BEFORE THE EXPERT PANEL **FTAA-2507-1089**

I MUA I TE ROOPU TOHUNGA

IN THE MATTER of the Fast-track Approvals Act 2024 (the Act)

AND

IN THE MATTER of an application made under the Fast-Track Approvals Act 2024 by Matakanui Gold Limited (Santana Minerals)

STATEMENT OF EVIDENCE OF MIKE DREAVER (TREATY OF WAITANGI NEGOTIATOR) ON BEHALF OF KĀTI HUIRAPA RŪNAKA KI PUKETERAKI, TE RŪNANGA O MOERAKI, TE RŪNAKA O ŌTĀKOU, AND HOKONUI RŪNANGA (KĀ RŪNAKA)

24 APRIL 2026

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INTRODUCTION

Qualifications and experience

1. I hope the qualifications of a BA/LLB Hons.

2. I am sole director of The Policy Shop, a negotiations, facilitation and policy consultancy. I established The Policy Shop in 2001, following twelve years in the public service in Aotearoa-New Zealand (Law Commission, Treasury, Office of Treaty Settlements, Ministry of Economic Development) and internationally (United Nations High Commissioner for Refugees).

3. For the last three decades the primary focus of my work in the public and private sectors has been in the space between the Crown, Māori and, increasingly, the private sector.

4. I have played a role in the negotiation of more than 40 historical Treaty settlements, including Muriwhenua, Mahurangi and Tāmaki Makaurau in the north, Ngāti Awa and Whakatohea in the east, Taranaki and Manawatū in the north, and the entire South Island.

5. In most cases my role has involved working for and representing the Crown, including being Chief or Lead Crown Negotiation for several claims in the lower North Island. From 2009 to 2015 I was Chief Crown Negotiator for 27 negotiations across Tāmaki Makaurau, Hauraki/Coromandel and the Kaipara/Mahurangi regions.

6. I have also at times worked for iwi in negotiations, notably for the Kurahaupō iwi of Te Tau Ihu: Ngāti Apa ki te Rā Tō, Ngāti Kuia and Rangitāne o Wairau. I also supported the National Hauora Coalition in their contemporary Treaty of Waitangi claims relating to the health system and its impact on Māori.

7. One of my first forays into Treaty settlements was the Ngāi Tahu settlement negotiations between 1995 and 1997. At that time I was an advisor at Treasury and was seconded to the Crown negotiating team responsible for developing and negotiating the mahinga kai/mahika kai redress. That included developing and negotiating new redress instruments such as the statutory acknowledgements, and deeds of recognition, nohoanga/nohoaka entitlements and protocols with government departments. Our Crown team spent a

lot of time with Ministers and with our Ngāi Tahu counterparts, so developed a strong understanding of the intentions of the parties.

8. In the last decade I have maintained a close interest (but have not directly participated) in the ongoing negotiation of historical Treaty settlements, and have occasionally been asked to help iwi to ensure and enforce compliance by the Crown with its Treaty settlement obligations.

9. I was also invited by the Ministry of Justice to provide specialist feedback on the Treaty Principes Bill.

10. Most of my work now involves advising the Crown and private sector on the establishment and maintenance of productive and mutually beneficial partnerships with iwi and other Māori groups in relation to the design and delivery of infrastructure for transport, energy, housing and water.

Purpose and scope of evidence

11. This evidence is drafted in response to comments submitted by the Applicant regarding Treaty settlements, the relevance of an acknowledgement of rakatirataka/rangatiratanga and certain cultural redress instruments – statutory acknowledgements, nohoaka/nohoanga entitlements and recognition by the Crown of taoka/taonga species within the Ngai Tahu rohe.

Expert Witness Code of Conduct

12. Although these proceedings are not before the Environment Court, I confirm that I have read the Expert Witness Code of Conduct set out in the Environment Court's Practice Note 2023. I have complied with the Code of Conduct in preparing this evidence and agree to comply with it while giving oral evidence before the Hearings Panel. This evidence is within my area of expertise, except where I state that I am relying upon the specified evidence of another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

13. My wife and daughter are Ngāi Tahu. I have not discussed the contents of this evidence with either of them.

NATURE OF TREATY SETTLEMENTS

14. Each Treaty settlement is different, reflecting the history, circumstances and interests of the relevant claimant group, the priorities that group brings to the negotiating table, and the land and other resources owned by the Crown within the claim area.

15. Treaty settlement redress has also evolved over time, reflecting: greater confidence in our ability to preserve the wider public interest in land transferred to Māori ownership, the need to accommodate multiple iwi interests in one area, and the development of more sophisticated models to facilitate iwi participation in the governance of natural resources such as rivers.

16. Changes of Government have not had a marked effect on the content of Treaty settlements or forms of redress. This reflects a broad political consensus that seems unlikely to fundamentally fracture, even though recent years have seen the emergence of a sharper, more polarised, Treaty discourse from some quarters.

17. Notwithstanding these changes, each individual Treaty settlement still contains four distinct parts: an introduction and background which generally also describes the origins of the iwi or claimant group; a part that contains a historical account of Crown and claimant interaction since 1840, Crown acknowledgements of breaches of the Treaty and a Crown apology for those breaches; a cultural redress part; and a financial and commercial redress part.

18. These distinct parts interact to form a complete 'redress' package. If one of the four parts were missing, it would be difficult, probably impossible, to secure an agreed settlement – the Treaty settlement 'package' would be missing an essential component.

19. That entire redress package does not 'codify' the Treaty rights or interests of the iwi. But it is still intended to form an integrated whole, and every word counts.

20. For instance, I am aware of iwi negotiators who state that the Crown Acknowledgements and Crown Apology are more important to them as redress than the payment of many millions of dollars of financial redress.

21. That conclusion is also reflected in the text of the Ngāi Tahu deed of settlement. The Introduction concludes (p 18) with the following statement:

> *"Accordingly, in a spirit of co-operation, compromise and good faith and in consideration of the respective obligations and agreements contained in this Deed, the Crown and Te Rūnanga agree to settle the Ngāi Tahu claims in consideration for the redress to be provided by the Crown as specified in the following sections 1 to 20, and otherwise on the terms and conditions set out in sections 1 to 20."*

22. At section 2.1, the Crown "*apologises to Ngāi Tahu for its past failures to acknowledge Ngāi Tahu rangatiratanga and mana over the South Island within its boundaries, and, in fulfilment of its Treaty obligations, the Crown recognises Ngāi Tahu as the tangata whenua of, and as holding rangatiratanga within, the Takiwā of Ngāi Tahu Whānui."*

23. The Crown then at section 2.2 acknowledges:

> *"2.2.1 the legitimacy of the Ngai Tahu Historical Claims and the breaches of the Treaty of Waitangi by the Crown in relation to the Ngai Tahu Historical Claims;*
>
> *2.2.2 that the Settlement does not diminish or in any way affect the Treaty of Waitangi or any of its articles or the ongoing relationship between the Crown and Ngai Tahu in terms of the Treaty of Waitangi or undermine any rights under the Treaty of Waitangi, including rangatiratanga rights"*

24. The deed of settlement is therefore clear: the Crown Apology and Crown Acknowledgements are a key part of the overall fabric of 'redress', no less so than the cultural, financial and commercial redress commitments and obligations.

25. The Crown Acknowledgement of rangatiratanga within both the Crown Apology and Crown Acknowledgements equally forms part of the Ngāi Tahu Treaty settlement redress.

26. This is also confirmed by The Red Book published by Te Tari Whakatau, which states (p 87):

Among the first and most important items in a Deed of Settlement are the historical account, Crown acknowledgements and apology, collectively known as the Crown Apology. They may be seen as the first step in reconciling and healing the relationship between the Crown and the claimant group.

27. As a result, in the Ngāi Tahu Treaty settlement the Crown commits to ongoing recognition of the rangatiratanga of Ngāi Tahu – this is a clear obligation.

CLAIM THAT TREATY SETTLEMENTS ARE SOLELY BINDING ON THE CROWN AND NGĀI TAHU

28. Santana suggest they and other third parties who are not the Crown and not the iwi are not bound or otherwise affected by a Treaty settlement. This is wrong.

29. It is axiomatic that the Treaty of Waitangi was a compact between Māori leaders of iwi and hapū and the Crown. In a similar vein, Treaty settlements are a contract, given added force by legislation, between a claimant group and the Crown (on behalf of all New Zealanders).

30. Those words in parentheses – "on behalf of all New Zealanders" - are important. Treaty settlements provide rights and interests to, and impose obligations on, iwi. They are signed by the Crown and iwi. But they also affect the rights and interests of other New Zealanders. They require that decision makers act in a certain way, or take certain matters into account.

31. Much cultural redress in Treaty settlements involves rights and interests accorded to iwi and hapū to enable them to exercise their traditional rights and roles – rangatiratanga/rakatirataka is an example.

32. The grant to or recognition of rights in iwi does not remove the existing lawful rights of third parties. The grant of rights to iwi does not confiscate private property. It does not override or terminate existing contracts, permits or permissions.

33. But, Treaty settlement redress still have an impact on third parties. It may constrain access to some places. It may provide exclusive rights to iwi that are not available to non-members. For instance,

the holders of a nohoaka entitlement have rights of enforceability of those entitlements against third parties as if they were owners. It may provide preference to the claimant group in the granting of future permissions or concessions.

34. Treaty settlements also create or amend processes, criteria, principles and frameworks for decision makers to consider and comply with when undertaking certain functions.

35. In the minerals context, for example, when a mining company or individual successfully applies for an exploration licence, the Ministry of Business, Innovation and Employment (New Zealand Petroleum and Minerals) will generally impose requirements on the licence holder to engage regularly with named iwi and hapū; and to report on their engagement with those iwi and hapū, the issues that have been raised and how the applicant has responded to those issues.

36. Increasingly in recent years specific legislation explicitly requires the decision makers to act in a way consistent with Treaty settlements. The FTA is an example.

37. Section 7 of the FTA states: "all persons performing and exercising functions, powers, and duties under this Act must act in a manner that is consistent with the obligations arising under existing Treaty settlements." Section 85(1) states the panel must decline an approval if the panel considers that granting the approval would breach section 7.

RAKATIRATAKA/RANGATIRATANGA

38. The acknowledgments of Ngāi Tahu rangatiratanga in the Crown Apology and Crown Acknowledgement of the Ngāi Tahu settlement deed do not define or codify rangatiratanga or Treaty rights generally, however nevertheless they give rise to obligations.

39. The deed of settlement does provide some guidance as to the scope of rangatiratanga,

    (a) It does <u>not</u> acknowledge rangatiratanga "to the extent that acknowledgement has no impact on other New Zealanders".

(b) It does not acknowledge rangatiratanga only in respect of Crown owned land and activities in relation to that land.

40. The deed of settlement also sets out instances where the Crown acknowledges it breached its obligations to respect and protect the rangatiratanga of Ngāi Tahu Whānui. Examples are the failure to provide promised reserves when land was bought, and the failure to ensure Ngāi Tahu retained reasonable access to places where they produced or procured food.

41. It is reasonable to examine then what rangatiratanga means in the modern context, such as the present application by Matakanui Gold Limited. Rangatiratanga in 2026 is not going to be identical to rangatiratanga in 1866.

42. Ngāi Tahu (in this case, Kā Rūnaka) will have the most clarity about what they consider to be appropriate recognition of their rangatirataka, and so the iwi views should be given a strong weighting. That doesn't mean it is necessarily for the iwi to have the sole or final decision on what amounts to respect of rangatirataka in each situation - that is ultimately an exercise of judgment, a matter of discussion, negotiation, taking into account all the circumstances of the issue or project - place, people and significance.

43. Rangatirataka has process and outcome dimensions.

44. Rangatirataka is likely to require some key process features, including at the least:

(a) Early and open provision of all relevant information;

(b) Sufficient time and resource to consider and assess the information and its relevance;

(c) Openness to consider iwi perspectives;

(d) Respect for and protection of mātauranga Maori and cultural intellectual property;

(e) An open mind;

(f) Good faith;

(g) Respect for confidentiality;

(h) Respect for the right to disagree; and

(i) Complying with agreements on the conduct of engagement.

45. It is harder to define what rangatirataka might mean in terms of outcome in any given situation. However, the parties could test the potential outcome against a series of criteria, such as:

(a) Does it respect and protect rights and interests specifically identified in any relevant in Treaty settlement, and in particular specific redress?

(b) Does it respond to all the interests and matters raised by the iwi, including in any cultural impact assessment?

(c) Does it provide the iwi with meaningful influence and potentially participation in relation to the activity?

(d) Does it reflect the potential impact and the anticipated duration of the activity?

(e) Does it reflect and accommodate any uncertainty or risk around the activity?

(f) Does it build in a review process, particularly if the activity with a long duration?

(g) Where it might negatively affect iwi interests, does it build in an element of mutuality, shared benefits or alternative mitigations?

STATUTORY ACKNOWLEDGEMENTS, NOHOAKA ENTITLEMENTS AND TAONGA SPECIES

46. The key specific redress areas of relevance to this application appear to be statutory acknowledgements nohoaka entitlements and recognition of taoka species.

Statutory acknowledgements

47. Statutory acknowledgements were carefully constructed during the Ngāi Tahu negotiations, and have become standard cultural redress in almost every Treaty settlement since then.

48. They are limited to cover Crown owned land (e.g. certain maunga, riverbeds and lakebeds).

49. For rivers, they do not include tributaries. But it is important not to read too much into that exclusion. At the time the settlement was being negotiated, and probably today as well, it would have been difficult if not impossible to identify every tributary of every river and determine its ownership.

50. Also, the fact that a tributary is not included in a river statutory acknowledgement does not mean that an activity located on or adjacent to that tributary is not affected by the statutory acknowledgement. If an activity may affect a tributary (e.g. through discharge or damming or diversion) it will often also have a (literal) downstream impact on the main waterway.

51. The other important aspect of a statutory acknowledgement is declaratory. The statement of association, while not a 'deemed fact' for evidence purposes, describes in summary terms the traditional, historical, spiritual and cultural association of the iwi with the area in question. Councils are required to place summaries of statutory acknowledgment on planning documents.

Nohoaka entitlements

52. Nohoaka entitlements were developed to provide an opportunity for Kāi Tahu members to exercise their customary fishing and harvesting practices, or mahika kai. They are a practical exercise of Ngāi Tahu rangatirataka, kaitiakitaka and manaakitaka.

53. There are 72 entitlement areas across the entire rohe, and each is no more than one hectare. That is a total of 72 hectares in a rohe of at least 12 million hectares, which was previously all available for these purposes. I recall that during the Ngāi Tahu negotiations a great deal of time and effort went into selecting suitable sites for these entitlements.

54. Where an entitlement in Crown land is alienated or destroyed by natural causes, the Crown must take reasonable steps to secure a replacement site (12.7.11). But there is no equivalent provision for replacement or remediation where a nohoaka entitlement area is rendered (permanently or temporarily) unfit for fishing and harvesting because of unnatural causes such as pollution. This places a high degree of responsibility to avoid action that might potentially compromise the integrity of these places and the integrity of the redress and the Treaty settlement itself.

Taoka Species

55. I am aware that Kā Rūnaka have raised concerns over the impact of the applicant's proposal on a number of species that are recognised in the Ngāi Tahu settlement as taoka species.

56. The deed of settlement explicitly limits the impact of this recognition of species to certain functions of the Director-General of Conservation, in particular in instances when those species are subject to Species Recovery Groups.

57. Specifically, the Director-General is required (12.13.8) *"to consult with and have particular regard to the views of Te Rūnanga when making policy decisions concerning the protection, management or conservation of all taonga species subject to Species Recovery Groups."*

58. In addition, and notwithstanding the explicit limitation in the deed of settlement, the recognition of the species as taoka to Ngāi Tahu in the deed of settlement is a matter that I presume the Department of Conservation takes into account in accordance with the section 4 obligation that the Conservation Act 1987 must be interpreted and administered to give effect to the principles of the Treaty of Waitangi.

CONCLUSIONS

59. In my professional opinion, the approach taken by the Applicant asserting that the provisions within the Apology of the Ngāi Tahu Treaty settlement do not create obligations is incorrect.

60. It is also my opinion that the Applicant's view that the Ngāi Tahu Treaty settlement apology does not impose obligations on Santana or the Panel in this situation is wrong.

61. I have provided some thoughts in what a recognition of Ngāi Tahu rangatirataka might look like in terms of process and substance. These are preliminary and by no means exhaustive, but I consider they would be a minimum expectation for an Applicant such as Santana when engaging with Ka Rūnaka.

62. Specific Treaty settlement redress such as statutory acknowledgement, nohoaka entitlements and taoka species recognition also create rights and obligations that impact upon this Application and should be front of mind for Santana in its engagement with Ka Rūnaka.

Mike Dreaver

24 April 2026