

Memo

To: Matakanui Gold Limited **Cc:**
From: Lane Neave 17 August 2026
Client: Matakanui Gold Limited **Matter Number:** 271881.0001
Matter Description: Bendigo-Ophir Project Resource Consenting

Subject: Battery Hill Sanctuary - Scope Considerations

Introduction and Summary

1. This advice considers any scope implications of Matakanui Gold Limited's (**MGL**) proposed amendments to the lizards effects management package for the Bendigo-Ophir Gold Project (**Project**) under the Fast-track Approvals Act 2024 (**FTA**).
2. In response to concerns raised by the Expert Panel and ecology experts during the hearing process, on the advice of technical experts MGL has reassessed aspects of its proposed lizard management response. The amendments proposed by MGL in response to these concerns are set out in its response to question 10 of Request for Information 11 (**RFI 11**).
3. The key amendments proposed by MGL in response to feedback received during the hearings are:
 - (a) replacement of the approximately 38-hectare Ardgour Sanctuary with a new approximately 52-hectare sanctuary located at Battery Hill (**Battery Hill Sanctuary**); and
 - (b) refocus salvaging efforts so that they are principally directed towards Kowarau gecko and southern grass skink.
4. We have assessed any potential scope considerations in relation to these amendments. In summary:
 - (a) we consider the proposed amendments to the lizard management package are within the scope of the Substantive Application for the Project as:
 - (i) the envelope of effects remains approximately the same and has not materially increased;
 - (ii) while the proposed Battery Hill Sanctuary will occupy a larger area than Ardgour Sanctuary, it does not increase the scale or intensity of the visual or aquatic ecology effects for which consent is sought and does not give rise to any new consent triggers; and
 - (iii) given the nature and location of the amendments within the existing Project footprint (particularly given that the proposed Battery Hill Sanctuary is further away from private third party dwellings), no party who has not already been invited to comment on the Project would have been required to be invited to comment had the amendments been included in the original application.

Proposed Amendments

5. MGL proposes the following changes in response to concerns raised by the Expert Panel and ecological experts during the hearing and conferencing:¹
 - (a) replacing the Ardgour Sanctuary with a new predator-exclusion sanctuary at Battery Hill:
 - (i) The proposed Battery Hill Sanctuary would encompass approximately 52 hectares, compared with approximately 38 hectares proposed for the Ardgour Sanctuary.
 - (ii) Replace the broadscale large numbers of lizard salvage with targeted salvage and relocation of Kawarau gecko and southern grass skink.
6. For the reasons discussed below we consider that the proposed Battery Hill Sanctuary is within the scope of the Substantive Application for the Project.

Scope Considerations

7. It is an established and settled legal principle under the Resource Management Act 1991 (**RMA**) that the scope of an activity is confined by the terms of the application under which consent was sought for the activity.² The original application and any documents incorporated into the application by reference, such as the assessment of effects, technical reports or plans, defines the scope of the consent authority's jurisdiction.³ In the case of the FTA, the scope of an application is also constrained by a projects description in Schedule 2.
8. In the RMA context, the test is whether an activity is significantly different in scope or ambit from what was applied for in terms of:⁴
 - (a) scale or intensity of the proposed activity; or
 - (b) altered character or effects from what was originally applied for.
9. In considering the above matters, a consent authority will also consider whether there might have been other submitters had the activity as ultimately proposed been the one originally applied for.⁵ Under the FTA, we consider the equivalent mechanism is the invitation to comment under Section 53.⁶
10. In our view the scale and character tests above relate to the assessment of an envelope of effects that are defined by the original application rather than particular consent triggers. This will also be guided by the relevant consent triggers (but not necessarily bound by them).
11. If amendments are proposed to an activity that fall outside the scope of the application, because the scale, intensity, or effects are significantly different, additional resource consents will be required that would be subject to a separate application process.
12. In the FTA context, the Expert Panel in the *Waitaha Hydro* decision accepted a similar interpretation of scope when considering whether additional consents required were within the

¹ Response to Question 10 RFI 11 – Ecology - Lizards Matakanui Gold Limited, 17 August 2026.

² *Sutton v Moule* (1992) 2 NZRMA 41, *Clevedon Protection Society Inc v Warren Fowler Limited* (1997) 3 ELRNZ 169, cited in *Millar v Ashburton District Council* [2016] NZHC 3015 at [71].

³ *Darroch v Whangarei District Council* A018/93 1 March 1993 at page 27.

⁴ *Atkins v Napier City Council* [2009] NZRMA 429 (HC).

⁵ *Atkins v Napier City Council* [2009] NZRMA 429 (HC).

⁶ Fast-track Approvals Act 2024, Section 53.

scope of the substantive application in that case.⁷ While we recognise that the Project Expert Panel are not bound by the decisions of other Expert Panels, we consider that the reasoning should be seen as persuasive.

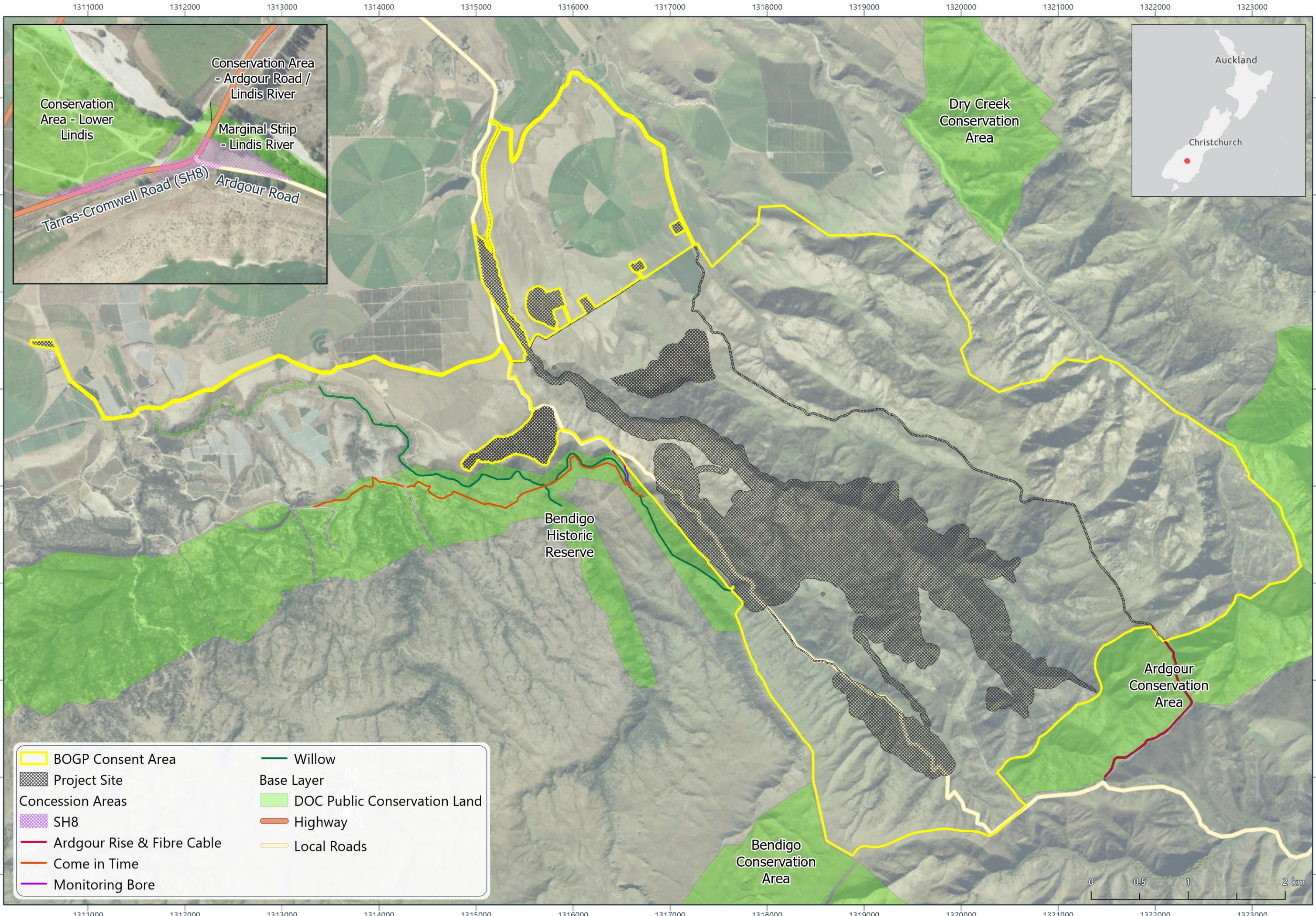
Application to the Bendigo-Ophir Gold Project

13. We consider the proposed Battery Hill Sanctuary is within the scope of the original application as:
- (a) The amendments do not materially alter the potentially adverse character or effects of the Project. The Battery Hill Sanctuary is located within the *BOGP Consent Area* shown in **Appendix 1** as originally delineated in the as lodged application and does not increase the spatial extent of the Project.
 - (b) MGL's ecological experts consider that the amendments will generate better outcomes for lizards compared to the earlier proposal, while remaining within the effects envelope assessed for the Project. This therefore represents a reduction in adverse effects arising from the Project.
 - (c) The proposed Battery Hill Sanctuary does not introduce any new activities or consent triggers beyond those that are included in the Substantive Application. While the Battery Hill Sanctuary requires the installation of culverts and structures in the bed of Rise and Shine Creek, the substantive application includes consent triggers and effects management proposals for structures and culverts within the same waterbody. The culverts and structures associated with the Battery Hill Sanctuary are of a comparable nature and scale to those already proposed and would result in effects that are not materially different from, or greater than, those already assessed as part of the Substantive Application, including in relation to aquatic ecology where assessments have not detected the presence of any fish species in Rise and Shine Creek.
 - (d) No additional parties would have been invited to comment under Section 53 of the FTA had the proposed amendments formed part of the application at the time the Expert Panel issued its invitation to comment. The proposed Battery Hill Sanctuary is entirely within the *BOGP Consent Area* and no additional adjacent landowners or occupiers would have been affected. While the Battery Hill Sanctuary is proposed in a more visually prominent location than the Ardour Sanctuary due its elevated location on a raised landform, the visual effects are not considered to be materially greater in scale or intensity as:
 - (i) The Battery Hill Sanctuary will be viewed entirely within the context of an active mining landscape including the Rise and Shine Pit and pit benches and will not be perceived as an isolated feature.
 - (ii) The Battery Hill Sanctuary is located further away from potential viewers than Ardour Sanctuary reducing its scale and prominence.
 - (e) In terms of the Schedule 2 listing, the scope of the Project in Schedule 2 of the FTA is expressed in broad terms in relation to both the activities authorised and the geographical area covered.⁸ The proposed amendments directly relate to the establishment, operation and remediation of the Project and are located within the geographic area identified in Schedule 2. Given this, the amendments do not extend beyond the activity or geographic scope contemplated by Schedule 2.

⁷ *Record of Decision of the Expert Consenting Panel, Waitaha Hydro Scheme*, 17 April 2026 at [856]-[863].

⁸ Fast-track Approvals Act 2024, Schedule 2. *Project Name: Bendigo-Ophir Gold Project. Project Description: Establish, operate, and remediate an open pit and underground gold mine. Approximate geographical location: Bendigo and Ardour Stations, approximately 20 kilometres north of Cromwell, Central Otago.*

APPENDIX 1: MAP C.03 BOGP CONSENT AREA



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