

24 February 2026

Environmental Protection Authority
Attention: Hon Matthew Muir KC
Chair of Expert Panel appointed to consider the Bendigo-Ophir Gold Project (FTAA-2507-1089)

By email: info@fasttrack.govt.nz

Dear Mr Muir,

Bendigo-Ophir Gold Project - Fast-track substantive application

1. The Environmental Defence Society Incorporated (**EDS**) has a material (and substantially greater than the public generally) interest in the Bendigo-Ophir Gold Project (**Project**) and requests an invitation to comment on it under s 53(3) of the Fast-track Approvals Act 2024 (**FTAA**).
2. EDS is a national environmental non-governmental organisation. For over 50 years it has undertaken environmental litigation in the public interest, most notably *EDS v King Salmon* (Supreme Court) which fundamentally reset the interpretation of the Resource Management Act 1991.¹ The Environment Court has recently confirmed that EDS (in context of a Marlborough proposal) "... represents an interest that is greater than the public generally."²
3. In recognition of EDS's public interest standing in projects of economic importance, it was listed in the COVID-19 Recovery (Fast-track Consenting) Act 2020,³ the precursor fast-track regime to the FTAA.
4. EDS has historical engagement in several mining projects on the Coromandel Peninsula and elsewhere. Its early involvement in the Waihi Gold mine is described in the book *Environmental Defenders: Fighting for our Natural World*,⁴ the relevant extract of which is enclosed as **Appendix A**.

¹ *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited & Ors* [2014] NZSC 38.

² *Kaiuma Farm Limited v Marlborough District Council* [2025] NZEnvC 164 at [13].

³ COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA), section 17(6)(m).

⁴ Published by Bateman Books in 2024 and available to purchase [here](#).

EDS involvement in the FTAA and its implementation

5. EDS has undertaken extensive legal analysis and review of the FTAA and its implementation, including:
 - a. Submitting on the Fast-track Approvals Bill and presenting to the Select Committee;⁵
 - b. Publishing a plain-English guide to the FTAA on its Environment Guide website;⁶
 - c. Liaising with the Environmental Protection Authority (EPA) on its legal requirements under the FTAA to publish information;⁷
 - d. Instructing legal firm Anderson Lloyd to produce a legal memorandum on cost recovery under the FTAA;⁸
 - e. Liaising with the EPA about its legal obligations under s 46 FTAA (its 'completeness' test);
 - f. Liaising with councils about referred and substantive applications, including prelodgement consultation obligations;
 - g. Being briefed by applicants on their proposed applications;
 - h. Liaising with legal counsel acting for participants engaged in FTAA processes, including those acting for applicants, councils, community groups and iwi;
 - i. Liaising with officials from administering agencies engaged in FTAA processes;
 - j. Submitting on the Fast-track Amendment Act 2026 and presenting to the Select Committee;⁹
 - k. Reviewing all draft and final decisions released to date under the FTAA;
 - l. Undertaking a 'stocktake' of procedural correspondence from Panel Convenors and panels on several projects, with a focus on legal issues arising; and

⁵ EDS's submission is available [here](#).

⁶ <https://www.environmentguide.org.nz/ftaa/>

⁷ <https://eds.org.nz/wp-content/uploads/2025/05/EDS-Letter-to-EPA-information-publication-28Apr25-Final79.pdf> and <https://eds.org.nz/wp-content/uploads/2025/05/Signed-ENQ-49347-G8M2B5-Fast-Track-OIA-response91.pdf>

⁸ Available [here](#).

⁹ EDS's submission is available [here](#).

- m. Inputting into the Panel Convenor Guidance Note before it was finalised.
- 6. EDS has also been invited to comment on four fast-track projects: Taranaki VTM, Southland Wind Farm, Haldon Solar and The Point Solar Farm.
- 7. It has been selective about its involvement in individual projects and has limited its engagement to projects that give rise to material adverse impacts on nationally significant indigenous biodiversity, outstanding landscapes, natural character of the coastal environment or freshwater systems.
- 8. EDS's involvement has sought to assist panels with independent legal analysis of the decision-making process under the FTAA, and to provide independent expert evidence on key issues arising. In the Taranaki VTM draft decision, EDS's legal submissions are widely cited and accepted by the panel. EDS contributed ecological evidence to the Southland Wind Farm and The Point processes.

EDS involvement in Bendigo-Ophir Gold Project

- 9. EDS is listed in the Application as an entity that the Applicant met with pre-lodgement.¹⁰ EDS's engagement with the Applicant is set out:
 - a. In an EDS letter to Santana Minerals, dated 23 April 2025, enclosed as **Appendix B**;
 - b. In an EDS letter to the EPA on the Project, dated 24 June 2025, enclosed as **Appendix C**; and
 - c. At paras [72] – [74] of EDS's legal memorandum to the Panel Convenor in relation to the Project's decision timeframe and Panel expertise, enclosed as **Appendix D**.
- 10. Its involvement with the Bendigo-Ophir Gold Project includes:
 - a. Two site visits;
 - b. Ongoing engagement with local interests, including local community groups, Ngāi Tahu and Fish and Game;
 - c. Ongoing engagement with the Central Otago District Council (**CODC**), Otago Regional Council (**ORC**) and the Department of Conservation (**DOC**);
 - d. Extensive in-house legal review of the application documentation, as evidenced in Appendix D;
 - e. Provisional independent economic, ecological and landscape expert review of the application documentation;

¹⁰ F.16 Bendigo Ophir Gold Project Pre Application Engagement Report, section 5.5, available [here](#).

- f. Several requests for transparency and public disclosure of information relevant to the Project, including under the Official Information Act and the Local Government Official Information and Meetings Act, some of which are still pending; and
 - g. Presentations at public meetings in Cromwell and Wānaka, and wider public and media comment on the Project.
11. From EDS's perspective, the key issues in contention relate to terrestrial ecology (including invertebrates), landscape, groundwater hydrology and geochemistry (the movement of water to, from and around the Project site and associated movement of trace metals and chemicals) and economics.
12. If invited to comment, EDS would file legal submissions on the Panel's decision-making process and the application of relevant planning instruments. It would also file evidence from five independent experts on the key issues listed above.
13. We consider this evidence would be of great assistance to the Panel in understanding and determining the material impacts and regional and national benefits of the Project. We note that expert caucusing would be an appropriate way to narrow the issues arising and our experts will be available to participate in those processes if that were directed by the Panel.
14. EDS is engaging with other participants in the process to ensure that its involvement would align with the procedural principles in s 10 of the FTAA.
15. We therefore respectfully ask that you exercise your discretion under s 53(3) FTAA and invite EDS to provide comments on the Project.

Ngā mihi,



Shay Schlaepfer
Chief Operating Officer and General Counsel
Environmental Defence Society

Appendix A

Waihi opencast mine

One of the last mining cases EDS was involved in was at Waihi. The application for a mining licence to establish a fresh opencast mine on the old opencast mine workings at Martha Hill was lodged in April 1985 by the Waihi Gold Company. The proposal involved removing some 33 million tonnes of rock and other material from Martha Hill which would then become a lake. The reason EDS got involved, as Gary Taylor explains, was that “the community was under siege and they needed help. These were lay people who had houses above the tunnels that made up the Waihi mine. We were concerned about what was a very large tailings dam and the need to ensure that it was properly designed and reinforced against earthquakes and the like. And the Waihi mine was to be a big ugly hole in the middle of the town which was not without its own environmental impacts. But the main reason we got involved was the social connections that EDS had built up with the community and the expectation that we would help them out with the more technical hearings process.”

In the end, the Society represented 86 objectors, an enormous number to manage. The legal team consisted of Auckland barristers Raynor Asher and Paul Cavanagh. There were two of them, so they could split up the considerable load. Gary Taylor coordinated the case.

The hearing ran for 26 days and evidence was given by 53 witnesses, many who were experts. EDS was present during the entire hearing, cross-examining the applicant’s witnesses, and presenting its own including a noise consultant, social impact assessors and a freshwater biologist. The Society was *the* major environmental advocate at the hearing with no government agency evidencing any concern for the protection of the environment.

After the applicant had presented its first witness, EDS sought an adjournment on the grounds that the proposed conditions were unlawful. In EDS’s view, the conditions illegally conferred arbitral or judicial powers on the Inspector of Mines who would be left with final design approval. The Tribunal agreed that the conditions were defective and they were extensively redrafted.

By the end, the hearing considerably stretched EDS’s resources. As described in the July 1987 edition of *EDS News*, “The Waihi hearing was basically too big for the Society to handle and we were faced with huge costs far beyond our budget – although of course our budget was minute compared with what the applicants would have invested in the hearing. While it might be possible for us to ask for free legal advocacy from lawyers for a hearing lasting perhaps a week, a five week hearing is far too long, and the fact that multiple advocates were required, detracted from our effectiveness.

“Nonetheless, the Society was the only agency to put the project consistently to the test, and the Society’s involvement was crucial in obtaining lawfully enforceable conditions. In the end, the Tribunal concluded that the factors in favour of the mine going ahead had substantially more weight than those against. It granted consent but subject to much tighter, and more enforceable, conditions. These were largely due to EDS’s involvement.”

Gary Taylor was present through most of the long hearing and he recalls, “During a lunch break in the hearing on the Waihi mine case, Judge Sheppard was working at his bench and I was preparing material for the afternoon. I recall we were the only people in the room. During the morning session we had been hearing evidence about the seismic integrity of the proposed tailings dam. With some kind of ironic serendipity, a significant earthquake occurred, rattling the bones of the old weatherboard building we were in and causing the Judge and I to look at each other with eyebrows raised. This was before the days of ‘drop, cover and hold.’ The hearing proceeded after lunch and nothing more was said about the earthquake.”

When the Resource Management Act came into force in 1991, mining was squarely included within the Act’s provisions, and required to undergo the same environmental scrutiny as other activities. This was something EDS had been advocating over many years. A separate allocation regime for minerals was provided for in the Crown Minerals Act 1991.

Six years later, in 1997, the Crown Minerals Act was amended to prevent mining north of the Kopu-Hikuai Road on the Coromandel Peninsula as well as on most conservation land and offshore islands in the Hauraki Gulf, including Great Barrier Island. This was largely a result of the continuing efforts of Peninsula Watchdog, although as Mark Tugendhaft observed, “getting the amendment passed wouldn’t have happened without EDS”.

Like many environmental issues, there may yet be more to play out with this one.

Appendix B

23 April 2025

Damian Spring
Chief Executive
Santana Minerals

By email: damian@santanaminerals.com

Dear Damian

Bendigo-Ophir Gold Project

We refer to various discussions we have had with you and Santana Minerals' experts regarding the Bendigo-Ophir Gold Project, including during our site visit and since. This letter collates the key concerns EDS has raised about the project in the course of those discussions and requests that Santana:

- a) Provide EDS with a draft copy of its application (including the assessment of environmental effects) prior to lodgement for formal review and comment; and
- b) In due course, recommends to the panel appointed to hear the project under the Fast-track Approvals Act 2024 (Act) that it invite feedback from EDS on the project.

The purpose of setting out EDS's concerns here is to ensure that you have notice of our expectation that these issues will be addressed in Santana's application for the project under the Act. In that regard, we note some slippage in the timing of applying under the Act, providing sufficient opportunity to ensure that the issues raised in this letter are addressed before lodgement. The issues set out have been informed by our expert advisers.

Underground v open cast mine

It would be helpful to understand why the mine is progressing as open cast, rather than underground. We understand that later stages will be underground, so question why this is not being progressed from the outset. Is open cast just a cheaper way of accessing gold close to the surface? And is an underground mine likely to significantly reduce adverse effects, particularly in relation to landscape and terrestrial biodiversity?

Economic analysis

Section 85(3) of the Act requires a proportionality assessment by expert panels. That necessitates fast-track applications to contain an economic analysis to support your proportionality contention. That analysis is different to a financial one and will need to assess costs, benefits, risks and alternative scenarios (eg a fall in gold price). Specific questions our economic advisers have advised should be addressed in the analysis are:

- What are the direct and indirect economics impacts of the project on the local, regional and national economy?
- What is the method used for the analysis?
- What are the GDP, consumer spending, and employment impacts?

- How will the workforce requirements of the project affect Central Otago, considering direct and indirect workers? Where will they be sourced, and what are the expected impacts on businesses, wages, housing, infrastructure, healthcare, schools, and recreational amenities in Central Otago?
- What are the competitive advantages of the RAS project that make it the 'lowest cost gold mine' in Australasia, with a comparison to other gold mines or a 'typical' Australasian gold mine?
- What potential changes might Santana make to the RAS project if projected profits fall to levels indicated in the sensitivity analysis, such as below \$1 billion or below \$500 million?
- What are the economic valuations of the various impacts discussed below (terrestrial ecology, freshwater ecology, etc.)?
- How has the assessment accounted for the project's end-of-life costs? What activities will be entailed in finishing the project and leaving the area?
- If Santana was to set aside a substantial contingency fund or long-term bond to address environmental issues at the site, what would be the effect on the economics of the project? What would be the effect on total profits, the benefit-cost ratio, and the net benefit?

Environmental impacts

Santana's published material about the project lists its likely actual and potential impacts. As the detail of each is fleshed out, and prior to finalisation, we would appreciate an opportunity to review material. You have already undertaken to provide a draft of the terrestrial ecology assessments from your team of consultants and we look forward to receiving that documentation.

The impacts that EDS is concerned about are set out below. For each matter, the application should assess baseline state, actual and potential impact and application of the resource management effects management hierarchy:

- **Terrestrial ecology:** what indigenous plant and animal species inhabit the project site and are any threatened or at-risk; what habitats are located within the site and are any of significance; how will the RMA hierarchy (avoid, remedy, mitigate etc) be applied; and what is the significance of the impacts on the ecological values in a regional and national context?
- **Freshwater ecology (including streams, wetlands and aquifers):** what is the baseline state for freshwater health on, around and downstream of the site; what impacts are there on freshwater ecology and how will they be addressed; how will leakage from the tailings dam (if any) be prevented; and what effects cannot be avoided?
- **Environmental hydrology and geochemistry:** what will be the impact on ecosystems and groundwater users from groundwater drawdown related to the open pit and mine dewatering?
- **Water use:** what volumes of takes are required; where will the abstraction come from; what effects will that have on existing users and ecosystems; where will discharges be made; what are the chemical parameters of the discharges?
- **Landscape:** what are the landscape values of the site; what are the likely effects; are any effects unable to be avoided; will there be remote view impacts; what about light impacts offsite and night; and can simulations be provided?
- **Cultural and heritage:** what are the impacts and are they positive or negative?

We expect that other impacts (such as traffic, noise, dust, recreation use and amenity) will be of particular interest to the local community.

Bond

We have discussed the question of a bond with you. Our understanding is that there are 2 bonds: an annual one (which you agree to) held against potential compliance issues to do with dam design and construction; and a long-term bond (which you have not yet agreed to) that secures against both remediation costs and post-closure risks. We see the latter as critically important and if agreed would like to understand the nature of the instrument to be used; the quantum of guarantee; and the duration of its efficacy. In our view it should be an undertaking held by a competent independent New Zealand entity and arguably run in perpetuity. It will need to be substantial.

Peer-review of tailings dam

As per our conversation with Santana's dam experts, we expect that the dam design will be peer reviewed by an independent international expert. We consider that a peer review is required to satisfy both the requirements of the Building Act and the RMA.

EDS's involvement in the formal process

Whilst we do not consider our discussions to date to comprise formal consultation or engagement, we have appreciated your willingness to engage informally with EDS pre-lodgement.

We will be formally requesting that the expert panel appointed to hear Santana's project invites feedback from EDS. Our participation in the process will be to ensure that the panel is independently informed of the material environmental effects of the project and any mitigation proposed, including by the provision of independent expert evidence.

In light of the above, we have copied this letter to the Environmental Protection Authority (EPA). We will seek that it be passed to the panel for the project once convened.

We also consider this letter to be relevant to the EPA's completeness assessment under section 46 of the Act. The matters set out herein are relevant to the project's assessment of environmental effects and to the identification of persons (including EDS) who may be affected by the activity (see clause 6(1)(a), (d) and (e) of Schedule 5 of the Act). We look forward to continuing our engagement with you on these matters.

Yours sincerely



Gary Taylor CNZM QSO
Chief Executive
Environmental Defence Society

cc Allan Freeth, CEO, EPA

Appendix C

24 June 2025

Dr Allan Freeth
Chief Executive
Environmental Protection Authority
By email: Allan.Freeth@epa.govt.nz

Tēnā koe Allan,

Bendigo-Ophir Gold Project

The Bendigo-Ophir Gold Project is listed in Schedule 2 of the Fast-track Approvals Act 2024 (FTAA). The applicant, Santana Minerals Limited (which owns Matakanui Gold Limited), was due to lodge its substantive application by the end of June 2025. Recent information suggests that this time frame has now been further extended.

The purpose of this letter is to:

- (a) Reiterate the EPA's legal obligation to, as far as practicable, publish the substantive application without delay.
- (b) Advise that (for the reasons set out below) EDS does not consider that Santana has met the consultation requirements of the FTAA and that the EPA should return its application as incomplete once it is lodged.
- (c) Request an invitation to participate in the Panel Convenors' conference on the application in due course.

Duty to publish documents without delay

In accordance with recent correspondence between EDS's legal counsel Rob Enright and the EPA, the EPA must publish Santana's application on the fasttrack.govt.nz website as soon as practicable and without delay. Our expectation is that the EPA will publish Santana's substantive application immediately upon completing privacy and official information checks. Anything less is contrary to the EPA's legal obligations in s 93 and s 92.

Completeness assessment

Once lodged, the EPA is responsible for assessing whether Santana's application is complete and within scope.¹ This is a substantive decision for the EPA and is open to challenge. An

¹ See in particular FTAA, s 46(2)(a)(ii)

important aspect of the completeness assessment is whether Santana has complied with FTAA requirements relating to consultation.

Under the FTAA, Santana's application must:

- (a) List the persons and groups the applicant considers are likely to be affected by the project (s 43(2) and s 13(4)(j));
- (b) Summarise consultation undertaken with those listed persons and groups, and with the parties required to be consulted under s 11 (s 43(2) and s 13(4)(k)); and
- (c) Summarise how the consultation has informed the project (s 43(2) and s 13(4)(k)).

These requirements are supported by clause 6(1)(e) of Schedule 5, which requires that the application's assessment of environmental effects (AEE) identifies persons who may be affected by the activity and includes responses to the views of any persons consulted.

The FTAA's prescribed pre-lodgement consultation must be meaningful. EDS considers that this requires provision of a full draft AEE (including proposed consent conditions). Given the scale and scope of Santana's application, anything less would be inadequate.

The FTAA anticipates this level of engagement given that the application must summarise how it has responded to the feedback received. This necessitates adequate provision of technical information upon which feedback can be given. Local authorities that EDS has spoken to about consultation share its expectations with respect to provision of a draft AEE and consent conditions.

Despite its apparent imminent lodgement with the EPA, and as far as EDS is aware, relevant local authorities have not been provided with a full draft of Santana's application. *Unless (and until) that occurs, it is EDS's view that the application cannot be accepted into the fast-track process and must be returned as incomplete under s 46(4).*

Further, EDS considers itself to be affected by Santana's application and therefore should be meaningfully consulted. EDS is a national environmental non-governmental organisation. For over 50 years it has undertaken environmental litigation in the public interest. In recognition of this role, the Environment Court has recently confirmed that EDS (in context of a Marlborough proposal) "... represents an interest that is greater than the public generally."²

Santana's project is of a scale not seen before in Aotearoa New Zealand and is situated in an area of high ecological and landscape value. It raises several issues of national importance that require independent assessment. EDS is well placed to inform that process on behalf of the public interest, having engaged independent experts to review Santana's application once available. Indeed, if Santana's application is accepted into the process, EDS expects to be invited by the appointed Panel to provide comment under s 53(3) to present this evidence.

EDS was initially involved in constructive dialogue with Santana, reflecting EDS's direct interest in the proposal, which has both regional and national implications. This included a proposal by Santana to provide EDS with penultimate drafts of the ecological assessments accompanying the application. Regrettably (and in breach of our expectation) this has not transpired.

² *Kaiuma Farm Limited v Marlborough District Council* [2025] NZEnvC 164 at [13]

No ecological assessments, or other draft AEE material, has been forthcoming. *We wish to formally record that EDS does not consider that it has been consulted, let alone adequately and in accordance with the relevant legal principles, by the applicant.* Any suggestion to the contrary in Santana's forthcoming application is wrong, and will be contested by EDS.

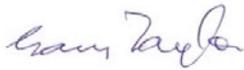
Panel Convenors' conference

In the event that Santana does undertake meaningful consultation and its application is accepted as complete, EDS requests an invitation to participate in the Panel Convenors' conference on the application so that it can provide input into the membership of the panel and the timing of the decision (and any other related matters). It is in the interest of natural justice that EDS be provided an opportunity to comment on these matters given:

- a. EDS is an affected party (as per above);
- b. The Panel Convenor's conference occurs before s 53(3) decisions are made, and EDS will seek to be invited to comment under that section;
- c. The timing of decisions and panel appointees are early procedural decisions that will impact upon the remainder of the process in a significant way.

We have copied this letter to the Panel Convenors so they are aware of our request.

We appreciate your consideration of the matters set out in this letter.



Gary Taylor CNZM QSO
Chief Executive
Environmental Defence Society

Cc: Environmental Protection Authority
By email: contact@fasttrack.govt.nz

Cc: Panel Convenors
By email: [REDACTED]

Appendix D

BEFORE THE EXPERT PANEL

IN THE MATTER	of the Fast-track Approvals Act 2024 (FTAA)
AND	
IN THE MATTER	of an application for approvals under the FTAA for the Bendigo-Ophir Gold Project

**MEMORANDUM ON BEHALF OF ENVIRONMENTAL DEFENCE SOCIETY INCORPORATED
(EDS)**

16 January 2026

Environmental Defence Society Inc
PO Box 91736
Victoria Street West
Auckland 1142
Shay Schlaepfer, Chief Operating Officer
Email: [REDACTED]

Counsel Acting: Rob Enright
[REDACTED]

MAY IT PLEASE THE PANEL CONVENOR

INTRODUCTION

1. We refer to Minute FTAA-2507-1089, dated 18 December 2025, relating to the Panel Convenor's conference on the Bendigo-Ophir Gold Project (**Project**). The Minute invited conference participants to file responses, by 16 January 2026, to matters raised relating to appointment of panel members and timing of the panel decision.¹
2. Although the Environmental Defence Society Incorporated (**EDS**) has not been invited to the Panel Convenor's conference, this memorandum sets out matters that it considers are relevant to the Convenor's decisions on panel appointments and decision timeframe.
3. In due course, EDS will seek an invitation to comment on the Project under s 53(3) of the Fast-track Approvals Act 2024 (**FTAA**) from the decision-making panel (**Panel**). This is on the basis that EDS has an interest materially greater than the public generally and meets the relevant threshold for standing and inclusion as a discretionary invitee.²
4. The matters set out in this memorandum are informed by a review of:
 - a. All documentation on the completeness decision of the Environmental Protection Authority (**EPA**) as published on the fast-track website;³
 - b. All correspondence to and from the Panel Convenor as published on the fast-track website;⁴
 - c. Several draft technical reports provided to councils as part of pre-lodgement consultation;
 - d. Part A - Substantive Application Report; and
 - e. Aspects of Parts B to J of the substantive application.
5. EDS's understanding of the Project is also informed by:
 - a. EDS's historical engagement in several mining projects on the Coromandel Peninsula and elsewhere;
 - b. Two site visits;
 - c. Engagement with local interests;
 - d. Engagement with the Central Otago District Council (**CODC**), Otago Regional Council (**ORC**) and the Department of Conservation (**DOC**); and

¹ Minute of the Panel Convenor, FTAA-2507-1089, 18 December 2025, available [here](#)

² Further information will be provided in due course, if required, including the relevant paper trail for this Project

³ Available [here](#)

⁴ Available [here](#)

- e. Limited engagement with the Applicant, including continued information requests by EDS to address relevant impacts raised by the Project.

DECISION TIMEFRAME

6. The decision timeframe for the Project is that which the Panel Convenor considers appropriate, having regard to the scale, nature, and complexity of the approvals sought in, and any other matters raised by, the substantive application.⁵
7. After preliminary assessment, you indicated that 110 - 120 working days may be an appropriate timeframe in light of complexity, likelihood of significant impacts, and other factors.⁶ By contrast, the Applicant has proposed 30 working days, which is the default period in the FTAA,⁷ because, in summary:⁸
 - a. The Project is primarily on private land;
 - b. The substantive application is thorough and comprehensive;
 - c. The legislative intent is that extended decision-making timeframes are not necessary, guided by the Fast-track Approvals Amendment Bill (now the Amendment Act);
 - d. Except for the uplifting of the Bendigo Conservation Covenant, the Project does not raise any novel or untested legal issues;
 - e. The Applicant continues to engage with agencies and iwi to resolve issues; and
 - f. A short decision timeframe will still provide time for the Panel to seek independent advice and undertake dispute resolution processes.
8. The above issues minimise the likelihood of significant impacts, reflecting the scale of the Project, and the nationally and regionally significant values in the receiving environment that merit protection. EDS disagrees with the Applicant and responds to each of its points in turn below.
9. EDS respectfully agrees with the Panel Convenor's original time estimate as a bare minimum to ensure that the Panel is able to independently review the Project, and achieve considered, quality decision-making. Moreover, given the scale of the Project, and importance of independent consideration and testing by the Panel of assertions made by the Applicant and their expert advisors, EDS considers that a decision timeframe of at least 140 working days is more appropriate. This uplift on your initial assessment is appropriate due to the matters set out below, which collectively increase the complexity of the Project and, ultimately, the Panel's decision-making process.

⁵ FTAA, s 79

⁶ Panel Convenor Minute FTAA-2507-1089 regarding Applicant expectation concerning timeframe, dated 9 December 2025, available [here](#)

⁷ Memorandum of Counsel on behalf of Matakānui Gold Limited responding to Minute of the Panel Convenor regarding timeframe, 12 December 2025, available [here](#); FTAA, s79(1)(b)

⁸ Memorandum of Counsel on behalf of Matakānui Gold Limited responding to Minute of the Panel Convenor regarding timeframe, dated 12 December 2025, available [here](#)

A. Land ownership

10. The Applicant is correct that the Project is “primarily” located on private land. However, that characterisation understates the Project’s reliance on public land. Access to, and use of, public land is necessary for the Project to proceed and is therefore a critical, not ancillary, component of the Project.
11. The Project requires use of public land administered by three government agencies: DOC, Land Information New Zealand (**LINZ**) and CODC.
12. Section 2.4 of the Substantive Application Report outlines this public land tenure and its proposed utilisation.⁹ Consent or agreement for the Applicant to use public land is not a straightforward exercise, nor is it guaranteed.
13. Of most import is the Project’s requirement to stop and access public roads owned by CODC. This element raises complex legal and factual issues that require close scrutiny. The issues include:
 - a. The Applicant has not applied for road access arrangements or approvals in its Application under the FTAA. However, the Application clearly intends that road access arrangements be authorised as part of the Application. This may create a jurisdictional issue.
 - b. The Applicant relies on a landowner consent form signed by CODC as evidence that it has landowner approval to use the public roads. That form does not constitute legal consent to close or use the public roads, and any use by the Applicant must be compatible with use of the roads by the public generally.
 - c. The Project requires closure and stopping of a paper road, which cannot be authorised under the FTAA, and requires a separate process under the Local Government Act 1974 which requires public notification. Any approvals granted under the FTAA cannot predetermine the outcome of a road stopping application.
14. The following details EDS’s understanding of these road access issues. They raise three interrelated problems: legal authority, statutory pathway and factual uncertainty.

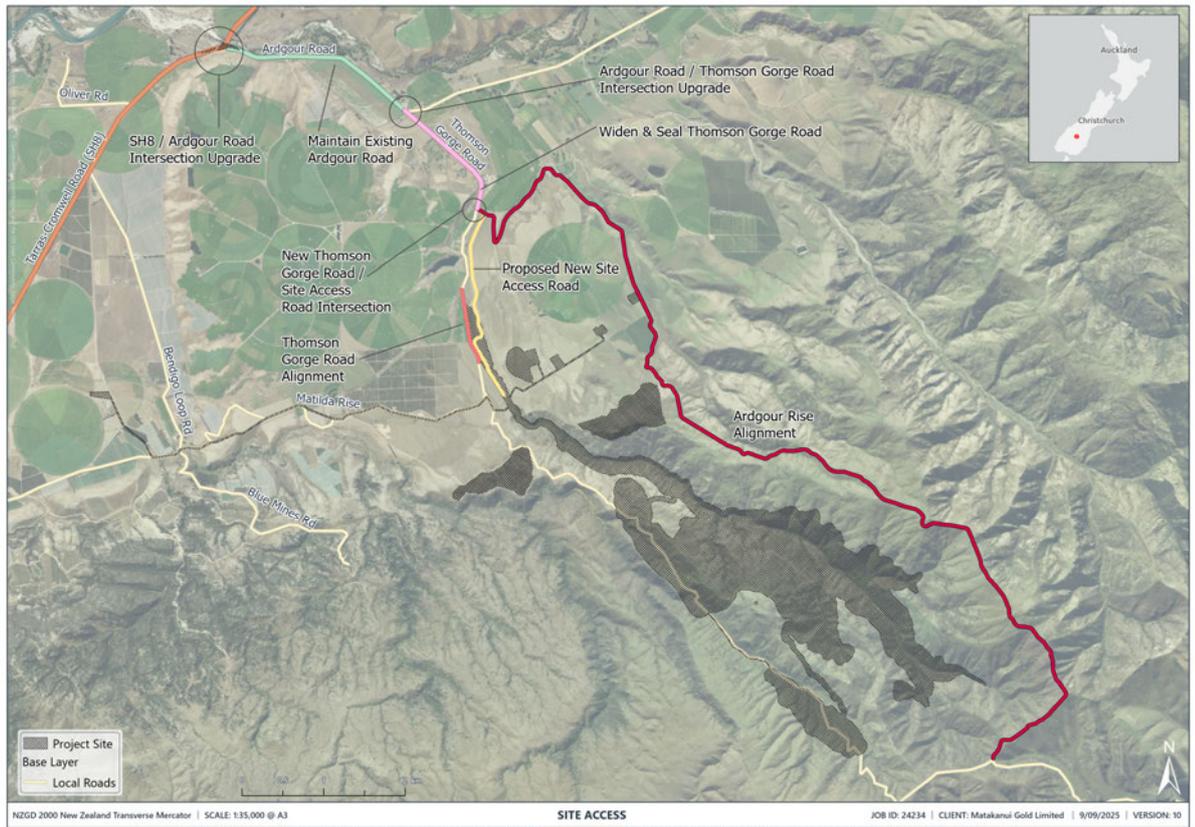
Access requirements to public land – roads

15. Access to the Project site is proposed via State Highway 8 (SH8), Ardgour Road and Thomson Gorge Road. Access via Bendigo Loop Road and Matilda Rise may also be necessary during the initial Project phases.¹⁰
16. The location of these roads is shown on the map below:¹¹

⁹ A.09A Section 2 Existing Environment, section 2.4, page 39, available [here](#)

¹⁰ B.30 Stantec Integrated Transport Assessment, page 1, available [here](#)

¹¹ C.21 Project Site Access, available [here](#)



17. In summary, the Project proposes to:¹²

- a. Upgrade the SH8 / Ardgour Road intersection;
- b. Upgrade Ardgour Road from the SH8 intersection to Thomson Gorge Road (green in the map above);
- c. Widen 1.6 km of Thomson Gorge Road to a width of 6.5m (pink in the map above);
- d. Create a new Thomson Gorge Road site access intersection (where pink meets red in the map above);
- e. Upgrade Thomson Gorge Road and realignment of approximately 800m to bring it back within the legal road reserve (orange in the map above);
- f. Legally stop part of Thomson Gorge Road (the exact extent of which is unclear);
- g. Legally stop the paper road that runs through the Project site (the exact extent of which is unclear);
- h. Construct a new private road from Thomson Gorge Road through to the 'neck' of the lower Shepherds Gorge into the processing plant area (dark yellow in the map above); and

¹² B.30 Stantec Integrated Transport Assessment, available [here](#)

- i. Create a 13.3km alternative route east over the Dunstan Mountains to the Manuherikia Valley, which the Application calls Ardgour Rise (red line in the map above).
18. Although access via Bendigo Loop Road and Matilda Rise may also be necessary, the Application does not propose any upgrades to these roads which are currently unsuitable for heavy vehicle use.¹³
19. The exact parts of the above roading network that CODC owns are unclear. EDS has been unable to find a consolidated map in the Application showing the location of all publicly owned roads that the Applicant requires access to or requires to be stopped for the Project. The Records of Title and Landowner Table that sets out the legal descriptions / records of title within and adjacent to the Project consent area redacts the owner section column.¹⁴ Several of the parcels listed in the Table include road reserve.
20. What can be deduced from the Application is that CODC owns the following roads:
 - a. Thomson Gorge Road and the paper road that runs through the lower Shepherds Valley;¹⁵
 - b. Large tracts of Matilda Rise where the Application proposes to locate the borefield pipeline (shown in maps C.07 – C.09);¹⁶ and
 - c. Parts of Bendigo Loop Road.¹⁷
21. EDS understands that CODC also owns Ardgour Road, but this is not confirmed in the Application, although it is intimated in the Access Road Construction Traffic Management Plan.¹⁸
22. While the Application emphasises the value of the ‘one-stop-shop’ nature of the FTAA as a timely and integrated means of processing multiple approvals,¹⁹ it has elected not to seek road access arrangements via its substantive application, even though that option was available to it.²⁰
23. Notwithstanding this deliberate approach, the Application clearly intends that road access be approved as part of its substantive application:
 - a. In the proposed CODC Land Use Consent and Conditions:²¹
 - i. “Activities authorised by this consent” include:

¹³ B.30 Stantec Integrated Transport Assessment, page 24, available [here](#)

¹⁴ I.02 Records of Title and Landowner Table, available [here](#)

¹⁵ A.09A Section 2 Existing Environment, section 2.4.1, page 39, available [here](#)

¹⁶ Available [here](#), [here](#) and [here](#)

¹⁷ A.09A Section 2 Existing Environment, section 2.4.1, page 39, available [here](#)

¹⁸ G.10 Access Road Construction Traffic Management Plan, available [here](#)

¹⁹ A.08 Section 1 Introduction, section 1.4, page 16, available [here](#); A.10 Section 3 Project Description, section 3.1, page 130, available [here](#)

²⁰ FTAA, s 42(4)(l); A.11 Section 4 Approvals Sought, available [here](#)

²¹ D.01 CODC Land Use Consent and Conditions, available [here](#)

- The “upgrade of Ardgour Road and Thomson Gorge Road to provide improved access to the BOGP”;²²
 - The “proposed temporary closure of part of Thomson Gorge Road, enhancement of Thomson Gorge Road east of the project and the closure of an undeveloped road (“paper road”) in the lower Shepherds Valley whilst mining operations and rehabilitation activities are undertaken”;²³
 - The “realignment of Thomson Gorge Road, via Ardgour Station (“Ardgour Rise”) to provide public access between the Bendigo / Ardgour terraces and the Thomsons Saddle” (inclusion of Ardgour Rise in the Application is perplexing as CODC has advised that “Ardgour Rise is subject to an existing resource consent application”²⁴);²⁵ and
 - An “upgrade to the intersection of State Highway 8 (“SH8”) and Ardgour Road to provide safe and suitable access to the Project Site whilst appropriately managing effects on the wider transport network.”²⁶
- ii. “Construction work” is defined to include “[c]onstruction of new access roads and road upgrades”;²⁷ and
 - iii. The Consent Holder must “widen Thomson Gorge Road between Ardgour Road and the proposed new intersection of Thomson Gorge Road and the proposed new site access road (approximately 1.6 km) as shown in Attachment B to this Land Use Consent to provide a minimum two-way sealed carriageway width of 6.5m.”²⁸
- b. In the proposed Common Conditions for CODC and ORC:²⁹
- i. Activities addressed in management plans are “certified as part of the approval of the BOGP pursuant to section 81 of the Fast-track Approvals Act 2024 and form part of this consent”.³⁰ The Application includes an Access Road Construction Traffic Management Plan.³¹ Its purpose is to “implement a phase of the Project Traffic Management Plan” (which is not included in the Application).³² Activities set out in the Access Road Construction Traffic Management Plan include works that “traverse both public road corridors and private land”, including the following which, by

²² Condition 2(k)

²³ Condition 2(l)

²⁴ Fast Track Approval – Substantive Application Completeness Checklist – CODC Resource Consent, Table A, page 8, available [here](#)

²⁵ Condition 2(p)(i)

²⁶ Condition 2(p)(iii)

²⁷ Condition 7

²⁸ Condition 47

²⁹ D.03 Schedule One – Central Otago District Council and Otago Regional Council Common Conditions, available [here](#)

³⁰ Condition C13

³¹ G.19 Access Road Construction Traffic Management Plan, available [here](#)

³² G.19 Access Road Construction Traffic Management Plan, available [here](#)

virtue of the proposed conditions, would be certified by any approval of the Application:³³

- Upgrading the SH8 / Ardgour Road intersection;
 - Upgrading the Ardgour Road and Thomson Gorge Road intersection; and
 - Upgrading Thomson Gorge Road.
24. Without seeking road access arrangements under the FTAA (i.e., approvals described in s42(4)(l) of the FTAA), the Application’s proposed activities on public roads cannot be approved via the FTAA process. Further, the Project requires the closure or stoppage of a paper road. As noted, this must be undertaken outside of the FTAA process, in accordance with the Local Government Act 1974.
25. The Application includes a “landowner consent form”, dated 16 October 2025, which purports to be CODC’s landowner approval to the Project activities taking place on council-owned roads.³⁴
26. The Application relies on this form as evidence that:
- a. CODC has approved the proposed road stopping of the paper road that traverses through the lower Shepherds Valley: “CODC has provided its written approval in its capacity as a land owner to this occurring (presented in **Part F**)”,³⁵ and
 - b. The “written approval of CODC as landowner has been obtained to undertake mining operations on various parcels of land (paper roads) owned by CODC (Provided in **Part F**).”³⁶
27. The assertion that CODC has approved the closure of the paper road is legally and factually incorrect. As noted above, road stopping requires a separate process which has not been initiated by CODC. EDS reserves its position on other legal remedies to address this.
28. Likewise, the suggestion that CODC has provided approval for the Project on council-owned roads also appears to be legally and factually incorrect:
- a. On 3 November 2025, after Mr Kelly signed the “landowner consent form”, the Mayor of CODC emailed a member of the public as follows:³⁷

“To respond to your message, council has signed an MOU to work towards an access arrangement, but has not signed or approved a formal agreement yet.”

³³ G.19 Access Road Construction Traffic Management Plan, page 3, available [here](#)

³⁴ F.07 CODC Approval as Landowner Letter_Redacted, available [here](#)

³⁵ A.10 Section 3 Project Description, section 3.18.4, page 207, available [here](#)

³⁶ A.09A Section 2 Existing Environment, section 2.4.1.1, page 40, available [here](#)

³⁷ Email from Tamah Alley, Mayor of CODC, dated 3 November 2025

- b. On 6 January 2026, CODC advised EDS that it is “still in negotiation with Santana Minerals” over access to roads.³⁸
29. Based on this correspondence, and the wider legal position, the 16 October 2025 CODC landowner consent form does not constitute legal authority for the Project to access CODC-owned roads.
30. The Application states that “MGL does, or will, hold legal rights (access arrangements, easements, licences to occupy, consents or concessions) from the Department of Conservation and CODC in relation to any works proposed on land administered by these parties. Copies of affected party approvals are provided as **Part F** to these application documents”³⁹ Road access matters have garnered significant interest from the public. Future access to CODC-owned roads cannot be asserted with this degree of confidence.
31. That is particularly so with respect to the paper road which is, as acknowledged in the Application:⁴⁰
 - a. A well-established recreational driving and 4WD route;
 - b. A recognised cycling tour route; and
 - c. A popular local equestrian route.
32. To date, all negotiations between the Applicant and CODC on road access have been undertaken privately and all Council reports and Council meetings on the topic have excluded the public. CODC has consistently refused information requests on these matters, including provision of Council’s decision that purportedly authorised the signing of the 16 October 2025 landowner consent form. Disclosure of this information, along with Council reports and meeting minutes, will greatly assist parties, and ultimately the Panel, in understanding the Project’s putative road access arrangements. The Project cannot legally proceed until these matters are resolved.
33. The above has resulted in a legally and factually complex situation that the Panel will have to address. This will require additional time.

B. Application completeness

34. The Applicant asserts that the Application is thorough and comprehensive. However, the Panel cannot rely on the bare assertion of the Applicant and must independently assess the quality of information supplied. While certainly lengthy, the Application remains deficient in many respects. These gaps will necessitate the Panel seeking further information or commissioning reports / advice under ss 67 and 68 of the FTAA so that it can properly assess the Application against the decision-making criteria in s 81 of the FTAA.
35. Some of these information gaps are set out by parties in their responses to the EPA as part of the s 46 FTAA completeness assessment.

³⁸ CODC letter to S Schlaepfer, dated 6 January 2026, responding to LGOIMA request #149276

³⁹ A.15 Section 8 Fast Track Approvals Act 2024 Requirements, section 8.4, page 388, available [here](#)

⁴⁰ A.09A Section 2 Existing Environment, section 2.23 page 128, available [here](#)

36. Both DOC and Heritage New Zealand advised the EPA that the Application did not meet the completeness tests in the FTAA.
37. Heritage New Zealand considers the following relevant information is missing:⁴¹
- a. Description of how the Project will modify or destroy each archaeological site identified within the Application; and
 - b. A more detailed assessment of the archaeological values of the archaeological sites such that scale and significance of the Project on these values and sites can be determined.
38. DOC said that:⁴²
- “Some of the information gaps identified by DOC may impede its ability to give advice to the panel, if this information is not identified or provided as part of the application during the process.”
- And
- “In relation to the detail/further information identified as required, DOC will be limited in its ability to provide comprehensive s51 reports which address the relevant matters set out in each of the schedules. Subsequently this may limit the Panel’s assessment against the relevant criteria as again required under the Act and the relevant schedules.”
39. Of note, DOC identifies the following information gaps:
- a. Assessment of effects on lizards, including comprehensive and accurate identification and mitigation proposals;
 - b. Lack of a specific effects assessment for the activities proposed within each concession and consequential lack of information on the management of those effects (all concessions);
 - c. Lack of assessment of proposed roading works against the Conservation Management Strategy (all concessions);
 - d. Lack of assessment against the purpose of the Historic Reserve (Water Monitoring concession);
 - e. Lack of assessment of the values of the conservation covenant sought to be revoked, and the impact of the revocation on recreation, landscape and biodiversity (application for amending or revoking conservation covenant);
 - f. Application activities are insufficiently described (Come-In-Time concession and complex freshwater fisheries approvals);

⁴¹ Heritage New Zealand Completeness Check letter, available [here](#)

⁴² Department of Conservation advice for EPA compliance assessment, dated 13 November 2025, page 2, available [here](#)

- g. Reports referenced in the Application are not provided (i.e., RS.03 referred to in Water Monitoring concession documentation and MWM (2025j) referenced in A.15);
 - h. Lack of alternatives assessment to Application activities (Come-In-Time concession); and
 - i. Lack of explanation as to why concessions have been sought, when a licence or easement might be more appropriate due to term and monitoring requirements (Come-In-Time concession and Water Monitoring concession).
40. DOC also identifies that wildlife approval is not sought for public conservation land and protected wildlife is likely to be impacted by the concessions sought in the Application. Also, it is ambiguous as to whether some concessions would require wildlife approval.
41. Some of DOC's issues arise because the Applicant has decided not to follow Panel Convenor Guidance to undertake separate technical assessments and reports for each approval sought. Instead, it has collated its assessments (or lack thereof) and is asking the Panel to consider the Application as a "cohesive whole".⁴³ In doing so, it has omitted necessary statutory assessments required for each approval sought, particularly the conservation concessions.
42. CODC similarly signalled the need for the Panel to request further information to fill gaps in the Application:⁴⁴

"Where information is identified as incomplete in Table A, it is assessed on the basis that the absence of this information at this stage of the process is unlikely to have significant implications and should not necessarily impact on the progression of the application to the next stage of the process. As such, CODC suggests that any information gaps identified in Table A can be resolved through further information requests."

43. Information gaps identified by CODC include:⁴⁵
- a. Ecological description of the vegetation / habitat along the proposed alignment of Ardgour Rise and assessment of effects on that vegetation / habitat;⁴⁶
 - b. Survey of mosses and lichens;
 - c. Data on the populations, distributions and biology / ecology of two Threatened species;
 - d. The Pre-Feasibility Report, dated July 2025, which informs the economic assessment;

⁴³ A.02B Legal Overview, at [28] – [30], available [here](#)

⁴⁴ CODC Completeness Check letter, available [here](#)

⁴⁵ Fast Track Approval – Substantive Application Completeness Checklist – CODC Resource Consent, available [here](#)

⁴⁶ Fast Track Approval – Substantive Application Completeness Checklist – CODC Resource Consent, pages 7 - 8, available [here](#)

- e. Information on the key sectors that will receive direct expenditure from the Project;
 - f. Spatial data related to the Project's impacts;
 - g. Assessment of noise or vibration levels that would enable an ecologist to assess impacts on fauna;
 - h. Assessment of unreasonable noise;
 - i. Assessment of noise and vibration effects over neighbouring land that might be developed for noise sensitive activities in the future;
 - j. Assessment of the safe and efficient operation of the Ardgour Road section between SH8 and Thomsons Gorge Road;
 - k. Description of the engineering specification for Ardgour Rise;
 - l. A Cultural Impact Assessment; and
 - m. A climate change assessment.
44. Largely because of the information gaps listed above, the EPA's final completeness decision states, on 13 occasions, that "[f]or the purposes of completeness, evaluation reflects a borderline level of sufficiency."⁴⁷ In this context, it is questionable whether the Application has been correctly deemed complete, and EDS reserves its position on this issue.
45. EDS understands that further deficiencies / areas that require further clarification have been identified by parties as their experts continue to review the Application. EDS anticipates that these will be articulated in corresponding memoranda filed today by the other parties.
46. An application of this size and scale, which involves a new extractive industry and approvals across multiple statutory regimes (within the bounds of the FTAA), will inevitably give rise to uncertainties and questions that need to be answered. For comparison, the Panel hearing the Taranaki VTM Project, also a new mining application under FTAA (as opposed to an extension like Waihi North), has:
- a. Issued 35 Minutes;
 - b. Received 53 additional documents from the Applicant;
 - c. Received 7 supplementary evidence statements;
 - d. Made 7 further information requests to the Applicant, several of which have been extensive and multifaceted; and
 - e. Made 4 further information requests to other parties.

⁴⁷ EPA Memorandum on Completeness and Scope, 5 December 2025, available [here](#)

47. The Panel in this case will need to fill information gaps via requests for further information or commissioning of reports or advice. This process takes time and should be accounted for when setting the decision timeframe.

C. Legislative intent

48. The Application says that the legislative intent of the FTAA is that extended decision-making timeframes are not necessary, guided by the Fast-track Approvals Amendment Bill (as it was at the time).
49. EDS does not agree. The Fast-track Approvals Amendment Act 2025 is irrelevant to the Panel Convenor's decision on length of decision timeframe. As rightly noted in your Minute of 18 December 2025, "[t]he amendments made to s 79 by the Fast-track Approvals Amendment Act 2025 will not apply to this application."⁴⁸ Parliament had every opportunity to apply the new 90 working day cap on decision timeframes to this Application (via the transitional provisions in the Act), but it did not.
50. There is also no express or implied presumption in the FTAA against decision timeframes of more than the default 30 working days, or some extended time thereafter. To date, no decision timeframes have been set at the default period and timeframes for more complex projects have been set significantly above that, for example Waihi North was 112 working days and Taranaki VTM was 100 working days.
51. Section 79(2)(b) of the FTAA requires that the timeframe be set having regard to the scale, nature and complexity of the approvals sought and any matters raised by the substantive application. The procedural principles in s 10 of the FTAA also apply such that all practicable steps must be taken to ensure a timely, efficient, consistent and cost-effective process. Your minute of 18 December 2025 traverses how inadequate timeframes can potentially lead to ineffective operation of the FTAA, impacting the quality of decision-making and leaving the decision susceptible to challenge.⁴⁹ The Applicant has substantially understated the complexity of this Project, including fundamental errors and information gaps relevant to whether approval may ultimately be granted.

D. Novel or untested legal issues

52. The Applicant says that, except for the uplifting of the Bendigo Conservation Covenant, the Project does not raise any novel or untested legal issues.
53. EDS disagrees. The discussion above clearly demonstrates that access arrangements raise difficult and new legal issues. While not comprehensive, other legal issues are set out below.

Bendigo Conservation Covenant

54. The significance of uplifting the Bendigo Conservation Covenant should not be minimised. The covenant was created as part of the tenure review of Bendigo Station whereby parts of the property that were publicly owned were privatised subject to

⁴⁸ Minute of the Panel Convenor, FTAA-2507-1089, 18 December 2025, footnote 6, available [here](#)

⁴⁹ Minute of the Panel Convenor, FTAA-2507-1089, 18 December 2025, at [5] - [6], available [here](#)

enduring conditions specified in the covenant. The land subject to the covenant is to be managed in accordance with the following conservation objectives:⁵⁰

- a. Protecting and enhancing the natural character of the land with particular regard to the natural function of ecosystems and to the native flora and fauna in their diverse communities and dynamic inter-relationships with their earth substrate and water courses and the atmosphere.
 - b. Protecting the land as a representative area and significant part of the ecological character of the Dunstan Ecological District.
 - c. Maintaining the landscape values of the land.
 - d. Maintaining the historic values of the land.
55. In 2023, the covenant was varied so that temporary tracks could be constructed with the Minister’s consent subject to a restoration and enhancement programme. At the time, DOC cautioned the landowner that the variation was not an indication of support for further mining activities, and reminded them that:⁵¹
- “... the objectives of the Bendigo Conservation Covenant are a very significant barrier to mining activity within the covenant area should this be sought at some time in the future.”
56. Clause 42 of Sch 6 of the FTAA sets out the information requirements for an application to revoke a conservation covenant. Section 8.9.1 of the Application purports to address these requirements. However, it relies on wider site assessments to draw conclusions about the covenant area proposed to be revoked.⁵²
57. The Application does not include any assessment specific to the area sought to be revoked. It does not provide a description of the area affected by the revocation and the values contained within it, an assessment of impacts on those specific values and any mitigation to address those impacts, or whether or to what extent the values that will be impacted are found elsewhere in the covenanted areas or the remainder of the covenant as required by clauses 42(b) - (d). Without this information, the Panel will not be able to assess whether the revocation will compromise values of regional, national, or international significance.⁵³
58. Further, it is not clear whether the Applicant has engaged with the New Zealand Conservation Authority, relevant Conservation Boards, New Zealand Fish and Game Council or the Game Animal Council⁵⁴ which must be invited to provide comment on the revocation.⁵⁵
59. Finally, the Application does not appear to propose any conditions of the type anticipated by the FTAA for approvals to revoke / vary conservation covenants, such as the protection by the Applicant of equivalent land outside the area of the covenant or

⁵⁰ E.04 Bendigo Conservation Covenant 2000, available [here](#)

⁵¹ E.05 Bendigo Conservation Covenant Letter of Agreement Variation (23 November 2023), available [here](#)

⁵² FTAA, Sch 6, cl 46

⁵³ FTAA, Sch 6, cl 45(1)(c)

⁵⁴ Part F of the Application and A.12 Section 5 Consultation and Engagement, available [here](#)

⁵⁵ FTAA, Sch 6, cl 44

the carrying out of works to enhance conservation values on land remaining within the covenant.⁵⁶

60. Removing part of the Bendigo Conservation Covenant is a major change, and is likely to require careful legal (and factual) review against the decision-making criteria in Sch 6 of the FTAA.

Consent duration for water takes

61. The Application breaches a statutory bar set out in s 127B of the Resource Management (Consenting and Other System Changes) Amendment Act 2025.⁵⁷ The Application seeks consent for water takes of 35 years, contrary to the six year limitation in s 127B:

“127B Duration of new water permits under Regional Plan: Water for Otago must not exceed 6 years

- (1) The duration of a water permit authorising the taking or use of water granted on and after the commencement date under the Regional Plan: Water for Otago must not exceed 6 years.

...

- (4) This section overrides any provision in the plan that applies to the duration of a water permit authorising the taking or use of water.”

62. Section 127B sits alongside Policy 10A.2.2 of the Otago Regional Water Plan which limits the duration of resource consents for new takes and / or uses of freshwater to no more than six years. The policy was introduced to the Plan via Plan Change 7 (PC7).⁵⁸
63. PC7 was promulgated at the recommendation of the relevant Minister (Hon David Parker) in response to the Skelton Report⁵⁹ which found that Otago does not have a fit for purpose planning framework in place to appropriately manage applications for new water permits. It was designed as an interim measure until a new planning regime was operative.⁶⁰
64. The possibility of an alternative pathway for longer term consents was expressly rejected in the PC7 decision.⁶¹
65. More recently, the draft Homestay Bay decision addressed Policy 10A.2.2 and s 127B in the context of the FTAA.⁶² The draft decision states that a 35 year consent is appropriate due to the scale of the project, the investment required and the certainty of providing for critical infrastructure necessary for the housing development. This decision (once finalised) is not binding on other fast-track panels and some of its

⁵⁶ FTAA, Sch 6, cl 46(1)

⁵⁷ A.11 Section 4 Approvals Sought, section 4.2.2, page 235, available [here](#)

⁵⁸ [2021] NZEnvC 164 available [here](#) and [2021] NZEnvC 179 available [here](#) (then Environment Judge Borthwick presiding)

⁵⁹ P Skelton, 2019, Investigation of Freshwater Management and Allocation Functions at Otago Regional Council, Report to the Minister for the Environment

⁶⁰ Otago Regional Council was due to notify such a plan but the Government prevented its progress via a law change in October 2024

⁶¹ [2021] NZEnvC 164 at [92], available [here](#)

⁶² Draft Homestead Bay decision under the FTAA, at [408] – [411]

findings are contrary to the considered position adopted in the PC7 decision. EDS reserves its position on the correctness of this decision, and the wider legal issues.

66. The Panel appointed to the current Project will need to grapple with the application and relevance of Policy 10A.2.2 and s 127B which will require legal submissions on this largely novel and untested issue.

Additionality of ecological offsetting and compensation

67. The Applicant holds numerous existing approvals and authorisations spanning mining, resource management and conservation.⁶³ These approvals and authorisations each contain conditions, many of which seek to manage ecological impacts including through rehabilitation and restoration.
68. Issues of additionality therefore arise with the Project's ecological offsetting and compensation package. To what extent is that which is being proposed in the Application already required?
69. Additionality is an offsetting and compensation principle of the National Policy Statement for Indigenous Biodiversity 2023 (NPSIB).⁶⁴ Its importance in the scheme of sections 81 and 85 of the FTAA, along with the offsetting and compensation 'bottom-lines' in the NPSIB,⁶⁵ will require legal and expert analysis to assist the Panel with its decision.
70. Although the adverse impact of fast-track projects on planning instruments has been discussed in other panel decisions, only approximately 10 decisions have been released to date. The matter cannot therefore be described as 'settled law' and is still very much the subject of legal argument. The issue has not been tested in senior courts.

E. Engagement

71. The Application sets out the Applicant's purported engagement.⁶⁶ The Applicant says that it continues to engage with agencies and iwi to resolve issues. EDS cannot comment on the extent to which these discussions are ongoing, or their progress. However, agencies and iwi are not the only interested parties in the Project.
72. On 19 July 2024, EDS approached Santana Minerals seeking a briefing on the Project. Over the next few months, the Applicant met with EDS online to discuss the Project and showed EDS around the site. It also facilitated a meeting between EDS and its tailings dam experts. At that stage, engagement was positive and forthright. The Applicant had offered to provide EDS with early drafts of its ecological reports to review.
73. At the Applicant's initiation, engagement with EDS abruptly ceased in late 2024. EDS made multiple attempts to continue the discussions during 2025 but received no reply. No relevant reason for the cessation in communication was provided.

⁶³ Part E and A.09A Section 2 Existing Environment, section 2.2, pages 31 - 35, available [here](#)

⁶⁴ National Policy Statement for Indigenous Biodiversity 2023, Appendix 3 and 4, available [here](#)

⁶⁵ National Policy Statement for Indigenous Biodiversity 2023, Appendix 3(2) and 4(2), available [here](#)

⁶⁶ Part F of the Application and A.12 Section 5 Consultation and Engagement, available [here](#)

74. The Applicant's approach has prevented any opportunity for EDS to discuss its questions and concerns and narrow outstanding issues. This is not conducive to a streamlined and condensed decision timeframe, as issues will now need to be aired via the Panel process.

F. Adequate time for Panel processes

75. The Applicant says that a short decision timeframe will still provide time for the Panel to seek independent advice and undertake dispute resolution processes. Given the scale, nature and complexity of the Application, this is not plausible.
76. The Application is approximately 9,400 pages long.⁶⁷ Read at 1 minute per page, it would take about 19.5 eight-hour workdays to read, about 4 weeks. That does not account for time reading the s 53 comments, which are likely to be extensive. EDS is aware that both councils and DOC have several expert witnesses each. EDS has so far engaged two experts to review the Application. Further information will be required, and the Panel will likely need to commission its own reports or advice. Then there are the s 51 reports.
77. Simply reviewing all the material will take closer to 2 months.
78. EDS considers that the Project will necessitate expert caucusing across a multitude of topics and a hearing, possibly with provision for cross-examination or Panel questioning of experts. It is noted that the Taranaki VTM Project Panel has so far held two hearings, one exclusively on legal matters.
79. A hearing should be anticipated given the volume of material included in the Application, the further large volume to come via comments / further information / commissioned reports or advice, and the technical nature of much of it (geotechnical, engineering and hydrology). Deciphering this much paperwork will be very challenging without discussion or opportunity for independent testing of Applicant and expert assertions.
80. The decision timeframe should be sufficiently long to enable these processes to occur. EDS considers this will result in a more efficient process overall, as issues can be narrowed or resolved prior to the Panel's final determination.

G. Disputed facts

81. In addition to the matters discussed above, substantial aspects of the Applicant's expert evidence is likely to be disputed. As noted above, EDS has engaged two experts to review the Application - ecology and economics. Both experts have identified serious concerns with the Applicant's technical assessments. The Project's benefits in particular are assessed with a disputed methodology and (in EDS's view) are materially overstated or otherwise inaccurate. Resolving or reducing differences between the parties' experts will add time to the decision-making process.

⁶⁷ As reported [here](#)

Conclusion on decision timeframe

82. Taken together, unresolved road access, information deficiencies across multiple statutory regimes, novel legal questions, and the sheer volume of material justify a timeframe materially longer than the 110 - 120 working days initially indicated.

PANEL APPOINTMENTS

83. EDS considers that the scale, nature and complexity of the Project would be assisted by:

- a. At least four panel members;⁶⁸ and
- b. An experienced lawyer, preferably a retired Environment Court Judge, as Chair.⁶⁹

84. EDS considers that the following expertise would be most advantageous for the Panel:

Terrestrial ecology

- a. The Project will result in the permanent loss of Threatened fauna and large areas of significant habitat:⁷⁰

“The unavoided loss of irreplaceable and vulnerable species or communities will be permanent and either cannot be replaced or balanced by the suite of beneficial actions. Under good ecological practice, such values should not be impacted. For those ecology values, the project will result in significant residual adverse effects that cannot be addressed.”

- b. The offsetting and compensation package proposed will need careful review in this context. Adverse impact on indigenous biodiversity is likely to be the primary natural environmental effect to be weighed against the Project’s benefits.
- c. An experienced terrestrial ecologist with knowledge of lizards and invertebrates is recommended.

Hydrogeology

- d. The Project will result in significant changes to the hydrological processes of the site, including the realignment of freshwater systems and a complex matrix of mechanical and passive movement of water around the site.
- e. The Project will also impact upon ground and surface water hydrological systems offsite, including via its groundwater takes and augmentation of surface water systems.
- f. An experienced hydrogeologist is recommended.
- g. Freshwater systems will also be affected by contamination as a result of the extraction and processing activities proposed. Additional expertise in relation to

⁶⁸ FTAA, Sch 3, cl 3(1)

⁶⁹ FTAA, Sch 3, cl 4

⁷⁰ A.13 Section 6 Assessment of Environmental Effects, section 6.7, page 313, available [here](#)

water contamination and the movement of contaminants through water systems is also likely but may be better commissioned given its specialist nature.

Landscape architect

- h. The Project proposes creating four open pits and extensive infrastructure in an Outstanding Natural Landscape. It also impacts upon public conservation land and a conservation covenant that have statutory landscape protections.
 - i. An experienced landscape architect is recommended.
85. The Panel must also include at least 1 member who has an understanding of te ao Māori and Māori development.⁷¹ EDS considers this should be a fifth panel member, made on recommendation from mana whenua.

CONCLUSION

86. EDS thanks the Panel Convenor for considering the matters raised above.

⁷¹ FTAA, Sch 3, cl 7(1)(b)