and markets are highly sensitive to
2 contamination risk, both real and perceived.

3 This leads to the central issue – reputation. Central Otago’s global position is built
4 on purity, sustainability and a pristine environment. This is what international
5 consumers are buying, and that reputation is fragile. It takes decades to build but
6 it can be damaged very quickly and it is extremely difficult to recover.

7 In their response to submissions, the applicant relied on the Hunter Valley as an
8 example of co-existence of a wine region with coal mining. However, the reality
9 is very different. PJ Charteris, a winemaker with 25 years’ experience in the
10 Hunter Valley and nearly two decades in Central Otago, has been very clear in
11 personal communication to us in response to the applicant’s position. Wineries
12 do not see mining as a compatible neighbour. In practice, the industries are
13 separated. Where vineyards exist next to mines, they are typically owned by the
14 mining companies, they produce low value fruit, they generally have no tourism
15 or cellar door offerings, and there are concerns, even among the pickers of the
16 grapes, about contamination exposure.

17 **Mr Muir:** If we look at the Hunter Valley as an economic unit, in 2022 Ernst & Young
18 said that the gross economic outputs of the Hunter Valley were about
19 three per cent from wine and were about 23 per cent from mining. This is the
20 predominant industry within the Hunter Valley – within the Hunter. You paint a
21 somewhat binary picture – it’s either mining or its wine. It is not generally the
22 Hunter where the activity in relation to coal mining is not confined to the upper
23 Hunter, although that’s where some of the bigger opencast mines are, it is
24 throughout the entire Hunter region. And sometimes in relatively close proximity
25 to very prestigious labels. Isn’t it a reasonable example of co-existence and the
26 fact that when you say, you know, reputation is not localised, in fact the Australian
27 wine industry, one of the most powerful in the world, occurs within one of the
28 most extractive countries in the world?

29 **Ms Murray:** Yeah, well, the comments in the discussion that I had with Mr Charteris
30 were that in actual fact that’s not the case in practice. That the wineries that are
31 flourishing are quite some distance from the mining, not in the upper Hunter at
32 all. And I guess there’s also the fact that they have some of Australia’s oldest
33 vines planted there. It’s a long established region, perhaps further in their story
34 than Central Otago, although obviously we aim to have a much longer, you know,
35 future.

36 **Mr Muir:** You paint a picture that this mine would have adverse effects not only on
37 the vineyards within close proximity of it, but to include all of the Bendigo
38 vineyards and then indeed all of the Central Otago vineyards and then a spill-over
39 effect into the national winegrowing reputation. So you’re suggesting effects that
40 might be 20, 30 or 40 or more kilometres away from the location of the mine - - -

41 **Ms Murray:** Absolutely.

42 **Mr Muir:** - - - adversely affected.

43 **Ms Murray:** Yes.

1 **Mr Muir:** Right. Well, there wouldn't be that distance between some of the premier
2 vineyards of the Pokolbin region, for example, in the Hunter and, you know, the
3 upper Hunter where some of the most, well, where the huge opencast coal mines
4 exist, would there?

5 **Ms Murray:** Potentially not. Well, what I was told is they're about 100 kilometres
6 away.

7 **Mr Muir:** Well, what about the Napa Valley, another enormously prestigious
8 winegrowing area? You know, one of the largest gold mines for the last 30, 40
9 years was the McLaughlin mine, about 20 kilometres out of Calistoga. 3.5 million
10 ounces came out of it. It's now a natural reserve in a highly prestigious
11 winegrowing area. But has Napa suffered from that?

12 **Ms Murray:** I can't answer those questions for you. I know more about Central Otago
13 than these other regions, but we had a lot of wine experts comment on our
14 application, which I believe you would have read, who had grave concerns about
15 the reputation, the impacts and the reputation internationally of our wine industry
16 should there be a huge extractive gold mine right next door to our vineyards and
17 I mean I think we're talking about fine wine here so we're talking, you know, on
18 the same level as Burgundy in France.

19 **Mr Muir:** Probably as the bird flies, your Bendigo vineyards are probably no further
20 away from Macraes Mine than many of the other Central Otago vineyards would
21 be from this development. And yet your industry flourishes.

22 **Ms Murray:** Yeah, although that doesn't cover reputational damage and I think that's
23 really what expands to the whole of Central Otago is reputation, because if you
24 talk to a wine consumer from somewhere else in the world, you know, they know
25 New Zealand, you know, and if we're lucky they know Central Otago, and if
26 they're really a wine geek they will know our sub-regions. But, you know, to your
27 greater population, they know Central Otago so it will definitely affect the whole
28 of Central Otago reputationally. Yeah. And I mean Marlborough is a whole
29 different kettle of fish to Central Otago. It's Central Otago that pushes that
30 premium up for the whole of New Zealand.

31 Sorry, so onto my next point. The applicant's case relies on two key propositions.
32 First, that effects can be managed, but managing physical effects does not address
33 market perception, brand impact or long term positioning. Second, that economic
34 benefits are decisive. But that analysis focuses on what can be measured, relies
35 on assumptions that are contested and does not account for the loss of premium
36 value across the region as a whole. These are real economic effects, although
37 difficult to quantify.

38 So ultimately this is not just a technical question before the panel. It is a question
39 of risk and whether that risk is acceptable in the context of the Act. The fast-track
40 process is intended to enable projects that deliver net benefits but not where the
41 potential adverse effects are significant, uncertain or enduring. In this case, the
42 evidence shows a high value established regional economy, a young, globally
43 recognised wine region and a set of risks – environmental, reputational and

1 economic – that extend beyond the immediate site and across the entire region.
2 The risks are long term, difficult to mitigate and potentially irreversible in their
3 impact. In that context, the negative outcomes are not speculative, they are
4 credible and material. Thank you.

5 **Mr Muir:** To what extent should we take into account the seemingly powerful
6 evidence that international wine consumption habits are rapidly changing,
7 whether we blame the medical profession, my doctor telling me I'm never allowed
8 to have more than 10 units a week, or whoever we do, young people are not
9 drinking the volume of wine that they used to – perhaps they've migrated to RTDs
10 or something. The wine industry all around the world is under financial pressure.
11 There is – frequently we see news of New Zealand vineyards that are pulling vines
12 and reducing size, resizing operations for a different market. Is it a relevant
13 consideration for us? There's so many uncertainties with – there are uncertainties
14 about gold prices, there's uncertainty about grape price.

15 **Ms Murray:** Look, I think there's uncertainty over the whole world at the moment, isn't
16 there. There is economic pressures for every type of business. The wine
17 industry's not immune to that and yes, there are changing consumption trends.
18 But as far as the Central Otago wine region goes, it's – we're actually not as
19 affected as other wine regions. The general trend, worldwide, is that people are
20 drinking less but they're drinking better. And this is a premium region. So we
21 focus on quality, the producers here are predominantly a lot smaller and our
22 market is premium. So, yeah, I know there's a lot of media out there. Yeah,
23 Central Otago is a little bit different to those stories that you see in the media.
24 Anything you want to add?

25 **Mr Muir:** Does the Panel have any questions? Well, thank you very much Ms Murray
26 and can I congratulate you also on the quality of the written work that's come
27 before this panel and its predecessor, the convenors. I've read quite a bit of
28 correspondence that you've generated and it is of a high quality, thank you.

29 **Ms Murray:** Thank you.

30 **Mr Muir:** Yes, we didn't get to say goodbye to Mr Gardner. But perhaps we're a little
31 late for that now. Right, Chinaman's Terrace Service Company Limited. Is there
32 a representative? Coming in on video. Right. Well, good afternoon or good
33 evening is it Mr Pujol. Have I got your pronunciation correct? Oh, it's pre-
34 recorded, I see. Yes, oh well, lawyers like talking to themselves.

35 **PAUL PUJOL FOR CHINAMAN'S TERRACE SERVICES COMPANY**

36 **Mr Pujol:** Hi there, I'm Paul Pujol, winemaker and General Manager at Profits Rock
37 Wines. Just making a supplemental video presentation to the panel so thanks for
38 accepting this little supplement. I apologise for not being able to attend in person.
39 We are in the middle of a vintage right here where 12 months of work in the
40 vineyards come together with harvest and vinifying the wines. So it's an annual
41 period of very intense workload that results in the production of absolutely

1 everything that we sell. So apologies again for not being able to present in person
2 but thanks for accepting this short video.

3 The submission for the Chinaman's Terrace Services Company covers both
4 environmental and economic concerns regarding the Bendigo-Ophir project. I
5 will take the environmental risks as covered in the written material, both in ours
6 and very thoroughly in other submissions. And so amongst those various
7 elements, clearly the risks to our vineyards from groundwater and airborne
8 contamination are existential to our businesses and nature.

9 Here, though, I'd like to give the panel some more depth on the economic side
10 and explain in greater detail the nature of our businesses and how they'd be
11 affected by the proposed mine. As such, I should give you a little bit of my
12 background. As a winemaker, I have run and operated wineries exclusively in the
13 fine wine space in both France, Oregon and here at Profits Rock in New Zealand
14 since 2005. In all cases, making very high value wines that sit comfortably in the
15 fine wine sector of the market. So smaller production volumes but very high value
16 wines.

17 In our submission, we briefly cover some of the unique elements of the region and
18 how they make it eminently suitable for the production of some of New Zealand's
19 finest wines. Central Otago is a small region and has yet established itself around
20 the world as one of the highest profile fine wine producing regions in the world,
21 which is quite remarkable. Two of the producers within the Chinaman's Terrace
22 Services Company, Gibbston Valley and ourselves, are certainly operating at the
23 highest level of New Zealand's wine industry, producing very high value, high
24 margin wines that sit comfortably on the global fine wine stage. In our case, the
25 New Zealand Herald awarded us New Zealand Winery of the Year last year in
26 2025 and in another publication, the Rural Review, we also were awarded New
27 Zealand's top fine white wine of the year. Gibbston Valley are also a multi award
28 winning winery.

29 From our perspective, operating in the fine wine environment, here is a bit of an
30 idea of what that entails. You know, we are producing wines that are among the
31 most highly differentiated products in the world. Wines are distinct, based on site,
32 vintage, you know, or season, and the human elements of farming and
33 winemaking. Speaking for Profits Rock, our wines are predominantly sold in fine
34 dining restaurants, including in multiple examples some of the most famous
35 restaurants in the world. We have been featured on the wine list of several
36 restaurants that have been awarded best restaurants in the world.

37 The quality of wines that that requires, and the level of scrutiny a producer comes
38 under, in this tier of high quality, high value wines, is justifiably very intense.
39 Every element of your production is examined for best practice. You know, are
40 you sustainably accredited in the vineyard, are you organically registered, which
41 is the case with our home vineyard here where the winery is situated on
42 Chinaman's Terrace, how the wines are vinified and so on.

43 Of all those elements, it is the environmental factors that are the most closely
44 examined. The establishment of a mine in our wine region would have a direct

1 impact on the position of the region in this fine wine space. And a mine and a fine
2 wine region cannot co-exist without irreparable reputational damage to the wine
3 region. This view is borne out by expert submitters that the panel have already
4 received submissions from, including some of the world's top tier wine media and
5 journalists and some of the world's most prestigious wine producers that operate
6 in similar climates and with the same grape varieties as ourselves, such as
7 Domaine de la Romanée-Conti whose bottles of wine sell regularly at auction for
8 five to six figures per bottle.

9 This is to illustrate – it's not just my view as someone who sells wine in this space
10 as a small producer. I am both responsible for the farming, the wine production
11 and I am out directly in the market presenting these wines on the global stage.

12 The regions that are relevant to Central Otago in terms of wine production of Pinot
13 Noir and cool climate whites, Burgundy and Oregon, have already protected those
14 areas from this sort of industrial mining. As part of this video submission, I would
15 also like to present some information from Gibbston Valley, one of the other
16 wineries present here on Chinaman's Terrace, and Bendigo and part of the
17 Chinaman's Terrace Services Company. And this I think gives another element
18 to the space and the sorts of operations that are concerned here. Gibbston Valley
19 Wines Limited is a major wine producer and tourism operator in the Queenstown
20 region. It's one of the pioneering companies of Central Otago and really played
21 a formative role in the establishment of the region. It was started in 1983 and the
22 Gibbston Valley 87 Pinot Noir was the first commercial release of wine in this
23 region. So one of the early pioneers. Gibbston Valley Wines operates as a
24 destination winery with an integrated wine, hospitality and destination business
25 built around premium Bendigo wine, a luxury lodge, dining, golf, tastings events
26 and visitor experiences. Gibbston Valley's reputation has been reinforced by
27 recognised national and international accolades, including in 2023 the Aotearoa
28 New Zealand Organic Wine Awards, Gibbston Valley was named New Zealand
29 Organic Wine Awards Vineyard of the Year.

30 The wider destination business has also received international hospitality
31 recognition through the Gibbston Valley lodge and spa, which was awarded a
32 Michelin key and various other accolades for the different elements of its business.
33 The business employs over 90 people on site and provides business for contractors
34 also. Over 125,000 visitors go to Gibbston Valley every year. Over 1,000,000
35 people have visited the iconic wine cave and between 20,000 and 30,000 tastings
36 are poured on site each year. The company has business relationships with over
37 200 tourism operators, bringing winelovers from all around the world to
38 Queenstown and Central Otago and exposing them to the best of the region. On
39 site activities depend on the credibility of Gibbston Valley's wines, the integrity
40 of the landscapes from which they come and the knowledge that guests are
41 engaging with an authentic, organic premium wine environment. Guests do not
42 only purchase wine – they book tastings, cave experiences, lunches, dinners, stays
43 and other services because they are attracted to a coherent wine-led destination
44 grounded in place.

1 Bendigo has been an important part of Gibbston Valley Vineyards vineyard base
2 for more than 25 years. The development dates from the late 90s with the Red
3 Shed Vineyards, China Terrace from 2001, Schoolhouse in 02. Since then,
4 Bendigo has become central to both Gibbston Valley's production base and to its
5 premium wine identity.

6 On the total land holding basis, Gibbston Valley owned Bendigo properties
7 comprise over 37 hectares. These vineyards are important to Gibbston Valley, not
8 merely because they are land holdings but because they are central to the shape of
9 the company's business. They have also been at the forefront of Gibbston
10 Valley's move towards 100 per cent Biogro Organic Certification and a more
11 deliberate model of land stewardship. In those circumstances, the industrialisation
12 of the Bendigo, or even a credible risk of long term environmental degradation,
13 has the potential to reduce the current and future economic value and affect the
14 wider commercial ecosystem built around the Gibbston Valley brand.

15 So that's to illustrate that it's not just on the global stage in terms of selling these
16 high margin differentiated products, for us, as a producer going out in over 12
17 export markets around the world, but there's also a wider economic potential
18 impact to the region as a premium wine destination where all of those perceptions
19 are also at play.

20 The vineyards and wineries in Central Otago and on Chinaman's Terrace are high
21 value and multi-generational in nature. Vines with care, like the growers here on
22 Chinaman's Terrace, will produce for well over 100 years. So we ask the panel
23 to carefully consider the merits of jeopardising a prosperous region that drives the
24 economy both here and nationally for short term commodity extraction.

25 We are of course open to questions from the panel. Again, I apologise for not
26 being able to submit and present in person, but absolutely feel free to email any
27 questions through to us and we can provide you with supplemental information
28 and answer any questions that you may have. So thanks again for taking the time
29 to listen to my short presentation and the effort of coming down to Central Otago
30 to hear the submitters in person. Thanks again.

31 **Mr Muir:** The final submission of the day are the Ardgour Strawbale B&B. Professor
32 Kearsley and Dr Claire Kearsley. Who intends to lead off for this high power
33 couple?

34 **PROFESSOR GEOFFREY KEARSLEY FOR ARDGOUR STRAWBALE B&B**

35 **Professor Kearsley:** Thank you. I'm Geoff Kearsley and this is my wife, Claire, and
36 we live at 60 Thomson Gorge Road, which leads directly to the mine. My
37 background is that I have a doctorate in geology and geography from London
38 University and an academic career that traverses London, Glasgow and, in the
39 main, Otago. In this time, I have taught geography, founded the University's
40 Department of Tourism, and retired some 12 years ago as Emeritus Professor and
41 Dean of Social Science. I have an extensive record of resource management,
42 applied consultancy and research.

1 Our position here today is not to comment on the overall proposal. This has been
2 admirably treated by the experts you have heard from today. But we are here to
3 expand upon specific impacts related to, first of all, my wife and myself and the
4 three or four properties that comprise the dwellings on Thomson Gorge Road and
5 which are closest to the mine.

6 We purchased number 60 some 12 years ago upon our retirement from the
7 University, and our intent was to be small farmers for a while and to downsize
8 after about 10 years. Declining health on both our parts have made that a timely
9 schedule. But our property and others in the district have been on the market for
10 up to two years when, in the past, the average duration was closer to one. There
11 has been very little sales interest and what interest there was closed down
12 immediately when the mine was mentioned and we are in a state of limbo with
13 very little activity at all. Why should this be? Well, the first question of course is
14 water. And again, not our job to discuss the technicalities of water supply or the
15 stability of the tailings dam, but rumours are circulating, correct or not, that there
16 may be the possibility of catastrophic dam failure and/or seepage of pollutants
17 through the underlying material. This is important because the sole supply of
18 water to our property and to our neighbours is from the Ardgor pipeline which
19 draws water primarily from the Clutha and through a borehole at the junction of
20 the Clutha and the Lindis. If that were compromised in any way, then we would
21 have no worthwhile water. And this is a rumour that has circulated according to
22 our estate agents among the very few people who have been interested.

23 Currently, we are spray free and accepted as organic by various outlets such as
24 shops and hotels and so on. And this status would disappear if there were
25 questions about the status of the water. We only have assertions that dust will not
26 affect us. We do not spray and we do not apply any surface material to our olives
27 and grapes. Our olives and raspberries are currently totally spray free and are
28 collected and harvested purely by traditional methods so that they hold market
29 premium because of this.

30 We also own a bed and breakfast, which is two purpose built units adjacent to the
31 house, and they have been extremely successful, with a slight blip during the
32 COVID downstream period. We've slowed down a little bit because of our own
33 capacity to run it but we have very strong interest from the European and North
34 American markets and in fact we now market only from a tourist company in the
35 Netherlands that produces bespoke tours for high-end visitors.

36 From our guidebooks and from the guides that our agents provide, from our
37 discussions with our visitors and from our comments books, universally they are
38 seeking peace and quiet, nature, history and scenery, and in passing, my geology
39 helps to explain the extremely complicated landscape around Thomson Gorge
40 Road. Particularly these people are avoiding resorts, even small towns, and
41 anything other than urbanism.

42 The problems that we would face for future markets are, first of all, traffic. Traffic
43 would be at its most during peak times and they would be at the times when our

1 visitors normally like to breakfast, often outside, and at the times when they're
2 returning from their daytime activities.

3 Noise could be a problem. We have nothing other than a simulation of what might
4 be based upon Australian evidence, which may or may not apply to our particular
5 situation. We are particularly concerned that, despite assurances otherwise, there
6 would be a 24/7 heavy industrial rumble in the background. And although it might
7 be slight, it would be incessant. Our only noise at the moment comes from farming
8 activities which can be noisy for a brief period and then stop. They do not go on
9 overnight.

10 The workers' camp concerns me because it is difficult to see how it can be
11 controlled in a meaningful manner. It's worth noting that the workers' camp at
12 Benmore carries the label "the flying jug".

13 Light is a concern because many of our visitors describe a major asset being our
14 dark sky. Some, particularly our former Asian visitors, say that they have never
15 seen the galaxy before. Most of our urban visitors have never seen anything like
16 it and this is part of our reputation. Our atmosphere and reputation are based very
17 much upon a rural, non-urban, non-industrial environment.

18 What we would like to see in response to these concerns is a more complete
19 addressing of present and future problems. We would like to see a mediation and
20 a reparation package that goes beyond the dismissal of "oh there's no evidence"
21 which was apparently in a document which may not have official standing which
22 purports to come from Santana. We have plenty of evidence and there are ways
23 of collecting more beyond our ability. We would like to see wider issues of
24 reparation for what is already affecting us and for what will directly affect us in
25 the future, and we would like that to be an important part of future considerations.

26 A further concern that we've heard very little of are the psychological effects
27 already being experienced and will be experienced in the future, and I'd like to
28 hand over to Claire Kearsley for her views on that.

29 **Mr Muir:** Yes, thank you Doctor, thank you.

30 **DR CLAIRE KEARSLEY FOR ARDGOUR STRAWBALE B&B**

31 **Dr Kearsley:** Well, I am a retired registered psychologist. I taught at three
32 universities in New Zealand and one in Australia, the last one being the University
33 of Otago. I have also had a small private practice while I was working as part of
34 what I do. Now the submission with my husband – in that submission we outline
35 three aspects of the mining proposal by Santana Minerals that directly affected us,
36 and these being traffic inconvenience, property values, loss of income from the
37 B&B that we run that Geoff has spoken about and the problem of selling. We are
38 at an age where we've enjoyed living for 12 years on Thomson Gorge Road, and
39 we've loved it so much that we've actually put off selling for a couple of years
40 because we enjoyed it.

1 That has now gone. Now I won't reiterate what I've said, or what we've said, in
2 the submission and what I'd like to do just for the next few minutes is to put a
3 human face on those comments by briefly outlining the psychological aspects of
4 living on a mining road. We first heard about the mine when we received an
5 invitation from Santana, who subsequently came to our home and told us what
6 they intended to do. Now this was shock and awe basically. They were polite,
7 they were pleasant, no denying that. However, this is the first we've heard of it,
8 "so there's going to be a gold mine, what does that mean". So they went on and
9 explained. They presented though as a fait accompli. For the next 18 months
10 we've had trucks, power outages, trucks constantly going up the road, fences
11 moved, we've arguments, you know, what are – we just paid a couple of thousand
12 for a fence gate, it's been torn down and thrown over there. That was rectified
13 however. But these are the things that we've lived with.

14 Now I talked about the shock that turned into grief. Grief at our loss. And what
15 are the emotional aspects of grief. Very briefly, sadness, anger, anxiety, worry.
16 There's a cognitive level – difficulty concentrating, making decisions. At the
17 emotional level – fatigue, sleep disturbances; and at the behavioural level,
18 withdrawal from social interaction, finding it difficult to engage with others. Now
19 this has happened. One of the people up the road belongs to a group. They've
20 had difficulty every time she goes, there are issues with regard to "oh, what's
21 happening at the mine, how are you feeling today". And it's constant. It's not
22 something that happens only once in a while.

23 There's prolonged grief, difficulty in accepting the situation and what's called
24 disenfranchised grief which is others seeing our grief as really insignificant. "So
25 what are you worried about". We get that as well. "It could be a good thing", and
26 so on.

27 None of us on Thomson Gorge Road want to remain there. We all love it but since
28 we've been there, the last 18 months have been very, very stressful. So I wanted
29 to put forward the human cost of the mine on the people who are directly – have
30 been directly affected. Other people who have spoken today that we've listened
31 to since 3 o'clock all have very legitimate concerns. But they won't live with it.
32 If the mine goes through, we'll still have to be there. No one will buy our property.
33 We'll have to put up with the noise, the B&B business will be gone. I think that's
34 basically what I have to say.

35 **Mr Muir:** Does the panel have any questions?

36 **Ms Sweetman:** Thank you Professor Kearsley and Dr Fletcher-Flinn, much
37 appreciated. We appreciate you coming in and talking to us. To you Dr Fletcher-
38 Flinn, you've talked about the psychological impacts on you and others in the
39 community. You would have heard Ms Gepp for Sustainable Tarras talk about
40 the applicant having started to prepare a social impact assessment. Were you
41 aware of such an assessment being undertaken?

42 **Dr Kearsley:** No, not at all. No.

1 **Ms Sweetman:** Would you, wearing your professional hat, expect such a thing to have
2 been produced for this type of applicant?

3 **Dr Kearsley:** Of course.

4 **Ms Sweetman:** Thank you.

5 **Mr Barry:** Has there been any discussion of compensation or reparation at all?

6 **Dr Kearsley:** None, none whatsoever.

7 **Professor Kearsley:** We're in a position where it seems to us who are adjacent to the
8 proposed mine that we will bear quite considerable costs but receive no benefits
9 and there has been no discussion or acknowledgement of that. And the depth of
10 consultation is such that we were in the first instance provided with the choice of
11 three access routes – “which would you prefer – actually we're taking this one so
12 what do you think about that”, which didn't seem like consultation to us. And that
13 has been the tone ever since.

14 **Mr Muir:** Any other questions? Professor and Dr Kearsley, thank you very much
15 indeed. It's been quite a drive for you to come over here and I don't know if
16 you've been here all day waiting for your submission to be called, but we are most
17 appreciative of your making available time to speak to us in person.

18 **Dr Kearsley:** Thank you very much for inviting us.

19 **Mr Muir:** Thank you. That concludes the submitters for today and we will resume
20 tomorrow morning at the earlier time of 9 – there's a suggestion here that we're
21 going to start at 9. Look, we'll start at 9 o'clock tomorrow morning. But I think
22 that we'll move fairly promptly into the Otago Conservation Board's submission.
23 If they could be ready by 9 o'clock that would be great. Thank you, we'll adjourn
24 until tomorrow.

25

26 **Hearing adjourned**