

TĒNĀ, E TE ROOPU TOHUNGA

1. The essence of this submission is whether consent is capable of being lawfully granted to the Applicant, Matakanui Gold Limited.
2. Counsel submit that consent cannot be granted, due to the Application being inconsistent with obligations arising under the Ngāi Tahu Treaty Settlement Act and settlement provisions. That inconsistency prevents consent being granted in this case under the Fast-track Approvals Act 2024, section 7.
3. Even if the Panel were to decide there was no inconsistency with Treaty settlement obligations arising from the Application, (noting that legal principles and evidence for Kā Rūnaka support that there is inconsistency), it is submitted that the adverse landscape, ecological, water quality and cultural effects of the proposed Santana gold mine are individually adverse and cumulatively even more adverse. These adverse effects are long term – extending well beyond the cessation of mining activity. Consequently, consents cannot be granted for the current Application regardless of any claimed short term national or regional economic benefits.
4. Kā Rūnaka do not submit that this Application is fundamentally incapable of consent. Had the Applicant consulted more competently with Kā Rūnaka (and other parties with concerns), and undertaken more thorough technical investigations, different outcomes on a range of issues might readily have been secured. Such outcomes might well have resolved or settled the fundamental environmental concerns of other parties to these proceedings. However, in its current state, with the approach taken by the Applicant to Kā Rūnaka's involvement, to conditions, to long-term effects, to mitigation, to cultural effects, and to uncertainty, it is submitted the current Application is incapable of securing consent.

Evidence

5. Kā Rūnaka has provided evidence from the following witnesses:
 - (a) Mark Pizey (mine, environmental management);
 - (b) Matt Dale (ecology);
 - (c) Dr Alayna Rā (landscape);
 - (d) Jade Watkin (ecology and Kāi Tahu cultural values); and
 - (e) Edward Ellison ONZM (Treaty - cultural issues).

6. The Cultural Impact Assessment is attached to Mr Ellison's evidence.

CONTEXT

7. The factual context is set out in the Cultural Impact Assessment for Kā Rūnaka, and it is not intended to repeat that information unnecessarily here. Suffice to say, the proposed Santana mine is of a scale not previously seen in New Zealand in such close proximity to a highly sensitive area of Central Otago - with seriously limited capacity to absorb the potential cultural and environmental effects and impacts. In addition to this, the Proposal as it stands includes a myriad of uncertainties regarding landscape, ecology, and water quality – including potential impacts lasting well beyond the life of the proposed mining with no clarity or certainty as to how such future long-term effects can be mitigated or avoided. Proposed bonds to cover the remedying of long-term issues such as the tailings dam safety and performance will not provide the financial means to protect the long-term health of the environment.

LEGAL FRAMEWORK

Fast-track Approvals Act 2024 (FTAA)

8. The FTAA does not prioritise granting of consents regardless of other considerations. Previous Fast-track panels have declined applications on a range of grounds, including a draft decision finding that they were unable to grant consent due to the application preventing the practical implementation of Treaty settlement legislation and agreements.¹
9. S7 of the FTAA requires all persons performing and exercising functions, powers, and duties under the FTAA must act in a manner that is consistent with the obligations arising under existing Treaty settlements.
10. A panel **must** decline consent where the panel considers that granting the approval would breach section 7.²

¹ Record of Draft Decision of the Expert Consenting Panel under section 87 of the Fast-track Approvals Act 2024 on the Trans-Tasman Resources VTM application to extract seabed material on (4 February 2026) at [xxi]: "The Panel finds that granting the approvals before it would be inconsistent with the practical operation of those settlement obligations and would breach s 7 FTAA. Approval of the project application must be declined, therefore, under s 85(1)(b) of the FTAA."

² Fast-track Approvals Act 2024 s85(1)(b).

11. A panel **may** decline an approval if the panel forms the view that the adverse impacts from the approvals are sufficiently significant to be out of proportion to the project's regional or national benefits,³ even after taking into account any conditions set by the panel or the Applicant to avoid, remedy, mitigate, offset, or compensate for those adverse effects.⁴

NGĀI TAHU TREATY SETTLEMENT

12. Kā Rūnaka Treaty rights and interests are set out in the Ngāi Tahu Claims Settlement Act 1998 (**NTCSAct**). The Treaty settlement is built upon the Apology by the Crown to Ngāi Tahu.⁵ This stipulates:

E whakapāha ana te Karauna ki a Ngāi Tahu mō tōna hēanga, tērā, kāore ia i whai whakaaro mō te rangatiratanga o Ngāi Tahu, ki te mana rānei o Ngāi Tahu ki runga i ōna whenua ā-rohe o Te Wai Pounamu, nā rēira, i runga i ngā whakaritenga me ngā herenga a Te Tiriti o Waitangi, **ka whakaae te Karauna ko Ngāi Tahu Whānui anō te tāngata whenua hei pupuri i te rangatiratanga o roto i ōna takiwā.**

The Crown apologises to Ngāi Tahu for its past failures to acknowledge Ngāi Tahu rangatiratanga and mana over the South Island lands within its boundaries, and, in fulfilment of its Treaty obligations, the **Crown recognises Ngāi Tahu as the tāngata whenua of, and as holding rangatiratanga within, the Takiwā of Ngāi Tahu Whānui.**

[emphasis added]

13. In addition to this, the NTCSAct recognises taoka species, and records the Crown's acknowledgement of the cultural, spiritual, historic, and traditional association of Ngāi Tahu with the taoka species⁶, with the requirement that the Minister of Conservation must:⁷
- (a) act to advise Ngāi Tahu in respect of any relevant conservation management strategy review or plans, policies, or documents relating to a taonga species; and
 - (b) consult with, and have particular regard to the view of Ngāi Tahu when the Minister of Conservation makes policy decisions concerning the protection, management, or conservation of a taonga species; and

³ Fast-track Approvals Act 2024 s85(3)(a)(b).

⁴ Fast-track Approvals Act 2024 s85(3)(a)(b).

⁵ Evidence of Edward Ellison (10 April 2026) at [88].

⁶ Ngāi Tahu Claims Settlement Act 1998 s288.

⁷ Ngāi Tahu Claims Settlement Act 1998 ss293, 294

(c) the same in relation to policy decisions concerning the protection, management, or conservation of all taonga species.

14. In his evidence Mr Edward Ellison states that the intent of the NTCSAct in respect of the apology and impacts on rakatirataka was "to not only recognise and understand that, but to ensure Ngāi Tahu rakatirataka was not ignored or ignored in such future discussions, to give notice to future generations that the Crown honoured their pledge and Apology".⁸
15. Mr Ellison sets out the meaning and requirements for holding rakatirataka within the Takiwā. He says that "rakatirataka is about having the mana or authority to give effect to Kāi Tahu culture and traditions in the management of the natural world".⁹ Mr Ellison states that Kā Rūnaka have a "duty when exercising our rakatirataka to provide for future generations in a way that does not encumber kā uri with irreversible environmental damage".¹⁰
16. Mr Ellison describes the impact on rakatirataka arising in relation to the proposed mine:¹¹

If the mine is granted resource consent it will impact negatively on our rakatirataka. Many landscape scale values have been lost or compromised in the Central Otago region, prior to the NTCSAct. The intent of the NTCSAct was to not only recognise and understand that issue, but to ensure Ngāi Tahu rakatirataka was not ignored or ignored in such future discussions, to give notice to future generations that the Crown honoured their pledge and Apology, and not lumber future generations with the past repeated.

17. As set out in the evidence of Mr Ellison:¹²

A function of rakatirataka is the exercise of kaitiakitaka, which utilises information and knowledge framed in traditional or te ao Māori concepts to guide decision making.

In the case of the MGL Fast-track process, the access Kāi Tahu / runaka people have had to critical information has been constrained by the limited timeframes to fully comprehend the potential effects proposed gold mining activity.

⁸ Evidence of Edward Ellison (10 April 2026) at [115].

⁹ Evidence of Edward Ellison (10 April 2026) at [29].

¹⁰ Evidence of Edward Ellison (10 April 2026) at [100].

¹¹ Evidence of Edward Ellison (10 April 2026) at [115].

¹² Evidence of Edward Ellison (10 April 2026) at [102], [103].

18. It is clear that the very basis upon which the project was undertaken is inconsistent with rakatirataka, and therefore, it is submitted, Treaty settlement obligations.
19. Mr Ellison concludes that:¹³
- The evidence in our view points strongly to a decline by you the panel of experts hearing this Fast-track proposal, on the basis of incomplete preparation of evidence that addresses fully the multiple issues identified in our respective reports to the deficiencies of this proposed mining activity.
- The gold would remain in the ground, the landscape, water and habitat, and ecosystems will remain as they are, and any future applications would be on notice to aspire to higher standard of engagement, environmental husbandry and the interest of future generations who will be custodians of the residual effects of any mining activity.
- Of great concern is the proposal as it stands at this point has had a reductive impact on the relationship and functional role of kaitiakitaka as we would normally exercise on a proposed plan, policy or development of any reasonable scale, the magnitude of the MGL proposal has huge significance in that respect.
- The alienation effect on our connection to whenua, wai, me kā taoka impacts now, but sends a strong signal that this will be characterised during the mines operation if granted, and post the closure of the mine, an intergenerational harm, an issue that drove the case Kāi Tahu took to the Waitangi Tribunal and resulted in the Ngāi Tahu Claims Settlement Act.
20. The Settlement and evidence is clear: all outcomes are based upon the Crown's apology and recognition of Ngāi Tahu as tangata whenua of, and holding rakatirataka within, the takiwā. To repudiate, fail to give effect to, or ignore this status is inconsistent with obligations contained in the Treaty settlement. The effects and impacts, and the lack of role of Kā Rūnaka in decision making in the takiwā, all constitute inconsistency with the Treaty settlement.
21. Based on this evidence, counsel submit that in granting consent the panel would be acting in a manner inconsistent with obligations arising under Ngāi Tahu's treaty settlement.
22. Accordingly, counsel submit that Section 7 of the Fast-track Act applies and consent for the current Application must be declined.

¹³ Evidence of Edward Ellison (10 April 2026) at [110]-[113].

EFFECTS OUTWEIGH BENEFITS

23. The evidence of Mark Pizey sets out the effects on the existing environment, and his expert opinion on the proposed mining operations to be undertaken and the information provided in support of those. He concludes that a key issue for Panel consideration are the uncertainties, particularly in relation to underground mining. He notes the level of information available is insufficient to adequately evaluate the associated impacts, and highlights particular need for additional work in relation to surface subsidence and ground and surface water hydrology.¹⁴ Mr Pizey also notes the uncertainties in the proposed rehabilitation techniques, particularly post-closure management.¹⁵ Mr Pizey concludes that the long term inter-generational effects remaining establishes grounds for the decline of consents until additional information of how management will be achieved post-closure is provided.¹⁶
24. The evidence of Matt Dale sets out the effects on vegetation and flora, avifauna, and lizards. While noting the difficulty of assessing ecological effects due to the dispersed and inconsistent information, and his exclusion from conferencing,¹⁷ Mr Dale notes the significant impact on aquatic habitat arising from destruction of approximately 10 kilometres of stream¹⁸ and the requirement for further mitigation beyond the mine life to address long term water quality impacts.¹⁹ Mr Dale raises concern regarding insufficient information provided to enable assessment of effects on lizards,²⁰ and requirement for further work to be done on the Lizard Management Plan.²¹ Mr Dale does not consider that the proposed mitigation framework adequately addresses the ecological impacts,²² including in terms of aquatic ecology,²³ lizards,²⁴ and pests.²⁵ Mr Dale highlights ongoing and long term management requirements beyond the life of the mine which are not provided for.²⁶

¹⁴ Evidence of Mark Pizey (Mine Engineering and Environmental Management) (10 April 2026) at [18].

¹⁵ Evidence of Mark Pizey (10 April 2026) at [19], [20], [21], [22], [23], [25], [28], [32], [33], [34], [35], [37], [38].

¹⁶ Evidence of Mark Pizey (10 April 2026) at [39]-[41].

¹⁷ Evidence of Matt Dale (Ecology) (10 April 2026) at [30].

¹⁸ Evidence of Matt Dale (10 April 2026) at [40].

¹⁹ Evidence of Matt Dale (10 April 2026) at [49].

²⁰ Evidence of Matt Dale (10 April 2026) at [50].

²¹ Evidence of Matt Dale (10 April 2026) at [57].

²² Evidence of Matt Dale (10 April 2026) at [61].

²³ Evidence of Matt Dale (10 April 2026) at [67].

²⁴ Evidence of Matt Dale (10 April 2026) at [78].

²⁵ Evidence of Matt Dale (10 April 2026) at [85].

²⁶ Evidence of Matt Dale (10 April 2026) at [90], [93].

25. The evidence of Jade Watkin assesses the ecological effects arising from the project, including the irreversible net loss of lizards and habitats.²⁷ Ms Watkin states that the proposed offset measures do not provide for cultural effects from the impacts on taoka species, including the loss of mana whenua relationships to species, landscape, disruption to whakapapa, and the ongoing exercise of kaitiakitaka.²⁸ Ms Watkin notes that taoka and threatened species have deep cultural importance to Kāi Tahu²⁹, noting that this connection and cultural importance is not limited to species in the NTCSAct.³⁰ Ms Watkin concludes that the failure in the Application to incorporate matauraka and recognise mana whenua authority undermines the exercise of kaitiakitaka,³¹ rakatirataka,³² and that the impacts of the proposed project on cultural values are unmitigated.³³
26. The evidence of Dr Alayna Rā sets out the effects on landscape and cultural values, and concludes the effects will remain beyond the life of the mine as the landscape effects will remain largely unmitigated.³⁴ Dr Rā highlights the limited capacity of the Dunstan Mountains Outstanding Natural Landscape (**ONL**) to absorb the landscape effects from the proposed mine.³⁵ Dr Rā notes that the Applicant has not assessed the landscape impacts of the mine site as a “whole”, which is a key effect, and concludes the assessments are materially deficient³⁶ and do not provide the panel with an adequate evidential basis to understand the true scale and significance of effects on mana whenua values.³⁷ Dr Rā considers the Application as presented to the Panel would result in high adverse landscape and natural character effects which are not mitigated nor reversible, including disruption to whakapapa-based relationships with whenua, wai, and wāhi tipuna.³⁸
27. The evidence of Mr Edward Ellison is set out above, with his conclusions that the effects arising include alienation on Kai Tahu connection to

²⁷ Evidence of Jade Watkin (Ecology and Kai Tahu Cultural Values) (10 April 2026) at [19] [20].

²⁸ Evidence of Jade Watkin (10 April 2026) at [22].

²⁹ Evidence of Jade Watkin (10 April 2026) at [25].

³⁰ Evidence of Jade Watkin (10 April 2026) at [27], [28].

³¹ Evidence of Jade Watkin (10 April 2026) at [34].

³² Evidence of Jade Watkin (10 April 2026) at [41].

³³ Evidence of Jade Watkin (10 April 2026) at [44] - [48].

³⁴ Evidence of Dr Alayna Rā (landscape) (10 April 2026) at [24].

³⁵ Evidence of Dr Alayna Rā (10 April 2026) at [26].

³⁶ Evidence of Dr Alayna Rā (10 April 2026) at [29].

³⁷ Evidence of Dr Alayna Rā (10 April 2026) at [35].

³⁸ Evidence of Dr Alayna Rā (10 April 2026) at [32], [33], [34].

whenua, wai, and taoka, now and into the future, causing intergenerational harm.³⁹

28. Cumulatively, these mining, water, ecological, landscape, and cultural effects are of a substantial magnitude over an inter-generational timeframe, with some effects, such as landscape impacts, fundamentally incapable of mitigation.
29. While economic evidence was not adduced by Kā Rūnaka, counsel note economic assessments for various parties invited to comment call into question the claimed regional and national economic benefits arising from the Application.
30. In further support of this position, the FTAA does not specify that economic benefits are to be preferred or given greater weight in an assessment of effects.⁴⁰

CONSERVATION ACT AND CONSERVATION COVENANT

31. The Application seeks to cancel part of the conservation covenant existing on the takiwā. The Department of Conservation (**DOC**) has provided legal submissions on the proposed covenant cancellation.
32. Section 4 of the Conservation Act states "This Act shall be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi". This absolute requirement is not mitigated, nor diluted, by the existence of the FTAA, and such application is required not to be inconsistent with the principles of Te Tiriti.⁴¹ While the FTAA assessment required is to give the greatest weight to the purpose of the FTAA, this does not prevent the application of s4 to any assessment conducted under the Conservation Act.⁴² Indeed, such assessment, and of a broad nature, is required.
33. It is our submission that DOC's view is legally flawed in this respect as it does not properly recognise, and therefore properly provide for, section 4 of the Conservation Act. Specifically absent from this assessment is assessment of Ngāi Tahu's interests in active development and economic opportunities, as the principles of rakatirataka and

³⁹ Evidence of Edward Ellison (10 April 2026) at [113].

⁴⁰ Fast-track Approvals Act 2024 s81(4).

⁴¹ *Ngāi Tahu Maori Trust Board v Director-General of Conservation* [1995] CA18/95, 2 September 1995, (CA) at pg 8.

⁴² *Ngāi Tai Ki Tāmaki Tribal Trust v Minister of Conservation* [2018] NZSC 122 at [52], [53], [54], [55].

active protection include economic development. Such an absence renders the assessment deficient in terms of s4 of the Conservation Act.

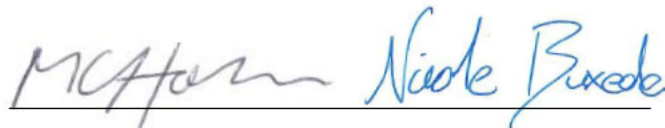
HEARING SOUGHT AND ASSOCIATED TIKAKA REQUIREMENTS

34. Counsel notes the Panel anticipates a hearing to be held in Otago at the end of April 2026.
35. The FTAA requires that if a hearing is held a panel must recognise tikaka Māori where appropriate.⁴³ Mr Ellison extends an invitation to the Panel to attend the marae, and states that the context of a marae setting and the tikaka that applies is a legitimate part of the process of conveying mana whenua values and beliefs in the exercise of their rakatirataka.

SUMMARY

36. In conclusion, Kā Runaka submits that:
- (a) The Application in its current form must be declined as it is in breach of s7, being so inconsistent with obligations arising under the existing Treaty settlement; and
 - (b) The Application in its current form should be declined due to the cumulative adverse effects, which over many years are sufficiently significant to outweigh any short term economic profits or benefits; and
 - (c) The assessment of the Application to cancel the conservation covenant is flawed and does not properly give effect to the principles of Te Tiriti of Waitangi.

DATE: 10 April 2026



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⁴³ Fast-track Approvals Act 2024 s58(1).