

**ENVIRONMENTAL PROTECTION AUTHORITY
BEFORE AN EXPERT CONSENTING PANEL**

**IN THE MATTER OF THE FAST-TRACK APPROVALS ACT 2024
AND IN THE MATTER OF AN APPLICATION BY MATAKUNUI GOLD
LIMITED UNDER SECTION 42 OF THE FTAA**

FOR THE BENDIGO-OPHIR GOLD PROJECT

APPLICATION NO: FTAA-2507-1089

Hearing: Held at Ōtākau Marae, Dunedin

Date: 28 April 2026

Panel: Hon Matthew Muir KC (Chair)
Gina Sweetman
Phillip Barry
Roger MacGibbon
Tim Mulliner
Peter Kensington
Douglas Johnson

Counsel: Mike Holm and Nicole Buxeda for Kā Rūnaka
Joshua Leckie and Mia Turner, Lane Neave, for the Applicant

For Ka Runaka: Mike Dreaver
Edward Ellison
Mark Pizey
Matt Dale
Jade Watkin
Dr Alayna Rā

For Applicant: Damian Spring, CEO, Santana Minerals Limited & Matakanui Gold
Peter Cook, Chairman, Santana Minerals Limited & Matakanui Gold
Cheryl Low, Environment Manager, Matakanui Gold
Mark Chrisp, Planning, Mitchell Daysh
Nicolai Berry, Planning, Mitchell Daysh
Mahanga Maru, Director, Maru Consulting

For EPA: Daya Thomson, Application Lead
Mehwish Imam, Project Coordinator
Te Mauri Apiata, Kaiwhahaere Tuhono Tangata,
Manager Māori Engagement (Tuhoe, Waikato, Ngapuhi)

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1 **Mr Muir:** Tēnā koutou katoa i runga i te karanga o te rā. My apologies that I'm self-
2 evidently not a reo speaker. You would've thought that Ms Borthwick could've done
3 a better job in the appointment of her Panel Chair. But, may I start by thanking our
4 hosts for the most generous reception. We are delighted to be here, delighted that
5 the schedules permitted us to come here to Ōtepoti before we head to Central Otago
6 tomorrow, and we thank you for the opportunity to do so.

7 If I could just introduce myself briefly. I am Matthew Muir. I am the Panel Chair.
8 I am a retired High Court Judge – but don't hold that against me especially. I hail
9 from Tāmaki Makaurau where I've had my professional life. But my tūrangawaewae
10 is deep in Waikato-Tainui country, a little place called Te Kohanga, which is between
11 Tuakau and Port Waikato. That is where my family farmed for two generations there,
12 and two generations before that in East Tāmaki. They arrived into Aotearoa in 1842
13 on the first immigrant ship from Greenock in Scotland.

14 In fact two arrived simultaneously, both departed and arrived simultaneously on the
15 day in October 1842. And like everyone on board that boat they were poor
16 immigrants, either cast into unemployment by the arrival of the industrial revolution
17 of the garment industry, or as agricultural labourers with no future at all. They were
18 actually paid to leave Scotland on an active depopulation policy and they arrived here
19 into the embrace of tangata whenua who housed them in raupo lined huts on the
20 foreshore of Mechanics Bay in Auckland. There was no kai, but for what tangata
21 whenua provided.

22 So that my family's destiny is inextricably interlinked with your family's embrace,
23 in those very, very early days. It could be useful I think if we all did a quick
24 introduction of who we are, before we get into the business of the day.

25 **Mr Johnson:** Yes, kia ora. Doug Johnson. I was born in the Waipa Valley, near
26 Te Kuiti, at the head of a river. My parents were school teachers in the timber mill
27 town. Apparently from a child I enjoyed playing with dirt and mud, and I ended up
28 becoming a geologist, geotechnical engineer, which I've been practising for some 44
29 years now. It's my pleasure to be here, and I look forward to hearing the conversation
30 today.

31 **Mr Barry:** Tēnā koutou katoa. My name is Phillip Barry. I hail from Te Whanganui-
32 a-Tara, and have had the privilege of working with some of the iwi around the
33 country, primarily on a commercial side, including Ngāi Tahu Holdings, Tainui,
34 Tūhoe, Ngāti Awa. But, very privileged to be here today. Economics is my game.
35 Thank you.

36 **Mr MacGibbon:** Kia ora. Roger MacGibbon. I'm a restoration ecologist. This little
37 corner of the woods is very important to my family, because New Year's Eve 1849
38 my family first arrived here, sailed into Port Chalmers, and they were grocery
39 merchants from Glasgow. But, they looked at the absence of people and no one to
40 trade with, and headed for the farmlands of Southland. And up until very recently

1 our family have been farmers in Southland and Otago, right through. Currently living
2 in Pirongia, in the North Island, but my heart and heritage is very much based down
3 here. Kia ora.

4 **Mr Mulliner:** Kia ora. My name is Tim Mulliner. I hail from Tauranga originally.
5 I've studied in Dunedin. I spent a great two to three years down in these beautiful
6 harbours. I now live in Ōtautahi. I guess my background is in water quality, and
7 geochemistry, and I feel very privileged to be part of this panel and I thank you for
8 inviting us onto the marae today.

9 **Ms Sweetman:** Tēnā koutou katoa. [Māori introduction] My name is Gina Sweetman.
10 I am a RMA Planner and Commissioner from Wellington, and I work nationwide
11 doing different hearings on different things. And also wearing a different hat, I'm
12 working on the current reforms to the Resource Management Act, but we won't talk
13 about those today.

14 **Mr Kensington:** Kia ora koutou. Ko Peter Kensington tōku ingoa. I have Scottish and
15 English heritage. Grew up in the Manawatu, Palmerston North, born and bred, but I
16 currently live in Tāmaki Makaurau, out at a small settlement called Muriwai Beach,
17 and I've lived there for more than I lived in Palmerston North. So that is my
18 tūrangawaewae now. Kia ora.

19 **Mr Muir:** Counsel, as you appreciate under the Fast Track Approvals Act the
20 procedures that we adopt are both flexible and, as much as possible, we're mandated
21 to be informal. This is not a formative exercise. This is an exercise of our obtaining
22 valuable information to assist in what is a most complex and difficult piece of
23 decision making on our behalf.

24 Typically in any hearing an Applicant will open and call any evidence that they
25 regard as appropriate and submit accordingly, and then we move into those who
26 object. In this case, it has been decided that the most appropriate and efficient means
27 by which the day should progress is with Kā Rūnaka opening, and a response, at the
28 end of the day from the Applicant. So Mr Holm, to you, thank you.

29 **Mr Holm:** Thank you sir. I'm debating with myself whether I address you as
30 "Mr Chairman" or Your Honour.

31 **Mr Muir:** Well I don't know that I carry, unlike Presidents of the United States, I
32 don't know that I carry the "Your Honour" beyond retirement. I think I'm just Mr
33 Muir now.

34 **Mr Holm:** Mr Chairman, in that case.

35 **Mr Muir:** Thank you.

36 **Mr Holm:** Thank you for that guidance on the procedure to be followed. I must say
37 it's very intimidating to be addressing a panel of seven. I've never had to do that in
38 my life.

39 **Mr Muir:** It'll be a first, I think.

1 **Mr Holm:** It'll be a first, and thank you for the guidance you've given us on how
2 you'd like to proceed. We've done our best to keep it focused on the information
3 that is important to your decision.

4 **Mr Muir:** Yes.

5 **Mr Holm:** And we've asked all of our various witness to provide summaries, which
6 they will, with your permission, read and then obviously answer any questions the
7 Panel may have.

8 **Mr Muir:** Yes. Yes. And Mr Holm, this is both a combination, sometimes of
9 submission, sometimes of evidence, is it? Because, you know, we don't have the
10 formality of having to swear people in to give evidence or anything of that nature.
11 We are at liberty just to hear those whom you choose to call, and from effectively
12 counsel's table, as – if that's as you're expecting it to be?

13 **Mr Holm:** Yes.

14 **Mr Muir:** Yes. Very good.

15 **Mr Holm:** We propose that they would be sitting alongside here.

16 **Mr Muir:** Yes, yes.

17 **Mr Holm:** Another piece of protocol, you're quite comfortable with counsel sitting
18 rather than standing?

19 **Mr Muir:** I am entirely comfortable with that. Yes. If you're my age, Mr Holm,
20 you've got no alternative.

21 **MR HOLM OPENS ON BEHALF OF KĀ RŪNAKA**

22 **Mr Holm:** Sir, if I may start then with just a very short introduction and then I will
23 hand over to my colleague, Nicole Buxeda, to address you on section 7 issues, and
24 then I will return to talk about the issue of effects arising and call the appropriate
25 witnesses in that category as well.

26 To summarise, Kā Rūnaka opposes the grant of a fast-track consent for the current
27 proposal on the basis of, firstly, section 7 of the Fast Track Act. And secondly, the
28 additional fundamental ground that the short and long term adverse environmental
29 and cultural effects are of a nature and scale to be cumulatively well out of proportion
30 to economic benefits.

31 Sir, the task of the Panel is to make decisions on section 7, as well as a wide range of
32 adverse environmental and cultural effects, and as I've just noted, whether such
33 effects are cumulatively, or individually, so adverse as to be out of proportion to the
34 economic benefits.

35 **Mr Muir:** Could I ask, you don't mind my asking questions as we go?

36 **Mr Holm:** Not at all sir. Not at all.

1 **Mr Muir:** When you, when Kā Rūnaka comes to address the issue of proportion,
2 under section 85, what is your understanding of the phrase “out of proportion”? Is it
3 a bare advantage that one is looking for, or does it need to be something more
4 substantive than that?

5 **Mr Holm:** I think sir, that’s a very difficult question. The language doesn’t give much
6 guidance. What is in proportion. What is disproportionate to, I think, has to be a
7 matter of fact in each case. I can’t think of a clear legal test as to what is in proportion,
8 and what is not. And looking at the various fast-track decisions there have been so
9 far, there’s no ...

10 **Mr Muir:** Well among many of them, the decision is that the – that the effects, as you
11 have called them, although that’s not the word that the statute uses, are not so
12 sufficiently substantial as to even engage the comparative test. Whereas, probably
13 speaking slightly out of turn at this stage in the process, there do appear to be some
14 significant effects, in the context of this application, which it’s a question of whether
15 they are adequately mitigated and set off, et cetera, and then whether they are out of
16 proportion to the regional and national benefits. Just so, there’s never really been a
17 lot of focus in the decisions thus far on what “out of proportion” means. Is it simply
18 that it’s on a scale of one to a hundred, 50.1? Or is it something different?

19 **Mr Holm:** Again, I think it’s a very difficult question to answer without ...

20 **Mr Muir:** Yes.

21 **Mr Holm:** ... the particular facts of the case ...

22 **Mr Muir:** Yes.

23 **Mr Holm:** ... in front. And I would’ve thought that to be out of proportion it would
24 have to be a very clear cut set of either individual or cumulative adverse effects.

25 **Mr Muir:** It needs to be clear cut, yes.

26 **Mr Holm:** Very clear cut.

27 **Mr Muir:** Yes.

28 **Mr Holm:** Very strong, such that the issue of benefits is clearly secondary, in a way
29 to avoid – to avoiding the adversity that would come from the identified effects.

30 **Mr Muir:** Yes.

31 **Mr Holm:** Yes. But, the Act is not particularly helpful in defining what
32 proportionality means. Sir, if I could now call on Nicole Buxeda, my colleague, who
33 is going to address you on section 7 of the Fast-Track Act, and introduce statements
34 from two expert evidence, Mr Edward Ellison, and Mr Mike Dreaver. Over to you
35 Nicole.

36 **Mr Muir:** Thank you, Ms Buxeda.

1 **MS BUXEDA'S SUBMISSIONS ON SECTION 7 OF THE FTAA**

2 **Ms Buxeda:** Tēnā koutou. Ko Nicole toku ingoa Thank you very much to the Panel
3 for your time here. Thank you for accepting the invitation, and thank you for taking
4 the time to be here. It is very much appreciated.

5 As my colleague, Mr Holm, has said, I will take you through the section 7 argument.
6 I anticipate the Panel will have questions. Please, as Mr Chairperson has already
7 done, please feel free to jump in with questions, as and when they arise. My intention
8 is to summarise the section 7 argument. But fundamentally it reflects the argument
9 contained in our legal submissions of 10th April.

10 And as Mr Holm has indicated, I have here two of our witnesses, both of whom add
11 a significant amount of weight and mana to our case. We are very lucky to have both
12 of them here. On that note, I would like to thank the Panel for accepting our
13 submission, and for accepting the evidence of Mr Dreaver. I have copies of his
14 evidence, as I am very aware that this was circulated at a late date. But the
15 willingness and openness of the Panel to hear from such an expert, who we truly
16 believe will add significant information and experience to our question here, is very
17 much appreciated.

18 **Mr Muir:** I think, possibly also, the thanks could extend to the Applicant, because
19 this emerged late last week, and the Applicant, I think very appropriately in my view,
20 but needn't have, indicated very early on after receipt of Mr Dreaver's draft evidence,
21 that there would be no opposition to the addition of that evidence. The Applicant has
22 signalled that it is not in a position to answer that evidence today, and nor is it the
23 Panel's expectation that it do so, given the timing of Mr Dreaver's evidence, and we
24 will reflect on an appropriate mechanism by which any responsive evidence comes
25 in, in the next day or so. Is that acceptable to you?

26 **Ms Buxeda:** I think that is a way in which to provide a reasonable response for evidence
27 that was received late. And in that case, I would like to extend gratitude to the
28 Applicant for their approach in this.

29 **Mr Muir:** Yes, well it certainly speeded things up rather than us having some sort of
30 procedural hearing today. It had been my intention that Mr Dreaver's evidence come
31 in, to use the old Court term, de bene esse, we would just receive the evidence and
32 then decide whether it was evidence in the application at a later time. But this has
33 speeded it up a lot.

34 **Ms Buxeda:** Fantastic. Thank you. Our intention here is to provide the Panel with the
35 best information, and the best people to answer any questions arising.

36 **Mr Muir:** Yes.

37 **Ms Buxeda:** And I'm very happy that that's been facilitated both by the Panel and the
38 Applicant.

1 It is my submission that the Fast Track Act is clear. Section 7, as the Panel will be
2 aware, as possibly everyone in this room will be aware, states:

3 All persons performing and exercising functions, powers and duties
4 under this Act must act in a manner that is consistent with obligations
5 arising under existing Treaty settlements.

6 Section 85(1) states:

7 The Panel must decline an approval, if the Panel considers that granting
8 the approval would breach the aforementioned section 8.

9 It is my submission that this assessment requires two steps. The first, whether an
10 obligation exists in existing Treaty settlements, and secondly, whether there is an
11 inconsistency with that obligation.

12 Now it is my submission that both of these steps are fundamentally evidential ones.
13 Accordingly, I have my experts here, willing to answer questions. But I will step
14 through those two steps of the legal test and then I will call them to answer any
15 questions on these branches of the test.

16 In regards to the first step, do obligations exist in the Ngāi Tahu Claims Settlement
17 Act 1988. The Ngāi Tahu Settlement, and specifically the apology, recognised Ngāi
18 Tahu as holding rakatirataka within the takiwā of Ngāi Tahu whānui. This
19 recognition establishes an obligation, in respect of rakatirataka. This obligation
20 clearly covers the land proposed to be mined by the Applicant. Accordingly, an
21 obligation exists in the Ngāi Tahu Claims Settlement Act and, as I have mentioned,
22 as this is an evidentiary question, this conclusion is supported by the evidence of Mr
23 Ellison and Mr Dreaver.

24 In terms of the second step of this inquiry: is an inconsistency with obligations
25 established. Again, this is fundamentally a factual inquiry step. In terms of
26 establishing effects and cultural effects of a project, the law is clear. Iwi are the
27 authority on that question. I refer the Panel to Justice Palmer's decision in *Tauranga*
28 *Environmental Protection Society Incorporated v Tauranga City Council*. I have
29 citations and I have copies of this case, which I can provide – where Justice Palmer
30 held that where the considered, consistent and genuine view of iwi is that the proposal
31 would have effects, and cultural effects, it is not open to the Court to decide it would
32 not. Justice Palmer went further to state that where the iwi's view was that the
33 proposal would have such effects, a decision maker deciding otherwise would be
34 inconsistent with that iwi's rakatirataka guaranteed to them by Article 2 of the Treaty
35 of Waitangi, and in this case, guaranteed in Ngāi Tahu's Treaty Settlement itself.

36 The evidence of Mark Pizey, Matt Dale, Jade Watkin, Dr Alayna Rā and Mr Edward
37 Ellison, along with the cultural impact assessment, are clear. The approach taken by
38 the Applicant is so deficient, and the cumulative effects of the current proposal are
39 of such significant scale, and over such a long timeframe, with inadequate

1 mitigations, that there are impacts on rakatirataka, and associated kaitiakitanga, such
2 that granting consent would be inconsistent with the Treaty Settlement obligation.

3 Through fulfilling the two steps in this test, we submit to the Panel that granting
4 approval in this case would be inconsistent with obligations arising out of the Ngāi
5 Tahu Treaty Settlement, such that the Panel is required to decline consent.

6 **Mr Muir:** So there are two issues, aren't there, identified there. There is essentially
7 could I call them procedural and substantive, and both legs of the double, Ngāi Tahu
8 says that this process, that the process – that the process and the substantive
9 application are both inconsistent with the Settlement Act, correct?

10 **Ms Buxeda:** That is – that is correct, Mr Chairperson.

11 **Mr Muir:** Right. As to the former, is that – is that capable of remediation between
12 now and the decision of this Panel?

13 **Ms Buxeda:** Mr Chairperson, it is my opinion that consultation is an action undertaken
14 prior to lodgement, and engagement are actions taken post lodgement. We are now
15 in post lodgement. So the consultation period has closed. It is the submission of Kā
16 Rūnaka that the consultation was inadequate, such that it breaches, or is inconsistent
17 with, Treaty Settlement obligations.

18 **Mr Muir:** It wasn't the view of the Panel Convenors, obviously?

19 **Ms Buxeda:** That is correct. Or, whether the Panel Convenors offered a view on the
20 consistency of the consultation, I believe that that sat with the EPA's assessment,
21 where the EPA decides whether the application as submitted is complete. At that
22 time we submitted a letter to the EPA indicating that the consultation undertaken was
23 inadequate, as it did not fulfil the legal principles required for consultation. That was
24 not taken further at that time and instead this process was – was stepped through.
25 However, issues and concerns were raised very early with the EPA.

26 **Mr Muir:** The Panel, in other applications, has expressed clear views at the outset in
27 cases of what it regards as deficient consultation, the Off-Shore – Taranaki Off-Shore
28 Application was an example of that. It didn't occur in this case did it?

29 **Ms Buxeda:** That did not occur in this case. Nor was the decision to pursue that seen
30 deficiency, on behalf of Kā Rūnaka, through judicial review undertaken.

31 **Mr Muir:** Right. So just going back to my initial point. Sorry, this is exactly – it's
32 quite important, as I address it, you know, as the Panel addresses the section 7 issue.
33 So your view is that – your submission is that the die is cast on the adequacy of what
34 I have termed the procedural issues at the time of the application. And, no – there is
35 no facility thereafter, either through expert conferencing, through discussion about
36 potential conditions, or any other mechanism by which that absence of kōrero can be
37 remedied?

38 **Ms Buxeda:** Thank you for the clarification question. I think, in my mind, the two
39 stages are divided into consultation and engagement. That consultation is closed.

1 That doesn't, in my mind, prevent further kōrero undergoing, further attempts to
2 address the situation from being taken. I don't believe the door is closed. Having
3 said that, whether that is a door which the Rūnaka would step through willingly at
4 this stage, is a question which is uncertain.

5 **Mr Muir:** Right. Your position is, that it's a matter of law, in terms of section 7,
6 there is a significant deficiency, which means, in process to this point ...

7 **Ms Buxeda:** Yes.

8 **Mr Muir:** ... which means that section 7 is engaged, process alone?

9 **Ms Buxeda:** Correct.

10 **Mr Muir:** On process alone, at this point?

11 **Ms Buxeda:** Correct.

12 **Mr Muir:** Right.

13 **Ms Buxeda:** So in terms of process, our submission is that the process has been so
14 deficient as to breach an obligation under the Treaty Settlement Act. Sorry, be
15 inconsistent with.

16 **Mr Muir:** Right. Well, Mr Dreaver addresses in his proposed evidence, what a
17 different – what a compliant process might look like. And certainly some of the
18 matters that emerge in his overview are matters that could potentially be dealt with,
19 in the context that I just identified?

20 **Ms Buxeda:** My comment on that would be, that that is my – that would be my
21 understanding. But as we stand before the Panel today, those actions have not been
22 completed.

23 **Mr Muir:** Right.

24 **Ms Buxeda:** And the application status and procedural substance of what we're looking
25 at currently, remains deficient.

26 **Mr Muir:** Right. And then you'll never – you'll be very pleased you never had to
27 appear in front of me in the High Court. But, this sort of engagement, direct
28 engagement is of most use, I think, to me and the Panel, around these difficult issues.

29 We come then to the substantive issue, and again the evidence that we receive speaks
30 to this. But substantively, it seems that Kā Rūnaka could, I mean just backing up a
31 little, this is not a gold extraction that could be effected with pick and shovel, with
32 miners in fedoras. This is, some have described it as gold extraction on an industrial
33 scale. The evidence tends to suggest that the necessary incidence of extraction on
34 the so-called industrial scale are such that substantively, Kā Rūnaka could never
35 approve – never agree to it. Is that – I'm just using a neutral word "agree". Is that
36 correct?

37 **Ms Buxeda:** I respectfully ...

1 **Mr Muir:** The diversion of watercourses, the loss of wetlands, the effects on flora
2 and fauna, the effects on landscape, all issues which are engaged independently of
3 Kā Rūnaka's opposition by various other parties in the process. But cumulatively,
4 from Kā Rūnaka's perspective, they are determinative in a way that could never be
5 approved. Is that right?

6 **Ms Buxeda:** Mr Chairperson, I think that's a good summation of concerns arising
7 regarding the effects, and there is little doubt that the effects here, across a wide range
8 of matters, including cultural, including the permanency, including the timeframe,
9 including the cultural nature of these effects, is of such significant scale that it would
10 be very difficult, to my understanding, for the Rūnaka to find these consistent with
11 cultural values. Having said that, I respectfully suggest, Mr Chairperson, that this
12 may be a question for the expert in rakatirataka, Mr Edward Ellison.

13 **Mr Muir:** Yes.

14 **Ms Buxeda:** I hesitate to make conclusions about the consistency, or acceptability of
15 cultural values.

16 **Mr Muir:** Yes. You see, normally, apart from section 7, these clearly articulated
17 concerns would weigh as impacts, adverse impacts, straight into the comparative
18 exercise. The, well the proportion – the proportioning exercise, under s 85. But
19 Kā Rūnaka's argument is different to that. It says, effectively, that there is a hard
20 line, and we don't even get into the comparative analysis, because section 7 precludes
21 it. Is that so? So it really, for the sort of the first time, really in one way it – one way
22 elevates a cultural impact significant, as it is stated to be, it elevates it within the
23 context of the Settlement Act to a hard line. You could – you could use the word
24 veto. Is that correct?

25 **Ms Buxeda:** My understanding of how the Act is written is that section 7 does act as a
26 directive. Having said that, in my submission Mr Chairperson, it's slightly more
27 nuanced than that. Because the cultural effects, and the effects extrapolated out on
28 the Treaty Settlement itself, as is required of an assessment in section 7, are so
29 fundamentally intertwined with all the effects, not only must there be an assessment
30 under section 7 but there is also required to be an assessment in terms of what
31 Mr Chairperson referred to as the comparative exercise of effects, as well. And we
32 say this, because assessment of effects is fundamental to assessment of whether there
33 is inconsistency with the Treaty Settlement and the obligations contained therein.

34 **Mr Muir:** But I think that you earlier invited the Panel, by reference to Justice
35 Palmer's decision, to say that, you know, the considered response of iwi in relation
36 to an application such as this, cannot be inquired beyond, or behind ...

37 **Ms Buxeda:** That is correct.

38 **Mr Muir:** ... in terms – in terms of cultural effect. Undoubtedly the law of New
39 Zealand. So, it being apparent that Kā Rūnaka's response here is demonstrably a
40 considered response ...

1 **Ms Buxeda:** Correct.

2 **Mr Muir:** ... and it has articulated various, multiple cultural objections to the
3 proposal, does that mean that this Panel ought not to inquire behind that, and that
4 effectively at that point you say section 7 is engaged and that is the end of the matter?

5 **Ms Buxeda:** Fundamentally, yes.

6 **Mr Muir:** Fundamentally, yes. Right.

7 **Ms Buxeda:** However, we would seek that the Panel assess and conduct the
8 comparative exercise under section 85 in addition to this.

9 **Mr Muir:** Right. So, I mean this is an issue that I've reflected on since I accepted
10 this appointment, and it was identified early in the process with the Panel Convenor
11 that a section 7 argument would be raised. The nature of that argument was not
12 clearly defined until the responses came in approximately two weeks ago. But in
13 reflecting through February as to how one would deal with a section 7 argument, and
14 whether it should be regarded as a, could I call it a gateway issue, something like
15 that? And then was it appropriate to actually deal with that completely independently
16 and effectively first up. And then run that, if necessary, into the court structure, by
17 way of appeal, and right up through the appellate courts no doubt, before everyone
18 spent all of their time, energy, and resource on the hugely complex technical and
19 other issues which inform ultimately the comparative analysis, in addition of course
20 to the cultural aspects that inform that analysis.

21 But you're really saying, which is I think probably provisionally the point that the
22 Panel has reached, that we must consider this as a standalone legal argument. But
23 you're not seeking that it be – it be ruled upon as a preliminary point, because you
24 invite us in your legal submissions to move from that starting point into the section 85
25 analysis, heavily weighted you say by the severe adverse impacts which culturally
26 this application raises. Correct?

27 **Ms Buxeda:** That is a correct and concise summary, thank you.

28 **Mr Muir:** Thank you. I've interrupted you quite – far too much.

29 **Ms Buxeda:** No, I appreciate this. I think this is probably, the discussion format is
30 probably the best way, and I hope for the Panel as well, to work through these issues.
31 So if this is – I'm very, very happy to continue ...

32 **Mr Muir:** Thank you.

33 **Ms Buxeda:** ... this line of questioning.

34 **Mr Muir:** Thank you. Well, I'm most appreciative of the clarity that you've brought
35 to those issues, which have been troubling me.

36 **Ms Buxeda:** Thank you. Are there any more questions from the Panel on that point?
37 With the permission of the Panel, I will move onto my ...

38 **Mr Muir:** Yes, thank you.

1 **Ms Buxeda:** Thank you. That concludes my legal assessment of what I see as the first
2 and the second step in respect of section 7, and I will call Mr Dreaver and Mr Ellison
3 very soon. I would like, however, to make a few comments on the Applicant's
4 approach, given that we have now received their legal submission which, in my
5 submission, are incorrect on a number of points.

6 The Applicant's claim that commitments contained in the apology are not binding on
7 Matakanui Gold Limited and the Panel, in my submission, demonstrates a complete
8 lack of understanding of how Treaty settlements work, and further, is incorrect in
9 law. I submit to the Panel that apologies are a key part of Treaty redress. Treaty
10 redress cannot simply be delineated into obligations and non-obligations. They are
11 a cohesive approach to righting wrongs, and setting out a path for the future. The
12 establishment of obligations in the apology are set out in the evidence of Mr Ellison,
13 and reiterated in the evidence of Mr Dreaver.

14 Secondly, as traversed, the Fast-Track Act imposes the requirement of the Panel to
15 act consistently with obligations under Treaty settlements. The Ngāi Tahu Treaty
16 Settlement establishes obligations in regard to Ngāi Tahu holding rakatirataka. The
17 proposal's inconsistency with holding and exercising rakatirataka are clearly and
18 irrefutably established through evidence submitted on behalf of the Rūnaka, who are
19 recognised as the authority on such effects.

20 Fundamentally, as we traversed in questioning, I don't consider that it is for me to
21 set out the substance of something so inherent to Kā Rūnaka in my legal submissions,
22 and this is set out in the evidence of Mr Ellison, who is appearing before the Panel to
23 speak on this. And with this I would like to invite please, first Mr Mike Dreaver to
24 address the Panel with his significant expertise and experience in Treaty settlement
25 negotiations, and the substance and status of those Treaty settlements.

26 **MS BUXEDA CALLS MIKE DREAVAR**

27 **Mr Muir:** Yes. Yes, thank you very much, Mr Dreaver, and thank you for making
28 available a draft of your intended evidence last week, received on Friday afternoon.
29 It has been most helpful to review that in advance. Thank you.

30 **Mr Dreaver:** [Māori greeting and introduction] Thank you for hearing me, and again
31 thank you for accepting, yourself and the Applicant, accepting my evidence so late
32 in the day. I was brought into the reserves bench pretty late, in the middle of last
33 week. So it's been a bit of a rush. I just thought I'd give a bit of a summary rather
34 than try and read out of my evidence. There is one bit of the evidence I just do want
35 to correct, is the second word, where it says, "I hope the qualifications of a BA LLB".
36 I actually do have those qualifications. But, I wouldn't read too much into the LLB
37 side of things.

38 So, my summary is essentially that, as already discussed, section 7 of the Act states:
39 "That all persons performing, and exercising functions, powers and duties under this

1 Act must act in a manner consistent with the obligations arising under existing Treaty
2 Settlements.” And section 85 states that the Panel, yourselves, “must decline an
3 approval if the Panel considers granting the approval would breach that section 7”.

4 From what I understand, the Applicant’s under the impression that Treaty settlements
5 only affect the rights and interests of iwi and the Crown, not third parties. And if
6 you’re planning to do something on private land, you don’t have to pay attention to
7 Treaty settlements, they’re not relevant to you. The Applicants bought, or are buying
8 the land, from a private landowner. The gold is owned by the Crown. As a result
9 the Applicant, Kā Rūnaka, is no more than a stakeholder. My evidence is that the
10 Applicant’s wrong on all of these counts. Treaty settlements clearly affect the rights
11 and interests of third parties. They don’t confiscate private property. But they may
12 affect how I can behave, and what I can do on my property.

13 Rangatiratanga, or rakatirataka, it’s an obligation under the Ngāi Tahu Treaty
14 Settlement. In some ways it’s the beating heart of the settlement. The Crown
15 acknowledges that it is required to respect and protect the rakatirataka of Ngāi Tahu
16 Whānui. By incorporating those Treaty Settlement obligations into the FTA process,
17 the Crown makes it clear that decision makers have a responsibility to ensure that
18 these obligations are upheld. And this means, I think, that the Panel has to examine
19 whether the way that the Applicant has interacted with Kā Rūnaka is consistent with
20 respect for rakatirataka.

21 Assessing this is a matter for judgment, and I’ve suggested a few tests of whether a
22 minimum standard of respect for rakatirataka has been demonstrated at a process
23 level. Those tests, my first cut really, they’re basically good manners, good faith,
24 behaving with honour and courtesy.

25 **Mr Muir:** So this, however, this is an objective test that the Court – that the Panel
26 would – old habits die hard – the objective test that the Panel would reflect on, it’s
27 not, as was as counsel suggested, simply Kā Rūnaka’s say-so that it regards the
28 process as deficient. We would be required to look at the process and make our own
29 assessment as to whether it met the minimum requirements of the expression of
30 rangatiratanga in the Settlement document?

31 **Mr Dreaver:** I think that is your responsibility as the decision makers, ultimately. But
32 Kā Rūnaka’s view, and evidence as to the nature of that engagement, consultation,
33 relationship is going to be a very important factor.

34 **Mr Muir:** Is it elevated quite to the standard of what Justice Palmer was saying in the
35 decision that counsel referred to? Whereby an informed assessment is definitive. An
36 informed assessment on the part of Kā Rūnaka or adequacy is itself definitive and
37 can’t be inquired behind? It doesn’t seem to be quite in that category, does it. Can
38 you help me on that?

39 **Mr Dreaver:** My, yeah, I’m not sure. I’m not – I haven’t actually explored. I’d have to
40 think a little more about that. But certainly I think that ultimately it can’t be just for

1 Kā Rūnaka to say, “we don’t like you and therefore we’re going to decide that you
2 haven’t engaged, interacted with us effectively”.

3 **Mr Muir:** Adequately, yes.

4 **Mr Dreaver:** I don’t think it is an automatic veto.

5 **Mr Muir:** Yes. Right.

6 **Mr Dreaver:** The next sentence I say is, it’s harder when you get to outcomes. So it’s
7 not to suggest it’s easier when you get to process. But I think in terms of trying to
8 develop a test as to what is an outcome with respect to rakatirataka, I think it’s
9 impossible to predetermine really what amounts to a substantive acknowledgment of
10 rakatirataka, because situations differ so much. People, place, project, issue, time,
11 all of those are going to be relevant. But I have suggested a number of criteria that I
12 think could be a useful guide at a generic level. Questions that you might ask when
13 looking at an outcome. But again my understanding is that Kā Rūnaka are of the
14 view that the responses proposed by the Applicant fundamentally fail to address those
15 outcome issues, from my reading of the cultural impact assessment, and the brief
16 conversations I’ve held with Kā Rūnaka in the last few days.

17 So finally, in my evidence, I touch on three of the specific redress instruments in the
18 Kāi Tahu Settlement that are relevant to the application. Together, those instruments
19 illustrate several dimensions of the iwi and hapu relationship with their environment,
20 and how they exercise their rakatirataka.

21 First, is the critical importance of fresh water as a source of life. The second is the
22 importance of indigenous flora and fauna, and the kaitiaki responsibility that
23 Kā Rūnaka have to care for that indigenous flora and fauna. And the third dimension
24 is the importance, and these are all inter-related, the importance of mahika kai or
25 mahinga kai, the ability to harvest natural resources for sustenance and to sustain
26 others through manaakitanga.

27 So, in summary, that’s my attempt to summarise briefly, turn my six pages into
28 probably five and a half pages, I think.

29 **Mr Muir:** Could I just come back to you on an issue that’s already scoped with
30 counsel when we talk about the substantive proposal as opposed to the prior level of
31 engagement. Is Kā Rūnaka’s rangatiratanga capable of being – capable of being –
32 how would I describe it – met, satisfied, by the imposition of appropriate conditions?
33 To take an example, from the Waihi mine application where one of the outcomes
34 there was the establishment, or endowment, of an effectively perpetual trust for the
35 rehabilitation and management of this land post closure. I’m just really scoping ideas
36 at the moment. But, is something, and is there the potential within this context, that
37 rangatiratanga could be recognised by giving a high level of responsibility, oversight,
38 and authority to Ngāi Tahu in the operational and post-closure phase, and fund it
39 accordingly?

1 I'm just trying to explore – I'm not suggesting that as some – some balm for all of
2 the problems that have been identified. I'm just trying to almost test it as an
3 intellectual issue as to whether, again, the issue that I raised with counsel, is the die
4 cast irreparably? Or, are there – are there ways in which these objections can, or
5 could be met?

6 **Mr Dreaver:** In part of the answer to that, probably most of the answer to that, I think
7 should – is an answer from Kā Rūnaka. But in terms of engaging with it as an
8 intellectual proposition, I think it's very difficult when the process is at this stage,
9 and when, from what I can see, the meaningful efforts to engage, and you know the
10 closest attempts to engage with Kāi Tahu as people of rangatiratanga, only started in
11 the last year, year and a half.

12 So, I do a lot of work in the last 10 years building partnerships for infrastructure
13 projects, with their roads, or golf courses, or hot pools, or energy projects, and one
14 thing I always insist on to my clients, if they're private sector people is to say, "Don't
15 wait until you're ready to lodge your consent. You start the relations, you come to
16 build a relationship and you co-create, and you don't deliver a whole swag of
17 information and then ask someone to comment on your solution. You co-create. You
18 build".

19 So there's an element of co-creation which I think is really important to an effective
20 rangatiratanga compliant process. So the risk of, as you said, putting the balm on or,
21 yeah, could say, putting lipstick, you know it could be a lipstick on a pig sort of a
22 solution to try and throw a – and I know it was just one example.

23 **Mr Muir:** Yes.

24 **Mr Dreaver:** But to say, "oh let's set up a bond, or a fund", or whatever, it's – it's yeah,
25 I'm getting into lots of clichés – horse has bolted, stable doors, and all those sort of
26 things. So, there's, I think there's a real challenge, and I think Mr Ellison will
27 probably have a lot more to add to this, but I think it's very difficult when you've
28 gone so far down a process before engagement starts. And I think, again, without
29 having, because I am new to this, but I understand there are concerns about issues of
30 good faith, and sticking to agreements, that have happened over the last week, or two
31 weeks, and it's quite difficult to backpedal and say, "let's start all over again, and
32 think about how we could do this differently".

33 **Mr Muir:** Right.

34 **Mr Dreaver:** It might be better to relodge. I don't know how that's actually done. But
35 yeah, so sorry, it's a long answer to, but not a very easy question. But yeah.

36 **Mr Muir:** I'm sorry. Do any other Panel members have any questions of
37 Mr Dreaver?

1 **QUESTIONS FROM THE PANEL**

2 **Ms Sweetman:** Mr Dreaver, thank you. Were you able, in the limited time since you were
3 subbed on the bench, able to review the Applicant's response to Kā Rūnaka's
4 evidence, in terms of Mr Springs' evidence in particular, or response, includes quite
5 a long list of the engagement. Well it might've been Mr Cook's, one of the two. Do
6 you have any comment on that?

7 **Mr Dreaver:** Part of it is the response I was just giving to the Chair really, which is it
8 seemed to start quite late. There's a flurry of emails and to-ing and fro-ings. It's a
9 long list of stuff happening over the course of about a year, and sometimes emails
10 flying back and forth. Again all you can do is read. It felt, to me, like I couldn't read
11 too much into the quality of it. It's like firing emails back and forth doesn't
12 necessarily amount to meaningful respect for the party you're dealing with.

13 So clearly there's, you know, it's great to record all these things, but what you don't
14 see underneath that is, what you don't see underneath that is the conversations which
15 might have flowed, or the quality, the substance of the engagement.

16 **Ms Sweetman:** Thank you. Nothing further.

17 **Mr Muir:** Thank you. Well thank you very much, Mr Dreaver. I've found your
18 evidence very, very useful in trying to give some form to what is a difficult argument
19 and the evidential foundation you've provided is very useful, I'm sure, to all of the
20 Panel as we grapple with this issue. Back to counsel.

21 **Ms Buxeda:** Thank you very much Mr Chairperson. Thank you Mr Dreaver. We would
22 like to ask Mr Edward Ellison to provide a summary of his evidence to the Panel and
23 remain for questioning.

24 **Mr Muir:** Yes.

25 **MS BUXEDA CALLS EDWARD ELLISON**

26 **Mr Muir:** Thank you Mr Ellison.

27 **Mr Ellison:** [Māori greeting] I'm providing here a summary of my evidence to you.
28 So look, the core values of our association, relationships with our place, our rohe, the
29 core values relate to mana, tapu, whakapapa and mauri that frame our manawhenua
30 tānga or our world view. And that's very extensive and timeless, in respect, in our
31 beliefs. It goes right back to the time of creation, and including to that celestial
32 element, and relationship to the earthly world.

33 So, it's a web of whakapapa, and the function of tapu noho, which is the ordering of
34 access, use to our taonga. Tapu noho being where there's restrictions, or apply noho,
35 which makes access available. So it is a balancing act there, in the way that we relate
36 with our surroundings, our values, our interests, our whenua.

1 Rakatirataka has an origin of right, or what we call a take, and that's very important.
2 Not anyone can have rakatirataka in a given place. There's a particular process to
3 confirm what your right is. And there's a number of those, including an ancestor
4 may have named the place, or discovered the area. Or, it may have been gifted.
5 There's a number of ways. There's six or seven different ways to obtain and hold
6 your rakatirataka or your take to a place, which trace how a hapū or iwi have that
7 take whenua, inherited right to land.

8 So I, in my evidence, I use the example of Rākahautū, who was probably, in our
9 traditions, the first human to traverse the interior of Te Waipounamu. That covers
10 all the iwi but as you come into different regions there are various versions of that.

11 So rakatirataka draws on the values base to what is tika, or correct. Correct practice
12 in a particular circumstance. And there are tohu or guides to that exercise, including
13 are there trails there. Are there noho waka, or places, camps. The wai, the
14 relationship with the water of the place. Taoka, mahika kai, and our pūrākau, relating
15 our stories on the landscape. Place names, wāhi tūpuna. How did our people use
16 that place and relate, and what did they leave there as tohu for us, current generations.
17 So, I explain rakatirataka is about having the mana, or the authority to give effect to
18 Kāi Tahu culture and traditions, and the management of the natural world, an exercise
19 that includes not encumbering our descendants with irreversible environmental
20 damage.

21 So, my evidence also goes into that connectedness from mountain to sea. And in the
22 Otago region, the central importance in that of water, rivers, lakes, wetlands and in a
23 broad range of customs, including mahika kai, that draws our people into those
24 places. So the Kāi Tahu relationship with Otago rivers, lakes, wetlands and moana,
25 in the broader environment, right to the sea.

26 My evidence on wāhi tūpuna expands on connection to ancestral places, landscapes
27 and taoka in Central Otago, and I included an example of wāhi tūpuna in the evidence
28 that we have met in preparation for the Central Otago District Plan, and the concept
29 there in, of putake mauka, or whakapapa connection to mountain and water.

30 I also refer to our ecosystems, habitats and indigenous species and through which
31 they survive and how they thrive. It's taoka to us, of a whole system approach to the
32 sustenance of land, water, and ecosystems. I did note that the taoka species listed in
33 the Settlement Act were not an exhaustible list. The provisions relate to the
34 management and recovery and functions/duties of the Director General of the
35 Department of Conservation and their requirement to engage with us in that work.

36 In the Ngāi Tahu Settlement Act, in respect of that I refer to the many landscape scale
37 values in Otago that have been lost or compromised prior to that Settlement Act and
38 the intent of the Settlement Act to have that recognised and understood. To ensure
39 that our Kāi Tahu, our rakatirataka, was not ignored in the future. To give notice to
40 future generations that the Crown honoured that pledge, and apologised, in fact, for

1 past demeanours and to ensure that they did not lump our future generations with a
2 repeat of those earlier decisions and impacts on our people.

3 At my paragraph 87 I state the Settlement has not led to Kāi Tahu being able to turn
4 a metaphoric corner. That is, the sustainable environmental outcomes remain a
5 significant challenge for current and future generations. That is, the Settlement Act
6 did not automatically fix those things. It is very much a work in progress.

7 In respect of the MGL proposed mine activity, as it stands at this point, it has a
8 reductive impact on the relationship and functional role of kaitiakitaka, as we would
9 normally exercise on a proposed plan, policy, or development of any reasonable
10 scale, such as that. The magnitude of the proposal has a huge significance in that
11 respect. I believe the gold should be left in situ, as the landscape, habitat and whenua
12 should also be, and the wai remain as is, sending a notice to future such applications
13 to aspire to higher standards of respect, engagement, environmental husbandry and
14 better consideration of the interests of future generations, who will be custodians of
15 the residual effects of any mining activity.

16 Thank you, Mr Chairman.

17 **QUESTIONS FROM THE PANEL**

18 **Mr Muir:** Thank you Mr Ellison. Could I just ask one or two questions?

19 **Mr Ellison:** Certainly.

20 **Mr Muir:** My understanding of Kāi Tahu's position is that its rakatirataka could
21 never be appropriately acknowledged in the context of what I had earlier referred to
22 as an industrial scale mining operation. Is that fair?

23 **Mr Ellison:** The experience has been, in the past of course it was ignored. Currently,
24 post the Settlement we have built better relationships, and on a minor scale we are
25 able to engage and develop conditions. On big scale activities, long term proposals,
26 we have found that increasingly the earlier the contact and engagement, genuine
27 consultation, and engagement in working through, understanding our proposals and
28 our values, given sufficient time there are potentially ways to address rakatirataka.

29 In the context of this proposal, the scale and the speed of the process, and the limited
30 consultation and inability to digest the technical information, makes that difficult.
31 And as we've evolved and understood how better to engage and sort through these
32 matters at a rakatirataka level, it is not conducive, the current process, as I can
33 understand it at the moment, to an easy way to address that. We're not saying that
34 rakatirataka has a veto, or stops development. We are, as a people, reliant on that
35 ourselves, and understand the importance of that going forward. We are a pragmatic
36 people. Building of relationships is a very important part of that process, that hasn't
37 exactly been achieved in this circumstance.

1 So it's a difficult question to answer, sir. But I think that would be my response, at
2 this stage.

3 **Mr Muir:** So in some ways it looks like the deficiencies, and the consultation and
4 engagement with Kā Rūnaka, significant that they are, become slightly, could I use
5 the word "academic", in the context of a proposal which was always for an open cast
6 mine with diversion of water courses, loss of wetlands, impact on landscape, impact
7 on the ecosystems at such a level that Ngāi Tahu's rakatirataka could never be
8 adequately recognised? There's no – could I put it this way – a mine in that
9 environment, which used traditional methods of underground mining or something
10 of that, may be an entirely different species of application. They may engage
11 significantly different considerations, environmentally and culturally, because the
12 landscape is essentially left intact, after removal of the necessary equipment.

13 This was always, presumably because the economics of it drove it, this was always
14 an open cast proposal and has never been advanced on any other basis, other than the
15 underground workings which would occur in combination with the largest of the
16 open cast pits. To cut through it, this was never going to fly, was it, no matter how
17 much engagement there had been in its essential terms? Is that fair?

18 **Mr Ellison:** Well in the first instance, those values I mentioned about mana, tapu,
19 Māori whakapapa, yes, the proposal was alienating us from ...

20 **Mr Muir:** Yes.

21 **Mr Ellison:** ... that very serious issue from our perspective, for a start. Yes, it has that
22 alienating effect, and that does make it difficult for us to work through, unless, you
23 know, and then we get to the avoid, remedy, mitigate level, if it were, for example,
24 to go forward. But in order to engage on that, it is difficult for us to engage with,
25 work through, develop responses, when we fully still don't understand the full total
26 impacts, I would say, even post the proposal. So there's limitations, at the moment,
27 that does make that difficult for us to answer.

28 But you are right. The scale of it is significant. Industrial scale. I don't think though
29 the critical parameters of engagement, consultation have been reached where, at least,
30 we have an understanding and the Applicant understands rakatirataka, what that
31 means to us. It's not about a few conditions and some avoid, remedy, some
32 mitigations. Scale requires scale of relationship, understanding, to take us to a point
33 where there are, and I don't know the answer to that, because we haven't had that –
34 we're not even at that, even got to that point to understand the possibilities.

35 In other arenas we have had issues for 30 years with some sort of proposals on marine
36 reserves off our coast. It took 20 years to get to a point where we could find a way
37 forward with the Department that recognises our rakatirataka, and in a way that
38 engages us and doesn't alienate us ...

39 **Mr Muir:** Right.

1 **Mr Ellison:** ... from a marine reserve, spatial place. Critical piece of work, but it took
2 30 years and they've yet to be gazetted in the winter. But I'm just giving you an
3 example of scale. Relationship, the depth and breadth, and the importance of our
4 rakatirataka after suffering five, six generations of complete reversals on those fronts.
5 So that's the importance to us. And for a company to come from another country
6 and consider that those things are not important, or don't apply, making those
7 statements publicly makes that, I think, exemplifies what I'm saying. We are not
8 opposed to progress. If, but progress has got to be carefully worked through and
9 identified.

10 **Mr Muir:** Yes, and your strong message is rakatirataka cannot be conditioned away.

11 **Mr Ellison:** No, that's right. Yes.

12 **Mr Muir:** It is an organic to respect your – if I could just paraphrase what you're
13 saying is that recognition of it, from your perspective, is an organic process which
14 must develop over time. It can't just be by stroke of carefully crafted lawyers' pen
15 acknowledged?

16 **Mr Ellison:** Agreed entirely, and the gems come out of those processes. I cannot tell
17 you what that might be. But generally when that works, you get the magic of the
18 relationships and things that work in place, retaining those values, or acknowledging
19 those values that are important to us intergenerationally, and importantly, looking
20 after and ensuring future generations are not encumbered by our actions.

21 **Mr Barry:** Could I just ask a question about the rangatiratanga and the concept? And
22 maybe one way to think about it is what limits, if any, there are on that. Clearly it
23 means more than just consultation. I think Mr Dreaver talked about it meaning the
24 right to co-create perhaps. And are we to take that that applies to any third party
25 property in takiwā?

26 **Mr Ellison:** Yeah, I think there's a concept of utu or reciprocity. That's a very
27 important element of how we exercise. It's not a one sided affair. We live with our
28 Treaty partners and we seek to work and live with them, and in partnership is very
29 important to us. So yes, if – if that helps you, our people, you know, there's that
30 manaakitaka. Look, around those values I mentioned there's concentric values that
31 all interact. Many of them, including manaakitaka, that are important as well. It's
32 important to us to not be mindful of other people's interests and how that works and
33 intersects with us. So rakatirataka, there's multiple values involved, at play,
34 depending on the circumstances and in particular, the people we're relating to. I hope
35 I'm answering – am I answering your question, sir?

36 **Mr Barry:** I think there's two arms to it. There are those values, and are there trade-
37 offs potentially, between the values?

38 **Mr Ellison:** Normally the values are applied in a way that their integrity remain. It's
39 how we work. We understand and are mindful of our role, function. Kaitiaki role,
40 of course is quite important, if we're talking environmental matters, and we do seek

1 to achieve balance in the way those matters are done. As has been mentioned, very
2 difficult in this industrial scale activity, but the same principles apply. We seek
3 answers, utilising our world view, relationships, understandings, and the exercise of
4 our rakatirataka.

5 **Mr Barry:** I mean Ngāi Tahu, for example, has owned a number of dairy farms, for
6 example, hasn't it? And, I guess that there may be some balancing required there,
7 for example?

8 **Mr Ellison:** Yeah, well they're outside of my takiwā but I am aware of them and I'm
9 well aware that the local rūnaka have had huge input into sustainability of those
10 farms, but I'm not able to answer in detail beyond that. But yes we, as an iwi, do
11 have a commercial arm who are required to, you know, return economic benefits.
12 But there is a strong onus on them to work and function within the parameters of our
13 values, relationships with our environment and responsibility as kaitiaki, which is
14 the, effectively, the exercise of rakatirataka.

15 So, in part, to answer your question about rakatirataka, the practical expression of
16 that in part is the function of kaitiaki and how we apply that, bearing in mind all of
17 those values we have to balance, and ensuring that we're not diminishing future
18 opportunities.

19 **Mr Barry:** Thank you.

20 **Ms Sweetman:** If I could just jump in with a question. Mr Ellison, did you read through
21 Mr Dreaver's evidence in terms of what he said would be a good process? Do you
22 agree with that?

23 **Mr Ellison:** Yes. Yes, I did Madam read Mr Dreaver's evidence and do agree with his
24 summary, yeah.

25 **Ms Sweetman:** There have been some other fast-track applications, large scale
26 applications recently. So one I think was just consented last week, or the week
27 before, Southland Hydro. Again reasonably large scale. I'm not sure if you're aware
28 of it or not, but if you are, how would you compare how those projects have occurred
29 and compared to what we are considering?

30 **Mr Ellison:** I'm not particularly familiar with the particular project. I couldn't say I
31 have – it's outside of my – our takiwā again, our hapū. Outside of our hapū takiwā.
32 So I'm not required to be, how would you put it, deeply conversant with the process
33 or the activity. So I'm sorry I couldn't probably honestly answer that question.

34 **Ms Sweetman:** That's fine, Mr Ellison. Perhaps counsel can, if they are aware of the
35 recently approved Hydro and are you able to tell us any comparisons?

36 **Ms Buxeda:** Thank you for the question, Ms Sweetman. I am not in a position to
37 comment, or provide comparisons on how that was approached at this stage, not
38 being involved in the preparation or consultation for that project.

39 **Ms Sweetman:** That's fine, thank you.

1 **Ms Buxeda:** Thank you.

2 **Mr Kensington:** If I may ask a question, Mr Ellison. Thank you for your evidence. And
3 it's been something that's been on my mind, from a landscape architectural point of
4 view, since starting to look at this application, and you mention it in your evidence.
5 Place names. What's the significance of Matakanui as a place name? I couldn't find
6 it. I've been looking for it, and I couldn't find that in the evidence.

7 **Mr Ellison:** I'm not sure if it's in our Ngāi Tahu atlas. But it was a place on the eastern
8 side of the range, or there is a place with that name. But I understand it is also the
9 name for the part of that range. So all place names are important to us. They, you
10 know, 70 per cent of our land names in Te Waipounamu disappeared off the maps.
11 And so it's a big project of ours to slowly reinstall them. Even if it's on our own
12 mapping system. But they have been authorised by the New Zealand Geographic
13 Board, our Kā Huru Manu atlas. So, other than that I, yes, that's – other than to
14 say they are very important to our connection to our landscape.

15 **Mr Kensington:** Thank you, and I guess the map that you've provided in your evidence
16 is helpful in that regard. And just to provide context for that, can you just explain
17 where that is in a process, that map?

18 **Mr Ellison:** I understand the Central Otago District Plan is still, well they've been
19 halted, I think, District Plans, Regional Plans, but it was due to go forward. And so
20 we pre-empted that process by producing that map, and did a zui actually on Waitangi
21 Day during Covid Lockdown, as a way to reach out to the community. Because we
22 did the same process in Queenstown Lakes District Council, met a wee bit of
23 opposition, which we worked through over time, and I realised, "oh we need to get
24 in front of this so people are not surprised". And we generally see one was in the end
25 approved without objection ultimately.

26 So that was the purpose of that map, to bring the community forward on what we
27 propose to see in the Central Otago District Council Plan, having earlier experienced
28 what we tried to do under the Dunedin City Council in the 90s and it didn't work.
29 We encountered all sorts of difficulties. So it's a progression in time of ways to bring
30 to the public, community councils, an overlay of our values and wāhi tūpuna within
31 their district plans, and bring us into being recognised, understood. Prior to our
32 settlement no one really knew who we were. So that's all part of our long game.
33 We're trying to help bring these things forward.

34 **Mr Johnson:** Mr Ellison, thank you very much for your conversation. Just a question
35 that I'm mulling through in my mind, as I think through. There's sort of three parts
36 to this application. There's the sort of the mining, then there's the closure, and then
37 there's the longer term handover. But where do you see the importance of the
38 consultation with you playing through those three stages of the conversation?
39 Because one's a scar, and one's a healing, and one's the long term, if you follow
40 my....

1 **Mr Ellison:** Yeah, I'll start with the long term first. From my perspective, a process
2 like that, I don't want to see our people, post closure, put into an alienated situation
3 with the scar. The results of that work I want to see them being enabled to be in a
4 position to do whatever can be done to maintain, as much as possible, equilibrium, if
5 that's the right word. But I think you understand what I'm saying. We need to be
6 enabled. Not prior, during, but it's got to be post as well for us to manage as best as
7 we possibly can, and not on our own resources either, as has been the case in the past,
8 when, you know, when our rakatirataka needs to be functioning at all of those stages.
9 I haven't answered the middle part, because I'm still trying to understand the nature
10 and full scale of the impacts and I think I've talked about the lead in, which is
11 probably inadequate at this – well clearly inadequate at this stage.

12 **Mr Johnson:** Thank you.

13 **Mr Ellison:** Thanks.

14 **Mr Muir:** Do any other Panel members have any questions of Mr Ellison? [No]
15 Mr Ellison, thank you so much for your evidence.

16 **Mr Ellison:** Thank you.

17 **Ms Buxeda:** Mr Chairperson and Panel Members, that concludes my part of the
18 presentation. I hand back to my colleague, Mr Holm.

19 **Ms Sweetman:** Just before you do, Ms Buxeda, sorry to interrupt. What is the case from
20 Justice Palmer that you were quoting?

21 **Ms Buxeda:** *Tauranga Environmental Protection Society v Tauranga City Council*
22 [2021] NZHC 1201 and I'm looking specifically at [66].

23 **Ms Sweetman:** If you could make that case available to the Panel that would be helpful.

24 **Ms Buxeda:** Thank you.

25 **Ms Sweetman:** Is that the Transpower one?

26 **Ms Buxeda:** Yes.

27 **Ms Sweetman:** Yes.

28 **Ms Buxeda:** It is.

29 **Ms Sweetman:** So that's regarding the designation?

30 **Ms Buxeda:** Yes.

31 **Ms Sweetman:** Thank you.

32 **Ms Buxeda:** Thank you. I'll provide that as soon as I can.

33 **Mr Muir:** That case wasn't appealed was it?

34 **Ms Buxeda:** I believe not.

35 **Mr Muir:** No.

1 **Ms Buxeda:** Thank you. I'll hand over to my colleague.

2 **Mr Muir:** Mr Holm.

3 **Mr Holm:** Mr Chairman, as I indicated earlier, we have four witnesses that have
4 lodged detailed evidence already, and I've asked them to prepare a summary for the
5 purposes of today, and I'll call them in sequence, and of course, they're there to
6 answer questions as well.

7 **Mr Muir:** Yes.

8 **MR HOLM CALLS MARK PIZEY**

9 **Mr Holm:** You'll see from the detailed evidence that Mr Pizey is a mining engineer
10 specialist. So that's ...

11 **Mr Pizey:** Sort of public condemnation being a mining engineer. Of relevance to the
12 Panel perhaps is the fact that I was also for a period the Chair of the Business and
13 Biodiversity Offsets Programme, which is an organisation that sought collaboration
14 between Government, NGO and industry for the development of biodiversity
15 offsetting principles. It's based in Washington DC and it's formed the foundation of
16 what is now the principles of biodiversity offsetting adopted by the Department of
17 Conservation and in other parts of New Zealand legislation. So although I say I'm a
18 mining engineer, I do have sympathy for areas outside rocks. I have a couple of
19 pages of summarised evidence here I'll read out if I may.

20 So my submission may be broken down, or summarised, into three parts. The first
21 being the absence of a complete data set to allow for the development of operational
22 and closure management planning at a level sufficient to support the application. The
23 uncertainty over long term management requirements for rehabilitation maintenance,
24 water treatment and biodiversity offsets, and the absence of any provision for
25 management of long term, and in some cases, potentially intergenerational impacts
26 proposed - associated with the proposed evidence.

27 So addressing the first of those. In the absence of the complete data sets, in multiple
28 documents there's reference to there being deficient data sets at this stage. For
29 instance, it's admitted that there is little experience in the rehabilitation of dry land
30 sites, such as those experienced at Bendigo, and I do agree that the further trials
31 proposed to be undertaken concurrent with mining activities will enable site specific
32 techniques to be developed. However, there remains a risk that the proposed
33 outcomes will not be achieved or, if they are, that long term management to protect
34 the rehabilitation from the outside impacts would be required.

35 In addition, the application acknowledges that further baseline data is required to
36 enable detailed water management plans to be developed. Again I am confident that
37 during the operation and immediate post closure phase the uncertainty associated
38 with the absence of a full data set will be overcome. However, this level of

1 uncertainty gives rise to concern that the post closure and long term management of
2 water, and the associated treatment philosophy, as well as the rehabilitation
3 methodology, is not fully understood and poses a risk to the project and the
4 consenting. What, in essence, the Applicant is requesting us to do is concede to a
5 certain loss in exchange for an uncertain redress or gain in the future.

6 My second point relates to uncertainty of post closure management. There are
7 several key areas where management input would be required for a period of post
8 mine closure for a period that exists beyond the absence of the mining company. The
9 rehabilitation of the site, the maintenance of the water treatment systems, and the
10 management of the biodiversity offsets proposed are examples of matters that will
11 require input for substantial periods of time post closure.

12 The application makes no specific reference to the mechanism by which these matters
13 will be managed, the time required to achieve the acceptable standards, or in the case
14 of the offsets, into perpetuity to ensure the gains made are retained. New Zealand is
15 in an unenviable position. You can achieve some biodiversity gain through the
16 management of pests and predators, bearing in mind pre-European times, at least
17 there's an absence of most of those. You can eliminate a rabbit, or a possum, or a
18 deer, or a pig, but unless you maintain that management philosophy, in time the gain
19 you create will be lost. This again introduces a level of uncertainty that could be
20 addressed by declining the application pending further data and the reduction of that
21 risk.

22 And then my last point relates to provision of long term management. As an
23 alternative to the application being declined, and this is my view, due to the absence
24 of the full data set in various areas, and the uncertainty this introduces, the application
25 could proceed if provision is made for uncertainty of future requirements by the
26 provision of long term financial resource that provides funds sufficient to meet the
27 long term. My colleague's lipstick on a pig, which I don't agree with entirely, there
28 will be some actions will be essentially perpetual, certainly intergenerational, and
29 that is outside the scope of any of the funding arrangements I've seen reference made
30 to in the evidence, or indeed beyond the existence of the mine, likely existence of the
31 mining company on the site.

32 I do note that in their reply to evidence to the Kā Rūnaka, several experts have made
33 reference to this non-wasting endowment fund, which is exactly what I was
34 proposing. In some cases a reference is made to the bond being used as a source of
35 financial support for that long term work. In my experience a bond tends to end at
36 the end of the operation. Once a set of closure criteria have been established, and is
37 normally then relinquished, it being an instrument running essentially a policy that
38 the Applicant would have, or the consent holder has with a funding entity. It is
39 appropriately scoped by the current proposal to the scale of the work that's being
40 undertaken at any time. But I've seen no reference to how that would be quantified
41 post closure. And admittedly at some point closure standards would be reached. My

1 point is that it is unlikely that those standards will be maintained unless there is some
2 maintenance regime, and the funding of that is at the moment silent.

3 So I do believe that this concept, the non-wasting endowment fund, or similar, is
4 certainly appropriate. And sir, you made reference to the Martha Trust in Waihi and
5 that is a fine model of such a thing. Although it doesn't address biodiversity.

6 The mine has a footprint of over 600 hectares and it will therefore rank as being
7 significant when compared to other large scale mining projects in New Zealand. It
8 is not a small operation, despite what some people would have you believe. Whilst
9 the project lies within a disturbed footprint and there are some ecological values that
10 have been compromised as a result of that historic mining, there are both vegetation
11 and vertebrate species that are either absent or limited in number outside the project
12 area, and these would be significantly impacted or lost as a result of mining activities.
13 And my colleagues will address much of that. Whilst the rehabilitation of the
14 majority of the project area is proposed, there will remain areas which no
15 rehabilitation is possible. The "Rise and Shine" lake will remain as a lake, where
16 there is not one at present. And it will be surrounded by high walls which are
17 admitted to be potentially unstable and to which public access should be restricted.
18 This represents a significant loss of amenity value. Also within the footprint the
19 existing springs that exist up the valley will also be lost in the main, and there is no
20 way of redressing that I can see and not without compromising the quality of the
21 water or the inherent cultural values of those assets.

22 In addition to the three open pits proposed, the mine itself will be extended by the
23 use of twin declines to provide underground access to the ore body at depth. The
24 level of study and the development of detailed underground mine planning is, in my
25 opinion, at a pre-feasibility study level at this stage and lacks sufficient detail to
26 enable sensible commentary or to enable determination of the likely impacts of this
27 part of the proposal.

28 Given the fluidity in the value of gold and the now limited exploration work, there is
29 every possibility this resource will extend well beyond where it is currently defined
30 and that would be probably underground, and consequently I believe that, at this
31 stage, I'm not of an opinion, not in a position, to express an opinion as to the
32 feasibility of the underground mining. I'd like some more information before I could
33 do that.

34 I do note that substances modelled to be relatively small, at around 0.2 of a metre and
35 there is acknowledgment that the ground water will need to be pumped and treated
36 during operations, and probably in a period post mine closure. I do support the use
37 of cemented backfill. That seems to be a sensible way to deal with tailings, which
38 would otherwise have to be retained in the structure up at the top of the valley.

39 My one final point is, the extraction of gold will utilise cyanide in a relatively
40 standard industry application. I don't have a concern over that. There perhaps should
41 be some consideration of how you limit the impact of use of that cyanide on the

1 environment, such as stormwater management and spillage management. But also I
2 believe that requiring the Applicant to sign up to the International Cyanide Code
3 would be an appropriate step to take. It mandates certain activities and requires
4 routine audits of the operation to see compliance. And that properly represents best
5 practice internationally, and I would advocate for that to be included in any consent
6 that were granted.

7 **Mr Holm:** Thank you Mr Chair, that's all from Mr Pizey. He's there to answer
8 questions.

9 **Mr Muir:** Yes, thank you.

10 **QUESTIONS FROM THE PANEL**

11 **Mr MacGibbon:** Thanks for that evidence Mr Pizey. I've got a couple of questions for
12 you. You were talking about this funding mechanism, endowment fund, or non-
13 wasting one as other contributors/submitters have referred to as well. Are you aware
14 of any such mechanism, particularly one that looks at long term management, that
15 has been applied to biodiversity across the globe. You obviously have a lot of mining
16 experience. Are you aware of where this has been done successfully elsewhere?

17 **Mr Pizey:** In its application to biodiversity, no, I cannot put my finger on one as I sit
18 here now. I recollect there were as number of proposals for that, for some of those
19 international projects to which I was party, or at least knew about. But none that I'm
20 aware of that have actually been implemented and then maintained.

21 **Mr MacGibbon:** And perhaps the second question, I just noticed in your evidence you
22 referred to with suggestion, your suggestion was to withhold the consent until
23 development of proven rehabilitation methodologies. Do you really think that's
24 practical in this sense, where there is no prior experience?

25 **Mr Pizey:** My point, I think, is probably that the uncertainty that this introduces to
26 the application is something of a risk that I would seek to mitigate or address by some
27 mechanism, such as requiring a proven technique for the rehabilitation methodology.
28 Otherwise we are not dicing with death but we don't know whether or not this is
29 going to work. I'm sure, I know a lot of the practitioners who are involved in this
30 project, given the right resources, everything will be done to try and achieve the
31 outcome. But in the absence of any proven technology, it is an extension of faith to
32 believe that that will happen.

33 **Mr MacGibbon:** Yes, okay. I guess the, from the Applicant's perspective there's a risk,
34 isn't there, too that it could take a very long time until, you know, those solutions are
35 found, because we're dealing with biological entities, you know, that are not
36 engineering, not bricks and mortar, are they?

37 **Mr Pizey:** No, I can't agree more. But, that might then, in turn, turn the tail of this
38 beast into something rather more than we anticipate now.

1 **Mr MacGibbon:** Thank you. That's all I have.

2 **Mr Johnson:** Mr Pizey, I've got a similar question, in a similar line, in terms of one of
3 the challenges is weighing up investment up front to establish a high level of
4 confidence what you say you do is going to happen, versus the amount of investment
5 that might be available in terms of working out how far down the track you go before
6 you apply for your consents. So, in terms of your experience, where would you see
7 – I mean this comes down to a question of baseline information as well as the question
8 you just perhaps answered for Mr MacGibbon – where do you see the deficiencies in
9 the baseline. I know we're going to do expert conferencing on some of the more
10 detailed aspects of this, but where do you, at a high level, where do you see the
11 challenge of baseline information existing?

12 **Mr Pizey:** So the modelling on the water, and water treatment area, is one that is of
13 particular concern. In conversation with the Applicant's expert, there is
14 acknowledgment that this will move from being an active water treatment solution
15 to a passive water treatment solution at some point in the future. But there is no -
16 insufficient knowledge at this time to say when that might occur. And as I see it, in
17 the application as it sits, there's no way that that is being addressed in the event, for
18 instance, the water treatment has to be actively undertaken for maybe a 25 or 50 year
19 period, how is that going to be dealt with, more from a – I don't believe there's not
20 an engineering solution. There is an engineering solution to most things, despite
21 engineers not knowing everything.

22 The reality is that there is no mechanism in the application at the moment that I see
23 that deals with the uncertainty as to how you would undertake that water treatment
24 over the longer period. And indeed, if it moves to a passive treatment, that isn't the
25 end of it. You don't just sort of set that up and walk away. You need to have some
26 mechanism to maintain that into the future. And there's been no real detail that I
27 have seen in the application that addresses that.

28 **Mr Johnson:** And have you seen anything in there that would satisfy you that the
29 Applicant has capacity to, if there was a spill or something detected in ground water,
30 to mitigate that?

31 **Mr Pizey:** Other than capture and treatment, no. And if it's in ground water, I find it
32 difficult to understand how that will occur. Surface water is more easily addressed.

33 **Mr Johnson:** Thank you.

34 **Mr Muir:** I always have something of a sort of, I call it a chicken and egg problem,
35 around these sorts of issues. Were the Applicant to have advanced an application
36 which was extraordinarily detailed in terms of its engineering responses to every
37 conceivable challenge, then inevitably the opponents of the application would
38 challenge the presumptions on which that had proceeded, because they would say
39 you just don't know until you actually undertake the work. And yet when an
40 Applicant recognises the inherent uncertainty of specific engineering responses until

1 the work is underway, it's criticised for that also. Do you think, is it your position
2 that in facing that conundrum this Applicant has failed?

3 **Mr Pizey:** Fallen short of my standards.

4 **Mr Muir:** Sorry.

5 **Mr Pizey:** Fallen short of my standards.

6 **Mr Muir:** Right.

7 **Mr Pizey:** I would have expected there would've been dry land rehabilitation trials
8 undertaken to date, and we'd have the first indications as to whether or not that the
9 methodology proposed was successful. When I read in an application, or in evidence
10 to support the application, that the Applicant actually acknowledges that there's
11 insufficient data relating to water quality and then that work must be undertaken
12 going forward, it smacks to me of being somewhat ill prepared at that point that that
13 was written.

14 **Mr Muir:** Theoretically you could still address such issues by having highly, or
15 clearly defined trigger points and a succession of cascading engineering responses to
16 those trigger points.

17 **Mr Pizey:** You're playing to my sympathy to the engineer in me. Yes, there is
18 always, in my view, a solution that's available. And if you have trigger points that
19 requires steps to be taken, then yes, I believe there are solutions that could be created.
20 But it's the uncertainty that we sit with today, that I'm being asked to accept, that
21 there is an absolute loss. There are three large open pits to be developed. There's a
22 large, engineered landform, a tailings retention structure, a water treatment facility
23 and a processing plant. All of these represents significant potential loss in the long
24 term. That loss is being offset by, if you like, a promissory note that, "we're going
25 to do a good job, don't worry, we've got ya" and I would seek more certainty before
26 I would be in a position to say I would grant the consent unequivocally.

27 **Mr Muir:** And if we move out of say the sort of the hard core engineering issues
28 around, you know, the geotechnical and the water, and the water geochemistry, and
29 those sorts of issues, into the area of biodiversity, which you said you have had some
30 professional experience, and although it's not your principal calling card ...

31 **Mr Pizey:** Correct.

32 **Mr Muir:** ... your position is, well, that can, the biodiversity unknowns are capable,
33 or were capable of being better tested before the application was made in some way,
34 is that right?

35 **Mr Pizey:** My point is that I think the majority of the offset will be created by
36 protection of certain key areas, as well as enhancement of others. And the protection
37 will secure a biodiversity uptick, because if you remove the pests and predators then
38 you will naturally allow for some regeneration of a natural environment that existed
39 pre that state. The moment you stop being there to maintain that fence, or apply that

1 poison, or do whatever measure is taken to ensure that offset is created, then you've
2 lost that gain. So I believe it can be achieved, and I believe there probably are
3 techniques and methodologies to achieve it. But my principal concern there is the
4 maintenance of it. And this speaks straight to what Mr Ellison was saying that, you
5 know, this is intergenerational and goes on for many years, and they don't wish to
6 see a loss associated with biodiversity as part of their kaitiaki status.

7 **Mr Johnson:** Can I just ask a qualification around that, Mr Pizey? Everything can be
8 solved with engineering solutions and we're trying to see eye to eye on that but only
9 if there's enough money, correct? That's the caveat isn't it?

10 **Mr Pizey:** Yes. And during the course of the operation I have no concern. The
11 economic evaluation of this project says that it is profitable and would be able to
12 support the work that will be required. It's after Matakanui Gold have packed up
13 sticks and moved off that my principle area of concern lies.

14 **Mr Kensington:** Thank you. Just a question from me in terms of your experience with
15 other similar projects over the years, and have you had experience with similar
16 projects in similar types of landscapes as this? And have they all sort of left a scar
17 on the landscape, or have there been somewhere they've gone in and extracted the
18 gold, for example, and left it in a state, a landform that isn't scarred, and that is more
19 of a natural appearance at the end of the day when they're all finished? Or is that
20 impossible to achieve?

21 **Mr Pizey:** I believe it's actually impossible to achieve. But if you're dealing with
22 intergenerational issues, and if the rehabilitation of the site goes as planned, then five
23 generations from now the reference point is lost. And so what they see then is the
24 natural state. Although my experience, I've not worked in a dry land, hard rock
25 operation such as this. A lot of the work on alluvial mining you can return that to a
26 state that is very similar to that which occurred pre-mining. Large scale open cast
27 mines leave indelible scars, and it is only through the effluxion of time that you
28 ultimately soften that, or people's perception becomes normalised.

29 **Mr Kensington:** Thank you.

30 **Mr Muir:** Any other questions? Thank you very much. Carry on with your evidence.

31 **Mr Holm:** Mr Chairman, I'll ask Matthew Dale to come forward. He's dealing with
32 ecology.

33 **MR HOLM CALLS MATTHEW DALE**

34 **Mr Dale:** Tēnā koutou katoa. [Māori introduction]. Kia ora. My name is Matthew
35 Dale. I'm an ecologist in support of Kā Rūnaka. I've approximately 25 years
36 experience as an ecologist in Otago, 10 years in local Government, much of which
37 was spent in the Lindis catchment working in the field to develop minimum flow
38 regimes for the Lindis River, followed by eight years with Te Rununga o Ngāi Tahu,

1 still engaged in that same process, which I think took about 15 or 20 years, and more
2 recently five years as an independent consultant, again supporting Kā Rūnaka to
3 make informed decisions and set up processes along those lines, wherever is needed.
4 I'd like to provide a summary of my evidence, but certainly welcome any questions
5 at any point in time in this discussion.

6 A summary of the key issues. From an ecological perspective, the information we
7 have on the project so far is clear that there is several compounding concerns across
8 fresh water, terrestrial and biodiversity domains. The overarching issues. There's a
9 high level of uncertainty and risk driven by gaps in baseline data, affects assessments
10 and insufficient mitigation and offset frameworks.

11 I'd like to break these down into several broad categories. Processes and
12 engagement. The Kā Rūnaka technical advisors were excluded from key technical
13 discussions and workshops with the Applicant and regulatory agencies. For many of
14 these we only found out about their existence when we were reading the submitted
15 evidence. This means that we were only getting snapshots of information as part of
16 what was an ongoing conversation between several parties. It makes it very difficult,
17 as a technical expert, to have completely informed positions when you're only
18 receiving those snapshots.

19 And so it has required a lot of catch up, if I'm honest, to make sure that we are fully
20 aware of the information that has been shared. And knowing that there is gaps in
21 there, a lot of the technical components, or technical consensus that we can reach is
22 through ongoing conversations and those sharing of ideas. And if you're not
23 ingrained in those processes, it's very difficult to be able to reach that position,
24 because you are essentially, as I said, getting exposed to snapshots along the way,
25 whereas most of the other parties involved have been exposed to an ongoing
26 conversation over a period of at least 12 months. So it very much has limited our
27 ability to engage in that process.

28 And I'll contrast that to, you know, a role I have filled across various RMA and
29 indeed fast-track applications, where my role is to start to set up, work with the
30 Applicants, and work with our Treaty partners, to set up those processes from an
31 operational perspective. So it's early engagement with experts across the board, and
32 a conversation about what information gaps exist, what work needs to be done, how
33 that's going to be communicated, where the touch points are along the way, of
34 feedback into that process. And that may be, you know, monthly, or even fortnightly
35 in some cases, discussions where the opportunity is given to engage with Applicants
36 and Treaty partners, including input into draft technical reports. That is what good
37 processes look like to me. And we've been certainly encouraged by other scenarios
38 where we've had that opportunity. It has not been the case here.

39 Moving on to the baseline information, again with that caveat I mentioned earlier. A
40 common issue that has been identified across many terrestrial disciplines is gaps in
41 the baseline data. It's been heartening to see in the response submissions from the

1 Applicant that some of those gaps have been filled. But again there remains
2 significant gaps that make it very difficult to confidently assess the effects, or the
3 appropriateness, of the proposed mitigation measures.

4 Loss of aquatic habitat. The proposal as it stands would result in the destruction of
5 approximately 10 kilometres of perennial stream habitat. While diversion channels
6 and reinstatement are proposed, they can't replicate the ecological function of a
7 natural stream system in the case of the diversions, and there is likely to be a
8 significant impact on aquatic ecology during the life of the mine. In my view, the
9 current mitigation measures are insufficient without more robust monitoring and
10 nutrient limits. Furthermore, the Applicant has not sufficiently considered the need
11 for offsets to address the effects of stream removal and realignment such as galaxiid
12 translocations as identified in my primary evidence.

13 I note that this was, in the one opportunity that we did have to feedback into the early
14 stages of the application, the idea of translocating native threatened galaxiids into the
15 mine area during and then post mine operation, was identified, but not acknowledged
16 or taken up by the Applicant.

17 Moving on to terrestrial ecology. Impacts on lizard populations represent one of the
18 most significant ecological risks to the proposal. The project would likely result in
19 significant loss of Kowarau gecko habitat and current mitigation offset measures are
20 unlikely to adequately address this. The number of lizards that we've been talking
21 about have varied. But certainly up to 750,000 lizards affected within the direct
22 impact area of the mine.

23 And so when we're talking about, you know, offset and mitigation methods – which
24 I get to a little bit later in my conclusion – to my knowledge this is an unprecedented
25 impact for a lizard population. And so, you know, in my view the context for the
26 solutions we look to as far as – well most of it can't be mitigated. So we're
27 immediately moving into offsets. The offsets considered need to be of a comparable
28 scale.

29 Moving on to the lizard salvage and translocation component of the proposal. As I
30 said, the scale is unprecedented. The current proposal, as I understand it, is for the
31 salvage and translocation of 102,000 lizards. I have some experience in this, having
32 managed and led lizard salvage and translocation teams up at Macraes and I can say
33 from that experience that, you know, with a team of six to ten ecologists, looking at
34 a month, a month and a half of work to translocate 3,000 to 4,500 lizards. So it gives
35 you an idea of the scale of work that's needed to do this. And that's not to say that
36 102,000 is impossible and shouldn't be done, but it does require a realistic
37 acknowledgment of the effort that it's going to take. And I believe conditions that
38 are sufficient to ensure that that happens, and aren't shortcut by time constraints.
39 You know, an open acknowledgment of the effort and time this will create – that will
40 be required to do this.

1 There is uncertainty around the suitability and carrying capacity of the receiving sites
2 for these translocated lizards. Particularly for species with relatively narrow habitat
3 requirements, such as Kawarau gecko and the southern grass skink. These are not
4 species that can be sprinkled across a wider landscape. They have much more
5 specific habitat requirements. And so you may take, for example, 40,000 southern
6 grass skinks. If you don't have the carrying capacity within your receiving site for
7 that same amount, most of those, or a certain proportion of those won't be surviving.

8 Pest management. Building on what Mr Pizey was mentioning before, this has to be
9 enduring. If we are moving species into an area that relies on pest control for that
10 population to be sustained, as soon as that pest control is withdrawn, or scaled back,
11 that gain is lost. And if we are talking about permanent impacts of the activity, we
12 need to then be talking about permanent mitigation offsets for the effects of that
13 activity.

14 There's also the interspecies interactions that are of concern. There's a specific term
15 called "mesopredator release". So if you are controlling larger predators, cats, stoats,
16 ferrets, you can get an explosion of mice which actually are a very significant
17 predator for our native lizard, particularly in winter, where our lizards are in torpor.
18 Not quite hibernating but not moving very quickly, and it can fall prey to mice half
19 their size. There's a significant amount of uncertainty as to whether that effect,
20 particularly from mice, can be adequately addressed. And I feel there's a need for
21 more certainty in that space.

22 Offsetting and the long term outcomes. The proposed mitigation and offsetting
23 package does not adequately compensate for the residual ecological effects for either
24 terrestrial or aquatic systems, and I will highlight, in its current state of the
25 application. While opportunities exist for establishing things like non-migratory
26 galaxiid sanctuaries, threatened lizard species translocations that may have
27 historically been at this site, these are not fully developed in my view, or in any way
28 secured.

29 Additionally, there is no clear mechanism to ensure long term intergenerational
30 management and funding of ecological outcomes beyond the life of the mine, and
31 this has been touched on by Mr Pizey. It is noted, however, that within the
32 Applicant's response to submissions, there is broad consensus among the technical
33 experts, the ecology experts should I say, for the need for long term management in
34 the form of a biodiversity advisory group to guide that long term management and,
35 of course, long term and intergenerational funding arrangements for that work to be
36 undertaken.

37 And I'll touch on some of the questions before, ad lib a little bit here, the challenge
38 around, so the detailed methodological response versus an outcomes response. In
39 some cases for this we don't know what we don't know yet. And so there needs to
40 be, I believe, a degree of adaptive management which absolutely needs very clear
41 thresholds, trigger points, and then follow on activities from there. But they do need

1 to be informed by good baseline information, and they do need to be very clear in
2 what triggers them and what the follow on actions can be. That, in my view, is the
3 most appropriate way to deal with that level of uncertainty. And that that process is
4 supported long term by the appropriate expertise.

5 In conclusion, in its current state, the application does not demonstrate that ecological
6 effects can be adequately avoided, remedied, mitigated or offset. Substantial
7 improvements are required, including the strengthening of baseline data, revised
8 mitigation frameworks, particularly for lizards, meaningful offsets and the
9 mechanisms for long term ecological management and funding. There is potential
10 for the gaps identified above to be reduced, potentially not eliminated but definitely
11 reduced, through further expert caucusing and revision of management plans, after
12 which a more informed decision on residual effects and offsets can be made. This,
13 in turn, will require a significant improvement in the level of engagement afforded
14 to Kā Rūnaka mana whenua and their experts than has been provided by the process
15 to date.

16 Thank you.

17 **Mr Holm:** Thank you Matt. Could you please answer any questions from the Panel.

18 **QUESTIONS FROM THE PANEL**

19 **Mr MacGibbon:** Thanks Mr Dale for that. We've got several questions. They may not
20 come in quite the order that makes sense but we'll try our best. Let's start with the
21 lizard side of things. I just noticed that you and your compatriots almost exclusively
22 adopted the lizard evidence given by DOC and those who are submitting in
23 opposition to the application. I just wonder whether you could explain to me why
24 you did accept all the evidence almost categorically without – as opposed to the
25 applicant's lizard experts – and I'd say that on both sides there are people with
26 extraordinary amounts of expertise but I just noticed you've adopted the DOC view.
27 Can you explain why you did that exclusively?

28 **Mr Dale:** Yes, I think part of that is a result of the process – the order of the process.
29 We – having not been given the opportunity to have detailed discussions with the
30 applicant's experts in the form of caucusing and workshops, we were somewhat
31 limited in our ability to engage in both sides – well, all parts of that discussion. That
32 perhaps is not directly answering your question so please answer follow ups – ask
33 follow ups. But I was quite heartened by some of the responses in subsequent
34 submissions from the applicant, in that perhaps in those detailed technical questions,
35 or issues, that the gap is not quite as big as initially was apparent. But also there was
36 strong alignment with a lot of the evidence provided by the submitters that you
37 mentioned with my experience up at Macraes and other sites in the catchment.

38 **Mr MacGibbon:** Okay, so you are agreeing that perhaps the response from the applicant
39 has helped with your understanding of the situation regarding lizards?

1 **Mr Dale:** Most definitely, yeah.

2 **Mr MacGibbon:** We've heard a lot from today about the lack of your involvement in the
3 process, particularly with the experts. From this point forward, and disregard any
4 section 7 type issues, how would you see it best that you and your colleagues are
5 engaged to participate in it and contribute to finding viable solutions, if you like?

6 **Mr Dale:** I think there would be two stages to that, in my view. One would be I think
7 the wider team working with the applicant and submitters on a process to engage in
8 that, and then having the ability for technical experts within their own areas of
9 expertise to be able to have free and frank discussions about the best ways forward
10 across the various issues that have been raised. In an RMA Environment Court
11 setting, I'd call that expert caucusing, which is in my experience an exceptionally
12 useful tool in the absence of the ability to engage earlier on in the process, purely
13 from a technical expert perspective.

14 **Mr MacGibbon:** Several of the responses from the applicant, actually from their experts,
15 have suggested workshops to help develop the management plans. Is that something
16 you would see and you would like to be involved in and should be involved in?

17 **Mr Dale:** Yes.

18 **Mr MacGibbon:** Thank you. I'm interested in your suggestion of translocation of the
19 Clutha – of flathead galaxiids back into that zone. Did you get any engagement on
20 that when you did raise it? Have you raised that with any of the DOC experts, for
21 example, and others who participated in this process?

22 **Mr Dale:** Yes, so it was – the one piece of sort of engagement we had with the initial
23 drafts of some of the technical reports we identified where we felt there were gaps.
24 That was summarised in an Excel spreadsheet and sent back to the applicant. Gaps
25 and potential solutions that we saw, should I say. That particular suggestion was
26 rejected. Within the conversations that I have had with other experts in this field –
27 freshwater ecology – there has been strong support for that concept. You know,
28 across the board for our Otago experts in non-migratory galaxiids, including the Ngāi
29 Tahu representative, on the non-migratory galaxiid species recovery group.

30 **Mr MacGibbon:** Who rejected it, when you say it was rejected? Who was ...

31 **Mr Dale:** I would have to get back to you on that. It was via email with essentially
32 another column added to our feedback. So I would have to get back to the Panel
33 when I can review that email and provide an answer for you. It was unclear whether
34 that had been from the applicant's technical experts or from a planner or project
35 manager – the source of that feedback wasn't clear to me in the email.

36 **Mr MacGibbon:** Alright. And just another question – you've raised this and several
37 others have too. To your mind, the creation of whether it's a biodiversity advisory
38 group or whether it's a management structure or trust or whatever it may be, and
39 funding to support it for the long term, and Mr Pizey was raising this as well, do you

1 support that concept. Would that make a difference to the potential for positive
2 outcomes for ecology from this project – from this application?

3 **Mr Dale:** Yes to both, in that the technical advisory group, or whatever name we
4 choose for it, in my view is something that should be initiated immediately – as soon
5 as the application is granted – or if the application is granted should I say. And that
6 should continue in perpetuity. So then the funding and support of that group would
7 then be taken over by whichever funding mechanism was put in place if that was to
8 occur. So there's two phases to it but the core concept remains the same.

9 **Mr MacGibbon:** Okay, and one last question then I'll hand over to everybody else. The
10 suggestion of releasing or translocating grand and Otago skink to within the fenced
11 areas has been put forward but not as a formal offer of compensation from the
12 applicant. What's your view on that? Do you think there are benefits to be gained if
13 that was offered?

14 **Mr Dale:** I think the core issue is that with 750,000 lizards potentially affected by
15 this, a one for one replacement or offset of those is – there's not the land – it's not
16 feasibly possible to do. So you then move – you can move into a space of bringing
17 in these higher value species and having high biodiversity values as a counterbalance
18 to the sheer volume of lizards that are lost under the application as it stands. I am
19 supportive, as an ecologist, of that concept and there's most definitely a need to get
20 some certainty into what that might look like. As you say, the idea has been floated
21 but from what I've seen it's nowhere locked into the application or the potential
22 conditions. The concept has merit. The devil will be in the detail.

23 **Mr MacGibbon:** Thank you. That's all I have.

24 **Mr Kensington:** I have a short question. You mentioned adaptive management with
25 clear trigger values but you also talk about the uncertainty in the existing baseline
26 data. How do you see – in your opinion is there sufficient information in terms of
27 the ecology to appropriately address the broad adaptive management issues within a
28 management plan?

29 **Mr Dale:** I think to answer that question categorically across all the sub areas of
30 expertise we have across here is probably outside the scope of the evidence I can
31 confidently provide today. I think we can get a lot closer than we are now in our
32 level of comfort around the baseline data by ongoing dialogue between the experts.
33 As I said, it was already evident in the applicant's response to submissions that that
34 gap can be narrowed and I believe it can be narrowed further. I can't say at this point
35 whether it can be narrowed enough until we've had those conversations.

36 **Mr Kensington:** Thank you.

37 **Mr Muir:** A related question. In setting the 140 day reporting time on this particular
38 application, the Panel convenors had in mind a period of around six weeks for expert
39 conferencing. The Panel is about to embark, or invite Chancery Green to conduct,
40 under its ultimate supervision, that aspect of the disposition of the application. In a

1 period of four to six weeks, taking into account the fact that you will be one only of
2 dozens of professionals giving evidence over multiple disciplines, do you think that
3 that is going to be sufficient and adequate time to advance the issues that you've
4 identified?

5 **Mr Dale:** In my view that certainly limits the opportunity to bring in new information
6 to inform those discussions. But as far as the dialogue between experts and
7 consensus, or as close as we can get to it based on expert opinion, it is exceptionally
8 tight but probably doable. I think the outcomes would be improved by a longer time
9 but that is the trade off for the process that we're in.

10 **Mr Muir:** Yes, there's not really the facility – this Panel does not have the capacity
11 to extend time of course, and it's got to operate within a framework which gets us to
12 the finish line in the context of a very complex application and an opportunity of
13 course for draft decisions to be published if it's an adverse outcome, or draft
14 conditions to be published if it is a favourable outcome, well in advance of the
15 reporting date. And probably the convenors' assessment of this up to six week period
16 was about as generous as she thought could be accommodated and I think, speaking
17 for the Panel, I tend to agree that projecting our timeline forward – but of course you
18 raise the perfectly valid point that if at the conclusion of that exercise there is still
19 more work to be done, then the applicant at least has it within their capacity to be
20 able to control that process. Right, thank you.

21 **Mr Johnson:** Can I just ask a quick question. I'm sitting here – my brain's spinning.
22 We've been doing lots of reading so I might actually know the answer to this question
23 once you remind me. If the lizards in the valley – there's a lot of them – so my having
24 done a lot of work at Stockton on the Powelliphanta snails are quite unique to each
25 valley, do we have the same situation with the lizards here, and I suppose looking for
26 a comparison of, you know, in the Rise and Shine, the Shepherd and in the Clear
27 Water and Ardgour catchments, what's the differences between the valleys in terms
28 of all the lizards and things like that?

29 **Mr Dale:** So it is different for all three species. The McCann skink – relatively
30 widespread species. Southern grass skink is much more limited in its distribution
31 within a landscape to, you know, relatively cooler, damper gullies for example,
32 whereas McCanns aren't that fussy. But geographically quite widespread. And then
33 I guess the highest tier of uniqueness, for want of a better term, would be the Kowarau
34 gecko which are very localised. There is ongoing discussion around what percentage
35 of their habitat is encompassed by the mine footprint, which is one of the issues that
36 would be addressed through expert caucusing. But the range discussed of the
37 percentage of their habitat is 7% down to I think in the applicant's response to
38 submissions a percentage point lower. So there's uncertainty there but certainly the
39 Kowarau gecko are very localised in the immediate catchment and surrounding hills.

40 **Mr Barry:** Just a follow up question. Mining is quite a noisy and disruptive process.
41 Would the skinks, the lizards, possibly relocate themselves at all?

1 **Mr Dale:** I'm not a behavioural ecologist so I'm not going to be able to provide you
2 a considered answer with all the relevant literature. What I can speak to though is
3 my experience up at Macraes doing lizard translocations where we are catching
4 similar species – well, the same species and a different species of gecko within
5 hundreds of metres of open cast mine pits. I can't speak to whether or not that is a
6 normal density of lizards within that area – whether some would have moved away
7 or not. But they do exist, you know, very close to an operating mine. But with the
8 caveat that I'm not an expert in the behavioural side of things.

9 **Mr Muir:** And by aspects of territoriality and things like that, can lizards move from
10 one location to another without inviting responses from male lizards that think this is
11 some new imposter in their territory?

12 **Mr Dale:** Well, yeah, certainly drawing on the evidence of Dr Mandy Tocher and
13 others, there is – most of these lizards have relatively small home ranges, in the order
14 of single digit of metres. You know, three to five metres. Individuals of course will
15 range wider – young ones will need to find new territories. But we're not talking
16 about movement, you know, within the scale of what we're talking about for this
17 application. So, you know, not in the scale of kilometres or hundreds of metres.
18 Again, not drawing on my direct experience there.

19 **Mr Muir:** Good, thank you very much Mr Dale.

20 **Mr Dale:** Thank you.

21 **Ms Buxeda:** Mr Chairperson, before we continue on, could I make the suggestion that
22 we break for a tea and coffee and maybe a leg stretch if that is amenable to the Panel?

23 **Mr Muir:** And how long did you have in mind? Five or 10 minutes?

24 **Ms Buxeda:** What is it – sorry, let me just check the time. It's 3.30 now. Shall we
25 suggest a 10 minute break.

26 **Mr Muir:** You're running on court hours. You're used to taking an adjournment at
27 3.30.

28 **Ms Buxeda:** Something deep in my bones is screaming at me. It's 3.30, it's time for
29 coffees.

30 **Mr Muir:** Let's have 10 minutes or so.

31 **Ms Buxeda:** Ten minutes is perfect, thank you very much.

32 **AFTERNOON BREAK AT 3.30 PM**

33 **MS BUXEDA CALLS JADE WATKIN**

34 **Ms Watkin:** [Te Reo introduction] Tēnā koutou, tēnā koutou, tēnā koutou katoa.

35 **Mr Muir:** I understand this may be the first occasion on which you have given
36 evidence in a proceeding, is that right?

1 **Ms Watkins:** Yes.

2 **Mr Muir:** Well, you've certainly started your career as a professional witness very
3 authoritatively.

4 **Ms Watkin:** Kia ora, thank you. On that note, my name is Jade Watkin. I am a runaka
5 member of Kati Huirapa ki Puketeraki here today to provide evidence on behalf of
6 Kā Rūnaka from a cultural scope of our connection to te taiao and taoka species. My
7 evidence examines the connection of mana whenua to taoka species specifically
8 across the Bendigo-Ophir Gold Project landscape and the cultural impacts that loss
9 of habitat and direct harm to these species will have on Kā Rūnaka. These impacts
10 are not only ecological. They are cultural, spiritual and intergenerational. The
11 proposed offset measures address ecological restoration but do not make provision
12 for the cultural dimensions of the impacts that will be caused on these taoka species.
13 Of the species identified in the technical reports, 18 bird species and 10 plant species
14 are listed under schedule 97 of the Ngāi Tahu Claims Settlement Act of 1998,
15 legislation that exists because of previous Crown failures to uphold its Te Tiriti o
16 Waitangi obligations and protect these taoka of Kāi Tahu. The 1998 Act establishes
17 a recognised role for Kāi Tahu and Crown management decisions for those species.
18 The Fast-Track Approvals Act requires consistency with those Treaty settlement
19 obligations.

20 The applicant's technical reports, as stand, failed to meet this standard, referencing
21 iwi only in historical terms and do not provide meaningful recognition of the
22 enduring connection, values and mātauraka Kā Rūnaka holds to the affected taoka
23 species in the wider whenua. Expanding on the cultural identity of Kāi Tahu, Kāi
24 Tahu's cultural relationships with these native species are not confined to those only
25 recognised in legislation.

26 **Mr Muir:** Of which mokomoko are not, that's correct.

27 **Ms Watkin:** That's correct. Yes. Kārara, lizards, most notably as you pointed out, in
28 reference to the application carry important cultural status for Kāi Tahu. They are
29 spiritual guardians of wāhi tapu and urupā, respected kaitiaki, and part of the wider
30 interwoven whakapapa of Kāi Tahu. The proposed activities will result in a net loss
31 of lizard populations, as Mr Dale has pointed out, including species already classified
32 At risk and Declining. The proposed methodology of toe clipping, for example, to
33 monitor translocated populations is not compatible with the values of Kā Rūnaka.
34 Kārara are connected to Kāi Tahu through whakapapa so to maim them is to maim
35 our own tipuna. That this was proposed without discussion with Rūnaka ecology
36 team speaks to the broader failure of the current engagement that has run through this
37 application.

38 The loss of these populations represents not only an ecological impact but a severing
39 of relationships between species, landscape and mana whenua that western offsetting
40 frameworks are not designed to recognise or remedy. Throughout the consent
41 process, technical workshops were held between the applicant, Te Papa Atawhai and

1 the Otago Regional Council. But Kā Rūnaka ecology experts were not part of these
2 workshops. The matauraka we could have contributed would have strengthened both
3 the technical assessments and offset designs of the project.

4 Moving forward, what is needed is genuine incorporation of matauraka Māori into
5 technical reports. In the offset design genuine incorporation of matauraka Māori and
6 Rūnaka engagement across all phases of implementation of the project, rehabilitation
7 goals embedded as consent conditions and intergenerational funding secured beyond
8 the 35 year offset period and operational life of the mine.

9 The cultural relationships and responsibilities of mana whenua to this landscape are
10 intergenerational. They predate this project and will continue to endure long after it.
11 The cultural impacts of this project as stands remain unmitigated. In its current form,
12 the application does not provide a sufficient basis for consent to be granted.

13 Nō reira, tēnā koutou, tēnā koutou, tēnā koutou katoa. Thank you.

14 **Mr Muir:** Does the Panel have any questions?

15 **Mr MacGibbon:** Thank you, Ms Watkin, for your evidence. I'm quite keen to explore
16 the matauraka Māori a little bit with you, or matauranga Māori as I'm used to calling
17 it. It is a constant challenge for those of us who are training western ecology, western
18 science based ecology, as to how we incorporate it – and I don't question for a
19 moment that it should be incorporated. And just as an example, elsewhere in another
20 fast-track project I was involved in, we got agreement with tangata whenua that in
21 fact we'd run the two in parallel – not try and merge the two and have one
22 compromise the other and vice versa. And so they were treated as equal but different
23 lines of thought. In your evidence, it's sort – you seem to be implying a wee bit that
24 they should be merged, but is that what you're thinking of or would you rather see
25 perhaps that they run parallel rather than merged together?

26 **Ms Watkin:** Yeah, that's a great question. I think it's really important that the mana of
27 both knowledge forms are treated as separate but I like to think of it as there's a
28 model around rivers – braided rivers that flow together. They're not completely
29 separate but the knowledge can interweave together to ultimately create a more
30 complete form of knowledge. That's how I see both knowledge forms working
31 alongside each other, and I think that engagement and working along with each other
32 as matauraka knowledge holders and scientist ecologist, we can only just get a more
33 complete picture if we work together.

34 **Mr MacGibbon:** Yes, I agree entirely with you actually. That's a great answer, thank
35 you. That was probably all I had really. I think Mr Dale, I probably tackled you with
36 some of those other questions I was going to ask, so that's fine, thanks very much.

37 **Ms Watkin:** Thanks Matt.

38 **Ms Sweetman:** I'd say no questions. You were very clear so well done for your first time.

39 **Ms Watkin:** Thank you, thank you very much.

1 **Ms Sweetman:** But we do take it from that that you are willing to participate in expert
2 conferencing with the ecologists?

3 **Ms Watkin:** Absolutely, yes.

4 **Ms Sweetman:** Thank you.

5 **Mr MacGibbon:** Perhaps just to add to that, with the conferencing side of things, would
6 you see your participation only being in those technical expert ecology conference
7 sessions or would you want or expect to have a parallel – as I was sort of hinting
8 before – a parallel session where you develop the matauranga – matauraka part of
9 that separately. You know, just thinking again on the lines you’ve said back that you
10 don’t want one to compromise the other but, yeah, would participation only in the
11 technical ecology conferencing be sufficient?

12 **Ms Watkin:** I think that’s a really good question. For me personally, my expertise and
13 area comes from that ecology space so that’s the space I feel comfortable providing
14 my matauraka and speaking on that. But I know there certainly are other members
15 within Kā Rūnaka who will have that expertise and more relevant specification for
16 those different areas across the project.

17 **Mr MacGibbon:** Thank you.

18 **Mr Muir:** So in that sense your evidence reinforces the fundamental submission of
19 Kā Rūnaka that there is a breach of section 7 in the process that has been conducted
20 thus far. But effectively from here on in, whilst that issue still sits on the table and
21 must ultimately be adjudicated upon in some way, you will participate in the expert
22 conferences independently of that issue. Is that how I – do I understand that
23 correctly? Or do you bring to the expert conferences – will you be bringing to the
24 expert conferences this dual perspective that you have?

25 **Ms Watkin:** That’s a great question. I think that’s something I’d really like to discuss
26 kind of with Kā Rūnaka and my place and what is appropriate with that. I
27 acknowledge my ecology background has come from an academic space that wasn’t
28 built on matauraka so I do – I am careful to acknowledge that my matauraka and my
29 ecology background, although interwoven, they do have both their own separate parts
30 of knowledge I can provide.

31 **Mr Muir:** You just may be relevant in terms of the way in which we structure the
32 expert conferencing as to whether it’s almost like a subset issue. Right. Okay, thank
33 you.

34 **Ms Watkin:** Kia ora. Thank you.

35 **Mr Muir:** Mr Holm.

36 **Mr Holm:** Thank you Mr Chairman. The final witness summary is from Dr Rā, who
37 I will invite to come forward.

1 **MR HOLM CALLS DR ALAYNA RĀ**

2 **Mr Holm:** She will be dealing with landscape issues sir.

3 **Dr Rā:** [Te Reo introduction 11:25] Kia ora koutou. My evidence has comprised
4 a peer review of the Boffa Miskell landscape natural character visual effects
5 assessment and the assessment of the Dunstan Mountain’s outstanding natural
6 landscape and associated appendices. Through these I have considered the
7 application against established landscape and visual impact assessment
8 methodologies whilst also addressing its consistency with best practice for
9 recognising cultural landscapes, values and relationships with whenua and wai. This
10 includes consideration of the existing landscape character and visual context, the
11 scale and nature of the change associated with this application, the absorption
12 capacity of this whenua and associated awa and puna, how effects are experienced
13 both visually and culturally, and whether the assessment appropriately recognises Kā
14 Rūnaka relationships with this place.

15 At a high level, my evidence identifies three inter-related matters. First, the receiving
16 environment is a culturally and visually significant landscape. It comprises a
17 coherent Central Otago, landscaped with recognised physical, visual, historical and
18 cultural attributes whereby the integrated whole is greater than the sum of its parts.
19 These values operate together to establish a high level of landscape sensitivity,
20 particularly when change is large scale, long term and alters landform legibility and
21 experiential qualities.

22 Second, although the application includes landscape and visual impact assessment
23 material, the assessment framework applied is incomplete. In particular, cultural
24 values, cultural landscapes and relationships with place are not effectively embedded
25 in baseline descriptions or sensitivity analysis. Instead, they are addressed largely as
26 a separate or supplementary consideration rather than informing how landscape
27 value, sensitivity and significance are determined at the outset.

28 Third, these methodological limitations directly influence the effects conclusions that
29 have been reached. By understating baseline sensitivity, treating cultural landscape
30 values as peripheral, and avoiding assessment of site level landscape effects, the
31 application correspondingly understates the magnitude and significance of landscape
32 effects. When assessed as an integrated landscape, including cultural context,
33 landscape coherence, experiential change, the proposal would result in a more
34 substantial, enduring and adverse modification of landscape character than the
35 application currently acknowledges.

36 The implication for the Panel is not merely one of visual amenity but how landscape
37 effects are correctly understood and weighted. Landscape and whenua in this context
38 are not only about what is seen, but about meaning, identity, continuity and
39 relationships. The terms “landscape” and “whenua” are grounded in the intersecting
40 and overlapping attributes of physical, associative and perceptual values alongside

1 hikoi, whakapapa and kōrero tuku iho. This is the bicultural foundation of Te Tangi
2 a te Manu Aotearoa New Zealand landscape assessment guidelines by the NZILA
3 2022. And from these guidelines, best practice requires that these matters are to be
4 embedded within assessments, not treated as parallel considerations. Where these
5 dimensions are not fully recognised, there is a material risk that adverse effects on
6 landscape values, including cultural landscapes, are underestimated in the decision
7 making process.

8 I further note that despite a late stage meeting, the assessors of this application were
9 not afforded the opportunity to review, integrate or respond to feedback I had
10 provided on their assessments.

11 In summary, my evidence concludes that the application would result in high adverse
12 effects on landscape character and values when appropriately assessed in accordance
13 with the Te Tangi a te Manu. I emphasise that this whenua and wai is a cultural
14 landscape through which whakapapa, identity and responsibility are exercised across
15 generations. A decision that understates or marginalises these values would fail to
16 fully recognise the enduring relationship of Kai Tahu whānau whānui and the
17 obligation to protect those relationships for future generations. I recommend that the
18 Panel treat landscape effects as a substantive and determinative consideration in this
19 application and give full weight to the sensitivity and significance of the receiving
20 landscape when assessing whether the application is appropriate. Kia ora.

21 **QUESTIONS FROM THE PANEL**

22 **Mr Kensington:** Kia ora Dr Rā, kia ora. Thank you for your summary and for your
23 evidence pre-circulated. Just a question in terms of your comment there about
24 engaging with the applicant's landscape architect. When did that occur?

25 **Dr Rā:** We had an online call which was dated – it's noted in my evidence I believe
26 as the 3rd of March – point 11 of my evidence.

27 **Mr Kensington:** So that in your mind was too little, too late, to influence their assessment
28 findings. And in fact they didn't change or respond appropriately?

29 **Dr Rā:** Unfortunately the assessment team, and I should say I hold our profession
30 in incredibly high regard, including the assessors who have conducted this mahi. But
31 unfortunately they were not provided our commentary on their assessment for them
32 to give due feedback during our call.

33 **Mr Kensington:** In order to undertake an assessment in accordance with the principles
34 and the concepts of Te Tangi a te Manu, what should an applicant's landscape
35 architect do in your experience in order to be true to what Te Tangi a te Manu is
36 expecting of us as landscape architects?

37 **Dr Rā:** Ka pai. I think Te Tangi a te Manu was an incredible advancement in the
38 profession of landscape planning. It was an approach that was delivered by our best

1 representatives in the landscape planning profession. And the intentions of the
2 creation of Te Tangi a te Manu was to bring together the profession, to be aligned in
3 how we address such matters, particularly in formal settings such as hearings or the
4 Environment Court. Through that, the contribution that the profession made to the
5 development of Te Tangi a te Manu was extensive and I genuinely believe that a
6 large portion of our profession – it may be a stretch to say all of our profession – but
7 a large portion of the landscape profession stand very strongly in their belief that this
8 is a robust document that sets a foundation for excellent landscape planning work in
9 Aotearoa.

10 Within Te Tangi a te Manu there is incredibly clear guidance that delineates where a
11 landscape assessor who maybe does not have high cultural competency can work,
12 and where they can work with others who do have cultural competency to ensure that
13 they are making the best judgment of effects. I think there is very strong will by
14 assessors, like those who have conducted this work, to undertake those collaborations
15 when afforded the opportunity. The information that was available publicly, such as
16 the ara tawhito, the traditional travel route which crosses through the centre of this
17 site, was publicly available and the assessment team have done their best to work
18 with that information. If they had have been afforded the opportunity to work in
19 collaboration, I am sure that this would have influenced the outcomes and effects that
20 they have determined.

21 **Mr Kensington:** Just to follow up so that I'm clear, are you hinting at the section 7
22 matters that were discussed at the outset today in terms of engagement and lack of
23 that, or is it a separate specialist kind of assessment matter?

24 **Dr Rā:** I think there are procedural considerations that pertain to earlier
25 conversations by our legal team and I will leave it with them to discuss how best to
26 move forward with regards to those procedural aspects. With regards to the
27 landscape planning profession, the greatest work that we will do will come through
28 collaboration with mana whenua. Te Tangi a te Manu sets out an approach for
29 landscape assessment that is inherently bicultural and inherently interwoven between
30 whakauru Māori, mataraka Māori and an understanding of the visual and landscape
31 effects, as we have traditionally known them in the landscape planning profession,
32 coming together. So I believe it's probably both.

33 **Mr Kensington:** I don't have any other questions thank you. Your evidence is very clear.
34 Thank you.

35 **Mr Mulliner:** Do you think that expert conferencing at this stage, bearing in mind the
36 misalignment from where you would like to be, I guess, in terms of the cultural
37 assessment, and bearing in mind the timeframe we have to work with, do you think
38 that that process can be used to come to, I guess, a more aligned view? I guess I'm
39 really bringing it back to the timeframe that we have at our discretion to undertake
40 these conferences.

1 **Dr Rā:** Kia ora. I think that any effort beyond what we have seen would be a good
2 effort. And I think whilst the timeframe is restricted, the opportunity that could be
3 afforded through that collaboration would see an improvement in the assessment
4 quality and the likelihood that the assessment gets closer to meeting the outcomes
5 required in Te Tangi a te Manu. I think there are more quantitative aspects and
6 deficiencies in this assessment which probably could not be addressed during a
7 timeframe this short. But any steps in that direction would be an improvement.

8 **Mr Mulliner:** Thank you.

9 **Mr Johnson:** Just following on from that question a little bit, irrespective of positions of
10 assessment of being large or small, the physical works will result in a modification
11 of the landform. Would modification of design, for instance batter slopes or – I mean,
12 everything's in concept at the moment. We've got a concept design which is
13 presented and it will still evolve – are there different ways of approaching the
14 physical form that would soften or change the position around mitigating effects?

15 **Dr Rā:** Having worked in landscape and visual impact assessment of the mining
16 sector over large parts of my career, I've certainly seen varying degrees of
17 remediation, of return to more or less natural landforms as outcomes. I make
18 reference in my evidence to the low absorption capacity of this landscape for the type
19 of change that is anticipated and I think that makes it very restrictive to achieve a
20 landscape of outstanding natural character with a mining open cut extractive industry
21 approach that we are seeing here. This landscape cannot absorb an open cut mine of
22 this scale without the abruptness of the landforms that will be left for eternity
23 thereafter.

24 **Mr Johnson:** Thank you.

25 **Mr Muir:** Thank you very much Dr Rā for your evidence. As with all witnesses
26 today, very much appreciated by the Panel, thank you.

27 **Dr Rā:** Tena koe.

28 **Mr Muir:** Mr Holm, that concludes the evidence that Kā Rūnaka intends to call
29 today?

30 **Mr Holm:** That is the end of the evidence.

31 **Mr Muir:** And is there any intention to further address by way of submission?

32 **Mr Holm:** I think we've had an earlier discussion on the legal issues that was
33 important. I believe we don't need to go over that ground again unless you had a
34 further question sir.

35 **Mr Muir:** Just before we then close this part of the hearing, any questions that the
36 day has developed from the Panel of the legal team for Kā Rūnaka? No. Thank you
37 very much indeed, Mr Holm.

1 **Mr Holm:** Thank you to the Panel for a very attentive and supportive hearing. Much
2 appreciated the way questions have been asked and discussions on important matters
3 raised. Thank you sir, thank you to the Panel.

4 **Mr Muir:** Well, as everyone will be aware, under section 57 of the Act, in particular
5 subsection (2) of section 57, wherever there is a hearing of evidence involving the
6 invitees under section 53, then there must be an opportunity given to the applicant to
7 be heard also, and that's been telegraphed well in advance of today and we have the
8 applicant team here. And I understand, Mr Leckie, that you will lead off for the
9 applicant team by way of response.

10 **RESPONSE FROM APPLICANT BY MR LECKIE**

11 **Mr Leckie:** Thank you sir, yes. I will lead off and introduce a few members of the
12 team, given this is our first opportunity in person to be in front of you. Ko Joshua
13 Leckie toku ingoa, ko au te legal counsel mo Matakanui Gold Limited. These
14 submissions are made on behalf of Matakanui Gold Limited and I will just introduce
15 the team I've got here with me. Up the front here, so Mr Spring to my left, who will
16 speak briefly once I've introduced the group. And Cheryl Low, who works with Mr
17 Spring, is sitting behind, who's the environmental manager at Matakanui Gold, my
18 colleague, Mia Turner, Mr Chrisp from Mitchell Daysh, who's led the planning
19 evidence and conditions, and his colleague, Nicolai Berry. And also Mr Peter Cook
20 is to Damian's left, the Chair, who will speak briefly, if the Panel is minded, just to
21 start our presentation. And lastly, Mahanga Maru is to the far left. So if I may, I'll
22 pass briefly to Mr Spring and Mr Cook to address you and then I'll run through my
23 legal submissions.

24 **Mr Muir:** So Mr Leckie, Mr Spring has not been called to give evidence as such. It
25 is just in the nature of effectively a submission by response?

26 **Mr Leckie:** That's right. We just felt that the nature of the occasion and the
27 opportunity to all be here would be a good opportunity for Mr Spring. So it's not
28 new evidence, more an opening address.

29 **Mr Muir:** Thank you.

30 **MR COOK'S RESPONSE FOR THE APPLICANT**

31 **Mr Cook:** I think I'm switched on. Kā Rūnaka. Tena koutou. Good afternoon Chair
32 and Panel members. My name is Peter Cook. By profession I'm a geologist and a
33 mineral economist and I've served on the board of Santana and Matakanui Gold as
34 the Chairman since October 2023. For those unaware, Matakanui Gold is a wholly
35 owned subsidiary of Santana and Matakanui has been granted exploration titles under
36 the Crown Minerals Act. Also has been granted a mining permit for the development
37 of the Bendigo-Ophir project, for which the consenting processes are being heard
38 under this Fast-Track Act. As Chairman of the company, my overarching role is that

1 of governance and statutory compliance of our board, acting as custodians for our
2 shareholders.

3 I want to begin by formally acknowledging and thanking Kā Rūnaka and their
4 advisers for the considerable work they have undertaken in relation to the Bendigo-
5 Ophir project. In particular, I acknowledge the extensive contribution of [Māori
6 34:15] and other Kā Rūnaka advisers in preparing the cultural impact assessment,
7 reviewing a substantial volume of technical information, participating in meetings,
8 site visits and workshops, and providing detailed cultural, environmental and values-
9 based matauraka over an extended period. This level of engagement has necessitated
10 significant time, expertise and resourcing, often with challenging statutory
11 timeframes. And it reflects a serious and sustained commitment to engaging with the
12 project.

13 Kā Rūnaka are mana whenua where the project is located, and we acknowledge their
14 role as rakatika and the duties and responsibilities to the whenua and waterways, flora
15 and fauna. From a governance and guardianship perspective, I and my board of
16 directors consider that relationship to be fundamental and not incidental or an
17 incidental part of how this project has been approached. It is my belief that through
18 the course of the project, the relationship between Matakanui Gold and Kā Rūnaka
19 has developed beyond that of a narrow statutory consultation. Since the first
20 discovery during exploration, and the proposed establishment of a significant mining
21 project, our company's interaction has involved regular dialogue, early and iterative
22 sharing of information, technical exchange and direct leadership level engagement.
23 That has included board level involvement – my full board, participation in
24 leadership to leadership discussions, and the collaborative development of
25 engagement frameworks intended to support ongoing dialogue. I do consider it an
26 honour to be invited back here today, to this marae for the purpose of this meeting.

27 Whilst support for the proposed development has not been reached on all matters, I
28 do not regard our interaction and engagement as being transactionally driven. The
29 depth, duration and seriousness of our interactions and relationship reflect a shared
30 willingness to engage openly, even where perspectives differ, and to do so in a way
31 that respects the responsibilities and constraints from both sides.

32 We have developed what I consider to be a respectful chiefly relationship which I,
33 together with my team, understand and appreciate. Our mutual trust and respect for
34 each other's rights and obligations is building. We recognise that trust is built
35 through consistency, openness and continuous engagement. We have varied
36 responsibilities, perspectives, and world views, and we have made sure that these do
37 not diminish our obligation to engage respectfully and constructively. Let me add
38 we do not consider consultation or relationship building as ending with the filing of
39 applications or the completion of the process. We, our full board and management
40 team, remain committed to addressing outstanding matters through direct leadership-
41 level dialogue, transparent discussions in areas of disagreement and the use of agreed

1 structures to support ongoing engagement over time. We continue to seek knowledge
2 and answers on matters of concern to Kā Rūnaka as to what effects can be suddenly
3 preset as an impassable hurdle that cannot be mitigated.

4 In my view, myself and indeed my board, is that outcomes capable of enduring across
5 generations require patience, clarity and continued dialogue, but they can be
6 achieved. We welcome the fact that both parties, and excuse me if I got a different
7 impression from today, indicate a willingness to continue discussions and the focus
8 of my board and management team is to work closely with Kā Rūnaka and [unknown
9 content] to develop mutually beneficial arrangements to address Kā Rūnaka concerns
10 for today and for future generations. Kia ora tatou koutou . Thank you.

11 **Mr Muir:** Thank you Mr Cook.

12 **Mr Leckie:** I pass now to Mr Spring.

13 **MR SPRING'S RESPONSE FOR THE APPLICANT**

14 **Mr Spring:** Thank you Josh. [40:16 Te Reo introduction] Tena koutou. Kia ora
15 koutou. Ko Damian Spring ahau. I am the Chief Executive of Santana Minerals and
16 subsidiaries, including Matakanui Gold Limited. I want to speak today about
17 consultation engagement and specifically about the nature and character of our
18 engagement with Kā Rūnaka, including Moeraki, Puketeraki, Otākou and Hokonui,
19 and other Ngāi Tahu members and representatives since this project first emerged,
20 now approaching eight years. I do so in the context of the full body of evidence
21 presented by Kā Rūnaka witnesses, including evidence addressing section 7 of the
22 Fast-Track Approvals Act, ecology, landscape, taoka species, and Kā Rūnaka Otākou
23 raka. From the outset, our intention has been to engage respectfully, openly and
24 transparently. That intention has not changed, even as the project has evolved and
25 the regulatory framework has shifted and iwi representatives have been required to
26 balance this engagement alongside many other competing hapu priorities.

27 Over that period, engagement has taken many forms. It has included hui at
28 governance and technical levels, site visits, workshops, provision of the majority of
29 draft technical material well in advance of applications, and the resourcing and
30 commissioning of the cultural impact assessment. Importantly, engagement has not
31 been limited to statutory moments or procedural milestones but has been ongoing,
32 iterative and responsive to Kā Rūnaka's availability and direction, and of course our
33 own.

34 From our perspective, consultation has never been treated as a compliance exercise.
35 It has been undertaken on the basis that Kā Rūnaka, as tangata whenua, that their role
36 carries both rights and responsibilities and their perspectives are mana informed by
37 whakapapa, karakia, waiata, whakatauki, intergenerational knowledge and cultural
38 responsibility and that those perspectives of Kā Rūnaka must be engaged with
39 respectfully, even when there is disagreement on outcomes of kaupapa. I also

1 acknowledge that Kā Rūnaka witnesses have raised serious concerns about effects
2 on wai Māori, taoka species, landscapes and the exercise of kaitiaki and rakatirataka.
3 I respect the depth of knowledge and expertise matauraka reflected in that evidence.

4 While I am not a technical expert in those fields, I acknowledge the weight those
5 matters carry for mana whenua and for future Kā Rūnaka generations. Equally, our
6 experts are New Zealand professionals who are well versed in the vital need for mana
7 whenua involvement, but of course cannot speak for all Māori. They have considered
8 the evidence submitted by the experts for Kā Rūnaka. Where they have agreement,
9 it is acknowledged. Where they do not have agreement, they have provided the
10 evidence as to why. And finally, where Kā Rūnaka experts had a different view that
11 our experts can consider, they have stated as much. This last point is the intention of
12 our ongoing consultation and proposed consent conditions regarding Kā Rūnaka's
13 involvement in management plans and the establishment of the joint steering group
14 to give mana whenua enhanced participation.

15 Furthermore, we welcome any opportunity to expert conferencing on cultural values
16 with Kā Rūnaka. From a tikanga and kawa perspective, I acknowledge openly that I
17 am not Māori. For that reason I have approached engagement with Kā Rūnaka with
18 humility and with an understanding that tikanga is not a checklist but a live system
19 of values, protocols and practices that shapes how relationships are formed,
20 maintained, tested and celebrated over time. I have sought to engage with Kā Rūnaka
21 and related parties on a kaupapa of respect, listening, providing information early
22 where possible, creating space for feedback and accepting that disagreement does not
23 equate to a lack of respect. I have also sought to engage directly rather than
24 delegating relationship matters solely to advisers because I believe leadership to
25 leadership engagement matters.

26 That does not mean we have always agreed. We have not. Nor does it mean the
27 process has been without some disagreement. It has not, but I understand from Te
28 Ao Māori perspective that places like these – the marae – provide opportunities to
29 understand and resolve matters. But it does mean that from MGL's perspective,
30 engagement has been conducted in good faith, with openness about where our
31 positions align and equal openness about where commercial, legal or technical
32 boundaries exist. I do not accept that engagement has been perfunctory or symbolic,
33 even acknowledging the constraints imposed by the fast-track process. I also want
34 to be clear that consultation in our view has not diminished over time. If anything, it
35 has deepened, becoming more structured, more transparent and more enduring,
36 particularly in relation to ongoing governance, cultural oversight, site access,
37 adaptive management, long term restoration and monitoring.

38 I acknowledge that Kā Rūnaka witnesses ultimately conclude that approval of the
39 project would be inconsistent with Treaty settlement obligations. While I respect
40 that position, we do not accept that conclusion when the project is assessed against

1 the statutory test in section 7 of the Fast-Track Approvals Act. Joshua Leckie, our
2 legal counsel, will elaborate on that point.

3 Ultimately we recognise that enduring relationship with Kā Rūnaka is important and
4 must be nurtured, earned and maintained. This approach continues to guide us today
5 in how we will continue engaging with Kā Rūnaka in good faith, openly,
6 transparently, respecting their tikanga and kawa. Kia ano tena koutou katoa.

7 **SUBMISSIONS FROM MR LECKIE ON BEHALF OF THE APPLICANT**

8 **Mr Leckie:** Thank you Mr Spring. I'll just move now to my legal reply, and I am
9 grateful for the opportunity to provide that. I will broadly split it into two aspects.
10 The section 7 Treaty settlement aspect and then the broader cultural effects. So in a
11 similar way that my friends for Kā Rūnaka have split their presentation.

12 As we've heard today, the project is located within the takiwa of Kai Tahu with Kā
13 Rūnaka sharing mana whenua status over the Otago and Murihiku regions. Within
14 that, the project largely sits on privately owned high country station land. Just
15 introducing the consultation to date, and in relation to this I refer to Mr Spring's
16 section 53 evidence. In my submission, the engagement by MGL with Kā Rūnaka
17 has been much more extensive than presented today, particularly in Mr Dreaver's
18 evidence where he referred to consultation within the last year. And I'd refer the
19 Panel to the appendix in Mr Spring's evidence where he's detailed in quite some
20 detail engagement as far back as 2018. So we contest that position that there's only
21 been – I think the wording was “the firing of emails back and forth over the last year”.
22 I think the Panel should treat that kind of comment with caution. From MGL's
23 perspective, the engagement has been meaningful and has included all sorts of –
24 forms of engagement, including site visits and in person hui. And MGL has
25 continued to, and seeks to, continue that dialogue and engagement moving forward.

26 A more recent output of the engagement was the cultural impact assessment that was
27 attached to Mr Ellison's evidence and you've heard about today. So in an overall
28 sense, in our view this engagement and consultation has provided Kā Rūnaka with
29 an opportunity to exercise its rakatirataka and this opportunity importantly remains
30 ongoing through this FTA process.

31 So moving now to the Treaty settlements, the section 7 aspects. And I provided a
32 written response within my legal submissions from 17 April on this so I won't
33 verbatim repeat those but take you to the key points.

34 Kā Rūnaka has submitted the project will breach section 7 of the Fast-Track
35 Approvals Act and, as you've heard and as the Panel is familiar, section 7 requires
36 the Panel to act consistently with the Settlement Act. Specifically, counsel for Kā
37 Rūnaka that the project is inconsistent with obligations under the Settlement Act as I
38 understand them in relation to rakatirataka and the recognition of taonga species.

1 In an overall sense, to introduce my response to that, my friend's arguments in my
2 view are conflating what is a Treaty principles argument with a Treaty settlement
3 argument within the context of section 7. I think they're very different matters and
4 I think it's fundamentally – Parliament in wording section 7 has referred to Treaty
5 settlements, not Treaty principles. And it's a really important distinction. And there
6 was some Hansard debate on that point when the Bill was going through Parliament
7 – that intentional decision. And the challenge of Treaty principles rakatirataka
8 principle being introduced to such a binary provision like section 7 is that it's
9 inherently subjective. It's difficult for the Panel or for MGL to question
10 rangatiratanga and therefore it's difficult to take my friend's submissions for them to
11 not have a right of veto if, in having a concern over rangatiratanga, it can essentially
12 act in a binary way and prevent you granting approvals for this project. So that ...

13 **Mr Barry:** Can I ask a question on this?

14 **Mr Leckie:** Yeah, no, sorry. I should have said happy to take questions as we go.

15 **Mr Barry:** Thank you, and I'm not a lawyer so I apologise in advance. But my
16 understanding is that the Ngāi Tahu settlement legislation specifically grants them
17 rangatiratanga in their takiwa. So it's not a Treaty principle issue, it is a Treaty
18 settlement issue.

19 **Mr Leckie:** Yes, no I would agree that it's in the apology of the settlement, it's
20 certainly part of the apology. I've just got it here. But the Crown acknowledging
21 that absolutely and we don't – MGL sorry, don't contest that. My submission is
22 though, it's important that arguments around the Treaty principle of rangatiratanga
23 aren't taken out of the context within the section 7 obligation. Which is quite a binary
24 requirement. And I'll expand on this briefly now about how the Crown's apology
25 within the settlement I say is given effect to within that settlement which is – I say
26 that's what creates the obligations that are relevant to your section 7 consideration.
27 But I'll get to that in a minute. But I absolutely agree that that sits within the apology
28 section of the Settlement Act.

29 Matakanui Gold does not and certainly would not dispute the explanation Kā Rūnaka
30 give to the historical context and the factual context of the settlement and are thankful
31 for the dialogue on that. It's not our submission to test that or to question that. In
32 my submission, the key area of dispute here or the key point for the Panel, is the
33 correct legal interpretation of these provisions within the FTA and that's what these
34 submissions are really responding to, not to question mana whenua's view on that.

35 And this focused examination is consistent as well from the section 53 comments
36 that were received from the Honourable Tama Potaka, the Minister for Māori
37 Development and Minister for Māori Crown Relations and the Minister of
38 Conservation through his feedback on this proposal. And Minister Potaka expressed
39 support for the project such to the Panel – they're the words used – considering the
40 impacts on Lake Dunstan, the Clutha River – I would assume because of them being
41 statutory acknowledgement areas – and the impacts on taoka species or taonga

1 species. And I'd agree with that, the way that's been captured by the Minister, that
2 they are the focus aspects of the Settlement Act in terms of navigating section 7 of
3 the FTA.

4 There's a section in the cultural impact assessment as well on page 26 that I found
5 quite useful to capture this in Kā Rūnaka's view, and I'll just read that out:

6 That the Ngāi Tahu Claims Settlement Act includes specific mechanisms
7 providing for the exercise of rangatiratanga by mana whenua in relation to
8 mahinga kai, taoka species and other resource management matters. These
9 are rights in relation to the management of listed species and specified
10 significant areas including statutory acknowledgement areas.

11 So I'd agree with that comment made in the CIA and put to the Panel that I say that
12 should be your focus when considering the section 7 question. And that they're the
13 mechanisms that sit within the Settlement Act that provide the obligations that need
14 to be tested.

15 So moving to the rakatirataka point first, and Matakanui Gold certainly don't
16 question or disagree with the evidence from mana whenua around it meaning Kā
17 Rūnaka have the mana and authority to give effect to their culture and traditions.
18 And Kā Rūnaka submit that the project will reduce their ability to do that. And
19 Matakanui Gold does not dispute the evidence of Mr Ellison on that, and can't dispute
20 the evidence of Mr Ellison on that. As I say though, for the Panel, I say you need to
21 look to the relevant legal framework in this case which includes both the Fast-Track
22 Approvals Act in section 7, and also the Settlement Act.

23 For the reasons that follow, it's our submission that the obligations within the
24 apology section of the Settlement Act are not obligations placed on MGL but are
25 rather Crown obligations and do not go as far as specifying particular forms of
26 consultation in a Treaty settlement sense. There are other consultation obligations
27 sitting elsewhere in the Fast-Track Approvals Act and there are other mechanisms
28 sitting within the Ngāi Tahu Claims Settlement Act, such as statutory
29 acknowledgement areas that trigger particular notification and consultation
30 provisions. And I say they're the relevant obligations that section 7 is focused on
31 rather than the acknowledgements from the Crown within the apology section of the
32 Settlement Act.

33 So in summary on the relevance of the apology in this context, we say that it does
34 not extend to imposing obligations on MGL, or the Panel in this instance, to recognise
35 or give effect to Kai Tahu rangatiratanga within the context of the Settlement Act.
36 There are other obligations, so for example the Resource Management Act includes
37 reference to rangatiratanga and that gets imported into the Fast-Track Approvals Act
38 so is a relevant matter that the Panel will need to work through in your substantive
39 decision making. But we say that's not the time to do it within the context of the
40 Settlement Act.

1 **Ms Sweetman:** Are you referring to kaitiakitanga rather than rangatiratanga?

2 **Mr Leckie:** Sorry, yes, kaitiakitanga. Sorry. Good catch, Ms Sweetman. And in
3 summary, the focus of section 7 is around ensuring compliance with express
4 obligations arising from Treaty settlements. And I think we share the view of my
5 friend on that point and I think that was step one – what are the obligations. In our
6 view, that captures obligations expressly set out in the Treaty settlements rather than
7 the broad apology.

8 I just wanted to clarify a point from Mr Dreaver’s evidence at paragraph 28 on this
9 point where Mr Dreaver submitted that Santana suggests they and other third parties
10 who are not the Crown and not iwi are not bound or otherwise affected by a Treaty
11 settlement. And that’s certainly not the submission we’re putting to you. There are
12 obligations within the ...

13 **Mr Muir:** Well, your written submission was pretty close to that. It said that neither
14 MGL nor the Panel, which I thought was probably quite ambitious ...

15 **Mr Leckie:** Yes, I’ll have to look back on my submissions. I hope I was referring to
16 the apology section of the Settlement Act. That was my intent and I apologise if I
17 went further than that. But there certainly are obligations on third parties that sit
18 within the Settlement Act that, if breached, would fall foul of section 7 of the FTA.
19 And Ngahonga entitlements are one example that come to mind that provide express
20 rights to mana whenua even when over third party land. So it’s certainly not the
21 argument - or the submission isn’t that the Settlement Act has no relevance to third
22 parties. That’s certainly not the case at all. The submission is that the relevant
23 obligations in this instance are not being breached.

24 **Mr Muir:** Not however as a matter of fact. You elevate - your argument is premised
25 on the fact that because it appears in the apology rather than a specific obligation that
26 it cannot be a foundation for...

27 **Mr Leckie:** ...an obligation.

28 **Mr Muir:** ...an obligation.

29 **Mr Leckie:** On Matakanui Gold on a third party. So where it sits within the Settlement
30 Act in my submission is very important, in that it sits in that apology. And yes, the
31 apology forms part of that broader package, as I think Mr Dreaver described it. But
32 in my submission that doesn’t put an obligation on Matakanui Gold within the
33 context of that apology alone. The obligations need to be read in the totality of the
34 whole Settlement Act.

35 And with that submission in mind, there’s two parts to our response. And the second
36 part is, if we’re wrong on that, what’s the next step.

37 **Mr Muir:** Can you just give me a moment. I just need to take a note.

38 **Mr Leckie:** Yeah, sure.

1 **Mr Muir:** So the second leg of the argument is acknowledged by Mr Dreaver, and
2 not necessarily binding on Kā Rūnaka but acknowledged in our interchange, that if
3 you're wrong on that, then this is not a case of Kā Rūnaka saying "this is what our
4 expectations were of, for example, consultation in advance".

5 **Mr Leckie:** Yes.

6 **Mr Muir:** "You have not satisfied those, therefore it follows automatically that there
7 is a breach of rangatiratanga". And the point that we got to was an acknowledgement
8 effectively that there has to be a qualitative analysis at that point.

9 **Mr Leckie:** I'd agree, and some cases have referred to it as a testing of the evidence in
10 that the outcome can't be a right of veto situation. So there is a need for that analysis.
11 And paragraph 44 of Mr Dreaver's evidence was particularly helpful in outlining
12 what, in his view – admittedly it's his view – the key process features would be in
13 terms of, you know, good practice engagement along that. And I would suggest to
14 the Panel that when testing that against Mr Spring's evidence, there is a lot of
15 consistency between the perception of MGL in the way that they've approached
16 engagement with Kā Rūnaka since 2018 and the key process features as Mr Dreaver's
17 described them as to what that good practice would be. And I think that's where that
18 testing of the evidence can take place. So that's the second limb to the argument that
19 if you don't agree with my first submission, the second submission – the evidence
20 needs testing and not just an accepting of the position of Kāi Tahu.

21 The only other point I'd add to that from Matakanui Gold Limited is that this testing
22 and these discussions don't stop at a moment in time now and you've heard some
23 discussion around that today and there's certainly a commitment from the applicant
24 to continue that engagement moving forward. And Mr Spring's evidence has
25 provided the tangible conditioned approach to enable that engagement. And I won't
26 go into the conditions in detail but for the Panel's reference they sit at C24 to C27 in
27 terms of this formation of the iwi advisory group, including financial assistance to
28 ensure it can be a meaningful process with annual funding of approximately half a
29 million dollars to enable that relationship piece to be able to occur in a meaningful
30 way. And in my submission that is relevant as well to the question of rangatiratanga
31 and enabling that to continue.

32 I'll briefly touch on taonga species. I won't spend too much time on it. In our
33 submission and the case is that we say they are relevant to your ultimate consideration
34 of effects. There's certainly no denying that. But within the context of the Settlement
35 Act, the language used is one of acknowledgement and recognition rather than a
36 particular obligation. And importantly, in relation to the taonga species, the actual
37 obligation, and I understand my friend, from his submissions, he shares my view on
38 this, that that obligation sits with the Minister for Conservation in terms of the
39 mechanics around taonga species. So to the extent there is an obligation within the
40 Settlement Act, it sits with the Minister of Conservation. And again, I'm not

1 submitting that taonga species are irrelevant. They certainly aren't. It's just about
2 them being considered at the appropriate part of the FTA process.

3 And the section 53 evidence of Dr Simcock and Mr Barber on behalf of MGL has
4 acknowledged that and they've made some suggestions about how they could see
5 that taonga species consideration being integrated into management plans and
6 management moving forward. So I expect that to be a matter for the expert
7 conferencing coming up.

8 Another point really – not to spend too much time on it today – that I expect will be
9 a matter for expert conferencing is that it is the intent of the ecologists on behalf of
10 MGL for the broader effects management proposal, including the offsetting and
11 compensation actions, to include consideration of taonga species. So again, a matter
12 that I see could really benefit from expert conferencing as to how mana whenua see
13 that best happen in terms of effects management for the project.

14 So briefly touching then on the remainder or the remaining aspects of the Ngāi Tahu
15 Claims Settlement Act that haven't come up much today and I don't understand are
16 in contention, but just for completeness, I wanted to just respond briefly to them
17 today. One being the statutory acknowledgement areas and the fact that the project
18 isn't within a statutory acknowledgement area. The two nearest ones being the
19 Clutha and the Lake. And the project site is five kilometres from those areas. And I
20 put weight on the fact that tributaries are expressly excluded from the definition of
21 those statutory acknowledgements. I think that's quite important in this instance.

22 Another obligation that sits within the Settlement Act are the nohoanga entitlement
23 areas and there are no nohoanga entitlement areas within the immediate vicinity of
24 the project. And if there were, there would be particular notification requirements
25 and things that would trigger – and potentially section 7 considerations as well.

26 **Mr Johnson:** Can I just ask a quick question on the tributary. What is a river without a
27 tributary? I'm just trying to get my head around that.

28 **Mr Leckie:** Sorry, I jumped over it quickly. I'll get my notes which are just here. So
29 I don't have my notes in front of me but I'll give you my recollection. A tributary is
30 expressly excluded from a statutory acknowledgement for a lake or a river within the
31 Settlement Act. That's the short answer. So I say that just because you're in a
32 tributary to a statutory acknowledgement area, doesn't mean you're captured by that
33 statutory acknowledgement area. I think that express exclusion is important. And
34 that's in relation to both the definition of "river" expressly excludes any tributary
35 flowing into that river, and likewise the definition for "lakes", it excludes any river
36 or watercourse, artificial or otherwise, draining in or out of the lake.

37 **Mr Johnson:** Does that name apply to the entity of the water – sorry, entity of the river
38 and lake, or to the water?

39 **Ms Sweetman:** Mr Leckie, do contemporary Treaty settlements treat rivers in the same
40 way?

1 **Mr Leckie:** I'm not aware of other Treaty settlements that have that same – I haven't
2 done a full check of that. I'm not sure, sorry, Commissioner. I could look into it.
3 But I don't know. I'm not aware of them doing that. I've only ever seen it in this
4 settlement.

5 I don't think I answered your question, sorry, Commissioner Johnson, which I think
6 was around water versus the body itself.

7 **Mr Johnson:** Yeah, yeah, I'm just – yeah.

8 **Mr Leckie:** And I would see that ...

9 **Mr Johnson:** I'm not a lawyer, so ...

10 **Mr Leckie:** No.

11 **Mr Muir:** Well, he's a bush lawyer.

12 **Mr Leckie:** Yeah, you spend enough time around lawyers. My response is it's not a
13 definition of water. It's a definition of the body that is protected by the statutory
14 acknowledgement. So I think that, to answer your question, it wouldn't be the water.
15 And in any event, the evidence on behalf of MGL has expressly considered any
16 impacts on those water bodies as far away as those statutory acknowledgement areas.

17 So just to summarise the Treaty obligations response, and it's the case for MGL and
18 in my submission, that the recognition of rangatiratanga and taonga species don't
19 constitute or trigger an obligation that constitutes a breach in this case of section 7.
20 And those matters are still relevant to your consideration as a Panel but in my
21 submission they're not matters that fall foul of section 7. That's the summary of the
22 legal submission. And I reinforce the point that in relation to the engagement, there's
23 a different perspective between MGL and Mr Dreaver on the extent of engagement
24 in the lead up to the lodgement of the application. But I would just reiterate what Mr
25 Spring mentioned earlier, that there is a true, genuine desire for that engagement to
26 continue and that is a relevant matter to your consideration I say as well.

27 Moving now to cultural effects, I don't want to say more broadly – that's not a fair
28 summary but it's getting later in the day. So cultural effects as they apply outside of
29 section 7. As the Panel know, under section 85 of the Act you may decline an
30 application if one or more adverse impacts are sufficiently significant to be out of
31 proportion to the project's regional or national benefits. And I'd agree that cultural
32 effects and cultural impacts are an important part and will be a part of your
33 assessment of that part of the FTA.

34 The evidence and legal submissions filed on behalf of Kā Rūnaka conclude that the
35 project will have adverse cultural effects that, combined with adverse effects on
36 landscape, ecology and water, are sufficiently significant to outweigh the economic
37 benefits of the project. That's my understanding of their position on that. Kā Rūnaka
38 expresses concern that the cultural value of taonga species has not been adequately

1 addressed and in particular, as I understand it, there's a particular concern around
2 two birds, including the New Zealand Falcon, in relation to those effects.

3 On those effects more broadly, MGL accepts it is only for mana whenua to determine
4 and speak to those cultural effects so MGL do not dispute those effects on the values
5 that Kā Rūnaka have identified. However, and I've mentioned this already, in my
6 submission that doesn't mean there is a right of veto and those concerns do still need
7 to be tested by the Panel. And that would include testing of the evidence on behalf
8 of MGL in relation to those matters such as landscape, ecology, water management
9 as well.

10 And in relation to those matters, in my submission it is appropriate for you as a Panel
11 to put weight on those relevant experts who have prepared evidence on behalf of
12 MGL, for example on landscape matters or ecology matters or water management
13 matters, and that is an entirely appropriate thing for them to have commented on, it's
14 within their area of expertise and it's appropriate for you to test that evidence against
15 the evidence from Kā Rūnaka. And on that point, it's my submission today that while
16 MGL cannot and will not question or assess cultural values, that being the role of Kā
17 Rūnaka, it is appropriate for the technical experts to have given evidence on those
18 other matters that are relevant to cultural values as well, including landscape and
19 water.

20 In terms of the moving forward, or engagement moving forward, Mr Spring's
21 evidence has described the iwi advisory group, which is the mechanism proposed by
22 Mr Chrisp in his planning evidence – his section 53 evidence – for a structured
23 mechanism for this ongoing engagement through the life of the project. Mr Chrisp's
24 evidence expands on this group and the intention of it, but in my summary it has three
25 functions. One to facilitate engagement and long term relationships, one to enhance
26 and create opportunities for social, economic and environmental enhancement
27 through the consideration of cultural values, and the third being to provide cultural
28 advice to MGL. So I see that as a really important tool that will also no doubt be the
29 subject of expert conferencing potentially, but an important way for things that have
30 been discussed today to still have meaningful and tangible mechanisms within the
31 project moving forward.

32 **Ms Sweetman:** Mr Leckie, who would you see participating in such expert conferencing
33 on those conditions?

34 **Mr Leckie:** I was just thinking that as I said it out loud and thought I shouldn't have –
35 I don't think we've actually proposed cultural conferencing because we couldn't and
36 it raises a really good question that that engagement and that discussion is going to
37 need to happen potentially outside of that expert conferencing, or at the very least if
38 it's within the expert conferencing, it would be a matter for MGL's relevant experts
39 and Kā Rūnaka's relevant experts – and when I say relevant experts it would likely
40 be planners as a minimum from MGL's side. But it's a good question. I haven't
41 thought about that before I suggested it as an option for conferencing.

1 **Ms Sweetman:** Some homework.

2 **Mr Muir:** I have an asterisk in my notes for that very reason.

3 **Mr Leckie:** I might need to follow up Sir and Commissioner Sweetman on that point
4 as to what – when’s the opportunity to progress that proposal.

5 **Mr Muir:** Well you have an opportunity to call, of course, additional evidence in
6 response to Mr Dreaver’s evidence but this contemplates something beyond that,
7 doesn’t it. This is really sort of addressing Dr Rā’s evidence where she says you
8 haven’t grown this proposal or sort of organically with tangata whenua. You have
9 consulted, yes, from time to time, but it is not effectively – yes, responses have been
10 sought but you have not grown the plan or the proposal with them.

11 **Mr Leckie:** Yes, and I think that’s the challenge we need to try and address through
12 the next few months that follow to best ensure that those perspectives can be
13 incorporated.

14 **Mr Muir:** Yes, well in turning our mind to the expert conferences which will start
15 imminently, schedules that have been prepared have had expert conferencing on
16 cultural issues and that’s come in and it’s gone out at the moment because we didn’t
17 think that there was the responsive voice available on the evidence at the moment.

18 **Ms Sweetman:** And probably not appropriate ...

19 **Mr Leckie:** Within a facilitated ...

20 **Ms Sweetman:** ... under the circumstances, yeah.

21 **Mr Leckie:** I’ll give it some more thought but my reaction at this stage is that it really
22 is a matter that Kā Rūnaka and MGL need to progress, which is what has been talked
23 about today, and I think that really best occurs at the same time as but outside that
24 more structured Panel directed conferencing.

25 **Ms Sweetman:** Maybe then it could go to the planners at a later stage, but we’ll hear your
26 further thoughts. Can I ask a related question?

27 **Mr Leckie:** Yeah.

28 **Ms Sweetman:** Why was the application lodged before the cultural impact assessment was
29 provided by Kā Rūnaka?

30 **Mr Leckie:** That’s a good question. I’ll do my best to answer it and Mr Spring might
31 have some thoughts on it as well. It was in draft. It wasn’t a final cultural impact
32 assessment at the time of lodgement so that was one of the reasons from my
33 perspective it wasn’t included in the application, is that MGL didn’t feel it
34 appropriate to lodge a draft cultural impact assessment.

35 **Mr Muir:** I don’t think that was really the question.

36 **Ms Sweetman:** That wasn’t the question. It was why was the application lodged before
37 there was a final cultural impact assessment and the ability then for MGL to consider

1 cultural values in the application itself, rather than try to address them at this stage
2 of the process?

3 **Mr Leckie:** From MGL's perspective, they have been attempting to address cultural
4 values much before receipt of that final cultural impact assessment. So that wasn't
5 the – the final cultural impact assessment that is attached to evidence now, there was
6 a draft earlier version of that, there had been engagement prior to that, so feedback
7 and dialogue had had influence on the project. It wasn't that the provision of the
8 final cultural impact assessment was the first time that that was known. I don't have
9 an answer for you, sorry, on why the application was lodged prior to the final version.
10 But it was always the intention for it to be provided once it was available. I don't
11 know if you have anything else, Damian, or does that cover it...

12 **Mr Spring:** The only thing I'd like to add is that the consultation was ongoing at that
13 point and there was an expectation that we would progress matters as the application
14 was processed. So that was in essence how we progressed. We did have that draft
15 cultural impact assessment that outlined areas that we had – the two parties had to
16 discuss, including the technical review of our reports that we were invited to make
17 responses to, which we subsequently did after the application was lodged.

18 **Mr Muir:** Well, yes to be fair, Mr Leckie flagged in his initial submission with the
19 filing of the application that that was the case. It's a question of just whether, as Ms
20 Sweetman has pointed out, whether that was itself a premature move in filing before
21 finalisation of the report.

22 **Mr Spring:** In hindsight it may certainly look like that but I guess at that point we were
23 still very happy with, at that level, the way the discussion had progressed. So we just
24 expected to continue that.

25 **Ms Sweetman:** And of course we're here now ...

26 **Mr Spring:** Correct.

27 **Ms Sweetman:** ... in this situation, so it would be useful Mr Leckie to give some thought
28 about how things can progress.

29 **Mr Leckie:** Absolutely. I think that would be very useful. Would you like me to
30 provide that by way of memorandum for the Panel. Sorry, I shouldn't put you on the
31 spot sir. You can ponder that.

32 **Mr Muir:** Well, I think the Panel might just consider that first before we call for such
33 a memorandum.

34 **Mr Leckie:** Yeah yeah, that's fine. The only other point – sorry, I've jumped around
35 a little bit but just before I close on the remainder of my reply – there has been some
36 evidence – I found the exchange today with the ecologists really useful and there was
37 some discussion around the ability for these in-perpetuity actions to continue and it
38 not just be a matter of after the 35 years MGL has an ability to walk away. And I'd
39 just signal, without going into it in great detail at this time of the day, that this is a

1 point that Mr Chrisp has given particular focus to in his section 53 evidence, and has
2 amended the conditions relevant to this to make it expressly clear that following
3 closure of the mine, those values from that offsetting and compensation need to be
4 maintained. And that's provided for within the bonding mechanism.

5 So again, likely a point that will be the subject of conferencing, but I just wanted to
6 signal that now, that that point, those changes came in through the section 53
7 evidence, of which there was a lot of it. So I just wanted to make sure everyone was
8 aware of that.

9 **Mr Muir:** Bonding is a fairly blunt instrument to deal with that issue, isn't it?

10 **Mr Leckie:** As Mr Lane, MGL's bonding expert, says himself, the bonding is really
11 the worst case. It's the last option to utilise a bond. So I would agree that a bond
12 isn't the preferred approach, but it is an important backup mechanism for the Panel
13 to put weight on in the event it is called on and is needed.

14 **Mr Muir:** In their nature they don't typically just sit around for 50 or 100 years,
15 because they have to be funded for that period of time. They typically are responsive
16 to milestones, which can be identified within relatively short order of closure.

17 **Mr Leckie:** Yes and that's...

18 **Mr Muir:** As a mechanism, something in the nature of long term endowment, is probably
19 far more useful, is it not?

20 **Mr Leckie:** I acknowledge that the long term endowment approach means the money
21 is there – at its simplest. And that probably does provide the greatest certainty. But
22 a well enforced bond should provide the equivalent legal protection than an
23 endowment – if it's done well. But I agree that it needs clear – a clear methodology
24 as to what's being bonded and how it's being priced, and how that applies across the
25 life of the bonded works. There is some comments on the endowment fund within
26 the section 53 evidence as well. I appreciate it's a live point for the experts.

27 I'll just check the rest of my notes but I feel we've covered the key aspects in reply I
28 was wanting to address, so happy to take any further questions, and likewise the rest
29 of the team.

30 **Mr Muir:** Ms Sweetman very accurately identifies my own requirement one way or
31 another to interrogate these legal issues a little more deeply, and we have not yet
32 decided upon a mechanism for doing that. It is possible that we might seek further
33 written information from the parties. The first thing that I'm likely to do is to call for
34 a transcript of today's proceedings so that I can look in greater detail at the respective
35 arguments, which are quite nuanced in places. And as will be notified shortly, the
36 Panel is highly likely to be seeking to appoint a very senior Counsel Assisting and a
37 likely course is that the Panel will take advice on some of these issues and if further
38 information is required we will seek it, or if a hearing, a further hearing, is required
39 we will convene it. But we had not made that decision yet.

1 There are invitees who generally are seeking hearings on a variety of legal issues that
2 now emerge in the documentary record. We've made no decision in that respect
3 either. We will just have to see how, when we get to start reflecting on the section 7
4 arguments, what further assistance we require. We may well have many, we may
5 have many more questions. We might do that in writing. We might do it in the nature
6 of a very focused legal hearing on those issues alone or in conjunction with any
7 hearing that we might specify on other legal issues. But I can indicate now that it is
8 not the intention of the Panel that there be days and days of legal argument. If you
9 look at the performance of other panels, they have had very tightly constrained
10 opportunity for legal submission. Today, we've spent quite a lot of time on what are
11 essentially legal issues. Yes, they are informed by factual and cultural issues that sit
12 around them but they are still fundamentally a legal issue.

13 **Mr Leckie:** I would agree, yes. So that concludes our reply, thank you, sir.

14 **Mr Muir:** Thank you very much Mr Leckie. I personally – and I'm sure I speak for
15 the Panel – have found this a very valuable day, and particularly in respect of the
16 issues that we have just been discussing. There's been an opportunity to hear from
17 some of the experts that Kā Rūnanga calls and to put their evidence within a wider
18 cultural framework, which wouldn't otherwise have been available – at least to the
19 quality, with the quality that we have been able to see today. And I am most
20 appreciative of everyone's input. It's been a very valuable day from my perspective.
21 I think that Te Mauri, you probably will have some indications of how we will now
22 conclude the hearing. That's likely to be with a karakia is it?

23 [Closure from Te Mauri Apiata]

24

25 **Hearing concludes**