

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 FTAA-2507-1089

**MEMORANDUM OF COUNSEL FOR ENVIRONMENTAL DEFENCE SOCIETY INC IN
RESPONSE TO MEMORANDUM OF COUNSEL FOR APPLICANT (24 AUGUST 2026)**

27 August 2026

Environmental Defence Society Inc
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Introduction

1. This memorandum is filed by the Environmental Defence Society Inc. (**EDS**) in response to:
 - a. The memorandum of counsel for the applicant dated 24 August 2026 (**Applicant memorandum**), which was was filed in response to Minute 46 (which granted leave to parties to respond to RFI 11 and water-related conditions by 7 September 2026); and
 - b. Minute 47.
2. Counsel has had the benefit of reviewing the memorandum of counsel for Sustainable Tarras (**Sustainable Tarras memorandum**) in relation to the same matters.
3. EDS agrees with the matters raised in the Sustainable Tarras memorandum as follows:
 - a. Completeness in terms of section 46 of the Fast Track Approvals Act 2024 (FTAA) is a different question to whether sufficient information has been provided in order for the Panel to make an informed decision on a complex application. Neither the EPA nor the Panel Convener were in a position to assess the latter at the time of lodgement or prior to the Panel being appointed. EDS agrees with the Panel's view that the information contained in RFI 11 is substantive in nature and is required for the purposes of the Panel's assessment.
 - b. EDS disagrees with the Applicant's characterisation of the information contained in RFI 11, i.e., that it provides greater certainty as to the conclusions already reached, does not introduce new assessment outputs and does not materially alter those conclusions. This will be addressed in detail by EDS's water experts in their response to this material.
 - c. EDS opposes provision for the Applicant to file closing legal submissions for the reasons set out in the Sustainable Tarras memorandum. In the event that the Panel allows closing legal submissions to be filed by the Applicant, EDS also seeks leave to file legal submissions on the key matters in contention, which it anticipates could also be filed on 7 September 2026.
4. EDS also wishes to record, for the purposes of ensuring the Panel is clearly informed, its position in relation to involvement in the conditions workshopping.
5. EDS has not been invited by the Applicant to participate in conditions workshopping. EDS understands that is because it does not have a planner in this process. Unlike the statutory bodies, EDS is not eligible to recover costs from the Applicant. It therefore targeted its expert engagement toward assisting the Panel to understand and test the complex technical matters that arise in the context of this project. The Applicant has not offered to contribute to EDS's costs.
6. EDS acknowledges that the Applicant invited written feedback on the 22 June 2026 version of conditions to inform the planners' consideration of conditions via the memorandum of counsel for the Applicant dated 17 July 2026, which says:

7. Consistent with the intention of the workshops they will be undertaken between the planning witnesses who participated in expert conferencing (to the extent they wish to) with input from their respective clients and technical experts on an as needed basis.

8. However, Matakanui Gold recognises that there are parties without planning experts who may wish to provide feedback on the 22 June 2026 resource consent conditions set. To ensure these parties have an opportunity to provide feedback ahead of the workshoping, Matakanui Gold:

(a) Invites parties without planning representatives who wish to provide feedback in advance of the workshops to submit written feedback on the 22 June 2026 version of the proposed resource consent conditions they are interested in, together with any suggested amendments or alternative wording, prior to the relevant workshop.

...

9. To ensure the workshops remain focused and efficient as a technical planning exercise, attendance at the workshops will be limited to those planning experts who have participated in expert conferencing. However, any feedback received from other parties in accordance with paragraph 8(a) will be provided to the workshop participants.

7. This is the only advice EDS has received from the Applicant with respect to opportunities for EDS to participate in conditions workshoping. It has not been copied into any emails about conditions workshoping or provided with any iterations of conditions through the workshoping process for comment. Notwithstanding that, EDS understands from discussions with other parties that technical experts were invited to attend conditions workshoping on an as required basis. It appears to EDS that it is the only party with expert witnesses that was not invited to participate in the conditions workshoping, with its invitation being limited to providing written feedback on the June version of conditions.
8. EDS also acknowledges that it has not, to date, provided written feedback on those conditions. It has not done so for the following reasons:
 - a. EDS already provided general feedback on conditions on a range of matters in its section 53 comments and legal submissions to the Panel at the hearing in Cromwell on 29 – 30 April 2026;
 - b. It was not clear how further information yet to come (including RFI 11 responses relating to water, ecology and bonding, and the 2025 spring annual survey) would influence either EDS's review of conditions or the conditions workshoping given the timing of workshoping vis-à-vis the timing of the pending further information – indeed, the Applicant has now advised the Panel that further amendments to conditions are being made as a result of RFI 11¹ which the Panel is yet to receive;

¹ Memorandum of counsel for MGL (24 August 2026), Appendix 1 says: "A number of responses have resulted in targeted amendments or refinements to proposed conditions through the concurrent workshoping process, including updates

- c. In any event, there are fundamental differences in technical opinion between EDS's experts and those of the Applicant that EDS considers cannot be resolved via conditions;
 - d. Providing feedback on the June 2026 version of conditions would require significant resourcing, but without the commensurate ability to participate in the workshops to ensure that feedback was taken into account;
 - e. In light of these concerns, the value that either EDS or the Panel would derive from EDS's contribution via written feedback on the June 2026 version of conditions was highly uncertain.
9. EDS therefore considered it more appropriate to target its efforts toward commenting on the final version of conditions.
10. Notwithstanding that, from its review of information provided in response to RFI 11, EDS is concerned that some conditions that the Applicant has indicated will be included in the final condition set due on 28 August 2026 - for example, relating to possible future compensation for cushionfields and spring annuals – may not be legally valid. However, it is not possible to assess the legal validity of those conditions until the final set of conditions has been provided. The Panel may therefore benefit from submissions on the legality of proposed conditions prior to its deliberations. EDS intends to raise this issue for the Panel's consideration if appropriate, following its review of the final set of conditions.
11. EDS is grateful to the Panel for its consideration of these matters.

Dated this 27 August 2026

Rob Enright/ Jen Vella

relating to seepage management, active water treatment, aquifer abstraction, wetlands, lizard management, spring annuals, cushionfields and the revised Ardgour Rise alignment."