

**BEFORE THE PANEL CONVENER**

**IN THE MATTER** of the Fast-track Approvals Act 2024 (**FTAA**)

**AND**

**IN THE MATTER** of an application by Matakanui Gold Limited under section 42 of the FTAA for the Bendigo-Ophir Gold Project.

**APPLICATION NO.** FTAA-2507-1089

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**MEMORANDUM FROM THE DIRECTOR-GENERAL OF CONSERVATION**

**RESPONDING TO MINUTE OF THE PANEL CONVENER**

Dated 16 January 2026

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Barrister Instructed: Dean van Mierlo; [REDACTED]

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## Introduction

1. This Memorandum is filed on behalf of the Director-General of Conservation (**DG**), in response to the Panel Convener's directions set out in the Minute dated 18 December 2025 (the **Minute**).
2. The Department of Conservation (**DOC or the Department**) is the relevant administering agency in respect of the following approvals sought by Matakanui Gold Limited (the **Applicant**) under s 42(4) of the Fast-track Approvals Act 2024 (**the Act**)
  - a. Section 42(4)(e), being 5 concessions as defined in clause 1 of Schedule 6;
  - b. Section 42(4)(g), being a partial revocation of a conservation covenant as defined in clause 41 of Schedule 6;
  - c. Section 42(4)(h), being a wildlife approval as defined in clause 1 of Schedule 7;
  - d. Section 42(4)(j), being a complex freshwater fisheries approval as defined in clause 1 of Schedule 9;
3. This Memorandum considers the matters set out in the Minute, including in the Schedules. It does so following paragraph 7 of the Minute which sets out specific matters to be addressed at the forthcoming Panel Convener's conference. It then addresses the two overarching issues set out at paragraph 2 of the Minute, being the Panel Convener's decision regarding the appointment of Panel members, and the timing of Panel decisions.
4. In summary, the DG considers:
  - a. the application lacks detail, and is substantial and highly complex;
  - b. there are novel legal issues, particularly relating to the proposed covenant revocation;
  - c. the proposed conditions and management plans for concessions and other approvals are not supported by DOC in current form; and
  - d. a longer time frame is warranted to ensure the Panel has sufficient time to assess information and advice from the Applicant, relevant

administering agencies, local authorities, mana whenua and invited parties to support its decisions.

**Confirmation of attendance at forthcoming conference**

5. The DG confirms her representatives will attend the Panel Convener's conference scheduled for 10.00am on 21 January 2026. Attendees will be
  - a. Dean van Mierlo, Barrister [REDACTED]
  - b. Pene Williams, Senior Solicitor Rōia Matua [REDACTED]
  - c. Marie Payne, Fast-track programme/project lead [REDACTED]

**Comment on the extent of engagement by the applicant before and following lodgement of application (para 7(a) of Minute)**

6. DOC has endeavoured to engage meaningfully and proactively with the Applicant prior to and following lodgement.
7. Whilst engagement has been ongoing DOC's observations are:
  - a. Engagement was requested by the Applicant in February 2025, however, details of the application were provided in the latter half of 2025.<sup>1</sup> This limited meaningful engagement on significant issues in relation to the effects on conservation values.<sup>2</sup> DOC did not receive the application documents in full prior to lodgement of the application.
  - b. Given the scale of impacts on conservation values, effects management and offsetting/compensation are significant considerations in relation to this project. Management plans relating to conservation values were first shared with DOC in late October 2025 (lodgement date was 31 October 2025).
  - c. DOC has provided feedback to the Applicant on technical assessments. DOC has raised concerns around gaps in the information contained in the assessments and advised that these gaps may subsequently lead to

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<sup>1</sup> Some limited reports were provided in the first part of 2025, and the Applicant began providing detailed technical reports from early July 2025, however, an overall Assessment of Environmental Effects was not provided pre-lodgement.

<sup>2</sup> Biodiversity, historic heritage and visitor recreation values.

incomplete/inaccurate representation of values present and assessment of effects, and thereby inadequately inform proposed effects management, compensation proposals and appropriate conditions.

- d. DOC provided specific feedback on the concession applications and the proposed partial revocation of the covenant.<sup>3</sup> This feedback identified that better information about the effects of these activities and consideration of concession types and long-term management intentions are needed to fully inform DOC's advice to a Panel.
- e. Many aspects of DOC's pre-lodgement feedback have not been reflected in the application as lodged, and DOC consequently considers a number of these issues remain in contention.
- f. DOC acknowledges that more recently, requests for further information have been responded to, however, there has been a significant lag in receiving some information.<sup>4</sup>
- g. A number of meetings requested or previously agreed have not proceeded,<sup>5</sup> and site visits are yet to be fully facilitated by the Applicant. DOC acknowledges the Applicant has since stated workshops or site visits will be facilitated early in 2026. No dates have been confirmed, and DOC is working with the Applicant to progress these.

8. Post lodgement, DOC has engaged with the Applicant on issues it raised as part of its response to the EPA in relation to the completeness of the application.<sup>6</sup> While the EPA did find the application to be complete, it noted that this finding was "borderline" with regard to some conservation approvals being sought.<sup>7</sup> The Applicant has provided further information in relation to these issues (24/12/2026) and DOC is in the process of reviewing that response. DOC

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<sup>3</sup> There was a concessions discussion with the Applicant's representatives on 10 October 2025, and DOC provided written comments subsequently.

<sup>4</sup> E.g. freshwater reports requested in October 2025 were only received in January 2026.

<sup>5</sup> E.g. a lizard workshop proposed by the Applicant in September 2025 has yet to occur.

<sup>6</sup> See [Bendigo–Ophir Gold Project](#), under Completeness responses received – Consultation with the Department of Conservation for s46

<sup>7</sup> EPA Memorandum on completeness and scope, e.g. p26-27 re Ardgour Rise concession 3(1)(g)(i) potential effects, 3(1)(g)(ii) actions to address adverse effects, and pp 36-37 similar re Come In Time Battery concession, as well as pp74 and 76 re wildlife approval: [Memo Bendigo s46](#)

considers that some of the issues raised stand and as above may limit its ability to advise a panel if not addressed.

9. DOC has commissioned an external peer review focusing on the Applicant's proposed biodiversity offsetting and compensation package. DOC has received a draft report which suggests there are significant information gaps and the proposed package may be considered inadequate to address expected biodiversity impacts. DOC intends to share the final report with the Applicant as part of ongoing engagement.
10. DOC remains willing to continue engaging with the Applicant on these and other matters and welcomes further workshops and site visits to facilitate this. But DOC is also mindful of the time required to meaningfully engage, particularly while continuing to progress the substantive application.

**Processes agreed with Applicant to narrow or reduce any issues relevant to the application and the Panel's decision (para 7(b) of Minute)**

11. As noted above, some workshops between the Applicant and DOC have been agreed but have not yet proceeded. In DOC's view they would provide an opportunity to narrow numerous issues identified in relation to the application.
12. The Department intends to share its technical assessments and peer review with the Applicant to facilitate further discussion between experts and narrowing of issues.
13. DOC also intends to propose to the Applicant that an independent valuation is jointly commissioned to inform the setting of appropriate concession fees to facilitate this aspect of the concessions' conditions, and DOC will continue to engage and progress this with the Applicant.
14. In addition to the matters above, DOC will continue to provide feedback on the application as part of ongoing engagement with the Applicant, with a view to resolving or narrowing points in contention.

**The level of complexity, including novel or difficult legal issues, evidential or factual complexity. (para 7(c) of Minute)**

15. This is understood to be the first application under the Act to involve the revocation or amendment of a conservation covenant. This will likely raise novel

legal issues and application of untested statutory provisions as there is no caselaw on this issue under the FTAA. The Panel’s decision may be seen as setting a precedent for other applications which include conservation covenants.

16. The scale of wildlife disturbance is also potentially unprecedented. For example, in excess of 100,000 absolutely protected lizards are likely to be impacted with the majority expected to be killed and the remainder disturbed and/or translocated.
17. The project site is one of the driest parts of Aotearoa / New Zealand. Consequently, there are a number of plants endemic to the application site, including rare or threatened species<sup>8</sup>. Many of these specialist plants host rare or threatened invertebrates. Translocation of plants at scale in this environment is untested. This is also the only directly proposed mitigation to address adverse effects on invertebrates. DOC’s view is that a precautionary approach to untested mitigation with significant adverse effects in the event of failure of that mitigation is warranted.
18. The dry conditions also have implications for the project’s water management, and the mitigation of adverse effects on aquifers and aquatic ecosystems. DOC has been engaging with the Otago Regional Council to further discuss their assessment of hydrological considerations.
19. The scale of the proposed mining operation will add to the factual complexity associated with consideration of the application.<sup>9</sup> That scale also filters through to matters of detail such as ensuring appropriate and adequate bonds, insurances and other safeguards and guarantees will be in place if approval is granted.
20. Finally, the multiple statutory approvals required will contribute to the complexity of the Panel’s task. In particular the need for approvals to integrate in a holistic manner, while maintaining the integrity of each separate statutory

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<sup>8</sup> E.g. the application site contains the largest known area of *Ceratocephala pungens*, which is classified as Threatened: nationally critical.

<sup>9</sup> The Applicant expects to extract 1.25 million ounces of gold over the projected 14 year mine life, with a project consent area covering 2,800 ha in total including proposed mitigation activities.

process, both in the first instance consideration and Panel decisions, and in the ongoing administration of those approvals.

21. In this respect, DOC notes the Applicant has not provided a separate assessment of environmental effects for each conservation approval sought, rather has provided an overall assessment. This is contrary to the Panel Convener's Guidance Note<sup>10</sup>, and adds to the complexity of analysis and consideration, as it requires cross referencing and, in some cases, searching for relevant information across multiple documents, with consequential risk that relevant details may be missed.
22. In summary, DOC considers the complexity of this project is **high**.

**Identify the principal issues in contention or other disputed matters, as a feature of the project's complexity (para 7 (d) of Minute).**

23. DOC's review and assessment of the application is ongoing. The principal issues in contention in relation to the approvals for which DOC is the administering agency are set out below.
24. DOC considers adequacy and accuracy of information is a key issue as this will likely impact the Department's ability to provide advice to the Panel which adequately addresses the matters to be considered in a Panel's assessment of the approvals sought. These matters include (but are not limited to):
  - i. the effects of the project on protected wildlife in relation to the wildlife approval;
  - ii. the extent to which conservation values, including historic heritage and biodiversity, will be compromised in relation to the proposed revocation of the covenant;
  - iii. the assessment of effects of the proposed concession activities and measures that can reasonably and practicably be undertaken to avoid, remedy or mitigate any adverse effects of the activity;

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<sup>10</sup> At clause 4.1(d)

- iv. risks to freshwater values and the presence of threatened, data deficient or at risk species under the New Zealand Threat Classification System in the vicinity of the proposed activity.
- v. overall, the adequacy of the Applicant's effects management package, including proposed mitigation and compensation measures.

*Biodiversity and wildlife*

- 25. DOC considers the proposed effects management package<sup>11</sup> does not adequately address expected impacts and under-represents biodiversity values whilst over-representing the certainty of success of proposed interventions for many species (lizards, invertebrates and threatened plant species). Given the scale of impacts, proposed effects management interventions are considered inadequate from a conservation perspective and unlikely to achieve the anticipated outcomes.
- 26. Impacts on several aspects of biodiversity do not appear to have been considered in the Applicant's assessments or its proposed effects management package. These include indirect or diffuse impacts, impacts to some areas are not accounted for<sup>12</sup>, additionality, feasibility and uncertainty of proposed mitigations.
- 27. The scope of the wildlife approvals sought is unclear, e.g. the Applicant has not included the proposed concession areas or all potential species that may be present and disturbed within the project area. DOC is continuing to engage with the Applicant to clarify this and other matters.
- 28. The Applicant has proposed an 'enhancement fund'<sup>13</sup> to address unavoidable losses. It is unclear what assessment has informed the amount proposed, and DOC's initial assessment indicates this is unlikely to facilitate any significant biodiversity gains. DOC considers the existing proposals will not be sufficient when considered against the unavoidable losses of biodiversity.

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<sup>11</sup> Includes avoidance, remediation, mitigation, offsetting and compensation.

<sup>12</sup> E.g. wetlands and the proposed concession areas are excluded.

<sup>13</sup> DOC notes this is part of the draft resource consent conditions rather than being included in draft conditions for the DOC approvals.

### *Historic Heritage*

29. DOC has identified significant concerns in relation to several aspects of the Applicant's historic heritage assessments, noting that a key focus of the existing covenant is ongoing protection of heritage values at a landscape scale.
30. DOC's assessments conclude that heritage values within the project site (and currently protected by the covenant) are significantly underrepresented by the Applicant and effects on historic heritage have therefore not been fully assessed.

### *Revocation of the existing covenant*

31. Following on from the comments on biodiversity and historic heritage above, DOC considers the Applicant's assessment of effects of partial revocation of the covenant is inadequate and incomplete and does not address the significance of the values protected by the covenant.
32. In relation to the covenant revocation the Applicant has not proposed a separate effects management package or protection of alternative areas which contain equivalent values.
33. DOC considers the effects of the revocation of the covenant go significantly beyond the direct disturbance footprint. The Applicant is seeking to revoke the covenant over a broader geographical area and DOC has been unable to identify where the impact on these additional areas has been assessed, limiting DOC's ability to advise a panel on these matters. The reason for seeking a larger area than required for the project is unclear.

### *Concessions*

34. DOC considers separate easement concessions are likely to be required within the Ardgour Rise Conservation Area for the proposed road realignment and Chorus fibre-optic cable.
35. DOC considers the concession for proposed alternative public access to the Come In Time Battery through the Bendigo Historic Reserve is unlikely to be considered an acceptable proposal to mitigate the effects of the project (noting

alternative public access is already available through the reserve but removal of the existing access will impact on existing recreation and heritage values).<sup>14</sup>

36. The Applicant has not directly assessed adverse effects of the activities proposed to be enabled by concessions and therefore the specific effects of these activities are undetermined. Nor has the Applicant considered all relevant provisions of the Conservation Act 1987.

**Is the drafting of proposed consent conditions (including management plans) agreed? (para 7(e) of Minute).**

37. The drafting of proposed conditions, and proposed management plans is not supported by DOC.

38. DOC's initial view is that the management plans and proposed conditions are insufficient due to gaps in information and assessment which have resulted in the misrepresentation of effects and subsequently inadequate proposed management of effects. DOC is continuing to review these documents.

39. DOC considers that significant further work will be required to develop an appropriate set of conditions and (as appropriate) management plans, for this large scale, complex project, located within an unusual, if not unique, environment. As noted above, DOC's view is that more information is likely to be required for DOC to appropriately advise a Panel in relation to the conservation approvals sought.

40. A particular issue that arises out of the scale of the project and the number of approvals sought, is the integration and consistency of conditions across the different approvals, and the relationship between approvals (DOC approvals and other approvals) and management plans. That will add to the complexity of condition finalisation. DOC's experience with the Waihi North Project, which similarly involved a significant number of approvals, was that this exercise required careful and extensive consideration.

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<sup>14</sup> Currently public access is available by a short walk off Thomsions Gorge Road, the proposed concession would create a 4 km route through the reserve.

**Propose efficient processes to enable the panel to understand, resolve or narrow the scope of likely issues, and indicate how they may be accounted for under the decision timeframe (para 7(f) of Minute).**

41. DOC envisages many issues will be able to be addressed and determined by the Panel on the papers.
42. The Act provides for a range of tools that Panels can use. In particular, the Panel may find workshops or conferencing of experts appropriate or useful for resolving technical issues or resolving or narrowing disputed technical expert opinions.
43. In due course, a conditions workshops and/or workshops for the various approvals and management plans sought may have merit.
44. Depending on how the narrowing of issues proceeds, DOC may seek direction from the Panel regarding outstanding information gaps where these may limit DOC's ability to provide advice to support the Panel's consideration and assessment of approvals sought.

#### **Time frame for Panel decision**

45. Given the scale and factual complexity of this project, novel legal issues relating to the covenant, the multiple statutory approvals sought, and the highly significant and diverse natural historic and biodiversity values at issue, DOC considers that a substantially longer timeframe than the default 30 working days for decision would be appropriate and justified.
46. DOC notes the recent amendment to s79 of the Act is not yet in force.<sup>15</sup>
47. It will be important that the timeframe for the Panel's decision allows appropriate use to be made of the available tools, to enable robust and enduring outcomes, and conditions that are no more onerous than necessary.

#### **Skills Composition of Expert Panel**

48. DOC considers that having the following areas of expertise would be invaluable for the members of the Expert Panel determining this application.

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<sup>15</sup> Section 2(2)(d) Fast-track Approvals Amendment Act 2025 delaying the commencement of s39 (which amends s79 of the Act) until 31 March 2026.

- a. Terrestrial ecology
- b. Historic heritage management
- c. Hydrology and hydrogeology
- d. Engineering, and particularly mine engineering
- e. Planning expertise.

49. Given the scale and complexity of the project, the values in issue, and the range of approvals sought, DOC considers that appointment of four or more Panel members will be appropriate and likely necessary to ensure the Panel as a whole has the breadth of knowledge and skills required to determine this application.

50. Additionally, the Panel may wish to consider appointment of technical advisors<sup>16</sup> in some of these specialist disciplines, to assist the Panel in its decision making.

#### **Other matters**

51. Ahead of filing this memorandum, the Department has been contacted by two third party organisations with a conservation advocacy focus. One organisation requested DOC consider the material it provided to inform this memo. DOC has not reviewed this material or relied on it. Nevertheless, DOC wanted to advise the Panel Convenor of this issue.<sup>17</sup>



Pene Williams



Dean van Mierlo

Joint Counsel for Director-General of Conservation

Date: 16 January 2026

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<sup>16</sup> Clause 10(3) of Schedule 3 of the Act.

<sup>17</sup> DOC will forward the information to the EPA and leave it to their discretion to progress.