
MINUTE 39 OF THE EXPERT PANEL
Response to CODC and EDS Memoranda and Update on Legal Advice
Bendigo-Ophir Gold Project
[FTAA-2507-1089]
[26 June 2026]

[1] This Minute:

- (a) Responds to Memoranda from Central Otago District Council (CODC) and Environmental Defence Society Inc (EDS) both dated 24 June 2026.
- (b) Reports on receipt of legal advice from Counsel Assisting Bronwyn Carruthers KC.

CODC Memorandum

[2] In its Memorandum, CODC advises receipt of a report dated 23 June 2026 from Abley Ltd (the Abley Report) which was obtained by it in response to further information provided by the Applicant on 12 June 2026 relating to the proposed Ardgour Rise design and alignment. That further information was, in turn, provided pursuant to an RFI from the Panel. CODC proposes that the Panel direct the EPA to request provision of the Abley Report from CODC pursuant to s 67 (1) (a) (iv) of the FTAA on the basis that the Applicant be given an opportunity to respond either in writing or at any “residual matters hearing”.

[3] Since receipt of the Memorandum, the Applicant has sought, and the Panel has approved, a processing suspension pursuant to s64 of the Act. An associated Minute from the Panel (no 37 dated 25 June 2026) identified (paragraph [6(b)]) the

Ardgour Rise alignment as one of the issues which involved ongoing work/assessment, on which s51 parties and s 53 invitees may in due course wish to comment.

[4] Although the Panel considers that it could deal with the issue informally through its extensive and flexible powers, it accepts the CODC invitation to direct the EPA to issue an RFI requesting provision of the Abley Report. CODC is simultaneously to provide the report to the Applicant.

[5] Because of the imminent suspension and the fact that the Ardgour Rise alignment is almost inevitably one of the issues which will be addressed during the suspension period (whether through workshopping or otherwise), the Panel makes no further directions at this stage. Obviously, if remaining differences cannot be resolved, the Panel reserves to the Applicant the right to respond as required.

EDS Memorandum

[6] In its memorandum, EDS requests that the Panel issue a RFI to the Applicant under s67(1)(a) (i) of the FTAA seeking provision of the report on a 2025 survey of spring annuals referenced in the Ecology- Effects Management JWS (Spring Annuals Report).

[7] After the existence of the report was identified during the concurrent hearings, the Panel advised Counsel for the Applicant that it would be sought. Counsel responded that the Applicant had no issue with provision of the report but that because it included information about property other than that germane to the application, consent or redaction of certain material would be required. Counsel suggested that a formal RFI was not necessary and that provision would be arranged as soon as practically possible.

[8] For the moment, the Panel is content to leave matters on this basis, particularly given the imminent suspension. However, if the Spring Annuals Report is not voluntarily produced an RFI will, in due course, issue.

[9] On receipt of the Report the Panel grants leave for s51 parties and s53 invitees to provide responsive evidence within 10 working days. The Panel's expectation is that this might all be achieved during the period of suspension, recognizing that it has no power to make formal directions in that respect.

[10] If by the time of resumption, the matter has not been resolved, the Panel invites a further memorandum from EDS and the relevant RFI will subsequently issue.

Receipt of Legal Advice

[11] The Panel advises that it has received written advice from its Counsel Assisting Ms Carruthers KC in respect of what it regards as the most significant legal issues raised by the parties and invitees in their written submissions and/or referenced at the Ōtākou Marae and Cromwell hearings. Topics covered in the advice are identified under the following headings

- (a) To what extent, if any, does the FTAA change the decision-making framework for projects with substantial regional or national benefits?
- (b) Is approval precluded by s7 of the FTAA?
- (c) How is the word "solely" and the phrase "a provision" to be interpreted in s85(4) of the FTAA?
- (d) Is there an issue as to scope?
- (e) How should the Panel approach the proposed revocation of the conservation covenant?
- (f) Can the Panel grant a water right in excess of 6 years?

[12] The Panel regards Ms Carruthers' advice as privileged and does not currently intend to publish it. Nor, having regard to (i) the quality of the legal submissions which it has received from the senior counsel engaged by all parties/invitees, (ii) the independent advice it has received and (iii) the composition of the Panel, does it at this stage consider any further hearing in relation to the legal issues is required. As it moves into its decision-making phase, it is possible however this position

could change.

A handwritten signature in blue ink, appearing to read "M. A. Muir," with a stylized, cursive script.

Hon Matthew Muir KC

Bendigo-Ophir Gold Project Expert Panel Chair