

BEFORE THE EXPERT PANEL

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

**Legal Submissions on behalf of the Director-General of Conservation
to support section 51(2)(b) Report relating to Conservation Covenant**

Dated 25 March 2026

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May it please the Expert Panel,**Introduction**

1. These legal submissions are made for the Department of Conservation (DOC, Department) on behalf of the Director-General of Conservation (Director-General) in respect of the application by Matakanui Gold Limited (the Applicant) for the Bendigo-Ophir Gold Project.
2. The Bendigo-Ophir Gold Project (BOGP, the Project) is the first application under the Fast-track Approvals Act 2024 (FTAA) to seek an approval under s42(4)(g) in relation to a conservation covenant. Accordingly, the approval sought is novel and the Expert Panel's decision may create a precedent for consideration of future FTAA applications where the relevant land is subject to a conservation covenant.
3. These submissions are intended to support the Expert Panel in relation to its consideration of the conservation covenant, and the s51(2)(b) FTAA report directed to be provided by the Director-General through the Department.
4. These submissions address the following matters:
 - a. the nature of conservation covenants as covenants in gross imposing agreed obligations and restrictions to preserve and protect conservation values in the public interest
 - b. the Minister of Conservation considers the purposes of a covenant and the conservation values affected, when deciding whether to agree to amend (vary) covenants, and in rare cases to revocation
 - c. the Applicant's application for an amendment should be treated as an application to partially revoke the conservation covenant, and the Expert Panel may set conditions having regard to the conservation values impacted
 - d. the Bendigo covenant was created through a tenure review process with an agreed compensation component
 - e. the purpose of the Bendigo covenant is to preserve and protect significant conservation values as described in its objectives and supporting materials
 - f. discussion of section 4 Conservation Act 1987 and the Treaty of Waitangi
 - g. supplementary advice re weighting and the Schedule 6, clause 45 criteria to be considered on the covenant application, as directed by the Panel Convenor's Minute seeking s51 comments.

Conservation covenants are covenants in gross imposing agreed obligations and restrictions to preserve conservation values in the public interest

5. The FTAA deals with two types of conservation covenant:¹
 - a. under s27 Conservation Act 1987 (CA) covenants are granted or reserved over land in favour of the Minister of Conservation (MOC) for conservation purposes²; and
 - b. under s77 Reserves Act 1977 (RA) covenants are agreements made in relation to freehold or Crown leasehold land between the land owner or Crown lessee (covenantor), in favour of the MOC, a local authority, or another body approved by the MOC³ (covenantee), where the covenantee is satisfied that land should be managed so as to preserve any of:
 - i. the natural environment, or
 - ii. landscape amenity, or
 - iii. wildlife [habitat] or freshwater-life [habitat] or marine-life habitat, or
 - iv. historical value,

and that the particular purpose or purposes can be achieved without acquiring the land for a reserve and the covenant may provide for the management of that land to achieve the purposes of that conservation covenant.
6. These conservation covenants may only be agreed for conservation purposes, unlike e.g. covenants required to be entered into as a condition of resource consent under s108(2)(d) or s220(2)(a) Resource Management Act 1991, which may address resource management matters generally relating to use of land.
7. Both conservation covenant types are covenants 'in gross' as, while they burden the land to which the covenant applies, they are not made in favour of another 'benefitted' parcel of land. These covenants run with and bind the title to the covenanted land and are deemed to be an interest in that land for the purposes of the Land Transfer Act 2017.⁴

¹ FTAA Schedule 6, clause 41 Interpretation.

² "Conservation" is defined in the Conservation Act 1987 as meaning "... *the preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations*".

³ "body" is not defined. "Administering body" is defined in s2 Reserves Act 1977 and includes a reserves board, trustees, society, voluntary organisation, a body of persons whether incorporated or not, and any Minister of the Crown other than the MOC.

⁴ s27(1)(a) Conservation Act 1987, and s77(4) Reserves Act 1977.

8. Enabled by legislation, these covenants are in the nature of a 'public good' rather than a private agreement as to rights and obligations between contracting parties. They are protective mechanisms applying to private or leasehold land to preserve and protect conservation values in the public interest. The MOC, local authority or other body (as the case may be) represent the public interest and, subject to the covenant's terms, must keep the covenant objectives in mind when considering covenantor requests.
9. The covenantor (land owner/ lessee) accepts restrictions and obligations relating to their land to achieve the objectives of a covenant to preserve and protect these values. The covenantor has agreed the public has sufficient interest in these values that the covenant can limit what they would otherwise be able to do on the land.
10. Section 77 RA provides a purchase price may be paid: subs (6) and (7). Where the covenanted land is a Crown lease, the Minister of Lands may agree to a rent reduction: s77(1) proviso. This may give explicit recognition and compensation to the covenantor acknowledging their agreement to defer their private interest in favour of the public purpose achieved by the covenant.
11. For s77 RA conservation covenants this public purpose is further demonstrated through the application of ss 93-105 RA under s77(3), subject to modification by the covenant. These offence provisions relevantly include:
 - a. giving powers to constables, rangers and officers to summarily enter on covenanted land to prevent an offence against the RA: s93
 - b. strict liability offences for unauthorised acts, including without authority – allowing animals onto the land, and in any way interfering with the covenanted land; or damaging its recreational, scenic, historic, scientific, or natural features or the flora and fauna: s94
 - c. strict liability offences for without authority lighting a fire or allowing a fire to break out on the covenanted land causing damage to vegetation: s97
 - d. evidential provision: s102; specifying penalties for offences: ss 102A-105; and confirmation that any fines payable resulting from offences where the MOC has an interest are to be paid into the public account and are to be applied for purposes generally for the improvement of reserves, including as consideration for (future) conservation covenants: s105(2).
12. Both s27 CA and s77 RA provide for covenants to be registered on the record of title for the land thereby putting in place a mechanism to ensure future land

owners are aware of a covenant and the restrictions it imposes.⁵ By giving 'notice to the world' in this way any future value of covenanted land will likely be discounted, noting the covenantor may have been compensated as part of the original agreement.

13. Conservation covenants typically set out land use activities which may be continued, and those which require the prior consent of the MOC (or covenantee) with consideration of the purpose of the covenant as specified by objectives the primary criterion.
14. In some instances, conservation covenants may prohibit certain activities on land which are detrimental to the values to be protected and preserved by the covenant. This is consistent with the public interest purpose of these covenants.

Amending (varying) conservation covenants can occur through agreement, revocation has only been considered by the MOC when the values are not present or not able to be preserved

15. The enabling legislation for s27 CA and s77 RA conservation covenants does not provide for their amendment or revocation. Nevertheless, the MOC has occasionally agreed to amend covenants in circumstances where he has agreed with the covenantor the covenant objectives are still able to be achieved through revised land management under the amendment.⁶ The variation to the Bendigo covenant is an example of an amendment made by agreement.⁷
16. The MOC has occasionally agreed to revoke or partially revoke a conservation covenant. This has always been in circumstances where the values protected by the covenant either were not present in the relevant part of the land or are unable to be preserved due to factors outside the covenantor's control. For example, on occasion covenants have been imposed on all land included within a Record or Instrument of Title to reduce costs of an additional survey to specify the covenanted area within that title. Subsequently, if the covenantor seeks to subdivide an area which does not contain values to be preserved, the MOC has agreed to a partial revocation of the covenant.
17. The MOC may agree to revoke or partially revoke covenants where external events mean the values are no longer present, and future land management will

⁵ s27(2) and (3) Conservation Act 1987, and s77(4A) and (5) Reserves Act 1977.

⁶ This may also have occurred for s77 RA covenants in favour of a local authority or other approved administering body. However, the Department has no knowledge of such cases.

⁷ Refer Substantive Application document E.05

not restore them. This may occur when e.g. landslips occur or water courses shift permanently as a consequence of flooding and the conservation values are no longer preserved or able to be restored.

18. When considering a revocation or partial revocation of a conservation covenant the MOC has previously applied the following criteria in reliance on s27 CA and s77 RA:
 - a. the purpose of the covenant, what are the conservation values present that are to be preserved and protected through management of the land, and
 - b. is the MOC satisfied the subject land should no longer be managed to preserve and protect the conservation values, having regard to the extent to which the conservation values on the land have been preserved.
19. The focus of the MOC's decision-making has been on the conservation values present on the land or portion of land where a change (amendment or revocation) is proposed, and what that change would mean for those values. It would be improper for the MOC to consider a 'net gain' or offset to preserve other conservation values elsewhere.⁸
20. Should a covenantor wish to amend or revoke a covenant over land without the consent of the MOC (or other covenantee), then this would require an application to court, and the MOC as an affected party would have the right to appear and be heard. I submit a court would take a similar approach in assessing an application for revocation, consistent with the public interest purpose underlying these covenants.

The application to amend should be considered an application to partially revoke the covenant and the Expert Panel may set conditions having regard to the conservation values impacted

21. In its application, the Applicant seeks an approval from the Expert Panel for an amendment to the Bendigo covenant.⁹
22. The FTAA allows a substantive application to seek an amendment to or revocation of a conservation covenant: s42(4)(g). Part 3 of Schedule 6 FTAA then

⁸ See *Hawke's Bay Regional Investment Company Limited v Royal Forest and Bird Protection Society of New Zealand Incorporated* [2017] NZSC 106, [2017] 1 NZLR, re a decision by the Director-General to revoke conservation park status under the Conservation Act 1987, at [111]-[117].

⁹ Refer document A.11 at section 4.4, pp 248-249, and document A.15 at section 8.9 pp 520-540.

sets out requirements for the application and the criteria the Expert Panel must apply when assessing an application for amendment or revocation.

23. The terms “amend” and “revoke” are not synonymous, as shown by their use as alternatives in the FTAA.¹⁰ In common usage “*amend*” means to change or modify a document, often for the better.¹¹ “*Revoke*” means to cancel, rescind or withdraw an agreement.¹²
24. The application seeks to “amend” the covenant by uplifting it from Sections 11, 12, 15, 16, 18 and Part 9 SO 24641 and Lot 6 DP 517385. The effect of the change sought by the Applicant is to wholly remove the application of the covenant to those land parcels. Another way of putting this is to say the agreement is uplifted so that it no longer applies to this land.
25. By contrast, an amendment to a conservation covenant under the FTAA would leave the covenant in place over this land, while moderating its restriction on land use in the manner determined by the Expert Panel.
26. I note the Legal Overview on behalf of the Applicant agrees that removing reference to the legal descriptions of the land titles included within the Project has the effect of revoking the covenant in relation to that land.¹³
27. For these reasons, I submit the nature of the approval sought under s42(4)(g) FTAA is not an amendment and should properly be considered by the Expert Panel as an application for partial revocation of the covenant over the BOGP Project land.
28. The Expert Panel may set conditions under clause 46(1) relating to use of land, including:
 - (a) *in the case of the revocation of a covenant, the protection by the applicant of equivalent land outside the area of the covenant:*
 - (b) *in the case of the variation of a covenant, the carrying out by the applicant of works to enhance conservation values on land remaining within the covenant.*
29. The Applicant has suggested no conditions are necessary on revocation or amendment of the conservation covenant, as it says this is sufficiently addressed by proposed Central Otago District Council land use conditions, including

¹⁰ They are similarly used as alternatives in section 48 Legislation Act 2019

¹¹ See e.g. [AMEND definition and meaning | Collins English Dictionary](#)

¹² See e.g. [REVOKE definition and meaning | Collins English Dictionary](#)

¹³ A.02A – Legal Overview on behalf of Matakanui Gold Limited, dated 31 October 2025, at paragraph 80

covenanting the proposed offsetting and compensation areas in perpetuity.¹⁴ Under the FTAA this covenant would be condition of a resource consent and amenable to variation or cancellation by agreement.¹⁵

30. In my submission, clause 46 does not limit the conditions which the Expert Panel may impose on either amendment or revocation of a conservation covenant. Rather the clause highlights options for panels to consider having regard to the nature of the approval sought, noting that if a covenant is revoked in full then there is no remaining covenanted land upon which an applicant could carry out works to enhance conservation values. By inference the focus for potential conditions should be on the conservation values currently preserved by the covenant and which would be impacted should the application be granted.
31. The Expert Panel should consider whether the proposed CODC land use conditions and covenant are appropriate in the context of the conservation values currently protected or whether other conditions relating to the use of land for the Project could be considered, e.g. amending the conservation covenant, requiring a replacement covenant for conservation purposes in favour of the MOC, or compensation for loss of conservation values impacted by the Project.

The Bendigo covenant was created through an agreed exchange of property rights for the previous pastoral lease with a compensation component

32. The Bendigo covenant made under s77 RA¹⁶ was agreed between the MOC and the landowners and registered in 2000. It was part of the outcomes of an Exchange of Property Rights forming the basis for an agreement under the Land Act 1948 between the former pastoral lessees of the Bendigo Crown pastoral lease, the Commissioner of Crown Lands, and the Director-General of Conservation.¹⁷
33. Crown pastoral leases restrict the activities lessees may undertake to having a right of pasturage over the land, but no right to the soil or to obtain the fee simple of the land.¹⁸ Other activities require consent from the Commissioner of Crown

¹⁴ Supra, at paragraph 85

¹⁵ Schedule 5, clause 18 and ss 108 and 109 Resource Management Act 1991.

¹⁶ Document E.04 – dated 18 August 2000.

¹⁷ refer draft proposal for an Application for Exchange of Property Rights. The final Application for Exchange of Property Rights appears to have been lost, as the relevant files were held in Land Information New Zealand's Christchurch office which was damaged and subsequently demolished as a result of the Christchurch Earthquakes.

¹⁸ Section 13 Crown Pastoral Land Act 1998 (as inserted by the Crown Pastoral Land Reform Act 2022), and refer section 66 Land Act 1948, repealed.

Lands.¹⁹ These leases have stock limitations – both as to type of stock and numbers of stock – and are perpetually renewable on 33 year terms.²⁰

34. The review of the tenure of the Bendigo pastoral lease commenced with voluntary negotiations in the early 1990s, and the implementation of the Exchange of Property Rights. It predated the Crown Pastoral Land Act 1998 which introduced a formal process for tenure review of Crown pastoral land.²¹ Nevertheless, the parties' intentions were similar and considered the conservation values present within the pastoral leases, with protection achieved through:
- a. land being restored to Crown ownership in recognition of its conservation values and without any provision for continued grazing (the present Bendigo Historic Reserve)
 - b. land being restored to Crown ownership subject to a special lease with provisions for vegetation monitoring and adjustment to grazing as appropriate (the present Bendigo Conservation Area)
 - c. a covenant²² to protect landscape and botanical values and historic mining sites (the Bendigo covenant)
35. A valuation exercise was undertaken as part of the Exchange of Property Rights, and the imposition of the Bendigo covenant was a relevant factor in assessing the value of the land to be freeholded as, while not as restrictive as the previous pastoral lease, it did impose restrictions on land use as well as obligations on the landowner. Compensation for the covenant was assessed as part of the agreed tenure review outcome.

The Bendigo covenant's objectives outline the area within the BOGP contains significant ecological, landscape, and heritage values deserving of preservation

36. Recital C of the covenant sets out the agreement between the covenantor and the MOC to manage the land to achieve four objectives:
- 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*

¹⁹ Sections 4-12 Crown Pastoral Land Act 1998, as inserted by the Crown Pastoral Land Reform Act 2022 and now applying a new “pastoral activity” framework.

²⁰ Sections 14 and 15 Crown Pastoral Land Act 1998, and section 66 Land Act 1948, repealed.

²¹ This was in Part 2 of the Crown Pastoral Land Act 1998. Part 2 was repealed by the Crown Pastoral Land Reform Act 2022 with effect from 18 May 2022, bringing tenure review of Crown pastoral leases to an end.

²² Conservation covenants were one form of ‘protective mechanism’ used to protect significant inherent values on land freeholded through tenure review of Crown pastoral leases.

fauna in their diverse communities and dynamic inter-relationships with their earth substrate and water courses and 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 February 1993.”*

37. These objectives, informed by the documents referred to, are all relevant to the application as – the covenanted area within the BOGP includes important ecological values (with diverse and complex inter-relationships between flora and fauna and the surrounding natural environment), is representative of the ecological character of the Dunstan Ecological District, has outstanding natural landscape values²³, and has significant historic values particularly as a historic landscape contained within the Rise and Shine Valley.

38. Applying s77(1) RA, the covenant objectives require management of the land to preserve the natural environment, landscape amenity, wildlife habitat, and historic values present. The covenant’s terms relevantly provide for (in summary):

- grazing by the landholder, and monitoring of native vegetation and historic sites by the MOC, clause 1
- imposition of obligations on the landholder to keep the land clear of weeds, pest animals and rubbish, clause 2
- certain activities to only be undertaken by the landowner with the MOC’s prior consent, including any prospecting or mining for minerals on or under the land, clause 3(1)d
- the MOC to exercise his right to object to any mining licence application which conflicts with the covenant objectives, clause 4
- members of the public to have access through the land on Thomson Gorge Road and the track to Mt Moka and the special lease area (Bendigo

²³ It is also included within the Dunstan Mountains ONL under the Central Otago District Plan. As it has completed tenure review, the Bendigo covenant area is exempt from the application of certain rules, however, the District Plan objectives and policies still apply.

Conservation Area) where the legal road and the formed road/ track do not align, clause 5

- within the Rise and Shine Creek area (Schedule 3, sections 11 and 12 SO 24641), clause 9, provides –
 - a. the public is to have foot access to historic mining sites,
 - b. the landholders and DOC employees may clear woody vegetation around historic sites,
 - c. the MOC may erect interpretation signs after consulting the landholder, and
 - d. the landholder will not use that land for forestry nor construct tracks.
- the principal historic values listed outside the Rise and Shine Creek area, clause 10
- the landholder to request technical advice from the MOC, for changes to the covenant by mutual agreement, and a joint management plan to implement the objectives to the parties' mutual satisfaction, clause 11
- the intention for the covenant to bind the landholders and successors etc. in perpetuity, and various administrative matters, clause 12

39. The covenant was varied by mutual agreement in 2023 so that, with the MOC's prior approval, construction of temporary tracks could occur in the Rise and Shine Creek area, subject to a restoration and enhancement programme.

40. Several approvals have been granted on behalf of the MOC for exploratory mining activities by the Applicant within the Rise and Shine Creek area and more broadly within the Bendigo covenant.²⁴

41. As stated in the statement of advice prepared in support of the section 51(2)(b) report, the historic values in the Rise and Shine Creek area preserved by the covenant are of national significance.²⁵ The s51(2)(b) report also confirms the significance of the landscape amenity, natural environment and wildlife habitat values preserved by the covenant within the BOGP site.

²⁴ Document E.03 – letters of authority dated: 6 March 2018 at p1, 7 February 2019 at p6, 22 September 2021 at p22, 25 October 2022 at p70, 17 February 2023 at p76, and 11 December 2024 at p138.

²⁵ Statement of advice – Dr Matthew Schmidt – Cultural Heritage

Section 4 of the Conservation Act and the Treaty of Waitangi

42. Conservation covenants are statutory creatures and, as part of their usual administration by the MOC, under both s27 CA and s77 RA these covenants are to be interpreted so as to give effect to the principles of the Treaty: s4 CA.²⁶
43. The BOGP site is within the takiwa of Ngāi Tahu Whānui.²⁷ The Ngāi Tahu Claims Settlement Act 1998 (NTCSA) does not mention the Bendigo area although it may come within a statutory acknowledgement area as addressed by the s51 report.²⁸
44. The Bendigo covenant objectives do not refer directly to cultural values. Nevertheless, the application of the covenant indirectly preserves the cultural landscape and environment, and native taonga species present within the covenant area, e.g. kārearea New Zealand falcon, and karamū (coprosma) and taramea (speargrass, spaniard).²⁹
45. In usual processes under the RA the MOC would engage with Te Rūnanga o Ngāi Tahu with an open mind, and have regard to any views expressed before making any substantive decisions under the Bendigo covenant, consistent with the protocols issued by the MOC under s282 NTCSA.³⁰
46. While the Expert Panel is not bound by the protocols previously issued by the MOC under the NTCSA, Te Rūnanga o Ngāi Tahu and Ngā Papatipu Rūnanga must be invited to comment under s53(2)(b) and (c) FTAA, as confirmed by the Expert Panel's invitation.³¹
47. The Expert Panel must consider any information it receives from invited parties for the purpose of making its decision: s81(2)(a) FTAA.
48. For these reasons, the views of Te Rūnanga o Ngāi Tahu and Ngā Papatipu Rūnanga are a relevant matter, and if comments are provided then the Expert Panel must have regard to them when making its decision on the covenant application.

²⁶ Section 4 Conservation Act 1987 states: “*This Act shall so be interpreted and administered as to give effect to the principles of the Treaty of Waitangi.*” The RA is one of the enactments listed in the 1st Schedule of that Act and within the functions of the Department, s6.

²⁷ Section 5 Te Rūnanga o Ngāi Tahu Act 1996.

²⁸ See NTCSA ss 205-222, and relevantly Schedule 40 Mata-au (Clutha River).

²⁹ NTCSA, Schedule 97 Taonga species.

³⁰ See Otago Conservation Management Strategy 2016, [volume 1](#) at section 13.5, p285.

³¹ [Panel minute - invite to comment](#), dated 11 March 2026 at Appendix 1.

Weighting the criteria for assessing the covenant application in Schedule 6, clause 45

49. The following submissions are intended to supplement the memorandum re weighting attached to the Department's s51 Overview Report.
50. Under Schedule 6, clause 45 when making its decision the Expert Panel must take into account, giving greatest weight to para (a):
- (a) *the purpose of this Act; and*
 - (b) *the purpose of the covenant and the conservation values of the land concerned; and*
 - (c) *whether the amendment or revocation will compromise values of regional, national, or international significance.*
51. Clause 43, setting out mandatory matters for the Director-General's s51 report, includes clause 45(b) and (c) but does not require that report to assess the purpose of the FTAA. However, the panel convenor's minute directs the Department to provide advice on weighting for s51 reports, including having regard to applicable statutory provisions and relevant senior court decisions.³²
52. In its draft decision, the Expert Panel appointed to consider the Waitaha Hydro Scheme³³ addressed the question of weighting in paragraphs 131-134, stating (references redacted):
- 131) *All of the Schedules include the purpose of the FTAA as the first criterion, and we are required to give the greatest weight to this purpose. This does not however mean that the purpose automatically outweighs all other considerations. Other relevant criteria must receive genuine consideration where relevant – noting there is no inherent hierarchy between those other matters.*
 - 132) *Further, and in terms of the approach to weighing those other factors against the purpose, we agree with and adopt the approach of the expert panels in Waihi North and Bledisloe North Wharf. This is that all relevant matters should first be individually assessed uninfluenced by the purpose of the FTAA, before standing back and conducting an overall balancing where the purpose of the FTAA is to be given greatest weight. We note that DOC also submitted in support of such an approach in its s.51 Report.*
 - 133) *In relation to the criteria, we do however note, as the expert panel did in Waihi North, that the decision-making criteria in the Schedules, “are never more stringent than ‘take into account’ the various matters specified”. In other words, there is no requirement that a proposal be consistent with or give effect to the various listed criteria.*

³² [Minute of the Panel Convenor – s51 Report Request](#), dated 8 December 2025 at [4](a).

³³ [Waitaha Hydro Draft Decision – Te 13 o Māehe 2026](#)

134) *In terms of the meaning of 'take into account' we accept the Applicant's submission that:*

The direction to 'take into account' requires the Panel to consider the matter (i.e. give it genuine attention and thought) and weigh it against other relevant matters. The weighting of that matter is at the panel's discretion.

53. Applying this approach, in relation to the covenant application I submit:
- a. the Expert Panel must assess the purpose of the Bendigo covenant as stated in the objectives, and the conservation values of the specific part of the covenant land the application relates to;
 - b. the Expert Panel must, assess the regional, national, and international significance of the conservation values that might be compromised by the amendment or partial revocation of the covenant;
 - c. the Expert Panel can consider, as a relevant matter, the extent of the covenant revocation or amendment sought, noting the application seeks to "uplift" the covenant over a greater area than is required for the BOGP Project;
 - d. the Expert Panel must give genuine attention and thought to these matters individually, before standing back and conducting an overall balancing where the purpose of the FTAA is given greatest weight; and
 - e. if it decides to grant the approval sought, the Expert Panel may impose conditions relating to use of land having regard to the covenant objectives, the impact of the project on the protected conservation values, and options including those set out in clause 46.



Pene Williams
Counsel for the Director-General
Date: 25 March 2026