



Forest & Bird
TE REO O TE TAIAO | *Giving Nature a Voice*

Bendigo-Ophir Gold Project – FTAA-2507-1089
Forest & Bird – Speaking Notes for Hearing on 29 April 2026

Introduction

1. The Royal Forest and Bird Protection Society of New Zealand Incorporated (Forest & Bird) is a longstanding conservation organisation with the constitutional purpose 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. In addition to legal submissions, Forest & Bird has provided the panel with evidence from Chelsea McGaw, setting out the concerns of our local branches, and expert evidence on lizards from Samuel Purdie. I will take those briefs of evidence as read unless the panel has any specific questions about them.
3. Together with Sustainable Tarras, Forest & Bird also jointly instructed Dr Meade, who has provided expert evidence on economics. This evidence is addressed in detail in the submissions of Sustainable Tarras. Forest & Bird adopts those submissions together with the evidence of Dr Meade, and any questions on this subject would be better addressed to counsel for Sustainable Tarras.
4. Numerous parties have commented on this application, and a large volume of expert evidence has been produced. In terms of how this evidence should be considered and weighed by the expert panel, Forest & Bird agrees that the legal position is as described by counsel for Sustainable Tarras.

5. Overall, as we have stated in our written comments, Forest & Bird considers that adverse impacts are out of proportion to the project's regional or national benefits, and that the application should be declined in accordance with s 85(3) of the FTAA.
6. My submissions today focus on issues surrounding the Bendigo Conservation Covenant, which were raised in Forest & Bird's written comments, and on the applicant's response to these comments.
7. There are four parts to my submissions today:
 - a. First, some further comments on the conservation covenants generally
 - b. Second, comments on the relevance of specific terms of the Covenant in the fast-track context.
 - c. Third, comments on clauses 45 and 46 of Schedule 6 of the Fast-Track Act and how these should be interpreted and applied by the panel.
 - d. Finally, some comments on the applicant's approach to assessing and responding to adverse effects on covenanted values.

Conservation covenants generally

8. Conservation covenants are an important and valuable tool in conservation and resource management.
9. As stated in our written comments, allowing covenanted values to be traded-off risks undermining public confidence in tenure review processes and conservation covenants more generally. This has been dismissed by the applicant in its response to comments as "hyperbole" [124].
10. However, similar concerns have also been raised by the Minister of Conservation, who states in his comments that:

Revoking or amending the covenant in a way that is contrary to the covenant's objectives, particularly if no direct compensation/mitigation is

offered by the applicant, could set a precedent and undermine confidence in the process used to set up such covenants, beyond the fast-track process. [8]

And that:

There is a risk that [tenure review] process could be seen as undermined, if changes that were contrary to the covenant's objectives were approved without alternative protection or mitigation in place. [9]

11. Notably, the Minister's comments have not been referred to by the applicant in its criticism of similar points made by Forest & Bird.
12. In my submission, the relevant considerations are even wider than just ensuring we can have confidence in conservation covenants – there is an important issue in play about how we honour the agreements we make.
13. This point leads into the second part of these submissions – which is about how specific terms of the Covenant apply to this Fast-Track application

How specific terms of the Covenant apply

14. As the applicant has pointed out in its response to comments, “each covenant exists in a distinct legal and factual context” [124] in my submission what is essential is that the expert panel, so far as possible under the Fast-Track Act, honours the specific agreement that was made between the Bendigo landowners and the Minister of Conservation.
15. There is a degree of subtlety to the way in which the Fast-Track Act impacts on the Covenant. To begin with, clause 3 of the Covenant requires the landholders to seek the Minister's prior approval before allowing mining to be carried out on their land. The landholders did not seek prior approval and must therefore be relying on the Minister's approval to be provided as part of the Fast-Track approvals process before mining commences. In the absence of approval by the Minister, the landowner consent provided by the Bendigo landowners would be unlawful.

16. The applicant has argued in its response to comments [126] that clause 3 of the Covenant does not apply, because the applicant is seeking the partial revocation of the Covenant, as opposed to approval under the covenant itself.
17. However, as the applicant also acknowledges [116], the covenant is protected by registration. Therefore, it is only revoked when the encumbrances are removed from the Land Register and remains in force until this final step is taken. This means that the applicant's position on clause 3 of the Covenant must be wrong.
18. The final step, under clause 47 of Schedule 6, requires the Minister of Conservation to give effect to the expert panel's decision by applying for the removal of the Covenant from the identified pieces of land, and by doing anything else necessary to revoke the Covenant.
19. In my submission this creates a degree of legal tension for the Minister which the expert panel should be mindful of – on the one hand the Minister is required by the Fast-Track Act to give effect to the panel decision, on the other hand he remains bound by the terms of the Covenant, including its conservation purposes.
20. The only way that this tension can be satisfactorily resolved is by the panel ensuring that it has properly had regard to the Minister's obligations under the Covenant while fulfilling its own functions under the Fast-Track Act.
21. Crucially, this is entirely consistent with the relevant provisions of the Fast-Track Act, which are the topic for the third part of these submissions, focusing on clauses 45 and 46 of Schedule 6.

Comments on clauses 45 and 46 of Schedule 6

22. In addition to the purpose of the Fast-Track Act, clause 45 requires the panel to take into account the purpose of the Covenant and the conservation values of the land concerned, and whether the amendment or revocation will compromise values of regional, national or international significance.

23. Clause 46 enables the panel to set conditions relating to amendment or revocation of covenants. In the case of revocation, this includes “the protection by the applicant of equivalent land outside the area of the Covenant”.
24. In my submission, when the Fast-Track Act refers to “equivalent land”, this must be referring to land with equivalent conservation values. It cannot simply be referring to an equivalent amount of land, because this would not help to address the assessment criteria in clause 45.
25. On this basis, applicant for revocation of a covenant should therefore be able to demonstrate that areas proposed for alternative protection have equivalent conservation values. However, I have not been able to find evidence which establishes that the applicant has done this.
26. Instead, the applicant consistently focuses on the area of alternative land that would be protected (which is larger in terms of hectares) and on the proposed management of the land (with more intensive biodiversity management than is required under the terms of the Covenant).
27. This approach is particularly concerning when applied to nationally significant habitats and species that would be lost on the covenanted land, including the loss of cushion-field habitat and spring annuals which the applicant acknowledges would not be offset or compensated for under its proposals.
28. Contrary to the applicant’s response to comments **[120]**, the issues raised by the existence of the Covenant mean that the proposed offsetting and compensation areas cannot “remove the need to impose conditions under clause 46(1)(a)”.
29. The key point is that clauses 45 and 46 specifically require the panel to take into account the purpose of the covenant and the covenanted values that would be compromised, and whether land with equivalent values can be protected in exchange. What is required, and is currently still missing, is an assessment of whether the proposed offset and compensation areas have equivalent conservation values to those that would be lost.

30. If it is not possible to provide for protection of an alternative area with equivalent conservation values, for example because the values are very rare, this should weigh heavily against the revocation of the covenant.
31. Granting revocation in such circumstances would also seriously risk undermining public confidence in conservation covenants more generally.

Comments on the applicant's approach

32. Finally, some comments on the applicant's approach to the Covenant. In its response to comments, the applicant has reiterated its position that an assessment of the covenanted values has already been provided in the substantive application **[126]** (Part A.15, Section 8.9.1).
33. However, when it comes to assessing "the impacts of the project on these values and any proposed methods of addressing those impacts" in the substantive application (**p 532**), the applicant simply refers again to its proposed offsetting and compensation measures that have been provided in the context of its application for approvals relating to the RMA.
34. Essentially, the applicant's position appears to be that the existence of the Covenant does not mean that it needs to do any more than it would be doing anyway for its application for approvals relating to the RMA. In my submission, the applicant is wrong to take this position.
35. Notably, as previously mentioned, the applicant's RMA assessment concludes that the proposed activity will result in the permanent loss of certain values. The applicant has not attempted to address this permanent loss with reference to the Covenant, nor has it provided any option for the protection of equivalent values on land elsewhere.
36. In its request for further information, the panel requested an assessment of the proposed revocation of that part of the Covenant over the Project Area against the documents referred to in the recital of the Covenant.

37. In terms of ecological values, a response was provided by Professor Norton on behalf of the applicant, who acknowledged the very high conservation values that would be lost through the proposed revocation of the Covenant [20]

38. Professor Norton's conclusion that opencast mining will not diminish the covenanted values appears to be primarily based on a comparison of the size of the proposed offset area to the size of the covenanted area that would be lost, and the relatively intense approach to biodiversity management that is proposed. In my submission, this is not the correct approach – the focus should be on whether equivalent land to be protected outside the area of the Covenant includes equivalent conservation values to those found on the covenanted land.

Conclusion

39. In conclusion, the panel should attempt to honour the terms and conservation purposes of the Covenant to the greatest extent possible under the Fast-Track Act. In my submission, the panel can do so by:

- a. Firstly, fully considering the purpose of the Covenant and the conservation values of the land, including the specific objectives set out in clause C of the recital to the Covenant; and
- b. Secondly, because of the high conservation values that are at stake here, only granting the application for revocation if it is satisfied that conditions can be imposed that would ensure the protection of land with equivalent values outside the area of the Covenant.

Tim Williams

Senior Environmental Lawyer, Forest & Bird

29 April 2026