

BEFORE THE EXPERT PANEL

FTAA-2507-1089

**UNDER
IN THE MATTER**

Fast-track Approvals Act 2024
of the Bendigo-Ophir Gold Project

**CLOSING SUBMISSIONS OF COUNSEL FOR THE NEW ZEALAND FISH
AND GAME COUNCIL AND OTAGO FISH AND GAME COUNCIL**

Dated 21 September 2026

SALLY GEPP KC

M +64 21 558 241 — SALLY.GEPP@MILLSLANE.CO.NZ
MILLS LANE CHAMBERS, 3 BROOKSIDE, NELSON 7010
PO.BOX 537 SHORTLAND ST, AUCKLAND 1140. MILLSLANE.CO.NZ

TO THE EXPERT PANEL

1. New Zealand Fish & Game Council and Otago Fish & Game Council (together “Fish & Game”) make the following brief closing submissions, within the scope of the Panel’s directions in Minute 48.

Water and contaminants

2. In a section of its submissions that largely does not raise any new legal issue but instead seeks to convince the Panel of the merits of its evidence, MGL submits that its RFI 11 response on water provides confirmation of the nature, scale and significance of potential groundwater effects and reinforces confidence in the effectiveness of the proposed management measures by further refining and validating the conclusions reached in the existing effects assessments.¹
3. In fact, the RFI 11 response does the opposite. The modelling and data collection were undertaken concurrently, so the modelling does not include the new datasets. The shallow model does not calibrate to the existing environment. These issues significantly limit reliability of model outputs. However, to the extent it can be relied on, in a number of key areas the RFI 11 response overturns the predictions from previous modelling and assessments, with significant implications for contaminant management:
 - a. There has been a shift from the earlier concept of a largely water-deficit mining operation to an operation that is predicted to experience water surplus conditions much earlier. The new Water Load Balance Model covering the BOGP’s operational period predicts surplus mine-impacted water exceeding compliance limits and requiring management and newly proposed engineering controls much sooner than previously predicted (Year 10 for antimony and Year 11 for nitrate toxicity). This means active water treatment within a short timeframe from start of mining operations (prior to rising concentrations in years 6 – 7) rather than during or post-closure.
 - b. There are newly identified sources of unrecovered seepage documented in the new operational WLBM (associated with the processing plant pad and the Shepherds Creek Valley fill). These are now predicted to contribute small but continuous loads of mine impacted water directly to SC01 and are part of the cumulative load driving predicted exceedances of compliance limits.
4. MGL submits that the proposed conditions demonstrate a clear ability to manage effects through monitoring and enforceable thresholds, triggers and responses² and that effects that might arise can be remedied before they become irreversible.³ Fish & Game disagrees, in reliance on the evidence of Dr Morgan, Professor Webster-Brown and Ms McArthur, but does not repeat that evidence or the reasons why it should be preferred, given the Minute 48 directions.
5. MGL now proposes that prior to the commencement of mining operations MGL must engage a suitably qualified and experienced person to develop a process, including suitable triggers and responses, to manage any mine

¹ MGL closing submissions at 45 – 46.

² At 49(b).

³ At 49(d).

circuit water seepage that bypasses mine waste storage facilities, with the groundwater and surface water triggers derived under Condition 21 to be contained in the Water Management Plan. Triggers and responses are standards that should be included in consent conditions, not left to a management plan. The law on management plan conditions was covered in Fish & Game's submissions for the Cromwell hearing dated 29 April 2026⁴ and is equally applicable to the triggers and responses for seepage management.

6. There are a number of further contingencies provided for in new conditions 25 – 26. Fish & Game submits that this is not “adaptive management”. It is undisputed that the Project will create uncaptured/untreated seepage. The risks from untreated seepage are clear. The proposal is to invent ways of dealing with the risks in future. The Panel has no evidence of the effectiveness of the additional contingency measures (e.g. sheet pile wall), their ability to be implemented, or what other adverse impacts might result from them. The law on adaptive management was addressed in Fish & Game's comments in April 2026.⁵

Surface Water Compliance Parameters and Limits

7. Fish & Game feedback on Attachment 5 to D.04 Schedule Two ORC Consents included the observation that some limits are permissive relative to existing water quality and ORC Schedule 15. That comment was “not accepted by MGL” on the basis that “the current proposed limits were those that were extensively discussed during conferencing and reflected in principle agreements by the key stakeholders in the JWS”. While most limits were agreed during conferencing, it is a simple factual observation that the limits are in many cases (e.g., nitrate, sulphate, and antimony) many times greater than the receiving environment baseline concentration, and as such will result in a direct degradation of water quality, even when limits are met.
8. MGL has accepted Fish & Game's request for a dissolved inorganic nitrogen (DIN) limit of 0.4 mg/L. There is no updated WLMB prediction of when that limit may be exceeded. With the compliance limit for nitrate toxicity predicted to be exceeded in Year 11, the DIN limit may be exceeded sooner, resulting in the need to implement active treatment even earlier than stated in paragraph 3a.

Gamebirds and contaminated waterbodies

9. The response from Dr Palich to Mr Couper's evidence on risks to avifauna acknowledges that the ANZG Guidelines are not based on risk to avifauna but describes them as a “screening tool” and then says that “in principle ... one would generally expect avian water quality criteria to be less stringent...”. Dr Palich has no relevant avifauna or ecology qualifications and experience,⁶ and no weight can be placed on her assessment of risks of contaminated pit lake water to birds because it is outside her expertise (and would not comply with the Code of Conduct if presented in the Environment Court). Her conclusion that “the available weight of evidence indicates that the predicted exceedances of ANZG DGVs are unlikely to result in ecologically significant

⁴ At paragraph 28 and footnote 38

⁵ At paragraph 63.

⁶ Her statement of evidence dated April 2026 states that she has a BSc in Geophysics and a MSc in Geology (Environmental Hydrogeochemistry).

adverse effects to avifauna using the pit lakes” appears to have been written by a lawyer and is not reliable given her lack of relevant expertise.

10. Dr Palich acknowledges that some uncertainty remains and the possibility of adverse effects cannot be completely excluded. No assessment has been provided of the implications of this “low probability high potential impact” (at least) effect for hunters or others who consume contaminated gamebirds, and no measures to avoid, remedy or mitigate that effect have been proposed.
11. Fish & Game’s request for conditions requiring tissue sampling of fish and ecotoxicology monitoring has not been accepted “as there is no way of attributing to MGL”. That is not a valid basis for declining to monitor a potential effect of the project. There is no evidence of other activities contributing the same contaminants of concern, but even if such activities do exist, the effects that the Panel must consider include “any cumulative effect which arises over time or in combination with other effects.”⁷

Factor of safety

12. Condition 52⁸ of Schedule Two ORC Consents requires that where project works may alter geotechnical stability, a minimum Factor of Safety of 1.5 must be maintained under static loading for all ground outside the project site. Fish & Game comments sought that this outcome be maintained in perpetuity with a consent notice requiring this outcome to be registered on the relevant titles.
13. MGL’s response was that this is not accepted because “you cannot require this on 3rd party land not owned by the Consent Holder”. The response does not make sense: Condition 52 places an obligation on the consent holder not to cause an effect on third party land, and the consent notice would be registered on the Consent Holder’s land to secure that outcome in perpetuity.

Conclusion

14. The BOGP will have very significant risks for the receiving environment. It is based on unreliable information which has changed in major ways over the course of the application process. There is no way of knowing whether the latest version of predicted effects is accurate, given it departs so substantially from the previous version.
15. The only reasonable conclusion available is that the project’s adverse impacts are out of proportion to its benefits, and that the BOGP should be declined.

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Sally Gepp KC
Counsel for Fish & Game

⁷ RMA, s 3.

⁸ Numbering refers to the latest version of conditions filed with MGL’s closing submissions