

COMMENTS OF THE ROYAL FOREST & BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED

Introduction

1. The Royal Forest and Bird Protection Society Incorporated (Forest & Bird) has been Aotearoa New Zealand's independent voice for nature since 1923. Forest & Bird's constitutional purpose is:

To take all reasonable steps within the power of the Society for the preservation and protection of the indigenous flora and fauna and the natural features of New Zealand.

2. We appreciate the expert panel's invitation to comment on the proposed Bendigo-Ophir Gold Project. If approved, this project would have very significant adverse effects on the environment. Our understanding is that the overall outcome is likely to be a net loss of indigenous biodiversity, despite the applicant's proposals for effects management.
3. More specifically, we understand that there would be significant adverse effects on many threatened and at-risk species of indigenous plants, invertebrates and lizards, including species that are endemic to the Otago region.
4. Under the Fast-track Approvals Act 2024 (FTAA), the applicant must ultimately persuade the expert panel that these significant adverse impacts are not out of proportion to the project's regional or national benefits. In this context we are concerned that the economic benefits of the project have been overstated by the applicant.

5. Forest & Bird is also concerned about the proposal for partial revocation of the Bendigo Conservation Covenant (**the Covenant**).¹
6. Under clause 3 of the Covenant, the landowner must seek the prior approval of the Minister of Conservation before allowing any earthworks or mining on the covenanted land. As has been explained in DOC's legal submissions supporting DOC's section 51 report,² this was intended to ensure that the public interest objectives of the Covenant – in summary: to protect, maintain and enhance the ecological, landscape and historic values of the covenanted land in perpetuity – would be achieved.
7. The FTAA has introduced a process according to which a decision on revocation or amendment of the Covenant can be made by the expert panel (under clause 45 of Schedule 6), with the Minister being required to give effect to the panel's decision (under clause 47) after the event.
8. In this context, Forest & Bird considers it is vitally important that the expert panel gives sufficient weight to the objectives of the Covenant when making its decision.
9. To assist the expert panel, our comments consist of the following:
 - a. Expert economic evidence of Dr Richard Meade (provided jointly by Forest & Bird and Sustainable Tarras, and submitted together with Sustainable Tarras' comments on the application)
 - b. Expert lizard evidence of Samuel Purdie (**Appendix A**)
 - c. Lay evidence of Chelsea McGaw, Forest & Bird's Regional Conservation Manager for the Otago and Southland Regions (**Appendix B**)
 - d. Legal submissions (which follow this introduction) relating to the Covenant.

¹ A conservation covenant entered into between the landowners and the Minister of Conservation under s 77 of the Reserves Act 1977.

² Department of Conservation, Section 51(2)(b) report relating to conservation covenant, Appendix C, at [8], [20].

10. Forest & Bird has attempted to provide the most possible assistance to the expert panel in the limited time available. Where our comments do not address certain matters, this does not mean we do not consider these matters to be relevant to the expert panel's decision-making, or that we support the applicant's position.
11. Overall, Forest & Bird considers that the application should be declined by the expert panel in accordance with s 85(3) of the FTAA. The adverse impacts of the project are out of proportion to the project's regional or national benefits, even after taking into account any conditions intended to avoid, remedy, mitigate, offset, or compensate for those adverse impacts.

Legal submissions on the application for amendment or revocation of the Bendigo

Conservation Covenant:

Bendigo Conservation Covenant

12. The Deed of Covenant dated 18 August 2000 (**the Covenant**),³ is a binding legal agreement between the Bendigo landowners and the Minister of Conservation.
13. The Covenant was entered into in the context of tenure review, whereby the landowners (lessees at the time) were granted freehold title to approximately 7992ha of land.⁴ In return for this transfer of freehold title, the landowners agreed (*inter alia*) to the terms of the Covenant, which were intended to protect, maintain and enhance the ecological, landscape and historic values of the covenanted land in perpetuity.
14. Clause 3(1) of the Covenant states that:

SUBJECT to the succeeding provisions of this clause the Landholders will not carry out or allow to be carried out without the Minister's prior approval:

³ Substantive application at E.04

⁴ Draft Proposal to the Commissioner of Crown Lands – Application for Exchange of Property Rights, Landcorp File P221\223, dated 1 September 1993, Recommendation at p 26

- a. The erection of any fence building structure or other improvements near historic sites on the land whether for the Landholders' purposes or for other private or public purposes.
- b. Any cultivation earthworks or other soil disturbance on the land near historic sites.
- c. Any tree planting on the land near historic sites.
- d. Any prospecting or mining for minerals coal or other deposit on or under the land

15. Clause 3(4) of the Covenant states that:

THE Minister will have regard to the objectives of this Deed when considering any request for approval under this clause and will not unreasonably decline approval.

16. There is a significant public interest in upholding the terms of conservation covenants. Forest & Bird has a particular interest in this, because conservation covenants are often used to preserve and protect important public values (including the indigenous flora and fauna, and natural features of New Zealand) in return for transferring public land into private ownership or permitting activities with adverse environmental effects. Subsequently allowing these covenanted values to be traded-off risks undermining public confidence in tenure review processes and conservation covenants more generally.

17. If conservation covenants cannot be relied on, then the expert panel can have only limited confidence in the durability of the applicant's proposed offset and compensation measures, which are also proposed to be protected in perpetuity by covenant to meet principles of offsetting and compensation.⁵

18. For these reasons, Forest & Bird considers that the expert panel should place significant weight on the terms of the Covenant and should uphold its objectives to the greatest extent possible under the FTAA.

⁵ Substantive application B.08, Alliance Ecology Consulting – Assessment of Ecological Effects, at p163

Written consent of landowners under section 43(3)(g) FTAA

19. The relevant provisions of the FTAA are set out in Part 2, Subpart 3 – Panel consideration of substantive application.
20. The essential requirements for a substantive application are contained in FTAA s 43, and include the requirements referred to in s 43(3) that apply to the approvals sought. For approvals relating to the amendment or revocation of a conservation covenant, these requirements are set out in clause 42 of Schedule 6.
21. Clause 42(f) of Schedule 6 states that an application for the amendment or revocation of a conservation covenant must include “the written consent to the proposed amendment or revocation of each person referred to in paragraph (e)”, namely “the owner of the burdened land or, if the covenant relates to more than 1 parcel of land... the owner of each piece of land that will be directly affected by the proposed activity”.
22. It appears there may be a document missing from the version of the substantive application that is publicly available. The form provided on the fast-track website,⁶ signed by the Bendigo owners, refers to s 95E of the RMA – affected person approval. The applicant’s legal overview states that landowner approval to the proposed partial revocation of the Covenant has been provided but does not reference the relevant document. There appears to be a missing document F.05, which has not been published on the fast-track website.
23. Nonetheless, it is clear from the available documentation that the prior approval of the Minister of Conservation was neither sought by the landowners, nor provided by the Minister, as would normally be required under clause 3 of the Covenant. DOC’s section 51 report states that DOC does not support the applicant’s proposal to partially revoke the Covenant.

⁶ Substantive application – F.06 Bendigo Station Signed Affected Persons Approval

Covenanted values

24. The Covenant requires the covenanted land to be managed for the purposes and objectives listed in recital C, as follows:
- i. Protecting and enhancing the natural character of the land with particular regard to the natural functioning 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.
 - ii. Protecting the land as an area representative of a significant part of the ecological character of the Dunstan Ecological District as referred to in the draft survey report for the Protected Natural Areas Programme for the Lindis Pisa and Dunstan Ecological Districts dated February 1987.
 - iii. Maintaining the landscape values of the land as referred to in the “Application for exchange of property rights” submitted to the Commissioner of Crown Lands.
 - iv. Maintaining the historic values of the land as referred to in “The rich fields of Bendigo” by Jill Hamel 1993.

Amendment or revocation?

25. Forest & Bird agrees with DOC’s position, set out in its legal submissions supporting the section 51 report, that the applicant’s proposal should be seen as an application for revocation, rather than amendment, of the Covenant. This is consistent both with the common usage of these terms, and with the relevant provisions of the Reserves Act 1977.
26. Covenants made under s 77 of the Reserves Act 1977 are protected by registration under the Land Transfer Act 2017, with s 77(4) providing that: “every conservation covenant runs with and binds the land that is subject to the burden of the covenant, and is deemed to be an interest in the land for the purposes of the Land Transfer Act 2017”.

27. Where the burden of a covenant applies to land comprising part of the land in a record of title, s 77(5) requires the land to which the covenant relates to be defined in a plan approved under the Land Transfer Act 2017. Each of these defined pieces of land is “land that is subject to the burden of the covenant” for the purposes of s 77.
28. Based on information provided in the substantive application, the Applicant is seeking to uplift (i.e. revoke) the Covenant from several pieces of land which have been legally defined in this way. These are referred to in the application as:⁷
- Part Section 9 SO 24641
 - Section 11 SO 24641
 - Section 12 SO 24641
 - Section 14 SO 24641
 - Section 15 SO 24641
 - Section 16 SO 24641
 - Section 27 SO 24641
 - Lot 6 DP 517385
29. If the application is approved, these defined pieces of land would no longer be subject to the Covenant, and LINZ records would need to be altered accordingly to remove the burden of the Covenant from the record of title. This cannot accurately be described as an amendment of the Covenant.
30. Under clause 46(1) of Schedule 6 FTAA, if the expert panel intends to revoke the Covenant in relation to these defined pieces of land, conditions may be set requiring “the protection by the applicant of equivalent land outside the area of the covenant”.
31. The applicant is not proposing to protect equivalent land outside the area of the Covenant. Furthermore, it appears this would not be possible, considering the

⁷ C.12-Bendigo-Conservation-Covenant-Overview

unique and irreplaceable nature of some of the covenanted values that would be lost.

Adverse impacts of revoking the Covenant

32. The adverse impacts that the proposed mining activity would have on the covenanted values have been described in DOC's section 51 report, including:⁸
 - a. Fragmentation of a nationally unique historic landscape, and destruction of individual historic artefacts.
 - b. Severe, permanent, and irreversible loss of ecologically significant dryland ecosystems, including the national stronghold of the Threatened – Nationally Critical *Ceratocephala pungens*.
 - c. Loss of irreplaceable wetland ecosystems.
 - d. Locally and nationally significant adverse effects on lizard populations, including the loss of approximately 7% of Kowarau gecko habitat nationally.
 - e. Poorly assessed, but likely highly significant, adverse effects on invertebrates.
33. As DOC has also identified, the applicant has not proposed any conditions directly relating to these specific impacts on the covenanted values.⁹ In DOC's view, "the values compromised have not been compensated or offset directly or to any relative scale".¹⁰
34. Forest & Bird agrees that the applicant has failed to propose consent conditions that adequately address the proposed loss of covenanted values.

Conclusions

35. Especially in relation to threatened and at-risk endemic species, many of the adverse effects of the project relate to values that are of regional and national

⁸ Department of Conservation, section 51(2)(b) conservation covenant report (**DOC s 51 report**), at [4.8]

⁹ DOC s 51 report, at [4.7]

¹⁰ DOC s 51 report, at [6.4.14]

significance. Adverse effects on endemic species that are already threatened with extinction are a matter of international significance.¹¹

36. Enabling these effects to occur by removing existing legal protections – which were originally intended to be maintained in perpetuity, and for which the landowners have already been compensated – is clearly not a step that should be taken lightly.
37. Forest & Bird considers that these highly significant covenanted values should certainly not be sacrificed for economic gains (accruing for the most part to the applicant) in the absence of a clear and compelling effects management strategy.
38. No such strategy has been presented by the applicant. Covenanted values are likely to be permanently lost, and the protection of equivalent land outside the area of the Covenant has not been proposed and would probably not be possible.
39. This is the epitome of a situation in which considerations relating to clause 45(1)(b) and (c) of Schedule 6 FTAA outweigh the economic benefits of the activity, despite the requirement to give the greatest weight to clause (a).
40. In these circumstances, and having regard also to the expert economics evidence of Dr Meade, Forest & Bird submits that the expert panel should decline the application for amendment or revocation of the Covenant, in accordance with section 85(3), and clause 45 of Schedule 6, FTAA.

10 April 2026



Tim Williams

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¹¹ United Nations Convention on Biological Diversity, including Kunming-Montreal Global Biodiversity Framework Target 4 – see DOC s 51 report at [6.4.27 – 29]