

Before an Expert Consenting Panel

Under

Fast Track Approvals Act 2024

And

In the Matter

an application for approvals
by Matakanui Gold Limited to
establish, operate, rehabilitate
and ultimately close an open pit and
underground gold mining operation
known as the Bendigo-Ophir Gold
Project

Reply Legal Submissions on behalf of Matakanui Gold Limited

Dated: 28 September 2026

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INTRODUCTION

1. These closing submissions are filed on behalf of Matakanui Gold Limited (**Matakanui Gold**) in accordance with Minute 48 in relation to its application for approvals under the Fast-track Approvals Act 2024 (**FTA**) for the Bendigo-Ophir Gold Project (**Project**).
2. As directed in Minute 48, these reply submissions are filed in response to the submissions filed by the parties on 21 September 2026 and address key matters raised in those submissions. These reply submissions should be read in conjunction with our legal submissions filed on 14 September 2026, 17 April 2026 and 31 October 2025. Matters already addressed in those legal submissions are not repeated here. These reply submissions take a thematic approach to responding to points raised by parties on 21 September to avoid repetition.
3. As signalled in our Memorandum of Counsel dated 23 September 2026 a final set of conditions is filed alongside these reply submissions. Changes to these conditions from the previously circulated version on 14 September 2026 (presented as tracked changes) are focused and strictly limited to targeted amendments that are:
 - (a) recommended by the relevant experts in response to Request for Information (**RFI**) 12 filed on 23 September 2026; and
 - (b) made in response to matters raised in the parties' legal submissions received on 21 September 2026.
4. No new or additional amendments beyond those two categories are included. A full set of the condition set is provided for administrative ease for the Panel's deliberations, as is standard practice.
5. The final conditions package represents a comprehensive and integrated framework for managing the effects of the Project.
6. We submit that the Panel can be satisfied that the relevant approvals should be granted in reliance on these conditions.

KĀ RŪNAKA

7. Matakanui Gold acknowledges the submissions made by Kā Rūnaka.

8. As counsel for Kā Rūnaka notes, legal submissions have already been made to the Panel on cultural effects, Treaty of Waitangi and Section 7. We refer to our earlier legal submissions addressing these matters.¹
9. The position of Kā Rūnaka is that the conditions package does not reflect a significant degree of collaboration and agreement between Matakanui Gold and Kā Rūnaka.² It is acknowledged that Kā Rūnaka and Matakanui Gold continue to hold differing views on whether the cultural effects of the Project can be addressed through conditions and, in this sense, there is not full agreement on the condition set.
10. Matakanui Gold is grateful for the active participation of Kā Rūnaka in condition workshopping which resulted in the suite of Mana Whenua conditions now incorporated into the package before the Panel which have been endorsed by Kā Rūnaka with the qualifier described in the Kā Rūnaka memorandum dated 21 August.³ Acknowledging differences of view remain, it is the hope of Matakanui Gold that this ongoing engagement will continue through the processes provided for in the conditions including the Kaitiaki Governance Group,⁴ the cultural health programme,⁵ feedback on management plans, the Biodiversity and Heritage Enhancement Fund (**Fund**) committee which requires a Kā Rūnaka appointee⁶ and involvement in the establishment and governance of the Matakini Trust (**Trust**) including input into the Trust Deed and appointment of a trustee by Kā Rūnaka.⁷
11. Submissions from Kā Rūnaka raise concerns with provision in the conditions for the long-term management of tailings post-mining.⁸ This has been extensively considered through expert conferencing and conditions workshopping. We refer to our previous legal submissions which address why:⁹
 - (a) the effects assessments and technical evidence before the Panel demonstrates that the Tailings Storage Facility (**TSF**) can be appropriately managed in the long term and;

¹ Legal Overview, 31 October 2025 at [114] – [121], Legal submissions, 17 April 2026 at [66] – [113] and [267] – [278] and Closing Legal Submissions at [17] – [36].

² Closing legal submissions on behalf of Kā Rūnaka, 21 September 2026 at [2].

³ Kā Rūnaka response to RFI 11 and Conditions, Sandra McIntyre, 7 September 2026 at [12].

⁴ D.03 - Schedule One - Common Conditions to the CODC and ORC Consents at Condition 29.

⁵ D.03 - Schedule One - Common Conditions to the CODC and ORC Consents at Condition 33.

⁶ D.03 - Schedule One - Common Conditions to the CODC and ORC Consents at Conditions 152 – 154.

⁷ D.03 - Schedule One - Common Conditions to the CODC and ORC Consents at Conditions 152 – 154.

⁸ Closing legal submissions on behalf of Kā Rūnaka, 21 September 2026 at [9].

⁹ Legal submissions, 17 April 2026 at [176], [393] – [409], Memorandum of Counsel, 22 June 2026, Closing Legal Submissions at [43] – [53] and [155] – [183].

- (b) that the condition suite before the Panel provides assurance that appropriate governance, funding and management is secured for the long-term management of the TSF.

ADEQUACY OF INFORMATION AND ASSESSMENTS

Consideration of Alternatives

12. Submissions on behalf of Environmental Defence Society (**EDS**) assert that because no assessment of alternatives has been provided the Panel cannot be satisfied that practicable steps have been taken to avoid harm to values of national significance and the approvals should be declined.¹⁰
13. We disagree. The FTA does not require an assessment of alternatives¹¹ and EDS have applied the incorrect decision-making criteria in reaching its conclusion.
14. Earlier FTA Panel decisions are clear that the FTA does not incorporate the requirements of Schedule 4 of the Resource Management Act 1991 (**RMA**) which requires a description of alternatives if an activity will result in significant adverse effects.¹² The FTA has its own requirements for compliant applications that do not include a requirement to assess alternatives.¹³
15. We agree with the legal position as set out by in the *Ayburn Screen Hub* decision, that the Panel's role is to assess the benefits and effects of a proposal as submitted by the applicant and to consider whether any adverse effect may be reduced through conditions.¹⁴ That assessment is based on the proposed activity, not alternative options.
16. EDS's conclusion that the approvals should be declined for failing to provide an assessment of alternatives that demonstrates practicable steps have been taken to avoid harm to nationally significant values does not reflect the legal test under the FTA and is not supported by evidence before the Panel.¹⁵

¹⁰ Supplementary legal submissions on behalf of Environmental Defence Society, 21 September 2026 at [38] – [51].

¹¹ With the exception of discharges where Clause 6(c) of Schedule 5 engages Section 105 of the Resource Management Act 1991 and requires an assessment of alternatives to be undertaken. This has been addressed in Section 8 of the Substantive Application.

¹² Resource Management Act 1991, Schedule 4, Clause 6, *Record of Decision of the Expert Consenting Panel, Ayburn Screen Hub*, 14 May 2026 at [614], *Record of Decision of the Expert Consenting Panel, Mahinerangi Wind Farm*, 3 July 2026 at [75].

¹³ *Record of Decision of the Expert Consenting Panel, Ayburn Screen Hub*, 14 May 2026 at [614].

¹⁴ *Record of Decision of the Expert Consenting Panel, Ayburn Screen Hub*, 14 May 2026 at [616] – [617].

¹⁵ Supplementary legal submissions on behalf of Environmental Defence Society, 21 September 2026 at [38] – [51].

Certainty of Information - Groundwater

17. The submissions of EDS and Fish and Game assert that the groundwater information before the Panel is uncertain and there is no way of knowing whether predicted effects are accurate.¹⁶
18. We do not agree with these submissions. We refer to and rely on our previous legal submissions which have comprehensively addressed the following:
 - (a) why the technical investigations undertaken since 2023 and lodged with the application provide a strong basis for understanding the nature, scale, significance and management of water effects;¹⁷
 - (b) why the additional technical assessment and analysis accompanying Matakanui Gold's response to RFI 11 strengthen the evidential foundation for assessing groundwater effects, provide greater certainty on the conclusions reached in the existing effects assessments and reinforce confidence in the effectiveness of the management measures;¹⁸ and
 - (c) provide confidence to the Panel that the adaptive management approach proposed by Matakanui Gold aligns with the Supreme Court's test in *Sustain Our Sounds*.¹⁹
19. In addition, further certainty has been provided to the Panel in Matakanui Gold's response to RFI 12 and Minute 53.
20. The 14 September 2026 version of conditions referred to primary and secondary seepage controls. Following the response to RFI 12, these measures are now collectively referred to as the seepage interception measures. This change in terminology, in the conditions, reflects that all components of the seepage management system will be installed during the construction phase of the project, and that the TSF, Shepherds Engineered Landform (**ELF**) and Shepherds Valley Infill each have their own discrete seepage interception measures.

¹⁶ Supplementary legal submissions on behalf of Environmental Defence Society, 21 September 2026 at [102] and Closing Submissions for the New Zealand Fish and Game Council and Otago Fish and Game Council, 21 September 2026 at [3] and [14].

¹⁷ Memorandum of Counsel on behalf of Matakanui Gold Limited responding to Minute 29, 22 June 2026.

¹⁸ Closing Legal Submissions, 14 September 2026 at [43] – [53].

¹⁹ Legal submissions, 17 April 2026 at [13] – [20] and [207] – [218] and Closing Legal Submissions, 14 September 2026 at [43] – [53].

21. The response to RFI 12 provides further certainty that seepage can be both captured and if not, detected.²⁰ This is because:
- (a) The seepage interception measures incorporate multiple engineering controls and are robust.
 - (b) The seepage interception measures for the TSF, required by the conditions, consists of underdrains that extend the full length of the TSF, an upstream cut off drain, an embankment chimney drain, and a grout curtain at the embankment. The groundwater modelling indicates that less than 0.5% of TSF seepage would bypass these seepage interception measures and less than 0.1% could reach the Ardgor Aquifer via the deep groundwater system.²¹
 - (c) The seepage interception measures required by the conditions for the Shepherds ELF consist of underdrains that extend the full length of the ELF, a cut off drain, grout curtain and interception wells at the toe of the ELF/immediately downstream of the Shepherds Valley Seepage Collection Sump. The groundwater modelling indicates that less than 5% of ELF seepage would bypass the collection systems and less than 1.7% could be lost to the deep groundwater system.²²
 - (d) The response to RFI 12 extended the seepage interception measures for the Shepherds Valley Infill. As now proposed in the conditions it requires underdrains that extend the full length of the Infill, a cut off drain, grout curtain and interception wells at the toe of the Infill.²³
 - (e) The seepage interception system design includes multiple layers of protection providing assurance that if seepage bypasses a primary control it can be caught by a secondary system.²⁴ In direct response to the Panel's question as to whether additional design measures could reduce unrecovered seepage to as close to zero as feasibly possible, Matakanui Gold proposes three additional measures to the seepage interception systems already in the conditions.²⁵
 - (f) The monitoring and response framework, which includes contingency measures provides confidence and assurance that downstream receptors are protected from water quality impacts from seepage.²⁶

²⁰ RFI 12 Response - TSF and Shepherds ELF Seepage.

²¹ RFI 12 Response - TSF and Shepherds ELF Seepage.

²² RFI 12 Response - TSF and Shepherds ELF Seepage.

²³ RFI 12 Response - TSF and Shepherds ELF Seepage.

²⁴ RFI 12 Response - TSF and Shepherds ELF Seepage at [5].

²⁵ RFI 12 Response - TSF and Shepherds ELF Seepage at page 6.

²⁶ RFI 12 Response - TSF and Shepherds ELF Seepage at page 8.

- (g) The modelling demonstrates that the dominant receiving environment for unrecovered seepage is the shallow groundwater and surface water systems in the Shepherds Creek catchment and the vast majority of unrecovered seepage is detectable by the extensive monitoring network.²⁷
 - (h) The potential for unrecovered seepage to the deep schist system is extremely low.²⁸
22. Minute 53 addressed a typographical error identified by EDS in seepage calculations provided as part of Matakanui Gold's response to RFI 11. As Mr Burgess confirms in his response to Minute 53, correction of the error does not alter the conclusion that the that most unrecovered seepage will likely report to SC01.²⁹
23. Mr Burgess' assessment provides further certainty that the dominant pathway for unrecovered seepage to SC01 is concentrated in shallow systems where it is detectable.³⁰
24. The responses to RFI 12 and Minute 53 provide additional certainty that:
- (a) The modelling provides assurance that the seepage interception measures will effectively capture seepage. Importantly the modelling does not include the new engineering controls that were proposed in response to RFI 12 and RFI 11 including the full-length underdrainage beneath the TSF, Shepherds ELF and the Shepherds Valley Infill, and the grout curtains and interception wells at the Shepherds Valley Infill and Shepherds Seepage Collection Sump. It is expected that these features will increase total recovered seepage and lower the unrecovered seepage proportions beyond what the current groundwater modelling suggests.³¹ The conditions require that the 3D modelling prepared in response to RFI 11 is updated to support detailed design of mine circuit water seepage collection measures.³²
 - (b) The seepage interception design which incorporates the new measures provides further assurance that the unrecovered seepage is as close to zero as feasibly possible.³³
 - (c) The pathway for unrecovered seepage is known, it is shallow and therefore detectable and capturable by the extensive monitoring network.³⁴

²⁷ RFI 12 Response - TSF and Shepherds ELF Seepage at page 6.

²⁸ RFI 12 Response - TSF and Shepherds ELF Seepage at page 6.

²⁹ Response to Minute 53, Hydro Geochem Group, 23 September 2026.

³⁰ RFI 11 – Question 2a – Water – BOGP Groundwater Site Investigation Memorandum (Hydro Geochem Group, 2026).

³¹ RFI 12 Response - TSF and Shepherds ELF Seepage at page 2.

³² D.04 – Schedule Two – General Conditions for ORC Consents at Condition 23.

³³ RFI 12 Response - TSF and Shepherds ELF Seepage at page 2.

³⁴ RFI 12 Response - TSF and Shepherds ELF Seepage at page 6 – 7.

25. In our submission the evidence before the Panel is clear that:
- (a) the groundwater environment has been characterised and is understood;
 - (b) the scale, nature and extent of potential seepage effects is known;
 - (c) the engineering controls provide assurance seepage can be captured and appropriately managed; and
 - (d) the conditions provide a comprehensive framework for managing effects through monitoring, enforceable water quality limits, triggers and responses ensuring that any emerging trends are identified and addressed well before compliance limits are reached and provides confidence and assurance that downstream receptors remain protected from water quality impacts related to seepage.³⁵

Section 107 of the Resource Management Act 1991

26. EDS submits that the Panel cannot be satisfied that the discharges comply with Section 107 of the RMA as in EDS' opinion they will render freshwater unsuitable for consumption by farm animals or cause significant adverse effects on aquatic life after reasonable mixing.³⁶ On that basis they submit:
- (a) the Panel must have regard to the fact that the application would ordinarily be declined under Clause 17(4) of Schedule 4 of the FTA; and
 - (b) that the Panel retains a discretion to decline for inconsistency with Section 107 of the RMA.³⁷
27. We agree that Section 107 of the RMA is relevant to the Panel's decision making, however disagree with the remainder of the submissions made in relation to Section 107. The inability of an FTA project to achieve consistency this provision does not preclude approval under the FTA.³⁸ The FTA instead provides the Panel with discretion to weigh the broader purpose of the FTA, prioritising significant regional or national benefits over an inability to meet RMA requirements.³⁹
28. Our legal submissions dated 14 September comprehensively address why the evidence for Matakanui Gold demonstrates that there will not be effects that render freshwater unsuitable for consumption by farm animals or cause significant adverse

³⁵ RFI 12 Response - TSF and Shepherds ELF Seepage at page 3.

³⁶ Supplementary legal submissions on behalf of Environmental Defence Society, 21 September 2026 at [37].

³⁷ Supplementary legal submissions on behalf of Environmental Defence Society, 21 September 2026 at [37].

³⁸ Fast Track Approvals Act 2024, Schedule 5 Clause 17(4).

³⁹ Fast Track Approvals Act 2024, Schedule 5 Clause 17(1).

effects on aquatic life after reasonable mixing.⁴⁰ The adoption of appropriate limits combined with comprehensive monitoring and adaptive management requirements as set out in the conditions ensure any adverse effects are identified and addressed.

29. We disagree that the Panel retains discretion to decline the discharge approvals solely on the basis of inconsistency of Section 107 of the RMA. The FTA is clear that a Panel may not treat an impact as meeting the threshold in Section 85(3)(b) solely on the basis that it is inconsistent with, or contrary, to a specified Act (such as the RMA) or any other document the Panel must take into account in its decision making.⁴¹
30. Our legal submissions dated 17 April 2026 outline our position on the interpretation of Section 85(4) being that:⁴²
 - (a) Section 85(4) does not permit decline solely on the basis of inconsistency with one or more policies and provisions; and
 - (b) any policy inconsistency must be accompanied by adverse effects that are sufficiently significant and out of proportion to a project's benefits.

ADAPTIVE MANAGEMENT

31. Several parties submit that the requirements for adaptive management identified by the Supreme Court have not been met.⁴³
32. We disagree with the submissions that the requirements for adaptive management have not been met. Our previous legal submissions address why the adaptive management requirements are met, we do not repeat these in full here but provide an overview in **Appendix 1**.
33. For the reasons set out in Matakanui Gold's earlier submissions, we submit that the proposed adaptive management regime is consistent with the principles identified by the Supreme Court in *Sustain Our Sounds*⁴⁴ and provides a robust and enforceable framework for the management of Project effects.

⁴⁰ Legal submissions on behalf of Matakanui Gold Limited, 14 September 2026 at [49] – [50].

⁴¹ Fast Track Approvals Act 2024, Section 85(4).

⁴² Legal submissions on behalf of Matakanui Gold Limited, 17 April 2026 at [55] – [57].

⁴³ Supplementary legal submissions on behalf of Environmental Defence Society, 21 September 2026 at [7] – [37], Legal Submissions for the Director General of Conservation, 21 September 2026 at [18] – [21], Closing Submissions for the New Zealand Fish and Game Council and Otago Fish and Game Council, 21 September 2026 at [6] and Legal submissions on behalf of Sustainable Tarras, 21 September 2026 at [62].

⁴⁴ *Sustain Our Sounds Incorporated v New Zealand King Salmon Limited* [2014] NZSC 40.

Precautionary Principle

34. EDS submits that the application of the precautionary principle prevents the Panel from granting the approvals.⁴⁵
35. We disagree. We submit that applying a precautionary approach is not required, and regardless, if the Panel were to consider otherwise, this would not require the Project to be declined.
36. The Courts have consistently emphasised there needs to be a plausible basis for adopting the precautionary approach. Conflicting opinions about whether a proposal would result in adverse effects where the expert witnesses were in no doubt about how the effects arise, what creates them, and what might cause them are not lack of scientific knowledge.⁴⁶
37. The Environment Court has also recognised, that applying the factors identified by the Supreme Court in *Sustain Our Sounds*, a precautionary approach can be effectively reflected in conditions, rather than dictating consent decline.⁴⁷
38. This is reinforced and given further emphasis in the context of the FTA where approvals may only be declined on the grounds specified in Section 85. The Panel must undertake the proportionality assessment in Section 85(3) with reference to the extent of the Project's benefits under Section 81(4) and any conditions under Section 85(3)(b). In an FTA context, adopting a precautionary approach does not automatically translate into declining approvals.
39. As addressed in our earlier submissions, the expert technical assessments demonstrate that the nature and scale of effects is understood along with the appropriate management responses. To the extent residual uncertainty remains as we set out below it is appropriately addressed through the proposed adaptive management framework and conditions. These conditions incorporate precautionary measures where necessary and we submit provide a robust effects management regime.

⁴⁵ Supplementary legal submissions on behalf of Environmental Defence Society, 21 September 2026 at [7] – [37].

⁴⁶ *Sea-tow Ltd v Auckland Council* [2006] ELHNZ 202 at [462], *Greenpeace v Minister of Fisheries* (HC Wgtn CP492/93 27/11/95 Gallen J) p32) *TransPower v Rodney District Council* Planning Tribunal Decision A85/94.

⁴⁷ *Wilson v Waikato Regional Council* [2021] NZEnvC 131 at [155].

- (a) **Cushionfields and Spring Annuals.** The conditions proactively address residual uncertainty for effects on cushionfields and spring annuals through:
- (i) The implementation of the Applied Research Programme (**ARP**).⁴⁸ The ARP is a research programme intended to reduce uncertainty for and provide updated research indicators for these species through mapping, rehabilitation trials and propagation work.
 - (ii) Requiring that, with the exception of an initial 2.7 hectare early disturbance area, the mining of the majority of the CIT pit must be delayed until it has been confirmed that spring annuals are either sufficiently present elsewhere or have been successfully propagated.⁴⁹ Relevant to this, ongoing technical studies have substantially increased the knowledge on populations of spring annuals and have identified larger and more widespread populations across a broad range of habitats beyond the Direct Disturbance Footprint (**DDF**) than was previously understood.⁵⁰ This has significantly increased the area over which management interventions can be trialled.⁵¹ A more extensive survey is planned for 2026, including areas that haven't previously been surveyed.
 - (iii) In addition to the above, as set out in the response to RFI 12, Matakanui Gold will now protect and manage areas of cushionfield within the BOGP Consent Area from year 6, as opposed to passive closure as previously proposed.⁵² If additional areas beyond those to be protected within the BOGP Consent Area or broader areas managed by Matakanui Gold, the company will negotiate with landowners to ensure adequate areas of cushionfield are conserved and actively managed from year 6.⁵³
- (b) **Water.** The conditions address any residual uncertainty with respect to water effects by requiring:
- (i) An update of the 3D modelling that was provided in response to RFI 11 to support detailed design of mine circuit water seepage

⁴⁸ D.03, Schedule One, Common Conditions to the CODC and ORC Consents at Condition 123.

⁴⁹ D.03, Schedule One, Common Conditions to the CODC and ORC Consents at Condition 128.

⁵⁰ RMA Ecology Ltd. October 2025. *Bendigo-Ophir Gold Project Vegetation Values Assessment* (Document B.13) included the results of the 2024 spring annuals survey and Walker S, Brownstein G, Simcock R, 2025. *Results of a survey of spring annual herb species on Bendigo and Ardour Stations, 2025 (updated)*. Bioeconomy Science Institute, Manaaki Whenua-Landcare Research Contract Report 2526-0088. 42pp. Prepared for Matakanui Gold Limited.

⁵¹ Statement of Evidence of Dr Robyn Simcock, 17 April 2026.

⁵² RFI 12 Question 2 Spring Annuals and Cushionfield Compensation.

⁵³ RFI 12 Question 2 Spring Annuals and Cushionfield Compensation.

collection elements.⁵⁴ Specifically, the updated 3D modelling will incorporate the additional seepage interception systems proposed by Matakani Gold in response to RFI 12 and RFI 11.

- (ii) Prior to the commencement of mining operations engagement of a suitably qualified and experienced person to develop a process, including suitable triggers and responses, to manage any mine circuit water seepage that bypasses mine waste storage facilities.⁵⁵
 - (iii) Update to the water load balance model annually which will ensure that predictions are continuously tested against observed data.⁵⁶ This will enhance confidence in longer term post closure projections.⁵⁷
 - (iv) As confirmed in the RFI 12 response, installation of three additional seepage interception measures.
40. Any residual uncertainty does not relate to whether effects can or cannot be managed, which has already been demonstrated through existing assessment, but rather the most effective way to respond to effects within a regime where there is certainty as to the potential effects and the options available to manage them. This is a very standard approach to large scale mining and resource projects.
41. In these circumstances, the Supreme Court's threshold for the adoption of a precautionary approach to decline the Project is not met, and in the context of the FTA there is no basis for declining the Project on precautionary principle grounds.

STATE HIGHWAY 8 AND ARDGOUR RISE CONCESSIONS

42. The FTA requires that a Panel must decline an application for a concession that would involve a lease for a term (including any renewals) of more than 50 years, would trigger a right of first refusal and the holder of first refusal has not waived that right.⁵⁸
43. Sustainable Tarras submits that while this requirement does not apply directly to the State Highway 8 and Ardgour Rise concessions (together, **Concessions**) it must weigh heavily against approval under Section 85(3) as the Concessions may require renewal after an initial 30 year term.⁵⁹

⁵⁴ D.04 – Schedule Two – General Conditions for ORC Consents at Condition 23.

⁵⁵ D.04 – Schedule Two – General Conditions for ORC Consents at Condition 21.

⁵⁶ D.04 – Schedule Two – General Conditions for ORC Consents at Condition 36.

⁵⁷ RFI 12 Response - TSF and Shepherds ELF Seepage.

⁵⁸ Fast-track Approvals Act 2024, Clause 7(3)(c) Schedule 6.

⁵⁹ Legal submissions on behalf of Sustainable Tarras, 21 September 2026 at [22].

44. We disagree with these submissions for the following reasons.

- (a) There is no reason to consider that the vesting process contemplated by the Department of Conservation (**DOC**), Central Otago District Council (**CODC**) and Matakanui Gold could not be completed in the 30-year timeframe. The provision for a 30-year timeframe has been proposed conservatively out of an abundance of caution, not because any delay is anticipated. To the contrary there has been general support from the relevant parties expressed for the vesting process:
 - (i) DOC's Section 51 Report stated a preference for the portion of Ardgour Rise and the SH8 upgrades located on conservation land to be vested in CODC and NZTA respectively as the respective road controlling authorities.⁶⁰
 - (ii) Matakanui Gold and CODC have entered into a Deed as to Road Stopping and Alternative Route that requires the vesting of the alternative route located on land owned by Matakanui Gold in CODC as soon as it is ready for use by the public.⁶¹
- (b) **State Highway 8 Concession.** We agree with the submissions of DOC that the State Highway 8 vesting in NZTA would not trigger a right of first refusal as NZTA is a Crown entity and Crown to Crown transfers are exempt.⁶² We submit that the statutory requirement to decline concessions involving a lease term exceeding 50 years where a right of first refusal would be triggered is not relevant to the Panel's assessment.
- (c) **Ardgour Rise Concession.** The concession has no renewal rights and cannot extend beyond the 30 years sought. The statutory requirement to decline concessions that could secure a lease beyond 50 years is not relevant to the Panel's assessment as any further use of the land beyond the concession term would require a new application and approval process outside the FTA process. The 30 year concession duration provides comfort that an adequate period of time is available to progress the proposed vesting and any potential rights of first refusal.

45. In response to DOC's feedback the expiry of the Concessions have been amended to be 30 years, or 20 working days following the vesting in the relevant road controlling authority, whichever is the sooner. This provides assurance the term of the concession will be no longer than necessary.

⁶⁰ DOC Section 51(2)(a) Report - Concessions, 25-03-2026.

⁶¹ Legal Submissions on behalf of Matakanui Gold Limited, 17 April 2026 at [168].

⁶² Legal Submissions for the Director General of Conservation, 21 September 2026 at [32].

SECTION 83

46. Sustainable Tarras have raised that proposed amendments to the conditions have not been accepted by Matakanui Gold on the basis they would be overly onerous (amongst other reasons).⁶³
47. An example raised are proposed amendments by Sustainable Tarras to D.03 Condition C137 which relates to the Mine Closure Plan to require remediation to “*pre-mining conditions or better*”.⁶⁴ Requiring Matakanui Gold to remediate the site to a better than existing condition imposes an obligation that goes beyond addressing the effects of the Project and extends beyond the purpose for which the condition is imposed being the management of the Project’s effects.
48. On this basis a condition of this nature would be more onerous than is necessary. Despite this, in some instances the evidence demonstrates that particular ecological outcomes such as native vegetation coverage are anticipated to balance or exceed pre mining conditions.⁶⁵
49. Our submissions dated 14 September 2026 address the requirements in the FTA for conditions to be no more onerous than necessary.⁶⁶ We submit that the conditions filed on 28 September 2026 which include targeted amendments in response to RFI 12 and the parties’ submissions are appropriate as:
 - (a) they are legally valid with reference to the established RMA tests as discussed at [50] - [120] below; and
 - (b) they represent the least onerous and most appropriate mechanisms for managing the relevant effects while still achieving the purpose of the FTA.

VALIDITY OF CONDITIONS

50. EDS has raised concerns on the validity and lawfulness of the proposed conditions.⁶⁷
51. We refer to our previous submissions which address the relevant tests for valid conditions and do not repeat these here.⁶⁸ The requirements of Section 108AA of

⁶³ Sustainable Tarras, Legal Submissions, 21 September 2026 at [46]-[47], [56]-[57] and [63].

⁶⁴ Sustainable Tarras, Legal Submissions, 21 September 2026 at [63].

⁶⁵ Alliance Ecology Consulting - Assessment of Ecological Effects (Alliance 2025) and Section 6 - Assessment of Environmental Effects.

⁶⁶ Closing Legal Submissions on behalf of Matakanui Gold Limited, 14 September 2026 at [212] – [215].

⁶⁷ Environmental Defence Society Inc, Supplementary Legal Submissions, 21 September 2026 at [52]-[57].

⁶⁸ Legal Overview, 31 October 2025 at [100] and Closing Legal Submissions, 14 September 2026 at [212] – [214] and [209] – [210].

the RMA remain relevant to the Panel's considerations, however this needs to be within the context of the FTA statutory framework as described below. Applying that, we disagree with EDS' submissions that the relevant tests are not met.

52. Clause 17 of Schedule 5 of the FTA requires that the provisions of Parts 2, 3, 6 and 8 -10 of the RMA which decision making on a resource consent application must be "*taken into account*" when considering approvals sought under the RMA. This incorporates Section 108AA of the RMA as a relevant matter in decision making.
53. However, while Section 108AA of the RMA must be taken into account, the greatest weight must be given to the purpose of the FTA.⁶⁹
54. As such, we submit that Section 108AA of the RMA and associated case law must be considered in this bespoke FTA context.
55. Relevantly, the effects management functions captured by conditions under the FTA are different to the RMA due to the role planning documents play within the FTA decision making framework. While RMA planning documents and the associated case law on valid conditions under the RMA remain a relevant consideration, greatest weight must be given to the purpose of the FTA and inconsistency with a planning document does not prevent approval under FTA.⁷⁰
56. The role of conditions under the FTA is also materially different from their role under the RMA. The FTA expressly requires decision makers through Section 85(3)(b) to consider whether adverse effects can be addressed by conditions when undertaking its Section 85(3) assessment. This gives conditions a more central effects management function under the FTA than the RMA and we say supports a broader, outcomes focused approach to addressing adverse effects.
57. This broadened scope of effects management contemplated (and directed) by the FTA necessarily means that the structure and function of FTA conditions will appropriately be different to those developed in an RMA context.

Role of Condition 2

58. EDS has raised that uncertainty arises in relation to Condition 2 of D.01 which refers to all information provided to the Panel listed in Attachment 1.⁷¹ EDS submits that a general condition cannot be relied on to provide the outer bounds of authorised effects and that the consent conditions must clearly fulfil this function.⁷²

⁶⁹ Fast-track Approvals Act 2024, Schedule 5, Clause 17(1).

⁷⁰ Fast-track Approvals Act 2024, Section 85(4).

⁷¹ Environmental Defence Society Inc, Supplementary Legal Submissions, 21 September 2026 at [59]. We note EDS' submissions refer to Condition 3 but we have assumed this is a typographical error.

⁷² Environmental Defence Society Inc, Supplementary Legal Submissions, 21 September 2026 at [60].

59. We disagree that proposed Condition 2 is the sole mechanism which establishes the bounds of authorised effects.
60. Condition 2 performs an enabling and constraining function by defining the scope of the Project through reference to relevant application materials. As recognised by the Panel in *Takitimu North Link*, conditions of this type are operational, they house the key documents which form the scope of the application.⁷³
61. However, the authorised effects cannot be determined by reference to Condition 2 in isolation. They must be assessed by considering the conditions package as a whole which incorporate changes and refinements made to the Project since the application was lodged, impose performance standards, management requirements, monitoring obligations and limits on effects. Collectively these conditions establish what the Panel in *North West Rapid Transit* described the ‘*envelope of effects*’ within which the Project must operate.⁷⁴

Remoteness of Conditions

62. Matakanui Gold declined to adopt proposed conditions requiring tissue sampling of fish and ecotoxicology monitoring for birds on the basis that any detected effects could not be directly attributed to the Project. EDS submit that this is not a valid basis for declining to monitor a potential effect and there is no evidence of other activities contributing the same contaminants, and even if such activities do exist, the Panel must consider cumulative effects.⁷⁵
63. We disagree. As EDS have identified in their submissions, a condition must be connected to the avoidance, remediation or mitigation of an effect in a way that is not indirect or remote.⁷⁶
64. The difficulty with the proposed conditions is that because fish and birds are mobile species, effects detected in the wider receiving environment could not be attributed directly to the Project.
65. We agree with EDS’ submissions that the RMA requires the assessment of cumulative effects. However, the assessment of cumulative effects and imposing monitoring conditions are separate exercises. While it is open to the Panel to consider cumulative effects in its assessment, it does not follow that the appropriate response is to impose monitoring requirements for effects that cannot be directly attributed to the Project.

⁷³ *Record of Decision of the Expert Consenting Panel, Takitimu North Link*, 19 March 2026 at [330].

⁷⁴ *Record of Decision of the Expert Consenting Panel, North West Rapid Transit*, 4 September 2026 at [735].

⁷⁵ Closing Submissions for the New Zealand Fish and Game Council and Otago Fish and Game Council, 21 September 2026 at [9].

⁷⁶ Environmental Defence Society Inc, Supplementary Legal Submissions, 21 September 2026 at [53].

66. We submit that conditions which are unable to distinguish between effects from the Project or other activities would be impossible to enforce. They also potentially amount to a requirement for Matakanui Gold to assume responsibility for the cumulative effects of all activities in the surrounding environment.
67. The evidence for Matakanui Gold demonstrates that the suite of monitoring proposed in the conditions is directly connected to the Project's effects, can meaningfully identify and manage these effects. In these circumstances conditions requiring fish tissue sampling and ecotoxicological monitoring in the wider environment would be more onerous than is necessary.
68. In our submission the evidence demonstrates that potential effects on fish and birds in the surrounding environment that EDS' proposed condition seeks to address is appropriately controlled through the water quality limits which have been determined based on technical input to ensure adverse effects don't arise for these species in the wider environment.⁷⁷ As discussed at [20] - [25] above, the monitoring network enforceable water quality limits, triggers and responses are designed to ensure that any emerging trends are identified and addressed well before compliance limits reached and any adverse effects occur in the wider environment.

Consent Notices

69. The parties submit that consent notices should be registered on the relevant records of title to secure the geotechnical stability requirements for land outside the Project site in perpetuity.⁷⁸
70. Consent notices can only be registered on a record of title where a subdivision consent is granted subject to a condition to be complied with on a continuing basis.⁷⁹ Matakanui Gold is not seeking a subdivision consent and as such a consent notice is not an available mechanism. The mechanism that the RMA intends to be used in such a situation is a Section 108 covenant. We refer to our legal response to RFI 11 which addresses the appropriateness of this mechanism.⁸⁰
71. Despite this, we submit that a legal mechanism securing the geotechnical stability for land outside the Project Site in perpetuity is unnecessary as it is already provided for in the following conditions and long term legal mechanisms:

⁷⁷ Part 2 - 20 - Response to Submissions on RFI 11 - Water - Memorandum from J. Palich - 14 September 2026, Part 2 - 12 - Response to Submissions on RFI 11 - Aquatic Ecology - Memorandum from I. Boothroyd and RFI 11 - Question 9 - Ecotoxicity – Ecotoxicology.

⁷⁸ Closing Submissions for the New Zealand Fish and Game Council and Otago Fish and Game Council, 21 September 2026 at [12].

⁷⁹ Resource Management Act 1991, Section 221.

⁸⁰ RFI 11 - Question 20 - New Covenant - Options Assessment, Section 108 Covenant.

- (a) Condition 52 of D.04 to maintain a minimum factor of safety outside the project site continues for the 35-year duration of the consent. These conditions remain legally enforceable for as long as the consents remain operative.⁸¹
 - (b) Condition 137 of D.03 identifies the closure objectives for the Mine Closure Plan and these relevantly require that the final landform is geotechnically stable, with no material risk to the environment or public safety.⁸²
 - (c) Before mining operations end, Condition 134 of D.03 requires the registration of a Section 108 covenant that will apply in perpetuity which requires the monitoring and maintenance of residual structures such as the TSF and ELF to ensure they remain in a stable and rehabilitated state.⁸³
72. Beyond the term of the consents which directly address stability of neighbouring land, the covenant already required by the conditions provides an enduring framework to ensure the long-term stability of the Project site. In requiring this control over any potential instability at its source, a more targeted control is provided than controls on third party neighbouring land.
73. The Panel is able to rely on the conditions to appropriately manage effects. As the High Court has held, when a decision maker imposes conditions, it is entitled to assume that the applicant will comply with them, nothing could ever be approved if consent authorities had to work on the contrary assumption that conditions wouldn't be complied with.⁸⁴

Matakanui Trust – Funding Condition

74. Sustainable Tarras and EDS' submissions have raised concerns with the level of funding proposed for the Trust.⁸⁵
75. Our legal submissions dated 14 September 2026 comprehensively address both the interaction between the bond and the Trust, and an explanation of the condition framework recommended by bond expert Mr Lane that provides certainty for the funding of the Trust and clarify that funding for the Trust is not capped at \$50 million.⁸⁶ Ultimately, the conditions require that if regulators approve the transfer of

⁸¹ D.04 - Schedule Two - General Conditions for Otago Regional Council Consents.

⁸² D.03 - Schedule One - Common Conditions to the CODC and ORC Resource Consents at Condition 137(e).

⁸³ D.03 - Schedule One - Common Conditions to the CODC and ORC Resource Consents at Condition 134(b).

⁸⁴ *88 The Strand Limited v Auckland City Council* [2002] NZRMA 475 at [19] and *Barry v Auckland City Council* [1975] 2NZLR 646 CA at [651].

⁸⁵ Legal submissions on behalf of Sustainable Tarras, 21 September 2026 at [59] – [61] and Environmental Defence Society Inc, Supplementary Legal Submissions, 21 September 2026 at [82]-[87].

⁸⁶ Closing Legal Submissions, 14 September 2026 at [162] – [177].

land and consents to the Trust, and at the time of transfer the annual bond calculation shows the cost of post closure obligations are more than the \$50 million held by the Trust, the conditions are clear that Matakanui Gold must provide additional funding to the Trust to meet the shortfall.⁸⁷

76. Any funding shortfall identified at the time of approved transfer is not a new or uncaptured liability. The shortfall would be the difference between the amount already held by the Trust and the amount required under the then-current bond calculation. That required amount would have already been identified by the annual bond review calculation and would be secured by the bond held by the Councils.⁸⁸
77. For the following reasons we disagree with Sustainable Tarras' submission that the condition framework doesn't provide confidence that the long-term management will be adequately funded and that if it is in Matakanui Gold's best interests to walk away from the site and consents it will do so.⁸⁹
 - (a) The conditions require the Trust to hold \$50 million in funding. These payments must start from Year 6 of gold production and continue until \$50 million is held.⁹⁰
 - (b) If there is a shortfall at the time of transfer, Matakanui Gold must provide additional funding to the Trust. This is a legally enforceable requirement.⁹¹
 - (c) If the regulators do not approve of the transfer, the land ownership and consent obligations remain with the consent holder and are legally enforceable by the Councils.⁹²
 - (d) The bond held by the Councils is to ensure that, at all times throughout the life of the Project, sufficient funds are available to the regulators to undertake any obligations required under the consent conditions should the regulators be required to do so.⁹³
 - (e) The bond covers all closure and post closure activities required by the consent conditions.⁹⁴ Importantly, the amount of the bond is not affected by whether these activities are undertaken by Matakanui Gold, the Trust or any other party.

⁸⁷ D.03 - Schedule One - Common Conditions to the CODC and ORC Resource Consents at Condition 157(b).

⁸⁸ D.03 Schedule One – Common Conditions to the CODC and ORC Consents at C145(f).

⁸⁹ Legal submissions on behalf of Sustainable Tarras, 21 September 2026 at [59] – [61].

⁹⁰ D.03 Schedule One – Common Conditions to the CODC and ORC Consents at C157.

⁹¹ D.03 Schedule One – Common Conditions to the CODC and ORC Consents at C157(2).

⁹² D.03 Schedule One – Common Conditions to the CODC and ORC Consents at C153.

⁹³ Malcom Lane Response to Supplementary Statements, 10 September 2026 at page 1.

⁹⁴ D.03 Schedule One – Common Conditions to the CODC and ORC Consents at C141.

- (f) The bond can only be released at the point that the Councils are satisfied that:⁹⁵
 - (i) the objectives and outcomes in the Mine Closure Plan have been completed and/or achieved; and
 - (ii) the Trust has been established and adequately funded.

78. The submission that Matakanui Gold could 'walk away' from the site and its obligations is inconsistent with the consent framework and incorrect. Matakanui Gold cannot avoid its closure and post closure obligations in the conditions by abandoning the site or surrendering the consents. The conditions are expressly designed to ensure that responsibility for long term management either transfers to a properly funded Trust or remains with Matakanui Gold as the consent holder.

Management Plan Conditions

79. Sustainable Tarras submits that particular management plan conditions⁹⁶ fail to meet the legal requirements for lawful management plan conditions as they do not set clear environmental objectives that must be achieved or triggers in conditions.⁹⁷
80. The law is settled that management plan conditions must:
- (a) set objectives and parameters;⁹⁸
 - (b) outline the matters a management plan must address;⁹⁹
 - (c) identify the performance standards to be met;¹⁰⁰
 - (d) not impose open-ended certification;¹⁰¹
 - (e) provide for effective monitoring of adverse effects and thresholds to trigger remediation action before effects become overly damaging;¹⁰²

⁹⁵ D.03 Schedule One – Common Conditions to the CODC and ORC Consents at C150.

⁹⁶ D.03 Schedule One – Common Conditions to the CODC and ORC Consents at C21, C38, C64, C67, C71, C75 and C137.

⁹⁷ Sustainable Tarras, Legal Submissions, 21 September 2026 at [62] referencing Conditions C21, C38, C64, C67, C71, C75 and C137.

⁹⁸ *Remediation (NZ) Ltd v Taranaki Regional Council* [2024] NZEnvC 213 at [466].

⁹⁹ *Final Report and Decision of the Board of Inquiry into the Transmission Gully Proposal* June 2012 at [194].

¹⁰⁰ *Re Canterbury Cricket Assn Inc* [2013] NZEnvC 184 [2013] NZRMA 371, at [114] - [130].

¹⁰¹ *Skyline Enterprises Limited v Queenstown Lakes District Council* (ENV-2018-CHC-14).

¹⁰² *Sustain Our Sounds Incorporated v New Zealand King Salmon Limited* [2014] NZSC 40 at [133].

- (f) specify the process for monitoring, evaluation of monitoring results, reviewing and refining hypotheses, the management plan and programme to better meet the objectives;¹⁰³ and
 - (g) set out the mechanisms for review and update of a management plan, usually as monitoring feedback becomes available.¹⁰⁴
81. Relevantly, the Environment Court has found that larger scale projects often require more leniency due to the interconnected nature that consent conditions will require.¹⁰⁵
82. The proposed management plan conditions identified by Sustainable Tarras meet the requirements for lawful management plan conditions outlined above. They prescribe clear objectives, performance standards, defined parameters for certification, require monitoring, trigger-based responses and provide mechanisms for ongoing review.
83. Importantly the conditions include the objectives of each management plan, which identify the ultimate outcomes sought in each management plan. These objectives provide the overarching required end result, and the performance standards and limits in the conditions operate as enforceable actions which the management plans which in turn must contain the methods to achieve those.
84. The Planning Joint Witness Statement dated 21 May 2026 records agreement between the experts on the appropriate approach to management plan conditions. Consistent with the judicial authority referred to above, the following approach agreed by the planning experts reflects the legal requirements for valid management plans conditions outlined above:¹⁰⁶
- (a) a requirement to implement the management plan;
 - (b) the objectives of the management plan;
 - (c) the measurable environmental outcomes that are to be achieved as a result of the implementation of the management plan, including performance standards and limits;
 - (d) monitoring and reporting on the progress towards, and achievement of the environmental outcomes; and

¹⁰³ *Crest Energy Kaipara Ltd v Northland Regional Council* [2009] ELHNZ 507 at [228].

¹⁰⁴ *Final Report and Decision of the Board of Inquiry into the Transmission Gully Proposal* Board of Inquiry, EPA 0175, June 2012 at [184]-[185].

¹⁰⁵ *West Coast Environmental Network Inc v West Coast Regional Council* [2013] NZEnvC 178 at [45].

¹⁰⁶ Planning Joint Witness Statement, 21 May 2026 at [63].

- (e) actions required as a consequence of any predicted or actual non-compliance with environmental outcomes or conditions.
85. During in person workshopping in July and August 2026, the management plan conditions were amended to ensure this approach. The conditions were also updated to reflect the limits and triggers which were agreed during technical expert conferencing.¹⁰⁷
86. The particular management plan conditions raised by Sustainable Tarras are Conditions C21, C38, C64, C67, C71, C75 and C137 in D.03.¹⁰⁸
87. D.03 C21 was a new condition added by planning experts from Matakanui Gold, Otago Regional Council (**ORC**), CODC, DOC and Kā Rūnaka during the four conditions workshops held in July and August 2026.¹⁰⁹ The other conditions raised by Sustainable Tarras were all amended by the planning experts during these workshops.¹¹⁰
88. As set out in our Memorandum of Counsel dated 24 August Sustainable Tarras elected not to participate in condition workshopping.¹¹¹ The relevant conditions have been collectively considered and tested by the planners through the workshopping process.
89. We submit that the proposed management plan conditions, as redrafted by the planning experts for Matakanui Gold, ORC, CODC, the DOC and Kā Rūnaka are appropriate and legally valid.

Compensation Conditions

Wetlands

90. EDS express a view that the Panel cannot be confident that wetland compensation payments required by the proposed conditions¹¹² are of a sufficient quantum to compensate for the wetland values that are lost or impacted in the event that wetland rehabilitation is unsuccessful and given this the conditions cannot be taken into account in the Panel's assessment under Section 85(b)(i)-(ii).¹¹³

¹⁰⁷ Mitchell Daysh, Memorandum on BOGP Conditions, 28 August 2026.

¹⁰⁸ Sustainable Tarras, Legal Submissions, 21 September 2026 at [62].

¹⁰⁹ D.03 Common Conditions to the Central Otago District Council and Otago Regional Council Resource Consents, Updated 28 August 2026.

¹¹⁰ D.03 Common Conditions to the Central Otago District Council and Otago Regional Council Resource Consents, Updated 28 August 2026.

¹¹¹ Memorandum of Counsel, 24 August 2026 at [10].

¹¹² D.03 - Schedule One - Common Conditions to the CODC and ORC Resource Consents at Conditions 59 and 60.

¹¹³ Environmental Defence Society Inc, Supplementary Legal Submissions, 21 September 2026 at [88] – [91].

91. EDS' submission that the level of the payments is insufficient and therefore should not be considered in the Section 85(3) assessment incorrectly applies the FTA framework. The FTA explicitly states that when undertaking a Section 85(3) proportionality assessment the Panel must take into account any conditions to avoid, remedy, mitigate, offset or compensate for adverse impacts.¹¹⁴
92. The language of the FTA explicitly contemplates compensation actions as a relevant factor that can reduce the significance of adverse impacts for the purposes of Section 85(3).
93. Matakanui Gold proposes to construct new wetlands at Shepherds Creek and on the TSF.
94. The wetland compensation payments require payments to the Fund if after 10 years of monitoring it is determined by the Peer Review Panels and Councils that the portions of the Shepherds Creek and TSF wetland are not self-sustaining (as defined in condition 59 of D.03) and are unlikely to be self-sustaining at passive closure payments must be made to the Fund of:
 - (a) \$30,000 per hectare of the Shepherds Creek wetland that is not self-sustaining; and
 - (b) \$50,000 per hectare of the TSF wetland that is not self-sustaining.
95. We submit the compensation payments are a valid effects management response and must be considered by the Panel in an assessment under Section 85(3). This approach is consistent with previous Panel decisions under the FTA which recognised that compensation measures are an important and relevant consideration to a Panel's overall assessment of significance of effects under Section 85.
96. In *Waitaha Hydro* the Panel accepted that compensation payments addressed aspects of effects on recreational values.¹¹⁵ As confirmed by the *Waitaha Hydro* Panel compensation conditions are not unusual, are lawful and enforceable.¹¹⁶ Ultimately the *Waitaha Hydro* Panel concluded that the package of conditions, including compensation measures, reduced the effects of the project and decline of the approvals was not warranted.¹¹⁷
97. Similarly in *Southland Windfarm* the Expert Panel held that while residual effects remained, when the offsetting and compensation measures were accounted for the

¹¹⁴ Fast-track Approvals Act 2024, Section 85(3)(b)(ii).

¹¹⁵ *Record of Decision of the Expert Consenting Panel, Waitaha Hydro*, 17 April 2026 at [480], [752], [761].

¹¹⁶ *Record of Decision of the Expert Consenting Panel, Waitaha Hydro*, 17 April 2026 at [1154].

¹¹⁷ *Record of Decision of the Expert Consenting Panel, Waitaha Hydro*, 17 April 2026 at [1287].

residual impacts were not sufficiently significant to be out of proportion to the project's regional and national benefits such that the application should be declined.¹¹⁸ The compensation measures considered by the *Southland Windfarm* Panel included wetland restoration actions on land outside the project site and funding predator control over land outside the project site.

98. The question for the Panel isn't whether the proposed compensation payments (if required) replace or replicate the affected wetland values, Section 85(3) requires consideration of the extent to which the conditions compensate for adverse effects and the weight that should be given to those measures in the overall proportionality assessment under Section 85.
99. The wetland compensation payments form part of the proposed conditions and are specifically intended to address residual adverse effects if wetland rehabilitation outcomes are not achieved. As the FTA expressly requires the Panel to consider such conditions in its Section 85(3) assessment, those payments are a relevant factor in evaluating the overall significance of the Project's effects.

Lizards

100. DOC submits that there is no certainty that the Fund will be spent on lizard work and the Fund cannot be relied on as a benefit that offsets or compensates for lizard impacts.¹¹⁹
101. Matakanui Gold has committed to increasing the Fund by an additional \$10 million with the specific purpose of providing significant benefits to Central Otago lizards.¹²⁰ This amount has been proposed to provide equivalent funding for the approximate cost of establishing an approximately 140 – 150 hectare pest exclusion fence within suitable habitat in the wider landscape, eradicating mammalian pests and maintain zero densities of targeted pests over 30 years.
102. This provides certainty that resources are both available and directed towards lizard conservation work in Central Otago. The proposed conditions include:
 - (a) The establishment of a committee with stakeholder representation to oversee the Fund. The committee's purpose is to direct funding, project management and administrative support to projects that:
 - (i) enhance heritage and cultural values within Central Otago and adjacent areas;

¹¹⁸ *Record of Decision of the Expert Consenting Panel, Southland Windfarm*, 2 April 2026 at [438].

¹¹⁹ Legal Submissions for the Director General of Conservation, 21 September 2026 at [11].

¹²⁰ RFI 12 Question 1 - Lizard Response at Section 3.

- (ii) protect and enhance threatened or at-risk species (including lizards) and ecosystems, in accordance with mātauranga Māori, within the Dunstan, Lindis and Pisa Ecological Districts (within the Central Otago Ecological Region); and
 - (iii) protect and enhance habitat for Kowarau gecko and southern grass skink and other threatened or at-risk lizard species beyond the BOGP Consent Area within Central Otago and adjacent areas,
 - (b) requirements that the Annual Monitoring and Compliance Report must provide a summary identifying a description of the projects and/or activities that have been implemented by the Fund and the benefits that have been achieved or are expected to be achieved.¹²¹
103. Ecological experts on behalf of Matakauui Gold support the funding commitment and consider it is capable of delivering materially greater benefits for affected species than the 81-hectare sanctuary network alone on the basis that funding outcomes, DOC agreement and monitoring outcomes are secured in legally enforceable conditions.¹²²
104. Condition 135 of D.03 achieves this by establishing a clear purpose for funding while retaining sufficient flexibility for the committee, which requires representatives from DOC and Kā Rūnaka representatives, to direct funding to the most effective conservation projects within a clear and enforceable framework.
105. Given the above we disagree with DOC's submission that the Fund cannot be relied on as a benefit that compensates for lizard impacts. The additional \$10 million contribution is secured by certain and enforceable conditions. For the reasons outlined above at paragraphs [95] - [99] above, the Panel is required to take that compensation into account as a measure that reduces the significance or residual impacts on lizards when undertaking its proportionality assessment under Section 85(3).
106. In addition to the \$10 million contribution to the Fund, Matakauui Gold has committed to the following actions in response to RFI 12 in addition to those already proposed and secured in the conditions of consent:¹²³
- (a) Increased salvage for southern grass skink and relocation to dedicated relocation site(s) of approximately 5 hectares of suitable wetland and

¹²¹ D.03 - Schedule One - Common Conditions to the CODC and ORC Consents at C14 and C135.

¹²² RFI 12 Question 1 - Lizard Response at Section 5.

¹²³ RFI 12 Question 1 - Lizard Response at Section 3.

riparian margin habitat area within the Ardgour Restoration Area or Mine Regeneration Zone.¹²⁴

- (b) The dedicated relocation site(s) has increased the number of southern grass skink that are able to be salvaged and relocated to appropriate from approximately 800 to approximately 1,800. This is because the Bendigo and Battery Hill sanctuaries contain limited habitat suitable for southern grass skink.
- (c) The dedicated relocation site(s) will be subject to livestock exclusion, feral browser control and intensive mouse control (to below a 5% tracking index) over and above the control of introduced mammalian pests already proposed for the Ardgour Restoration Area and Mine Regeneration Zone.¹²⁵

107. This full suite of effects management actions proposed for lizards is required to be taken into account by the Panel in its Section 85(3) assessment and we submit it materially contributes to the overall effects and proportionality assessment.

Cushionfields and Spring Annuals

- 108. EDS submits that Conditions C127 and C128 of D.03 relating to spring annuals and cushionfields compensation at passive closure amount to an unlawful delegation.¹²⁶ EDS argues the conditions unlawfully delegate the Panel's decision making with respect to whether further compensation is required and how compensation is to be calculated.¹²⁷
- 109. As set out at paragraph 39(a) above, in response to RFI 12 Matakanui Gold has committed to protect and manage areas of cushionfield within the BOGP Consent Area from year 6, as opposed to passive closure as previously proposed.¹²⁸
- 110. If additional areas beyond those to be protected within the BOGP Consent Area or broader areas managed by Matakanui Gold, the company will negotiate with landowners to ensure adequate areas of cushionfield are conserved and actively managed from year 6.¹²⁹
- 111. While management actions are now proposed to begin in year 6 requirements in conditions 127 and 128 of D.03 continue to apply. This has the effect that:

¹²⁴ D.03 - Schedule One - Common Conditions to the CODC and ORC Consents at Condition NEW C73A.

¹²⁵ D.03 - Schedule One - Common Conditions to the CODC and ORC Consents at Condition 97.

¹²⁶ Environmental Defence Society Inc, Supplementary Legal Submissions, 21 September 2026 at [65].

¹²⁷ Environmental Defence Society Inc, Supplementary Legal Submissions, 21 September 2026 at [68].

¹²⁸ RFI 12 Question 2 Spring Annuals and Cushionfield Compensation.

¹²⁹ RFI 12 Question 2 Spring Annuals and Cushionfield Compensation.

- (a) if the success criteria in the ARP haven't been achieved at passive closure, and are considered unlikely to be achieved by the Peer Review Panel and the Councils Matakanui Gold must:
 - (i) in the first instance protect with an appropriate legal mechanism any additional areas of land outside of the BOGP Consent Area that have been managed since year 6 in perpetuity; or
 - (ii) identify land that contains cushionfield habitat outside of the BOGP Consent Area and implement an appropriate legal mechanism to protect the habitat in perpetuity.
112. Areas that have been managed from year 6 within the BOGP Consent Area will already be subject to protection in perpetuity by the Section 108 RMA covenant proposed by Matakanui Gold in Condition 134 of D.03.
113. We disagree with EDS that these conditions related to compensation for cushionfields unlawfully delegate the Panel's decision making with respect to whether further compensation is required and how compensation is to be calculated as:
- (a) The conditions do not require the Peer Review Panel or Councils to decide the threshold for whether compensation is required. The trigger for compensation is set in the condition. If the ARP criteria haven't been achieved at year 6 and are considered unlikely to be achieved compensation must occur. The Peer Review Panel and Councils are undertaking an evidence-based assessment against defined benchmarks in the ARP, not exercising discretion as to whether compensation is required. The conditions themselves would have already determined that failure to meet ARP success criteria warrants compensation.
 - (b) The method for calculating compensation is prescribed in the conditions and is directly linked to the shortfall in hectares between the outcomes achieved and applicable success criteria. The Councils and the Peer Review Panel are not required to exercise subjective judgment as to the amount of compensation that should be provided. Their role is limited to assessing the evidence against the success criteria and determining the extent of any shortfall. The quantum of compensation then follows from the formula specified in the conditions.
114. For these reasons, these conditions do not involve unlawful delegation of decision making. They require specified actions to be taken based on clear triggers and

criteria contained in the conditions. No discretion is conferred as to whether compensation is required or how it is to be calculated.

115. EDS discusses conditions for the Haldon Solar project that it considers are similar and have been appealed on the basis of unlawful delegation.¹³⁰ We disagree with EDS that the conditions are similar and submit the following differences are of particular importance:

- (a) The compensation framework in Conditions 127 and 128 of D.03 is fully prescribed. The conditions specify the trigger for compensation and the response that must follow. The role of the Peer Review Panel and Councils is limited to making findings against pre-determined criteria. This is materially different from the Haldon Solar condition EDS has raised where the decision maker is required to determine whether compensation was required and if so, what actions were appropriate.
- (b) The spring annuals conditions are triggered by a defined point in time (year 6) when ecological outcomes can be assessed against established success criteria. At that point, the Council and Peer Review Panel's role is limited to determining whether those criteria have been met. In contrast, the Haldon Solar condition requires a final determination at a fixed future date and leaves the substance of the project's ecological obligations to be decided later.

116. Regardless, the decision of EDS to appeal the Haldon Solar FTA decision also has no binding or precedent value for the Panel. The lodging of an appeal has no correlation or relevance to the strength of an argument made within that appeal.

Proposed Covenant

117. Sustainable Tarras state that the covenant proposed over 2,219 hectares of the BOGP Consent Area:¹³¹

- (a) Goes beyond the role of a Section 108 RMA covenant as it does not secure the performance of any conditions of consent.
- (b) Imposes obligations on CODC without a clear statutory basis and where CODC has maintained it does not want to be the beneficiary of the covenant due to lack of resourcing and the responsibility it would place on the ratepayer.

¹³⁰ Environmental Defence Society Inc, Supplementary Legal Submissions, 21 September 2026 at [69]-[73].

¹³¹ Legal submissions on behalf of Sustainable Tarras, 21 September 2026 at [27] – [34].

- (c) Imposes obligations on CODC where monitoring costs cannot be recovered.
- (d) Results in a scenario where CODC would be both the covenantor and covenantee as CODC would be the landowner through the Trust.

118. For the reasons set out below we do not agree with these submissions.

- (a) The performance of the consent conditions is secured through the statutory framework including enforcement mechanisms available under the RMA.
- (b) The Section 108 covenant is the legal mechanism recorded against the title to the land ensuring that the relevant obligations and restrictions continue to bind the land and its owners in perpetuity.
- (c) There is a clear statutory basis for the imposition of the covenant under Section 108(2)(d) of the RMA. As confirmed by CODC at the hearing held in Cromwell, Section 108 covenants are a standard resource management tool for securing long term environmental outcomes and providing certainty.¹³²
- (d) It is not proposed that the covenant would provide CODC with any private benefit and CODC's role in the covenant would be the regulatory authority administering and enforcing the requirements of the RMA. That is entirely standard practice for a regulatory authority in relation to Section 108 covenants.
- (e) As set out in the legal response to RFI 11, CODC's concerns regarding enforcement related costs will be addressed through appropriate assignment and cost recovery provisions in the covenant and consent conditions.¹³³ Costs associated with monitoring and enforcing the covenant will not create an unfunded monitoring burden on the Council (or ratepayers) as the costs will be met by the consent holder.¹³⁴
- (f) There is no scenario under which CODC would become the covenantor and covenantee through the Trust. The conditions require that with approval from the regulators, the identified land is transferred to the Trust.¹³⁵ If approval is not given from the regulators, the consent holder remains the

¹³² Bendigo-Ophir Gold Project, Hearing Transcript, 29 April 2026 at page 8 [38] – [43] and page 9 [1] – [2].

¹³³ D.03 - Schedule One - Common Conditions to the CODC and ORC Resource Consents at C159.

¹³⁴ RFI 11 - Question 20 - New Covenant - Options Assessment, Section 108 Covenant, 17 August 2026.

¹³⁵ D.03 Schedule One – Common Conditions to the CODC and ORC Consents at C153.

owner of the land. The conditions do not contemplate or provide any mechanism for CODC to become the owner of the land.

119. Our legal response to RFI 11 addresses the reasons why the proposed covenant represents the most robust and reliable option to create enduring certainty that long term management outcomes will be maintained.¹³⁶
120. In the event the Panel is not minded to impose a Section 108 covenant, reliance on the consent conditions would provide a high degree of certainty. Matakanui Gold seek a land use consent with unlimited consent duration and the conditions attached to that consent would remain legally enforceable for so long as the consent remains operative. Section 138 of the RMA further provides that consent obligations may continue to be enforceable even where a consent is surrendered.

WILDLIFE ACT 1953

121. Our closing legal submissions outlined why we disagreed with DOC's 7 September 2026 submissions that the effects management approach fails to avoid, minimise or remedy effects on lizards. We rely on those submissions.
122. In that context we also referred to the Wildlife (Authorisations) Amendment Act 2025 that enables DOC to authorise the incidental killing of wildlife if satisfied that the overall effect of the authority would be consistent with the protection of populations of wildlife and individual wildlife.¹³⁷ DOC's 21 September 2026 legal submissions address the above points and submit that the Project's effects on lizards are not consistent with the purpose of the Wildlife Act 1953 (**Wildlife Act**).
123. For the reasons set out below we disagree with DOC's 21 September 2026 submissions and do not consider they correctly apply the relevant FTA statutory framework:
 - (a) While the purpose of the Wildlife Act is relevant to the Panel's decision making,¹³⁸ the greatest weight when assessing a wildlife approval must be given to the purpose of the FTA.
 - (b) The Wildlife Act as amended by the Wildlife (Authorisations) Amendment Act 2025 does not require the activity itself, or each individual act of killing viewed in isolation, to be consistent with the protection of wildlife.¹³⁹

¹³⁶ RFI 11 - Question 20 - New Covenant - Options Assessment, Section 108 Covenant, 17 August 2026.

¹³⁷ Closing Legal Submissions, 14 September 2026 at [99] – [106].

¹³⁸ Fast-track Approvals Act 2024, Clause 5 Schedule 7.

¹³⁹ Legal Overview, 31 October 2025 at [87].

- (c) When determining whether the overall effect of the authority will be consistent with the protection of populations of wildlife the Director General must have regard to effects on:
 - (i) populations of wildlife that will be affected by the activity; and
 - (ii) the viability of the species to which that wildlife belongs.¹⁴⁰
- (d) The ecological evidence does not support a conclusion that the Project will result in the extinction or long-term loss of a species:¹⁴¹
 - (i) All species identified on the Project Site have been consistently recorded in all surveyed locations in the wider landscape and populations outside the Ecological Study Area are estimated to be hundreds of times greater than those within the DDF.¹⁴²
 - (ii) Lizards will naturally recolonise the rehabilitated mine surface by year 35.¹⁴³
- (e) As set out in paragraph 106 above Matakanui Gold's response to RFI 12 has further strengthened the effects management response through the increased salvage and relocation of southern grass skink into dedicated habitat that will have enhanced pest control over and above the measures already secured in the conditions.

124. The Project cannot entirely avoid effects on lizards and the evidence has acknowledged this. The proposed conditions together with the additional commitments made in response to RFI 12 require significant measures to protect lizards and enhance habitat values. When taking into account both the Wildlife Act test and the purpose of the FTA, we submit it is appropriate to grant the wildlife approvals.

OTHER MATTERS

Ecotoxicology Response

125. Fish and Game's submissions assert that Ms Palich's conclusions in the response dated 14 September 2026:¹⁴⁴
- (a) appears to have been written by a lawyer; and

¹⁴⁰ Wildlife Act 1953, Section 53B(3).

¹⁴¹ Closing Legal Submissions, 14 September 2026 at [97].

¹⁴² B.15A RMA Ecology Lizard Values Assessment.

¹⁴³ B.08 Alliance Ecology Consulting Assessment of Ecological Effects (10-03-2026).

¹⁴⁴ Closing Submissions for the New Zealand Fish and Game Council and Otago Fish and Game Council, 21 September 2026 at [9].

- (b) is not reliable on the basis of the assertion that Ms Palich does not have relevant expertise.
126. These submissions regarding Ms Palich's evidence are without basis, incorrect and should be disregarded by the Panel.
127. Given the phrase quoted at paragraph 9 of the Fish and Game submissions, we assume Ms Gepp KC is referring to Ms Palich's phrase "*weight of evidence*" in formulating a submission that the expert evidence "*appears to have been written by a lawyer and is not reliable given her lack of relevant expertise*".
128. Ms Palich is a highly qualified and experienced expert. Ms Palich holds a Bachelor of Science in Geophysics, a Master of Science in Geology and Environmental Hydro Geochemistry, a Master of Business Administration and is a EIANZ Certified Environmental Practitioner. Ms Palich has more than 25 years' experience in the assessment of contaminated sites across Australia, New Zealand, and Canada with particular expertise in the assessment and management of mine site contamination and waste management.¹⁴⁵
129. The use of the term "*weight of the evidence*" by Ms Palich is expressly referenced in her conclusion at page 7 as a process in the ANZG 2018 guidelines to support the conclusion reached.¹⁴⁶ The term is a standard environmental risk assessment framework when applying these guidelines.¹⁴⁷ Application of the ANZG 2018 guidelines is a matter squarely in Ms Palich's expertise and experience.
130. We disagree that Ms Palich's conclusions are unreliable due to lack of relevant expertise. The response concerns the principles that underpin the ANZG 2018 default aquatic freshwater guideline values and their application as a screening level risk assessment tool.¹⁴⁸ The response acknowledges it relates to the risk assessment framework rather than avifauna behaviour and is entirely within Ms Palich's expertise as an environmental hydro geochemist.¹⁴⁹
131. Ms Palich has acted entirely within her obligations to the Panel under the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2023 as

¹⁴⁵ Part 2 – 17 – SOE – Julie Palich (Environmental Geoscience), Geocontam Risk Management 17 April 2026 and B.32 Geocontam Risk Management Preliminary Site Investigation GRM 2025.

¹⁴⁶ Part 2 - 20 - Response to Submissions on RFI 11 - Water - Memorandum from J. Palich - 14 September 2026.

¹⁴⁷ ANZG Key Concept Guidance www.waterquality.gov.au/anz-guidelines/resources/key-concepts-weight-of-evidence.

¹⁴⁸ Part 2 - 20 - Response to Submissions on RFI 11 - Water - Memorandum from J. Palich - 14 September 2026 at page 6.

¹⁴⁹ Part 2 - 20 - Response to Submissions on RFI 11 - Water - Memorandum from J. Palich - 14 September 2026 at page 6.

confirmed in Ms Palich's evidence,¹⁵⁰ and specifically her primary duty to assist the Panel impartially on matters within her expertise.

132. We submit the Panel should place significant weight on Ms Palich's evidence which complies with the Code of Conduct and provides impartial assistance to the Panel on matters that fall squarely within her area of expertise.
133. Counsel also takes strong objection to Ms Gepp KC's accusation that Ms Palich's conclusion appears to have been written by Counsel. Counsel has stringently complied with obligations to the Panel in relation to both the Environment Court Practice Note 2023 and the High Court Rules 2016. Counsel categorically denies any accusation that they wrote Ms Palich's statement. The accusation is incorrect, without any valid basis, unprofessional, and ultimately misleading to the Panel.

Mr Chrisp's Answers at the Hearing

134. Sustainable Tarras and EDS reference comments made by Mr Chrisp during the planning hearing as supporting a conclusion that the Project should be declined under Section 85(3).¹⁵¹ Mr Chrisp's comments during the planning hearing that are relied on in the submissions relate to hypothetical questions regarding what type or magnitude of effect may be sufficiently significant to outweigh the benefits.¹⁵²
135. Characterising Mr Chrisp's comments in this way takes them out context and is misleading.
136. In responding to the questions, Mr Chrisp was responding to a hypothetical question about the type or magnitude of effects that could in principle be sufficiently significant to outweigh the benefits.¹⁵³ In this context Mr Chrisp's response set out below was an acknowledgement of the types of effects that could tip the proportionality balance. Mr Chrisp was not asked and did not express a view on whether those effects would occur as a result of the Project.

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

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

¹⁵⁰ Part 2 – 17 – SOE – Julie Palich (Environmental Geoscience), Geocontam Risk Management 17 April 2026 at [6] and Substantive Application Document A0.2B.

¹⁵¹ Legal submissions on behalf of Sustainable Tarras, 21 September 2026 at [72] – [73] and Supplementary legal submissions on behalf of Environmental Defence Society, 21 September 2026 at [112].

¹⁵² [18-June-2026-Planning.pdf](#).

¹⁵³ [18-June-2026-Planning.pdf](#) at page 139 line 9.

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

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

137. Mr Chrisp provided his expert opinion on the actual effects of the Project throughout the hearing and ultimately concluded that the Project meets the statutory purpose of the FTA, and while it would result in adverse effects, they were not sufficiently significant to be out of proportion to the benefits.¹⁵⁴ The Panel should place no weight on EDS and Sustainable Tarras' submissions on this point. Mr Chrisp's response to a hypothetical question is not a concession that such effects will arise from the Project and does not detract from his overall conclusion that the Section 85(3) threshold is not met.

New Material – Natural Justice

138. Sustainable Tarras' submissions raise that new material such as the revised Ardgour Rise alignment and the Battery Hill sanctuary has been put forward that the parties have not had the opportunity to comment on.¹⁵⁵
139. Sustainable Tarras' position is that it should have an opportunity to respond to this new information in accordance with the requirements of natural justice.¹⁵⁶
140. We disagree that the parties have not had an opportunity to comment on this information. The Battery Hill sanctuary proposal was filed in response to RFI 11 on 17 August 2026¹⁵⁷ and the revised Ardgour Rise realignment was provided as part of CODC's comments on 7 September 2026. Matakanui Gold did not provide the revised Ardgour Rise realignment itself in its response to RFI 11 as it was waiting on confirmation from CODC on the design and subsequent safety assessment.
141. The starting position in the FTA is that parties have no right to reply to information received in response to an RFI unless invited by the Panel.¹⁵⁸ Matakanui Gold was supportive of the Panel providing the parties with opportunities to respond to this material on 7 September 2026 and 21 September 2026, in a way that went beyond what the FTA strictly requires. In those circumstances we submit that no issue of procedural unfairness or natural justice arises from the timing of the provision of the information.

¹⁵⁴ [18-June-2026-Planning.pdf](#) at page 134.

¹⁵⁵ Legal submissions on behalf of Sustainable Tarras, 21 September 2026 at [67].

¹⁵⁶ Legal submissions on behalf of Sustainable Tarras, 21 September 2026 at [68].

¹⁵⁷ RFI 11 - Question 10 - Ecology - Lizard Response.

¹⁵⁸ Fast-track Approvals Act 2024, Section 67(5).

Response to Comments

142. Sustainable Tarras assert that experts for Matakanui Gold did not read comments filed in April 2026.¹⁵⁹ This is incorrect. All material and comments received in April 2026 were reviewed by persons engaged on behalf of Matakanui Gold and were addressed in Matakanui Gold's response to comments.
143. Given the volume of material received and the statutory timeframes for response a thematic approach to responses was necessary. It is incorrect to suggest that comments were not read or considered, and the Panel should put no weight on this submission.

BENEFITS

144. The parties submit that the impacts of the Project outweigh the benefits.¹⁶⁰
145. We disagree with these submissions. Our previous legal submissions outline in detail why the Project's benefits are substantial and have not been overstated. However given the central importance of the benefits to the Panel's assessment, we briefly reiterate key benefits below.
146. The evidence on behalf of Matakanui Gold demonstrates that the Project will deliver substantial economic benefits including:
- (a) \$5.8 billion of cumulative direct GDP based on a gold price in June 2025 of USD \$3,138 per ounce.¹⁶¹ At the close of trading last Friday 25 September 2026 in New York the gold price was USD \$4,285 per ounce.
 - (b) \$360 million per year in direct GDP to the Inland Otago economy.¹⁶²
 - (c) \$1.8 billion in New Zealand Government revenue through corporate taxes, royalties and PAYE.¹⁶³
 - (d) Creating substantial employment opportunities, including 351 direct jobs per year and a peak workforce of 506 jobs.¹⁶⁴ The average wage is expected to

¹⁵⁹ Sustainable Tarras, Legal Submissions, 21 September 2026 at [45].

¹⁶⁰ Legal submissions on behalf of Sustainable Tarras, 21 September 2026 at [75], Supplementary legal submissions on behalf of Environmental Defence Society, 21 September 2026 at [112] and Closing Submissions for the New Zealand Fish and Game Council and Otago Fish and Game Council, 21 September 2026 at [15].

¹⁶¹ Part 2 – 10 – SOE – Benje Patterson (Economics), Benje Patterson People and Places 17 April 2026 at [55].

¹⁶² Part 2 – 10 – SOE – Benje Patterson (Economics), Benje Patterson People and Places 17 April 2026 at [19] – [20].

¹⁶³ Benje Patterson (People and Places) – Economic Impacts of the Bendigo Ophir Gold Project at [2.1].

¹⁶⁴ Benje Patterson (People and Places) – Economic Impacts of the Bendigo Ophir Gold Project at [7].

be 104% higher than the average wage in Inland Otago in 2024 and 98% above the Otago Region average.¹⁶⁵

147. Independent peer reviewers from CODC and ORC agree that the economic activity from the Project will bring significant benefits to the region and New Zealand.¹⁶⁶
148. The economic benefits of the Project have been robustly stress tested using a deliberately extreme and highly conservative scenario that assumes all worst case factors occur simultaneously.¹⁶⁷ The evidence concludes that these factors occurring simultaneously is highly improbable, with Dr Kaye-Blake for EDS assessing the probability of the layered worst case scenario eventuating at 0%.¹⁶⁸ Importantly, even under that highly conservative and unlikely scenario, Mr Patterson concludes that the Project retains substantial value.¹⁶⁹
149. As set out by the Panel in the *Waihi North* decision:¹⁷⁰

A well-paid job is beneficial to the person who holds it, members of their family, and in ways that are not only financial. An increase in the number of well paying jobs strengthens the resources, resilience and social cohesion of the community in which they are located. More generally additional employment is correlated with economic growth.

150. Consistent with the Panel's observations in *Waihi North* we submit that the Project's employment and income effects will support households, strengthen community wellbeing and social cohesion, and contribute to the long-term sustainability of the local communities.
151. The Project's economic benefits have been thoroughly tested throughout the Panel process including, requests for information, conferencing, independent peer review, independent tax assessment and sensitivity testing against a range of worst-case scenarios occurring simultaneously. The additional testing and analysis have not changed the conclusion of Mr Patterson that the potential economic impacts of the Project are substantial.¹⁷¹

¹⁶⁵ Part 1 - 01 - SOE - Benje Patterson (Economics), Benje Patterson People and Places - Panel RFI 17 April 2026 at [37].

¹⁶⁶ Part 2 - 10 - SOE - Benje Patterson (Economics), Benje Patterson People and Places 17 April 2026 at [17].

¹⁶⁷ Statement of Benje Patterson, 8 September 2026 at [14].

¹⁶⁸ Statement of Benje Patterson, 8 September 2026 at [16] and Supplementary Statement of Dr William Henry Kaye-Blake, 19 August 2026 at [31] – [32].

¹⁶⁹ Statement of Benje Patterson, 8 September 2026 at [14] – [15].

¹⁷⁰ *Record of Decision of the Expert Consenting Panel, Waihi North*, 18 December 2025 at [819].

¹⁷¹ Part 2 - 05 - Response to Submissions on RFI 11 – Economics at [23].

\$1.25 million Annual Payment to CODC

152. Sustainable Tarras characterise the \$1.25 million annual payment from Matakanui Gold to CODC pursuant to the access arrangement as an access consideration/solatum payment and submit that it should not be treated as money to be spent on the community.¹⁷² Sustainable Tarras' submissions note that CODC has stated the payment will be used to support development of a Local Bill to establish a minimum flow for the Manuhereki River, and that this does not mitigate the impacts of the Project or explicitly direct funds towards to the Tarras-Bendigo community.¹⁷³
153. We disagree with that characterisation of the payment. We have previously set out why the payment is correctly treated as an indirect benefit of the Project can appropriately be characterised as a net benefit of the Project. We do not repeat those submissions here.¹⁷⁴
154. It is correct that CODC has stated the payment will be used to support to support development of a Local Bill to establish a minimum flow for the Manuhereki River at an estimated cost of \$190,000 and \$250,000 (excl GST).¹⁷⁵ However, the development of the Local Bill would utilise a portion of one annual payment to support the long-term management of a significant river system in Central Otago. The balance of that payment together with all future annual payments is contractually required to also be spent by CODC for the benefit of the Central Otago community.¹⁷⁶
155. The access arrangement imposes an explicit and binding obligation on CODC use the payment for the benefit of Central Otago community, which includes the – Bendigo-Tarras community. We reiterate our submission that the payment is an indirect benefit of the Project and should be characterised as a net benefit for the Panel's consideration.

PROPORTIONALITY TEST SECTION 85(3)

156. The parties submit that it is open to the Panel to decline the Project in accordance with Section 85(3).
157. For reasons set out in our earlier legal submissions which address Section 85(3), we submit that the residual effects of the Project are not sufficiently significant to be

¹⁷² Legal submissions on behalf of Sustainable Tarras, 21 September 2026 at [51].

¹⁷³ Legal submissions on behalf of Sustainable Tarras, 21 September 2026 at [51].

¹⁷⁴ Memorandum of Counsel on behalf of Matakanui Gold Limited in response to Minute 11, 15 May 2026.

¹⁷⁵ [Local bill to be progressed by CODC - Central Otago District Council](#).

¹⁷⁶ Access Arrangement, Clause 9.3.

out of proportion to its significant regional and national benefits after taking into account proposed conditions.

158. In our submission the parties' position fails to provide for the central role that benefits play within the FTA framework. We submit that the monetary benefits of the BOGP make it one of the most economically significant projects considered under the FTA to date.

Environmental Defence Society Submissions Regarding Section 85(3)

159. EDS argues that Matakanui Gold's submission that the residual effects on spring annuals are not sufficiently significant to be out of proportion to the benefits of the Project mischaracterises the Section 85 test.¹⁷⁷
160. EDS' position is that Matakanui Gold has incorrectly proceeded on the basis that the more benefits a project has, the higher the level of impact the project can have and has therefore given inadequate consideration to fundamental environmental issues.¹⁷⁸
161. We disagree with EDS' submission that effects have been ignored in reliance on the Project's benefits. As set out in our Legal Overview, the ecological assessments, including in relation to spring annuals, have applied the effects management hierarchy. Where residual effects remain following the implementation avoidance, remediation and mitigation, offsetting and compensation has then been proposed. The Project's effects have not been ignored, the technical assessment before the Panel demonstrate that they have been carefully assessed and addressed through a comprehensive and integrated effects management framework. We submit that this response is appropriate and proposes a combination of applied research, rehabilitation, management and early compensation to collectively address effects.
162. EDS' submission incorrectly applies Section 81(4) which provides that when taking the purpose of the FTA into account for the purposes of decision making on an approval, the Panel must consider the extent of the project's benefits. EDS' approach also conflicts with the approach taken by other Panels in decision making under the FTA.
163. In accordance with the Panel's decision for the *Southland Wind Farm* project, the "proportionality" consideration means that the more significant the regional and national benefits of a proposal, the more significant the adverse impacts would need to be before the proposal could be declined.¹⁷⁹ Section 85(3) was introduced to the

¹⁷⁷ Environmental Defence Society, Supplementary Legal Submissions, 21 September 2026 at [109].

¹⁷⁸ Environmental Defence Society, Supplementary Legal Submissions, 21 September 2026 at [113].

¹⁷⁹ *Record of Decision of the Expert Panel, Southland Wind Farm*, 2 April 2026 at [60]-[63].

FTA late in the legislative process in order to “clarify the high bar for declining an approval”.¹⁸⁰ Adverse effects that merely outweigh or are greater than the benefits do not trigger the discretion to decline, adverse effects must be “sufficiently significant to be out of proportion to” those benefits.¹⁸¹

164. The Panel in *Maitahi Village* noted that even if the threshold in Section 85(3) is met, a Panel still has a discretion to grant the approval.¹⁸² This discretion will necessarily be informed by the purpose of the FTA.¹⁸³
165. We submit that the evidence clearly demonstrates that the threshold in Section 85(3) is not met in this case in relation to spring annuals. However, even if the Panel were to conclude otherwise, the wording of Section 85(3) does not require the approvals to be declined. The provision preserves the Panel’s discretion to grant the approvals.

Sustainable Tarras Inc submissions regarding Section 85(3)

166. Our closing legal submissions submitted that use of the term “out of proportion” requires an evidential finding that adverse impacts must substantially outweigh and exceed the national and regional benefits unlocked by a project before decline is warranted under Section 85.¹⁸⁴
167. Sustainable Tarras submits that impacts do not need to “substantially” outweigh benefits for the Section 85(3) threshold to be met and if that were the threshold the FTA would say so.¹⁸⁵
168. We do not agree with this submission.
169. The discussion in our closing legal submissions of the proportionality test reflects the findings of the Panel for the *Ayrburn Screen Hub* that there must be a material difference between adverse impacts and benefits, not just that adverse impacts are marginally greater than the benefits for the Section 85(3) threshold to be met.¹⁸⁶ This is also consistent with the approach of the Panel in *Southland Windfarm* who determined that the discretion to decline approvals does not arise if effects are merely significant or greater than its benefits.¹⁸⁷

¹⁸⁰ *Record of Decision of the Expert Consenting Panel, Southland Wind Farm*, 2 April 2026 at [60](c).

¹⁸¹ *Record of Decision of the Expert Consenting Panel, Southland Wind Farm*, 2 April 2026 at [62]-[63].

¹⁸² *Record of Decision of the Expert Consenting Panel, Maitahi Village*, 18 September 2025 at [94]-[95].

¹⁸³ *Record of Decision of the Expert Consenting Panel, Maitahi Village*, 18 September 2025 at [94]-[95].

¹⁸⁴ Closing Legal Submissions, 14 September 2026 at [238].

¹⁸⁵ Sustainable Tarras Inc, Closing Legal Submissions, 21 September 2026 at [74].

¹⁸⁶ *Record of Decision of the Expert Consenting Panel, Ayrburn Screen Hub*, 13 May 2026 at [115].

¹⁸⁷ *Record of Decision of the Expert Consenting Panel, Southland Windfarm*, 2 April 2026 at [60]-[61].

TARGETED AMENDMENTS TO CONDITIONS

170. As signalled in our Memorandum of Counsel dated 23 September targeted amendments have been made to the conditions to:

- (a) incorporate recommendations from the relevant experts made in response to RFI 12; and
- (b) address matters raised in the parties' legal submissions received on 21 September 2026.

171. No amendments beyond those categories have been made.

172. We provide an overview of the amendments made in **Appendix 2**.

CONCLUSION

173. The evidence before the Panel is compelling that this Project will deliver substantial benefits at both a regional and national scale. The Project will deliver \$5.8 billion in cumulative direct GDP, \$1.8 billion in Government revenue, \$360 million per year in direct GDP to Inland Otago and create more than 350 well paid jobs.¹⁸⁸

174. The benefits extend well beyond the Project Site and it is expected that the Project will generate \$25 million of indirect GDP within Otago and \$59 million per year across the rest of New Zealand.¹⁸⁹ At its peak the Project's direct GDP will be equivalent to 8.1% of Inland Otago's current GDP.¹⁹⁰

175. For the 351 direct jobs anticipated there is the potential for a further 1.3 jobs for every direct job created by providing goods and services to meet the needs of the workforce. The Project will be a catalyst for infrastructure growth regionally and a significant source of foreign investment to New Zealand in the construction phase.

176. A deliberately extreme, highly conservative scenario that assumes all worst-case factors occurring simultaneously (despite the probability of this being 0%) has been applied to stress test these economic benefits.¹⁹¹ Even in this highly unlikely scenario, the Project will retain substantial value.¹⁹²

¹⁸⁸ Benje Patterson (People and Places) – Economic Impacts of the Bendigo-Ophir Gold Project (Benje Patterson 2025).

¹⁸⁹ Benje Patterson (People and Places) – Economic Impacts of the Bendigo-Ophir Gold Project (Benje Patterson 2025).

¹⁹⁰ Benje Patterson (People and Places) – Economic Impacts of the Bendigo-Ophir Gold Project (Benje Patterson 2025).

¹⁹¹ Statement of Evidence of Benje Patterson, 8 September 2026 at [14] and [16] and Supplementary Statement of Dr William Henry Kaye-Blake, 19 August 2026 at [31]-[32].

¹⁹² Statement of Evidence of Benje Patterson, 8 September 2026 at [14]-[15].

177. The Project will deliver significant broader community and social benefits. Matakanui Gold has demonstrated a commitment to supporting the wider community through partnerships and sponsorships, including contributions to the 2026 World Gold Panning Championships, the Central Otago Football League, and the Light Up Cromwell community event. The \$1.25 million annual payment to CODC arising under the access arrangement must be spent for the benefit of the Central Otago community ensuring the funds stay in the region and are available for local investment.
178. The potential for, and management of, adverse effects has been carefully assessed and considered by leading technical experts in their disciplines.
179. The key question for the Panel is not whether effects exist, but whether those effects are out of proportion when considered against the Project's benefits. This assessment required by the FTA is a very different decision making framework from the RMA.
180. Section 85(3) imposes a deliberately high threshold for approvals to be declined and explicitly allows for residual effects to remain provided they are not sufficiently significant to be out of proportion to the benefits.
181. The evidence clearly demonstrates that this threshold is not met. The comprehensive and integrated package of effects management actions to avoid, remedy and mitigate effects, then to provide offsetting, compensation and additional positive effects has been refined through expert conferencing, workshopping and requests for information. The Panel must take these measures into account as part of its Section 85 assessment in evaluating the overall significance of effects.¹⁹³
182. Having regard to the scale of the Project's benefits we submit that the residual adverse effects do not outweigh the benefits it will deliver.
183. Matakanui Gold respectfully requests that the Panel grant the approvals sought for the Bendigo-Ophir Gold Project, subject to the conditions dated 28 September 2026.

Dated this 28th day of September 2026



Joshua Leckie / Mia Turner
Counsel for Matakanui Gold Limited

¹⁹³ Fast-track Approvals Act 2024, Section 85(3)(b)(ii).

Appendix 1

Supreme Court Criteria ¹	Why the criteria are met	References
Good baseline information about the receiving environment.	There is a high degree of baseline information about the receiving environment. Comprehensive field investigations beginning in October 2023 provide a robust understanding of the receiving environment against which the effects of the Project can be managed. The investigations included: (a) A 5,386 hectare ecological study area. (b) 148 integrated vegetation monitoring stations. (c) 133 bird count stations. (d) Wetland delineation across 123 plots. (e) Approximately 270 hours of field mapping and over 620 hours searching for lizards. (f) Extensive geochemical testing of more than 1,600 rock samples. (g) Collection of surface water quality data from September 2022 – March 2026 and remains ongoing at RS03 and SC01. (h) Groundwater baseline investigations undertaken to inform the substantive application as summarised in our Memorandum of Counsel dated 22 June 2026 and that have been supplemented by the response to RFI 11, Minute 53 and RFI 12.	Legal Submissions dated 17 April 2026 at [13]-[20] and [207] – [217]. Memorandum of Counsel responding to Minute 29, 22 June 2026. Closing Legal Submissions dated 14 September 2026 at [37] – [53].
The conditions provide for effective monitoring of adverse effects using appropriate indicators.	The proposed conditions demonstrate a clear ability to manage effects through an extensive monitoring regime, enforceable thresholds, triggers and responses. Water Monitoring: the conditions require monitoring at identified surface water and ground water locations. Compliance parameters and limits in the conditions have been determined based on technical assessment and have been tested and refined throughout the FTA process.	Legal Submissions dated 17 April 2026 at [13]-[20] and [207] – [217]. Memorandum of Counsel responding to Minute 29, 22 June 2026.

¹ *Sustain Our Sounds Incorporated v New Zealand King Salmon Limited* [2014] NZSC 40, at [133].

Supreme Court Criteria ¹	Why the criteria are met	References
	Ecological Monitoring: the conditions impose specific, measurable ecological objectives that are to be met within specified timeframes. Ongoing monitoring tracks whether performance is on trajectory to meet the objectives. Where monitoring demonstrates that a trajectory is not being met, the conditions require defined contingency measures to be implemented.	Closing Legal Submissions dated 14 September 2026 at [37] – [53].
Thresholds are set to trigger remedial action before the effects become overly damaging.	The conditions require remedial action when defined trigger levels are reached, before effects become damaging. Water: the conditions require remedial action is implemented through defined trigger thresholds, performance monitoring upstream of compliance sites and defined responses to ensure emerging effects are identified and addressed well before compliance limits are reached. Ecology: the conditions require remedial action before effects become damaging by ongoing monitoring tracking progress against the objectives, with predefined trigger thresholds requiring defined actions to be carried out if required.	Legal Submissions dated 17 April 2026 at [207] – [217]. Closing Legal Submissions dated 14 September 2026 at [37] – [53]. Memorandum of Counsel responding to Minute 29, 22 June 2026.
Effects that might arise can be remedied before they become irreversible.	The conditions are designed to detect and respond to emerging effects before they become irreversible through monitoring networks, early warning trigger thresholds, and defined actions.	Legal Submissions dated 17 April 2026 at [13]-[20] and [207] – [217]. Closing Legal Submissions dated 14 September 2026 at [37] – [53]. Memorandum of Counsel responding to Minute 29, 22 June 2026.

Appendix 2

Condition	Amendment
D.02 ORC Consents and Conditions	
Active Water Treatment Plant	
D.02 Condition 10	In response to EDS' submissions ¹ , one of the triggers for when the Active Water Treatment Plant must be constructed and commissioned has been updated to improve certainty and clarity. The trigger now requires the Active Water Treatment Plant to be constructed and commissioned if the annual Water Load Balance Model predicts a water surplus that cannot be managed by engineering controls in 24 months time and the discharge of mine-circuit water would lead to an exceedance of 50% of the surface water quality compliance limits for any listed parameter.
D.03 Schedule One – Common Conditions to CODC and ORC Resource Consents	
Reporting	
D.03 Condition 14	A new requirement has been added to the Annual Monitoring and Compliance Report to include the as built records, including locations, of the seepage interception measures.
Additional Southern Grass Skink Salvage and Relocation Measures	
D.03 Condition 72	Lizard management plan requirements updated to include the Southern Grass Skink relocation requirements to incorporate the response to RFI 12.
D.03 Condition 73	Lizard management plan limits and standards updated to include the requirement for a minimum of 1,000 southern grass skinks to be salvaged from the DDF and relocated to the Southern Grass Skink Relocation Area(s).
D.03 New condition: NEW C73A	Includes the dedicated Southern Grass Skink Relocation Area(s) for the relocation of a minimum of 1,000 southern grass skinks salvaged from the DDF as proposed in response to RFI 12.
D.03 Condition 74	Annual lizard compliance monitoring report requirements update to include post release monitoring results for relocated southern grass skinks, including the success of mice control measures to suppress mice to below a 5% tracking index as proposed in response to RFI 12.
D.03 Condition 97 D.03 Attachment 9: Mammalian Pest	the Mammalian Pest Management Plan Monitoring Targets have been updated to include the requirement to implement targeted control for mice within the Southern Grass Skink Relocation Area(s) to achieve less than 5% tracking index.

¹ Supplementary legal submissions on behalf of Environmental Defence Society, 21 September 2026 at [76].

Condition	Amendment
Management Plan Monitoring Targets	A corresponding update has been made to D.03 Attachment 9: Mammalian Pest Management Plan Monitoring Targets.
Cushionfields and Spring Annuals	
D.03 New condition: NEW C125A and NEW C125B D.03 Amended Condition 127 and Condition 128	To incorporate the compensation approach proposed in the response to RFI 12 these conditions have been amended to require Matakanui Gold to identify, protect and actively manage cushionfield and spring annual habitat at Year 6 (within the BOGP Consent Area and MGL controlled land to the extent possible) to proactively compensate for the loss of cushionfield and spring annuals within the DDF while the Cushionfield ARP is being implemented.
Biodiversity and Heritage Enhancement Fund	
D.03 Condition 135	This condition has been updated to incorporate the additional \$10 million contribution to the Fund outlined in the response to RFI 12. Key amendments are: (a) Adding an additional purpose to the Biodiversity of Heritage Enhancement Committee to protect and enhance habitat for Kawarau gecko and southern grass skink (and other threatened or at-risk species) beyond the BOGP Consent Area within Central Otago and adjacent areas. (b) Clarifying that the Consent Holder must provide annual funding of \$2,000,000 + GST every year in which gold is produced up to a maximum of 10 years of which: (i) \$500,000 + GST is for the purpose of enhancing heritage and cultural values within Central Otago and adjacent areas. (ii) \$500,000 + GST is for the purpose of protecting and enhancing threatened or at-risk species (including lizards) and ecosystems in accordance with māturanga Māori, within the Dunstan, Lindis and Pisa Ecological Districts (within the Central Otago Ecological Region). (iii) \$1,000,000 + GST is for the new purpose of (a) above.
D.04 – Schedule Two – General Conditions for ORC Consents	
Seepage Interception Measures and Water	
D.04 Condition 23	Recognising that the 3D contaminant transport model was provided in response to RFI 11 this condition has been amended to require updating of the 3D model to inform detailed design rather than commissioning the 3D model.

Condition	Amendment
D.04 New condition: NEW 25A	A new condition has been included that requires the installation of seepage interception measures at the downstream toe of the Shepherds Valley Infill as proposed in response to RFI 12. The measures include a low permeability seepage cut off and grout curtain that covers the full width of the infill and a minimum of three interception wells.
D.04 Condition 26	In response to EDS' legal submissions² Condition 26 has been updated to clarify that if all measures have been implemented and seepage is detected the necessary infrastructure and/or collection system required in Condition 26 must be: (a) installed as soon as possible; (b) designed by a suitably qualified and experienced person; and (c) the Consent Holder provide a report to ORC for certification which confirms the proposed infrastructure / seepage collection system is sufficient to capture all mine-circuit water seepage and proposes any necessary amendments to the groundwater monitoring programme.
D.04 Attachment 4A: Existing Groundwater Compliance and Performance Monitoring Locations D.04 Condition 33	Amendments have been made to D.04 Attachment 4A in response to EDS' submissions³ that some groundwater performance monitoring bores haven't been installed yet. The bores that are to be installed prior to mining have been included in new Attachment 4B: Proposed Groundwater Performance Monitoring Location Details. Amendments have been made to Condition 33 to clarify that: (a) The Consent Holder must at a minimum undertake groundwater performance monitoring at the locations shown in D.04 Attachment 3 and as set out in Attachment 4A and 4B. (b) Within 30 working days following the commencement of the consents the Consent Holder must install the bores identified in Attachment 4B at the locations shown in Attachment 3. (c) At least two years prior to any land disturbance activities within the footprint of the SRX Open Pit or CIT Open Pit, the Consent Holder must install the bores identified in Attachment 4B at the locations shown in Attachment 3. (d) The Consent Holder must provide ORC the information required in Attachment 4B for each bore (location and depth) no more than 20 working days following the completion of the installation of the bores.

² Supplementary legal submissions on behalf of Environmental Defence Society, 21 September 2026 at [31].

³ Supplementary legal submissions on behalf of Environmental Defence Society, 21 September 2026 at [26].

Condition	Amendment
D.06A, D.06B, D.07A and D.07B – Concessions	
D.06A - Ardgour Rise Road - Easement D.06B - Ardgour Rise Fibre Optic Cable - Easement	The concession terms have been updated to clarify that the term is for 30 years or 20 working days following the vesting of Ardgour Rise in Central Otago District Council (whichever is the sooner) to ensure an easement is only in place over part of the public road network for the minimum time necessary.
D.07A - SH8 Intersection (NZTA) – Easement D.07B - SH8 Intersection (CODC) - Easement	The concession terms have been updated to clarify that the term is for 30 years or 20 working days following the vesting of the section of SH8 / Ardgour Road reserve in NZTA/Central Otago District Council (whichever is the sooner) to ensure an easement is only in place over part of the public road network for the minimum time necessary.
D.11 - Wildlife Act Authority	
D.11 Wildlife Act Authority and Conditions	The Wildlife Act authority conditions have been updated to reflect the latest proposed approach to lizard salvage and relocation set out in RFI 11 and RFI 12 response. This includes: (a) Separating the lizard release requirements into release into the Bendigo Sanctuary or Battery Hill Sanctury or Southern Grass Skink Relocation Area(s). (b) Requiring that lizards must not be released into the Southern Grass Skink Relocation Area until a minimum of 5 hectares of demonstrated wetland/riparian margin habitat for Southern Grass Skink has been identified, predator management (including mouse control) has been implemented a minimum of three months and DOC has certified the release site. (c) Specifying estimated numbers of Kowarau gecko and southern grass skink that are proposed to be salvaged.