

Final Statement

Complaint submitted by the Evangelical Lutheran Church of Papua New Guinea, Jubilee Australia Research Centre and the Centre for Environmental Law and Community Rights Inc.

Submitted on behalf of 2,596 people, including people from the villages of Wangang and Yanga, people from villages located along the Huon Gulf coastline, citizens living in the city of Lae, and people living in villages along the pipeline corridor in the Morobe Province, Papua New Guinea

Against

Newcrest Mining Limited and Harmony Gold (Australia) Pty Limited

29 August 2025

Disclaimer

The information contained within this document is intended to inform the reader of the general processes and undertakings arising from a specific instance complaint raised with the Australian National Contact Point for Responsible Business Conduct. It is made available on the understanding that the Australian Treasury, as a result of providing this information, is not engaged in providing professional or legal advice, nor does it accept any responsibility for the accuracy or completeness of any material contained herein. Readers should exercise their own judgement with respect to interpretation. This material includes the views of third parties, which do not necessarily reflect the views of the Commonwealth or indicate its commitment to a particular course of action. Links to other websites and listings of other people or organisations are included for convenience and do not constitute endorsement of those sites, products or services. The Commonwealth Government respects the privacy of personal and commercially sensitive information provided by parties, as per the requirements of the Privacy Act 1988 and the Freedom of Information Act 1982.

© Commonwealth of Australia 2025

This publication is available for your use under a [Creative Commons Attribution 3.0 Australia](https://creativecommons.org/licenses/by/3.0/au/legalcode) licence, with the exception of the Commonwealth Coat of Arms, the Treasury logo, photographs, images, signatures and where otherwise stated. The full licence terms are available from <http://creativecommons.org/licenses/by/3.0/au/legalcode>.



Use of Treasury material under a [Creative Commons Attribution 3.0 Australia](https://creativecommons.org/licenses/by/3.0/au/legalcode) licence requires you to attribute the work (but not in any way that suggests that the Treasury endorses you or your use of the work).

Treasury material used ‘as supplied’

Provided you have not modified or transformed Treasury material in any way including, for example, by changing the Treasury text; calculating percentage changes; graphing or charting data; or deriving new statistics from published Treasury statistics — then Treasury prefers the following attribution:

Source: The Australian Government the Treasury

Derivative material

If you have modified or transformed Treasury material, or derived new material from those of the Treasury in any way, then Treasury prefers the following attribution:

Based on The Australian Government the Treasury data

Use of the Coat of Arms

The terms under which the Coat of Arms can be used are set out on the Department of the Prime Minister and Cabinet website (see www.pmc.gov.au/government/commonwealth-coat-arms).

Other uses

Enquiries regarding this licence and any other use of this document are welcome at:

Manager
Media Unit
The Treasury
Langton Crescent
Parkes ACT 2600
Email: media@treasury.gov.au

Contents

Executive summary	4
Figure 1: Summary of complaint issues and determinations	6
Determinations	6
Figure 2: Summary of Final Statement recommendations	7
Recommendations	7
Recommendations	8
Free, Prior, and Informed Consent (FPIC) Processes (cont'd)	8
Improve Environmental Due Diligence	8
Ensure all baselines use recent data, are comprehensive and are publicly released	8
Recommendations	9
Policy Development and Disclosure Improvements	9
Address Technical and Scientific Contentions	9
Review Documentation.....	9
Parties and process	10
Background to the parties and the Wafi-Golpu Project.....	10
Circumstances in which these determinations and recommendations are made.....	15
AusNCP proceedings	18
Initial Assessment	18
Good offices.....	18
Further examination	19
Application of the OECD Guidelines	21
OECD Guidelines relevant chapters	21
Chapter II – General Policies (Paragraphs 2, 10, 11).....	21
Chapter III - Disclosure (Paragraph 2(f)).....	21
Chapter IV – Human Rights (Paragraphs 1, 2, 5).....	21
Chapter VI – Environment (Paragraphs 1b, 1c, 2a, 2b, 3, 4)	22
Examination, determinations, and recommendations	24
Examination and determinations	24
Chapter II – General Policies, Paragraphs 2, 10, 11	24
Chapter III – Disclosure, Paragraph 2(f)	24
Chapter IV - Human Rights, Paragraphs 1, 2, 5	25
Human rights due diligence	27
Table 2. Examples of Adverse Impacts on Matters Covered by the OECD Guidelines for MNEs	29

Appropriate Human Rights Due Diligence- Violence and sexual abuse	29
Appropriate Human Rights Due Diligence - Modern slavery	31
Huon coastal communities' rights.....	32
Table 2: Indication of far shore impacts	33
Free prior informed consent (FPIC).....	34
Chapter VI – Environment, Paragraphs 1b, 1c, 2a, 2b, 3, 4.....	40
Protection of the environment and public health.....	40
Maintain a system of environmental management - baselines	42
Assess impacts over the full project life cycle.....	46
Assess impacts over the full project life cycle – critically endangered species.....	47
Precautionary approach	50
Provide adequate information and communication with communities.....	52
Recommendations	53
Develop a plan to implement Final Statement recommendations	53
Strengthen Human Rights Due Diligence.....	53
Free, Prior, and Informed Consent (FPIC) Processes	54
Improve Environmental Due Diligence	54
Ensure all baselines use recent data, are comprehensive and are publicly released	55
Policy Development and Disclosure Improvements	55
Address Technical and Scientific Contentions	55
Review Documentation.....	56
Annexes	57
Annex A: Schedule of events.....	57
Annex B: Publications and Bibliography.....	60
Annex C: Institutional arrangements	64
Annex D: Governance	65
Annex E: Complaint, Examination and Recommendations	66

Executive summary

1. On 9 November 2022, the Australian National Contact Point for Responsible Business Conduct (AusNCP) received a complaint from the Evangelical Lutheran Church of Papua New Guinea (ELC-PNG), Centre for Environmental Law and Community Rights Inc (CELCOR) and Jubilee Australia Research Centre (notifiers) regarding the activities of Newcrest Mining Limited and Harmony Gold (Australia) Pty Limited (enterprises). The notifiers indicated that the complaint is submitted on behalf of 2,596 people, including people from the villages of Wagang and Yanga, other villages located along the Huon Gulf coastline, citizens living in the city of Lae, and people living in villages along the pipeline corridor in the Morobe Province, Papua New Guinea (complainants).
2. The Wafi-Golpu Project is a proposed underground copper-gold mine and associated ore processing, concentrate transport and handling, power generation, water and tailings management and related support facilities, and services in the Morobe Province of Papua New Guinea.¹ The proposed underground copper-gold mine would be located beneath Mt Golpu, approximately 300 kilometres (km) northwest of Port Moresby and 65km southwest of Lae. The proposed support facilities include access roads to the mine and pipelines from the mine to the Port of Lae and to new coastal facilities near the village of Wagang.² The proposed total length of the pipeline, from the mine site to Lae, is 103km.³
3. The complaint alleges that the enterprises' plans for disposal of mining waste via deep sea tailings placement (DSTP) into Huon Gulf waters as part of the Wafi-Golpu Project, in Papua New Guinea do not comply with the OECD Guidelines for Multinational Enterprises 2011 (OECD Guidelines).
4. The Wafi-Golpu Project is presently in the permitting phase and mining operations have not yet commenced. The complaint examination predominantly focuses on matters of due diligence (environment and human rights), disclosure and free, prior and informed consent (FPIC)-related processes.
5. The finding of this examination is that the enterprises' activities appear to not align with the OECD Guidelines in some areas, including human rights due diligence related to gender-based violence; environmental due diligence pertaining to critically endangered species and the development of an adequate environmental baseline; and recommended disclosure policies.
6. The examination of this complaint has made numerous (28) recommendations for consistency with the OECD Guidelines, many with different timelines summarised in the recommendations section of this Final Statement. To enable implementation, monitoring and reporting, the Independent Examiner recommends the enterprises develop a plan which documents all the recommended actions with appropriate timeframes to deliver on the recommendations.
7. A summary of the issues raised in the complaint and the Independent Examiner's determinations is at **Figure 1**. A summary of the Independent Examiner's recommendations is

¹ Wafi-Golpu Project Environmental Impact Statement Executive Summary June 2018 (EIS Summary).

² EIS summary.

³ Notifiers' commentary to the draft Final Statement dated 13 September 2024 (Notifiers' submission dated 13 September 2024), p 10.

listed at **Figure 2**. A full list of determinations and recommendations is listed in a table at **Annex E**.

8. DSTP is the proposed tailings management system for the Wafi-Golpu Project. DSTP is an alternative to managing tailings in an on-land storage facility and involves transporting tailings from the mine site via a pipeline to the coast for discharging into the ocean. The proposal for the Wafi-Golpu Project contemplates a mine with a 28-year life span,⁴ with additional time required for construction, mine close and rehabilitation.
9. The notifiers hold concerns about the impact of the DSTP on the local ecosystem and surrounding communities. Specifically, the notifiers allege that insufficient due diligence and consultation has taken place regarding the risks of the proposed DSTP and the complainants, as well as the broader community, have not been given the opportunity to give or withhold their FPIC. The notifiers' concerns are generally specific to the issue of the DSTP component of the Wafi-Golpu Project, and not the project itself. However, there are some areas of the complaint that relate to concerns broader than the proposed DSTP and to the overall project operations.
10. The Independent Examiner recognises that the Wafi-Golpu Project has the potential to generate significant revenue for the country, which, if managed in a manner conducive to broad based economic growth and sustainable development, could generate significant benefits for the citizens of Papua New Guinea, and the people of Morobe Province. Formal project activities have not yet commenced, and official government approvals are yet to be finalised.
11. The enterprises raised concerns about the identities of the complainants being withheld, as they argued it was contrary to the normal course of a dispute resolution process. However, the Independent Examiner finds the notifiers to be legitimate parties, despite the individual identities of the complainants being withheld, due to: a) the ELC-PNG's function as a representative institution in a province comprised mainly of Lutheran citizens, and b) the understanding that there are definitely some complainants that live in the project areas designated by the enterprises.
12. Many aspects of the complaint relate to highly technical scientific matters contested between the parties. Some of these matters are also covered by judicial proceedings in Papua New Guinea, which the enterprises believe to be the appropriate legal forum to address these issues.
13. This Final Statement has been prepared with reference to the 2011 version of the OECD Guidelines and the 2022 version of the AusNCP Complaint Procedures that is available on the AusNCP website at www.ausncp.gov.au.

Aleta Moriarty

Independent Examiner

Australian National Contact Point for Responsible Business Conduct

OECD Guidelines for Multinational Enterprises on Responsible Business Conduct

Email: secretariat@ausncp.gov.au

⁴ Noting this timeframe is disputed between parties.

Figure 1: Summary of complaint issues and determinations

Determinations

Chapter II – General Policies (Paragraphs 2, 10, 11) allegation: failure to respect fundamental human rights, including the right to life, a healthy environment, culture, equality, non-discrimination, children's rights, and self-determination.

Determination: The Independent Examiner has covered the relevant human rights and environmental complaints in the respective sections of the Final Statement (see below).

Chapter III - Disclosure (Paragraph 2(f)) allegation: failure to disclose key information regarding foreseeable risks.

Determination: The enterprises' policies do not appear to be consistent with paragraph 2(f) of the OECD Guidelines.

Chapter IV – Human Rights (Paragraphs 1, 2, 5) allegation: Failure to respect internationally recognised human rights (FPIC) and failure to conduct appropriate human rights due diligence.

Determination: The enterprises appear to have been inconsistent with the OECD Guidelines requirements to conduct human rights due diligence 'appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts'.

Determination: The Independent Examiner is unable to determine the matter of FPIC at this stage.

Chapter VI – Environment (Paragraphs 1b, 1c, 2a, 2b, 3, 4) allegation: Failure to protect the environment and avoid causing serious and irreversible environmental damage; failure to engage in the precautionary approach; failure to establish and maintain a system of environmental management; failure to address environmental impacts over the full lifecycle; and failure to provide adequate information and adequate communication with communities.

Determination: The Independent Examiner is unable to make a determination on the failure to protect the environment for the entirety of the project given the highly technical scientific nature of the issues in contention, coupled with the likelihood that these will be dealt with by experts in the Papua New Guinea courts.

Determination: Regarding the alleged failure to address environmental impacts over the full lifecycle, the Independent Examiner does not find the enterprises' activities to be inconsistent with the OECD Guidelines requirement on timelines.

Determination: It appears the enterprises have been inconsistent with the OECD Guidelines in terms of operating 'within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment' to 'assess, and address...the foreseeable environmental...impacts...with a view to avoiding or, when unavoidable, mitigating them' in relation to critically endangered species.

Determination: It appears that the enterprises have not demonstrated consistency with the OECD Guidelines for establishing an 'appropriate' system of environmental management (baseline).

Determination: It appears the enterprises have not demonstrated consistency with the OECD Guidelines' recommended precautionary approach related explicitly to the due diligence associated with critically endangered species, and appropriate baseline development commensurate with the level of risk.

Figure 2: Summary of Final Statement recommendations

Recommendations

Develop a plan to implement Final Statement recommendations

1. Given the large number of recommendations, the first recommendation is for the enterprises to develop an open and transparent action plan which documents all of the recommended actions in this Final Statement into a coherent framework. The plan should include relevant timeframes and responsibilities for implementation to enable the plan to be monitored and reported on for stakeholders. Noting that most of these activities relate to FPIC and due diligence, it is envisaged that all activities would be undertaken before the project receives its final approvals, and formally commences its operations. The initial plan should be developed within three months of the final report being released and should be disclosed publicly. An update should be provided at six months and twelve months.

Strengthen Human Rights Due Diligence

2. Strengthen human rights due diligence to include comprehensive analysis of risks related to gender inequalities, violence against women, and Protection from Sexual Exploitation, Abuse and Harassment (PSEAH) (including child abuse).
3. Develop and implement a standalone gender action plan, which has been widely consulted with stakeholders in the area including women from the project area (including, for example, the mine site area, the DSTP outfall and filtrate disposal area), focused on addressing gender-based violence and inequality, prepared by an expert. This plan should be publicly disclosed.
4. Develop a standalone plan to evaluate and address PSEAH risks, prepared by an expert, and widely consulted with stakeholders from the project area, especially women. This should be publicly disclosed.
5. Ensure due diligence is in place to identify and mitigate risks associated with modern slavery, particularly in the agricultural components of the project and other high-risk areas. Publicly disclose plans to address modern slavery.
6. If people, or their assets are to be relocated, provide clear and precise guidance on compensation and support mechanisms for communities affected by resettlement (including those that may be displaced by pipeline corridor), with special attention to possible elite capture.
7. Respond to the notifiers' request to provide a clear and quantifiable explanation of the impacts, including impacts on access to water, food-growing areas, education, and employment. In addition, it is recommended that impact on fisheries both as a sector, and as a primary source of protein in the region, is examined in greater detail.

Free, Prior, and Informed Consent (FPIC) Processes

8. To ensure consistency with the OECD Guidelines as the project progresses through the approval process, demonstrate full compliance with FPIC principles and definitions outlined in OECD guidance and relevant guidelines, such as IFC Guidelines/performance standards.
9. Clearly demonstrate the rationale for including or excluding certain stakeholders as affected parties, based on existing and more recent scientific evidence. This is currently unclear in relation to coastal communities.
10. Given the predominant role the Evangelical Lutheran Church of Papua New Guinea plays in the Morobe Province, it is recommended that the enterprises ensure they are including the Church in all consultations and public forums as a representative body of a certain proportion of the citizens in the project area.

Figure 2: Summary of Final Statement recommendation (cont'd)

Recommendations

Free, Prior, and Informed Consent (FPIC) Processes (cont'd)

11. The enterprises are encouraged to document proof of FPIC to meet the IFC standard, if the standard is to continue being used for assurance purposes, either officially or unofficially. Verbal proof, as indicated, does not meet the standard. Documentation regarding FPIC was not provided to the Independent Examiner.
12. Release all relevant information to ensure a two-way dialogue consistent with the Papua New Guinea constitution and FPIC guidance. This includes working with CEPA to encourage the release of the Independent Assessment and publicly detailing the map of the pipeline with enough detail to determine which households/streets will be impacted. These need to be communicated in a format that is easily accessible and understandable to communities. It should also be published on the WGJV website.

Improve Environmental Due Diligence

13. Given the risk of irreparable harm, improve due diligence regarding the protection of critically endangered species in the project area or that pass through the project area. This includes all critically endangered species, and ideally those that are not critically endangered but still at risk, such as the dugong.
14. To ensure the protection of critically endangered species, contract independent species experts for every critically endangered species in the project catchment area, to evaluate risks and put in place recommendations and mitigation strategies. These reports should be publicly disclosed.
15. Given the importance of the fishery sector to both the diet and income of the local communities, as demonstrated in the EIS, it is recommended that a fishery expert is employed to assess the impact on fisheries.
16. To ensure alignment with IFC Performance Standards, if they are to continue being used, and as per Harmony Gold (Australia) Pty Limited's Biodiversity and Rehabilitation Position Statement, ensure and demonstrate that there is only a net gain in biodiversity and not a net loss in biodiversity as a result of this project. Likewise, ensure alignment with other recommendations under the IFC Performance Standards.
17. Uphold the precautionary principle, particularly where environmental impacts on critically endangered species and local ecosystems are uncertain.
18. Ensure all baselines meet best practice standards (such as those highlighted by Stauber et. al and other peer reviewed scientific papers cited in this Final Statement) and comply with the standards cited in the EIS (including the Papua New Guinea Draft DSTP Guidelines).
19. Given the complexity of interpreting baseline assessment results, all baseline assessments should be distilled into a clear, easily digestible table. This table should summarise each study, the methodology used, key impacts, suggested mitigation measures, the compliance standards used (if any), the assessor, and the assessment timeframes and scope.

Ensure all baselines use recent data, are comprehensive and are publicly released

20. Review documents to ensure all baseline data and sources are recent and relevant to a best practice standard. This includes information undertaken in desk reviews. Some sources are very outdated and need to be excluded or updated.
21. Noting there are limitations around desk reviews in establishing a baseline, for example a desk review will not readily identify new species, ensure that all other studies are comprehensive and have no gaps.

Figure 2: Summary of Final Statement recommendation (cont'd)

Recommendations

Policy Development and Disclosure Improvements

22. Develop and/or revise disclosure policies to include the disclosure of 'foreseeable risks'.
23. Ensure comprehensive and accessible public disclosure of project risks, impact assessments, and mitigation strategies as part of the FPIC process. In particular, many of the assessments and background documents are not in plain English or language that is accessible.
24. The enterprises are encouraged to disclose all relevant information as part of the FPIC process, including benefits (and who will receive these), social and environmental impacts, the content and quantity of the filtrate (including processing chemicals), job gains and losses (including impacts on fishery sectors and other sectors), compensation arrangements, forecast inflationary pressure and other relevant information.

Address Technical and Scientific Contentions

25. To ensure the enterprises meet the precautionary approach, provide evidence to address concerns and conflicting scientific views raised by independent reviewer Professor Mana, Dr Charles James, and address the issues, alongside the Government of PNG, that were raised by Judge Kandakasi.
26. Under the precautionary approach, the burden of proof falls on the proponent to provide evidence of safety. This includes understanding the impact of particle flow over long timeframes, lessons learned from other DSTP projects in the country, greater detail on seismic risks, flooding risks, levels of contaminants in relevant marine areas, and the efficiency and effectiveness of current monitoring and review systems. In particular, given the evidence of harm caused by Lihir mine, indicate how these impacts will be avoided or addressed in the use of DSTP in this instance.
27. If the enterprises wish to exclude coastal communities as relevant stakeholders in terms of FPIC, they will need to better demonstrate that there will be no impact on coastal communities to a standard that meets the precautionary principle. The current evidence and competing analyses do not fully demonstrate that there will be no impact. The onus is on the enterprises, particularly in the face of competing evidence, to provide evidence that there will be no impact and that they meet appropriate baseline standards. Likewise, it is alleged by the notifiers that Yanga village was not appropriately informed about where the infrastructure corridor/pipeline was going to be placed. If the pipeline/infrastructure will be going through Yanga village or significantly impacting this community, there is an onus on the enterprises to document their discussions and FPIC with this community.

Review Documentation

28. Review EIS and all project documentation, and revise or provide clarifying information, if necessary, to ensure alignment with the standards, processes and corporate policies stated, as well as within documentation. There were several areas where there was potential non-compliance with stated standards/policies/guidelines.

Parties and process

Background to the parties and the Wafi-Golpu Project

14. The AusNCP complaint under consideration is made by the Evangelical Lutheran Church of Papua New Guinea (ELC-PNG), Centre for Environmental Law and Community Rights Inc (CELCOR) and Jubilee Australia Research Centre (notifiers) against Newcrest Mining Limited and Harmony Gold (Australia) Pty Limited (enterprises) on behalf of 2,596 people, including people from the villages of Wagang and Yanga, other villages located along the Huon Gulf coastline, citizens living in the city of Lae, and people living in villages along the pipeline corridor in the Morobe Province, Papua New Guinea (complainants).
15. The notifiers and complainants have raised concerns about plans by Newcrest Mining Limited and Harmony Gold (Australia) Pty Limited (enterprises) to dispose of mining waste into the ocean of the Huon Gulf at Wagang, as well as the disposal of mining filtrate at the Port of Lae, alleging mining waste disposal will cause serious and permanent damage to the local ecosystem and have impacts on the surrounding communities. The notifiers also allege that the complainants and other communities along the Huon Gulf have not been adequately consulted or informed regarding the potential risks of the project.
16. The complaint alleges that the enterprises' plans for the disposal of mining waste via deep sea tailings placement (DSTP), a method where mining waste is disposed of by depositing it into Huon Gulf waters as part of the Wafi-Golpu Project in Papua New Guinea do not align with the OECD Guidelines due to the alleged environmental risks and the alleged failure of the enterprises to conduct adequate due diligence and consultation with the affected communities. According to the notifiers, the affected communities have not been given the opportunity to give or withhold their free, prior and informed consent (FPIC).
17. The ELC-PNG has a membership of over 1.2 million all throughout Papua New Guinea. This is approximately 16 per cent of the total 7.5 million population of the country.⁵
18. CELCOR is a not-for-profit, non-government environmental organisation that works to protect the environmental and customary rights of the people of Papua New Guinea through law and advocacy and to ensure sustainable resource management for the benefit of present and future generations.
19. Jubilee Australia Research Centre is an Australian-based non-profit research centre that was founded in 2009. The organisation's primary functions include engaging in research and advocacy in order to deliver economic justice in the Asia-Pacific region, and accountability of Australian corporations and government agencies operating within this region.
20. The notifiers state that they consulted the complainants and obtained their consent to bring this complaint on their behalf. While a file including the names and original signatures of each of the complainants was attached, they asked for the names of signatories and signatures

⁵ Complaint against Newcrest Mining Limited and Harmony Gold (Australia) Pty Limited submitted to the Australian National Contact Point for Responsible Business Conduct (AusNCP) by the Evangelical Lutheran Church of Papua New Guinea, Centre for Environmental Law and Community Rights Inc and Jubilee Australia Research Centre, dated 9 November 2022 (Complaint), p 5.

provided to remain confidential and not be provided to the enterprises due to a perceived risk of reprisal.

21. The Independent Examiner accepts that people within Lae and along the coastline represent potentially affected communities and that the ELC-PNG, representing 16 percent of the population, is a legitimate representative institution.
22. The complainants sought a number of remedies of the enterprises, including:
 - 22.1. Publicly commit to abandon current plans to pursue DSTP outfall at Wagang village.
 - 22.2. Develop a new tailings management plan that does not involve a pipeline through the city of Lae and an outfall at Wagang village.
 - 22.3. Halt all further approvals, negotiations and applications, and seek a pause with all PNG authorities regarding their pending decisions, for the Wafi-Golpu Project until FPIC has been given by all affected communities represented by the Complainants.
 - 22.4. Provide a clear explanation of the impacts assessed in their socioeconomic assessment, including impacts on access to water, access to food-growing areas, access to education and access to employment.
 - 22.5. Publicly request that PNG Conservation and Environmental Protection Authority (CEPA) release the Independent Review of the environmental impact statement (EIS).
 - 22.6. Provide answers to the specific questions submitted to the enterprises by Jubilee Australia on 31 August 2022.
 - 22.7. Fund an external review of their EIS by experts selected by the complainants.
23. Additional actions and remedies were sought by the notifiers in their submission dated 17 January 2024. These included:
 - 23.1. That a detailed map of the pipeline route through Lae be published by the enterprises in one of the PNG national newspapers, so that communities in and around Lae could be aware of the proposed pipeline route.
 - 23.2. A determination that the communities that they represent are eligible for FPIC.
 - 23.3. A determination that any FPIC process, and any other community engagement for communities who do not meet the criteria for FPIC, includes the active participation of the ELC-PNG.⁶

⁶ Notifier's submission titled 'Notifiers Final Submission' dated 17 January 2024 (Notifier's submission dated 17 January 2024), pp 52-53.

24. The notifiers' submission dated 17 January 2024 also contained a number of requests for the AusNCP. Many of these requests went beyond the scope of an NCP which is outlined in the OECD Guidelines.⁷
25. Many of these subjects may have been discussed if there had been engagement in the good offices process. The enterprises declined to participate in the process. However, many of these requests go beyond the scope of the Independent Examiner, whose role is to determine whether the enterprises' activities are consistent with the OECD Guidelines and make recommendations in this context.
26. Newcrest Mining Limited, an Australian registered company with the Australian Securities and Investments Commission (ASIC)⁸ is the largest gold producer listed on the Australian Securities Exchange and ranks among the world's largest gold mining companies.⁹ Newcrest Mining Limited is considered a multinational company with a diverse portfolio of operations and projects spanning Australia, Canada, and Papua New Guinea, where it owns 50 per cent of the Wafi-Golpu Project. It is headquartered in Melbourne, Australia.
27. Harmony Gold Mining Company Limited is the largest gold producer in South Africa. It is considered a multinational enterprise and has operations in Papua New Guinea, where it owns and operates the Hidden Valley mine and 50 per cent of the Wafi-Golpu Project, and the Eva Copper project in Queensland, Australia. The company is largely controlled by institutional shareholders who own 55 per cent of the company.¹⁰ Harmony Gold Mining Company Limited is registered and headquartered in South Africa. Harmony Gold (Australia) Pty Limited is a registered company in Australia, with offices in Brisbane, Australia.¹¹
28. On 6 November 2023, Newcrest Mining Limited was acquired by Newmont Corporation, a multinational mining company headquartered in the United States. All items covered in the examination pertain to the entities as relevant at the time of the complaint.
29. The Wafi-Golpu Project is an unincorporated joint venture with two equal participants, being Newcrest PNG 2 Limited and Wafi Mining Limited. The participants are companies registered in Papua New Guinea. The ultimate parent company of Newcrest PNG 2 Limited is Newcrest Mining Limited and the ultimate parent company of Wafi Mining Limited, through Harmony Gold (Australia) Pty Limited, is Harmony Gold Mining Company Limited.
30. The proposed Wafi-Golpu Project is an underground copper-gold mine and associated ore processing, concentrate transport and handling, power generation, water and tailings management and related support facilities and services in the Morobe Province of the Independent State of Papua New Guinea.¹²
31. The proposed underground copper-gold mine would be located beneath Mt Golpu, approximately 300km northwest of Port Moresby and 65km southwest of Lae. The proposed

⁷ Organisation for Economic Cooperation and Development (OECD), (2011), *OECD Guidelines for Multinational Enterprises*, OECD Publishing, pp 72-75. <http://dx.doi.org/10.1787/9789264115415-en> (OECD Guidelines).

⁸ A.C.N 005 683 625 and A.B.N 20 005 683 625.

⁹ Newcrest Mining Limited, [About Our Company](#), n.d., accessed 22 November 2024

¹⁰ Yahoo Finance, [Harmony Gold Mining Company Limited \(JSE:HAR\) is largely controlled by institutional shareholders who own 55% of the company \(yahoo.com\)](#), 4 February 2024, accessed 22 November 2024.

¹¹ A.C.N. 091 439 333 and A.B.N. 64 091 439 333.

¹² EIS Summary.

support facilities include access roads to the mine and pipelines from the mine to the Port of Lae and to new coastal facilities near the village of Wagang.¹³ DSTP is the proposed tailings management system for the project. DSTP is an alternative to managing tailings in an on-land storage facility and involves transporting tailings from the mine site via a 103km pipeline to the coast for discharging into the ocean.

32. The proposal for the Wafi-Golpu Project contemplates a mine with a 28-year life span.¹⁴ However, in the initial permitting process an environmental permit was issued for significantly longer than this.
33. The enterprises indicate that the proposed Wafi-Golpu Project Area consists of three component areas within the Morobe Province of PNG (refer to the Map at [Figure 3](#) below):
 - 33.1. Mine Area: This encompasses the proposed underground copper-gold mine located beneath Mt Golpu, and related ore processing facilities, and is located on the northern side of the Owen Stanley Ranges area, in the foothills of the Watut River catchment. The Mine Area is approximately 300km north-northwest of Port Moresby and 65km southwest of Lae.¹⁵
 - 33.2. Coastal Area: This includes the proposed port facilities including the tailings filtrate discharge pipeline which are located approximately 65km from the Mine Area near the Port of Lae and the proposed DSTP pipeline outfall area, located approximately six kilometres east of the Port, near Wagang. The area of coast adjacent to the Project is known as the Huon Gulf.¹⁶
 - 33.3. Infrastructure Corridor: This connects the Mine Area and the Coastal Area following the flat plains of the Watut River and Markham River Valleys, and encompasses the proposed Project infrastructure, being corridors for pipelines and roads and associated construction areas. The proposed tailings pipeline will be located within the Infrastructure Corridor.¹⁷

13 EIS Summary

14 EIS Summary.

15 Newcrest Mining Limited and Harmony Gold (Australia) Pty Limited submission titled 'Australian National Contact Point complaint relating to the Wafi-Golpu Project Newcrest Mining Limited and Harmony Gold (Australia) Pty Limited submission regarding the application of the Initial Assessment criteria' dated 27 February 2023 (Enterprises' submission dated 27 February 2023), p 5, [3.6(a)].

16 Enterprises' submission dated 27 February 2023, p 5, [3.6(b)].

17 Enterprises' submission dated 27 February 2023, p 5, [3.6(c)].

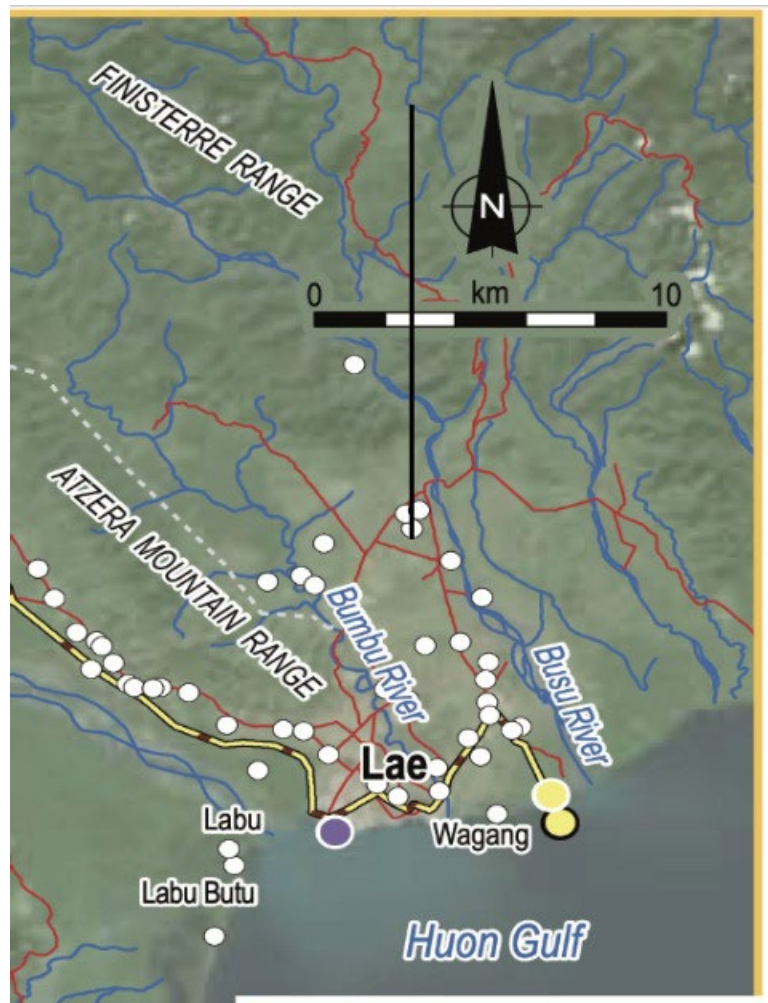


Figure 3: Map of the Wafi-Golpu Project Area in the Morobe Province of PNG

Source: *Wafi-Golpu Project Environmental Impact Statement Executive Summary June 2018, page 5*

34. The enterprises indicate that a number of international guidelines and standards informed the design of the Wafi-Golpu Project and the preparation of the EIS, including: the IFC Performance Standards; the Equator Principles III; the Voluntary Principles on Security and Human Rights; and the International Council on Mining and Metals Sustainable Development Framework which encompasses ethical business practices, partnering for development, human rights and the rights of Indigenous peoples.¹⁸
35. Approval-in-principle for the Wafi-Golpu Project was granted by Papua New Guinea's Minister for Environment and Conservation on 19 November 2020. The following month, on 18 December 2020, an environmental permit for the Wafi-Golpu Project was issued under section 65 of the Papua New Guinea Environment Act 2000 by the Director of CEPA.¹⁹ A stay on this

¹⁸ Enterprises' submission dated 27 February 2023, p 15, [5.23].

¹⁹ Enterprises' submission dated 27 February 2023, p 5, [3.7].

permit was imposed. There were proceedings which challenge the administrative aspects of the environmental permit, including:

- 35.1. *OS(JR) 112 of 2022*: Malatabi Keith Yawing, Grace Kerro & Councillor Kipu Anonga v Gunther Joku, Managing Director for Conservation and Environment Protection Authority & The State, and its related Supreme Court proceeding, *SCM 34 of 2023*: Malatabi Keith Yawing v Gunther Joku as Managing Director for CEPA & The State;²⁰ and
- 35.2. *OS(JR) 35 of 2021*: Saonu & Ors v Mori & Ors and its related Supreme Court Proceeding *SCM 56 of 2021*: State & Ors v Saonu & Anor, which resulted in the stay of the environmental permit.²¹ A stay was later placed on this stay, making it inoperative.²²
36. The enterprises decided not to participate in the AusNCP good offices process as they did not feel it was appropriate. They cited a number of reasons, including contemporaneous judicial proceedings, the identities of the complainants being withheld, and the technical nature of the complaint. Limited evidence was submitted to the Independent Examiner by the enterprises.
37. The notifiers indicate that less than 6 per cent of the 2,596 signatories to the AusNCP complaint are named in the court proceedings, and they are from Wagang, Yanga and Labu Butu villages.²³

Circumstances in which these determinations and recommendations are made

38. As noted above, the enterprises were offered AusNCP good offices process but declined citing a number of reasons including contemporaneous judicial proceedings and concerns about the identity and legitimacy of the complainants. This was outlined in the enterprises' submission dated 27 February 2023, which raised concerns regarding the identities of the complainants being withheld, particularly given the representative nature of the complaint.
39. The AusNCP procedures provide that if an offer of good offices is refused, the complaint will return to the Independent Examiner for examination. The Independent Examiner will review the information received and gathered and consider whether further consultation with other parties, which may include other government agencies or overseas missions, is required to conclude the matter. Then the Independent Examiner will prepare a Final Statement.
40. The Implementation Procedures of the OECD Guidelines contain Procedural Guidance which indicates that when a party is unwilling to participate in the procedures, a statement should be made publicly available, which makes recommendations as appropriate, on the implementation of the OECD Guidelines. The statement should identify the parties concerned, the issues involved, the date on which the issues were raised with the National Contact Point (NCP), any recommendations by the NCP, and any observations the NCP deems appropriate to include on the reasons why the proceedings did not produce an agreement.

20 Correspondence from the Notifiers titled 'Further answers to AusNCP queries' dated 8 March 2024, in response to the questions from the Independent Examiner dated 20 February 2024 (Further answers to AusNCP queries).

21 Notifiers, further answers to AusNCP queries.

22 Notifiers, further answers to AusNCP queries.

23 Notifiers, further answers to AusNCP queries.

41. As the offer of good offices were refused and consistent with the Implementation Procedures of the OECD Guidelines and the AusNCP procedures, this Final Statement is made after the Independent Examiner conducted an examination of the complaint. It contains a statement as to whether actions were consistent with the OECD Guidelines and provides recommendations.

Timing delays and complexities before publication

42. Completing the examination of this complaint and publication of this Final Statement was subject to significant delays throughout the complaints process. This was due to a number of factors, including complexities in technical issues for consideration and extensive consultation with the parties and delayed materials. In particular, ambiguity and lack of clarity around related court proceedings (*OS(JR) 112 of 2022*), which were initially set to be heard by the National Court of Justice in Papua New Guinea in February 2025, which coincided with the AusNCP's planned publication, complicated and delayed the release of the Final Statement.
43. While the AusNCP Secretariat and Independent Examiner were aware that outstanding issues existed between the Papua New Guinea government and communities, which were the subject of various court proceedings in Papua New Guinea, the status of these proceedings, some of which had been indefinitely stayed, were entirely unclear. The AusNCP Secretariat and Independent Examiner were not informed until 30 January 2025 by the notifiers, that *OS(JR) 112 of 2022* was set to be heard by the National Court of Justice in coming weeks, with potentially new issues being raised. This meant that the Final Statement which had been ready for publication in January 2025, needed to be delayed in order to understand the impact, if any, of these related court proceedings.
44. Significant effort was expended to obtain clarity around the nature of the court proceedings and to ascertain if there was any overlap between the issues raised in the proceedings and the Final Statement. With no visibility of the arguments, evidence and court documents being considered, the Independent Examiner sought to understand if any determinations in the Final Statement needed to be removed if this same issue was to be decided by the National Court of Justice.
45. Although originally set to be heard in mid-February 2025, the case was delayed on multiple occasions by the National Court of Justice until June 2025. Over the last 7 months, the AusNCP Secretariat and Independent Examiner used best endeavours to try to understand, in good faith, the nature of the issues being determined by *OS(JR) 112 of 2022*. Not only did the Independent Examiner correspond with the enterprises and notifiers about the court case (more below), but also with third parties such as other Australian Government agencies and the Court Registry of the Equity Division in Papua New Guinea. Ultimately these attempts were unsuccessful, as no information or court documents could be shared with or obtained by non-parties to the proceedings. The advice received was that only parties to the proceedings could provide details about the nature of the court proceedings and share any court documents.
46. Given that only CELCOR, one of the notifiers, had actual knowledge about the case (as the legal representatives for the Plaintiffs), considerable time over many months was spent trying to understand from CELCOR, the extent to which *OS(JR) 112 of 2022* overlapped with the determinations in this Final Statement. Initially, in February 2025, the AusNCP Secretariat and Independent Examiner sought access to the court documents. However, no response was

forthcoming by May 2025, despite repeated emails and calls from the AusNCP Secretariat. In May and June, CELCOR and the notifiers agreed to meet with the AusNCP Secretariat and the Independent Examiner. Although the purpose of these meetings was to ascertain if any details about the nature of the court proceedings could be shared instead of courts documents, this information was not forthcoming. By 30 June 2025, it became clear that the notifiers could not provide any detail regarding *OS(JR) 112 of 2022*, other than sharing the Orders made by the National Court of Justice on 12 June 2025.

47. On 12 June 2025, the National Court of Justice ordered that the decision in *OS(JR) 112 of 2022* be reserved. At the time of publication, the court judgment was not available to the Independent Examiner, and no clarity around when the judgment would be released could be obtained from the Court Registry in Papua New Guinea. Notwithstanding this, the Independent Examiner was advised by the notifiers that although a decision is pending, the court process has been completed and the recommendations in this Final Statement have no bearing on the outcome of the National Court of Justice's decision in *OS(JR) 112 of 2022*. The Final Statement has been published on this basis. It is worthwhile for the notifiers to better consider the impacts of instigating parallel proceedings in future instances.

AusNCP proceedings

Initial Assessment

48. On 1 August 2023, the AusNCP published the Initial Assessment statement for this complaint prepared by Independent Examiner, Ms Shiv Martin.²⁴
49. For a complaint to be considered by the AusNCP, there must be a relevant connection with Australia. In this case, both Harmony Gold (Australia) Pty Limited and Newcrest Mining Limited are multinationals, operating in multiple countries, that are registered as Australian companies with ASIC.²⁵
50. The complaint was accepted following the Independent Examiner's consideration of the six admissibility criteria of the Initial Assessment process. The Initial Assessment found the complaint merited further consideration and would be appropriate for 'good offices' within the OECD Guidelines.
51. The enterprises contested the acceptance of this complaint on the basis that the identities of the complainants were not disclosed to them. They highlighted the difficulty in resolving disputes where the identity of the complainants are unknown. Despite this, this did not preclude the acceptance of this complaint. The view of the Independent Examiner was that the notifiers, in their own right, have sufficient interest in the matters raised for this complaint to be accepted – regardless of the specific identity of each of the anonymous complainants.
52. In particular, the Independent Examiner noted the following information provided by the notifiers:
 - 52.1. 'The Evangelical Lutheran Church of Papua New Guinea (ELC-PNG) has a membership of over 1.2 million all throughout Papua New Guinea... the Church's administrative area [covers] the potentially affected area within Morobe province. There is an organised church located in almost every village along the Huon Gulf coastline, meaning that the Church is strongly connected and embedded within communities. All grievances are formally expressed through the administrative layers of the Church and are raised at Church conferences. As a result, the concerns of communities and the Church regarding DSTP have reached the national decision bodies of the Evangelical Lutheran Church of PNG.'²⁶

Good offices

53. It was decided that AusNCP good offices were suitable for the complaint to bring the parties together to help resolve the issues. Under the OECD Guidelines, where the issues raised merit

24 AusNCP (Australian National Contact Point for Responsible Business Conduct), *Initial Assessment: Complaint submitted by Evangelical Lutheran Church of Papua New Guinea, Centre for Environmental Law and Community Rights Inc and Jubilee Australia Research Centre on behalf of affected Morobe Province communities against Newcrest Mining Ltd and Harmony Gold (Australia) Ltd.*, Australian Government, 2023, accessed 19 November 2024.

25 A.C.N 005 683 625 and A.B.N 20 005 683 625; A.C.N. 091 439 333 and A.B.N. 64 091 439 333.

26 Complaint, p 5.

further examination, good offices are offered 'to help the parties involved to resolve the issues.'²⁷

54. On 3 August 2023, the parties were offered a meeting to discuss the AusNCP good offices process. Good offices entails proposing consensual and non-adversarial means, such as conciliation or mediation, to assist the parties in discussing the issues and arriving at outcomes that are mutually acceptable and comply with the OECD Guidelines.
55. On 10 August 2023, the enterprises declined the offer of good offices. They indicated that they did not feel it was appropriate, citing a number of reasons including contemporaneous judicial proceedings and identity of the complainants being withheld, as outlined in paragraphs 36, 38, and 51 above.
56. In accordance with paragraph 6.2.2 of the AusNCP Complaint Procedures, if the enterprise does not agree to good offices, the Independent Examiner will prepare a Final Statement including further assessment of the issues raised in the complaint and an assessment about whether the enterprises' actions were consistent with the OECD Guidelines.²⁸

Further examination

57. On 11 August 2023, the notifiers were informed that the enterprises had declined good offices.
58. On 15 September 2023, the parties were advised that the complaint was proceeding to the examination and Final Statement phase, and a new Independent Examiner would be contracted to undertake the Final Statement.
59. On 28 November 2023, the AusNCP wrote to the parties to advise that Ms Aleta Moriarty was appointed as the Independent Examiner to conduct the examination and Final Statement, along with a proposed timeline for finalising the statement.
60. As there was a delay in the examination, an offer was extended to both parties to make further submissions. The enterprises did not make any further submissions. The notifiers submitted an additional submission dated 17 January 2024 and an expert statement from Dr Charles James dated 1 March 2024. In addition, the Independent Examiner sent some questions to the notifiers regarding involvement in current proceedings, which they responded to on 8 March 2024.
61. Throughout the examination process all parties had the opportunity to provide materials they considered relevant. The AusNCP processes are clearly explained in the Final Statement for Complaint number 29: 'There is no formal 'onus' arrangement under the AusNCP Procedures. Where either party has raised an issue, provided credible material, and the other side has not significantly addressed that (beyond denials or rejections), this informed the Independent Examiner's analysis and conclusions on that issue. Equally, where a party has simply made

²⁷ OECD Guidelines, Part II, Procedural Guidance Part I(C), part 2.

²⁸ AusNCP, [Australian National Contact Point complaint procedures](#), Australian Government, 2022, [6.2.2] (AusNCP procedures).

assertions but provided no material substantiating those, that was given less weight.’²⁹ The enterprises did not provide significant evidence throughout this process.

62. The methodology for analysing this complaint involved reviewing formal submissions and publicly available documents, including those used in the Wafi-Golpu Project's compliance and permitting processes. Papua New Guinea subject matter experts were also consulted in specific technical areas. The enterprises' EIS, policies and other publicly available materials were core documents prioritised for examination as they had been publicly consulted and constitute part of the FPIC process, as well as the official government approval processes.
63. These materials were evaluated against the OECD Guidelines requirements. Where technical definitions were required, the OECD definitions and reference to previous NCP Examinations, were prioritised. In cases where the OECD Guidelines or OECD guidance lacked explicit definitions, interpretations were determined based on what would be deemed reasonable by using the standards of the Government of Papua New Guinea such as the Draft Papua New Guinea Deep Sea Tailings Placement (DSTP) Guidelines, and the IFC Performance Standards, as suggested by the enterprises to be relevant and adopted in project preparation. The IFC Performance Standards are also referenced in the latest version of the OECD Guidelines (2023) as relevant standards. Expert peer reviewed literature was also drawn upon in some technical areas.

²⁹ AusNCP, *Final Statement: Complaint submitted by Project Sepik and Jubilee Australia Research Centre on behalf of Sepik River communities against PanAust Limited*, Australian Government, 2023, accessed 19 November 2024, [29].

Application of the OECD Guidelines

64. The OECD Guidelines were updated in June 2023 during the AusNCP consideration of this complaint. This complaint has been assessed in accordance with the OECD Guidelines contemporaneous at the date of the original complaint. As such, this complaint has been assessed in accordance with the 2011 version of the OECD Guidelines.

OECD Guidelines relevant chapters

65. The complaint raised a number of issues and allegations relating to the following chapters of the OECD Guidelines.

Chapter II – General Policies (Paragraphs 2, 10, 11)

66. *Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard:*

A. *Enterprises should:*

...

2. *Respect the internationally recognised human rights of those affected by their activities.*

...

10. *Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.*

11. *Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.*

Chapter III - Disclosure (Paragraph 2(f))

67. *Disclosure policies of enterprises should include, but not be limited to, material information on:*

(f) foreseeable risk factors[.]

Chapter IV – Human Rights (Paragraphs 1, 2, 5)

68. *States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:*

1. *Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.*

2. *Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.*
- ...
5. *Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.*

Chapter VI – Environment (Paragraphs 1b, 1c, 2a, 2b, 3, 4)

69. *Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. In particular, enterprises should:*

1. *Establish and maintain a system of environmental management appropriate to the enterprise, including:*
 - ...
 - b) *establishment of measurable objectives and, where appropriate, targets for improved environmental performance and resource utilisation, including periodically reviewing the continuing relevance of these objectives; where appropriate, targets should be consistent with relevant national policies and international environmental commitments; and*
 - c) *regular monitoring and verification of progress toward environmental, health, and safety objectives or targets.*
2. *Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights:*
 - a) *provide the public and workers with adequate, measureable and verifiable (where applicable) and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance; and*
 - b) *engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.*
3. *Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle with a view to avoiding or, when unavoidable, mitigating them. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.*
4. *Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health*

and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.

70. The issues raised in the complaint and the Independent Examiner's determinations and recommendations are covered in the 'Examination, determinations, and recommendations' section of this Final Statement.

Examination, determinations, and recommendations

Examination and determinations

Chapter II – General Policies, Paragraphs 2, 10, 11

Determination: The Independent Examiner has covered the relevant human rights and environmental complaints in the respective sections of the Final Statement (see below).

71. The first area of the complaint raised by the notifiers relates to General Policies paragraphs 2, 10, and 11, which state that ‘Enterprises should respect the internationally recognised human rights of those affected by their activities.’ They should ‘carry out risk-based due diligence, for example, by incorporating it into their enterprise risk management systems, to identify, prevent, and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed’. Additionally, enterprises should ‘avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their activities, and address such impacts when they occur.’³⁰
72. The notifiers allege the enterprises have violated several rights, including: ‘Failure to respect the right to life, the right to a healthy environment, the right to culture, the principle of equality and non-discrimination, the rights of the child, and the right to self-determination’,³¹ alongside, ‘failure to avoid causing serious and irreversible environmental damage in the Huon Gulf... Extreme failure to take due account of the need to protect the environment, public health and safety, and to consider relevant international agreements and standards.’³²
73. The Independent Examiner understands that the Wafi-Golpu Project is still in the preparation/approvals stage, albeit at a reasonably advanced stage. **Consequently**, the examination is focused on areas of the OECD Guidelines related to due diligence, disclosure, and consultation processes. Disclosure, human rights, and environmental complaints are covered in the respective areas of this Final Statement.

Chapter III – Disclosure, Paragraph 2(f)

Determination: The enterprises’ policies do not appear to be consistent with paragraph 2(f) of the OECD Guidelines.

74. The notifiers have alleged that the enterprises have failed to disclose ‘foreseeable risk factors’ specifically related to Chapter III, 2(f):³³ ‘disclosure policies of enterprises should include, but not be limited to, material information on (f) foreseeable risk factors.’

³⁰ OECD, *OECD Guidelines*, 2011, Part I, General Policies Part II(A), p 20, [11].

³¹ Complaint, p 4. See pp 18 – 19 for additional detail.

³² Complaint, p 4.

³³ OECD, *OECD Guidelines*, 2011, Part I, Disclosure Part III, p 27, [2(f)].

75. While the complaint focuses on the enterprises' alleged failure to disclose foreseeable risks,³⁴ the OECD Guidelines specific focus is on the inclusion of 'foreseeable risk factors' into corporate policies. While these two are related, the examination is focused on the latter, in line with the OECD Guidelines' recommendation that corporate policies specifically include disclosure of 'foreseeable risk factors.'³⁵ Foreseeable material risks, extend beyond basic market disclosures and are defined by UN Trade and Development (UNCTAD), amongst other things as: 'including risks specific to industries or geographical areas, dependence on certain commodities, financial market risk and derivative risks. The corporate governance structures in place to assess, manage and report on these types of risks should be the subject of corporate governance disclosure'.³⁶
76. Newcrest Mining Limited has a Market Disclosure Policy,³⁷ but it does not mandate the disclosure of 'foreseeable risk factors.' Nor does the company's Disclosure Committee Charter.³⁸
77. Harmony Gold (Australia) Pty Limited has a Promotion of Access to Information Act policy, presumably required for South African compliance purposes and could be interpreted as a Disclosure Policy. It does not mandate disclosure of 'foreseeable risks.'
78. Disclosures are also covered in section 3.7.3 of the Disclosures section in Harmony Gold (Australia) Pty Limited's Code of Conduct, which states: 'Misleading the public can be a regulatory offence. Inaccurate and delayed information disclosure can damage Harmony's reputation and affect its share price. As a company listed on several stock exchanges, Harmony is required to comply with the disclosure obligations of these entities.'³⁹ Article 3.6.1 of the Code of Conduct also indicates that 'Confidential information should ever be disclosed to third parties, even when individuals are no longer employed by the company.'⁴⁰ This could include disclosure of foreseeable risk factors, but the Independent Examiner indicates that this is likely a policy typographical error rather than intended practice.⁴¹
79. There is nothing in Harmony Gold (Australia) Pty Limited's Risk Management Framework about requirements to disclose foreseeable risks.⁴²
80. The absence of a policy requirement to disclose 'foreseeable risk factors' in the enterprises' policies is inconsistent with the recommendations within the OECD Guidelines.

Chapter IV - Human Rights, Paragraphs 1, 2, 5

Determination: The enterprises appear to have been inconsistent with the OECD Guidelines requirements to conduct human rights due diligence 'appropriate to their size, the nature and context

³⁴ Complaint, pp 4, 20, 28, 48.

³⁵ OECD, *OECD Guidelines*, 2011, Part I, Disclosure Part III, p 27, [2(f)].

³⁶ UNCTAD, *Guidance on Good Practices in Corporate Governance Disclosure*, 2006, p 24.

³⁷ Newcrest Mining Limited, *Market Disclosure Policy (2021-2022)*, accessed 23 April 2024.

³⁸ Newcrest Mining Limited, *Disclosure Committee Charter 2022*, accessed 23 April 2024.

³⁹ Harmony Gold (Australia) Pty Limited, *Code of Conduct (2023)*, accessed 23 April 2024.

⁴⁰ Harmony Gold (Australia) Pty Limited, *Code of Conduct (2023)*, accessed 23 April 2024.

⁴¹ This appears to be clarified in the next paragraph on what the business position is on confidential information.

⁴² Harmony Gold (Australia) Pty Limited, *Enterprise Risk Management Policy (2021)*, accessed 23 March 2023.

of operations and the severity of the risks of adverse human rights impacts.’⁴³

Determination: The Independent Examiner is unable to determine the matter of FPIC at this stage.

81. The notifiers’ complaints about human rights cover two broad areas: failure to undertake appropriate human rights due diligence including identification and mitigation of human rights risks, and failure to secure FPIC.⁴⁴ The notifiers identified multiple, broad potential human rights risks; however, as the project has not commenced, these remain risks rather than actualised harms and are therefore addressed within the context of due diligence and consultation.
82. The OECD Guidelines commentary states that ‘States have the duty to protect human rights, and that enterprises, regardless of their size, sector, operational context, ownership and structure, should respect human rights wherever they operate.’⁴⁵ Under the OECD Guidelines, enterprises must address ‘actual and potential adverse human rights impacts [which] consists of taking, adequate measures for their identification, prevention, where possible, and mitigation of potential human rights impacts, remediation of actual impacts, and accounting for how the adverse human rights impacts are addressed.’⁴⁶ This includes avoiding ‘causing or contributing to adverse human rights impacts through their activities....which can include both actions and omissions.’⁴⁷
83. Enterprises are also encouraged to address: ‘more complex situations where an enterprise has not contributed to an adverse human rights impact, but that impact is nevertheless directly linked to its operations, products or services by its business relationship with another entity’.⁴⁸ ‘Business relationships’ include relationships with business partners, entities in its supply chain, and any other non-State or State entity directly linked to its business operations, products or services.’⁴⁹
84. It notes that ‘enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them.’⁵⁰
85. In this instance, the complaint alleges that the enterprises failed to obtain FPIC in line with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and related FPIC requirements.

43 OECD, *OECD Guidelines*, 2011, Part I, Human Rights Part IV, p 31, [5].

44 Specifically, those human rights-related complaints are highlighted on page 4 of the Complaint, including, ‘1. Failure to respect the right to life, the right to a healthy environment, the right to culture, the principle of equality and non-discrimination, the rights of the child, and the right to self-determination;...3. Extreme failure to take due account of the need to protect...public health and safety, and to consider relevant international agreements and standards;...6. Failure to adequately address...human rights impacts over the full life cycle of the Project with a view to avoiding or mitigating them;...8. Failure to respect internationally recognised human rights of those affected; 9. Failure to avoid contributing to adverse human rights impacts; 10. Failure to obtain the free, prior and informed consent of affected peoples and communities; 11. Failure to respect the right to free, prior and informed consent; 12. Failure to conduct appropriate human rights due diligence.’

45 OECD, *OECD Guidelines*, 2011, Part I, Human Rights Part IV, Commentary, pp 31 – 32, [37].

46 OECD, *OECD Guidelines*, 2011, Part I, Human Rights Part IV, p 33, [41].

47 OECD, *OECD Guidelines*, 2011, Part I, Human Rights Part IV, p 33, [42].

48 OECD, *OECD Guidelines*, 2011, Part I, Human Rights Part IV, p 33, [43].

49 OECD, *OECD Guidelines*, 2011, Part I, Human Rights Part IV, p 33, [43].

50 OECD, *OECD Guidelines*, 2011, Part I, Human Rights Part IV, p 32, [40].

Human rights due diligence

86. The complaint alleges that the enterprise has failed to ‘conduct appropriate human rights due diligence.’⁵¹ As a result, it failed ‘to avoid contributing to adverse human rights impacts.’⁵²
87. The notifiers submit that the enterprises ‘have failed to conduct appropriate human rights due diligence, as required under the OECD Guidelines on Multinational Enterprises’.⁵³ They also indicate that the: ‘EIS does not contain a human rights due diligence or impact assessment.’⁵⁴ They also claim the EIS also does not contain a social impact assessment of the project’s impact upon communities living along the coast of the Huon Gulf.
88. The notifiers also state they are ‘concerned about the Enterprises’ appraisal that there is a possible risk that public or private security personnel may use inappropriate force in the event that people seek to grow food to eat or build their homes in areas proximate to the pipeline. This acknowledgment appears to recognise that there has not been appropriate consent secured in these areas.’⁵⁵
89. The enterprises responded that the ‘potential adverse social impacts were identified in this assessment, the WGJV has proposed and is implementing processes and procedures to seek to mitigate these impacts or, where possible, remove them.’⁵⁶ They also stated that ‘the WGJV, through the EIS process, carried out a social impact assessment of the Project upon communities living in the Project Area.’⁵⁷
90. Concerning the complaint about the Huon Gulf communities, the enterprises state that ‘the approach undertaken by the WGJV to consultation with these communities was appropriate given the scientific evidence of no impacts to those communities from the Project or DSTP.’⁵⁸
91. In terms of the due diligence process recommended by the OECD Guidelines, an enterprise is expected to ‘carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.’⁵⁹
92. Factors that need to be considered when evaluating the nature of the human rights due diligence include:
- (a) The sector in which the enterprise is engaged – in this instance, the mining sector, which is widely known to be a high-risk sector.⁶⁰

51 Complaint, p. 4.

52 Complaint p. 4.

53 Complaint, p 23.

54 Complaint, p 24.

55 Complaint, p 25.

56 Enterprises’ submission dated 27 February 2023, p 32, [7.13].

57 Enterprises’ submission dated 27 February 2023, p 31, [7.12].

58 Enterprises’ submission dated 27 February 2023, p 32, [7.14].

59 OECD, *OECD Guidelines*, 2011, Part I, Human Rights Part IV, p 31, [5].

60 AusNCP, *Final Statement: Complaint submitted by Publish What You Pay Australia in its own name and on behalf of the Myanmar Alliance for Transparency and Accountability and the Bawdwin Labour Union against Mallee Resources Limited*, Australian Government, 2023, accessed 19 November 2024, pp 89-90.

(b) the size of the organisation, Newcrest Mining Limited is the largest gold producer in Australia and Harmony Gold (Australia) Pty Limited is the largest gold producer in South Africa,⁶¹ there is an expectation of enterprises this size to undertake appropriate due diligence.

(c) The severity of potential human rights abuses that may arise in connection with the enterprises' conduct or its business relationships are serious and have been well documented in Papua New Guinea, including conflict (Bougainville) and high levels of violence against women (Porgera).

93. The OECD Guidelines commentary on human rights indicates that 'addressing actual and potential adverse human rights impacts consists of taking adequate measures for their identification, prevention, where possible, and mitigation of potential human rights impacts, remediation of actual impacts, and accounting for how the adverse human rights impacts are addressed.'⁶² Paragraph 40 states: 'in practice, some human rights may be at greater risk than others in particular industries or contexts, and therefore will be the focus of heightened attention.'⁶³
94. The OECD Due Diligence Guidance for Responsible Business Conduct suggests that relevant elements for assessment include 'information about sectoral, geographic, product and enterprise risk factors, including known risks the Enterprise has faced or is likely to face.'⁶⁴
95. The OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector names many potential human rights areas that should be considered in analysing impacts in the extractive sectors, including risks posed by in-migration, conflict, access to resources and food security, resettlement, gender relations, and others.⁶⁵
96. The OECD Due Diligence Guidance for Responsible Business Conduct offers examples of adverse human rights impacts that should be considered, including risks of gender-based violence, forced labour, access to clean water, bribery, and risks to Indigenous people.⁶⁶

61 Harmony Gold (Australia) Pty Limited, [Corporate profile](#), n.d., accessed 19 November 2024.

62 OECD, *OECD Guidelines*, 2011, Part I, Human Rights Part IV, Commentary, p 33, [41].

63 OECD, *OECD Guidelines*, 2011, Commentary, p 32, [40].

64 OECD, *OECD due diligence guidance for responsible business conduct*, OECD Publishing, 2018, p 25 (OECD due diligence guidance for responsible business conduct).

65 OECD, *OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector*, OECD Publishing, 2017, pp 45-47 (OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector).

66 OECD, *OECD Due Diligence Guidance for Responsible Business Conduct*, 2018, pp 37 – 38.

Table 2. Examples of Adverse Impacts on Matters Covered by the OECD Guidelines for MNEs

(Source: *The OECD Due Diligence Guidance for Responsible Business Conduct*, page 38)

Human rights	<ul style="list-style-type: none">● Forced labour.³● Wage discrimination for equal work or work of equal value.● Gender-based violence or harassment including sexual harassment.● Failing to identify and appropriately engage with indigenous peoples where they are present and potentially impacted by the enterprise's activities.● Involvement in reprisals against civil society and human rights defenders who document, speak out about, or otherwise raise potential and actual human rights impacts associated with projects.● Restriction on people's access to clean water.
--------------	--

97. The Independent Examiner interprets the socioeconomic assessment, Chapter 18 of the enterprises' EIS and the Social Management Plan as the primary documents outlining human rights due diligence but acknowledges references in other parts of the EIS and Appendix.
98. The Independent Examiner does not agree with the notifiers that the EIS does not contain a social impact assessment, as the assessments are indicated above.
99. Regarding the complaint about the risk of violence by private or public security personnel demonstrating a lack of consent for the project, the Independent Examiner does not interpret this as a lack of consent, but rather an accurate risk that requires mitigation, given the high degree of violence perpetrated by security personnel in Papua New Guinea that has been documented.⁶⁷
100. In terms of undertaking human rights due diligence, the Independent Examiner finds that the enterprises have not undertaken an adequate assessment of the human rights risks 'as appropriate to the enterprises' size, nature and context of operations and the severity of the risks of adverse human rights impacts' with two areas of foreseeable human rights risks neglected. These are outlined below.

Appropriate Human Rights Due Diligence- Violence and sexual abuse

101. The original complaint dated 9 November 2022, includes concerns about gender-based violence, including: 'physical violence, killing, kidnapping and rape are some of the human rights impacts that have been previously connected to extractive projects in PNG'.⁶⁸ There is an explicit request that the AusNCP have full regard in the Final Statement to: 'the social and economic impacts that are linked to the above impacts, which include: i. Impacts on relationships, including stresses and domestic violence.'⁶⁹ While acknowledging that both men and women are affected by violence, intimate partner violence (domestic violence) and sexual

67 For documented examples of violence by security personnel at the Barrick Porgera, see Human Rights Watch, *Gold's costly dividend: Human rights impacts of Papua New Guinea's Porgera gold mine*, 2011, accessed 20 November 2024. For numerous reports of police brutality in Papua New Guinea, see: Human Rights Watch, *World Report 2020: Papua New Guinea*, 2019, accessed 20 November 2024.

68 Complaint, p 24.

69 Notifier's submission dated 17 January 2024, p 54, [203(e)(i)].

abuse is largely perpetrated by men against women.⁷⁰

102. Papua New Guinea has amongst the highest levels of violence against women in the world⁷¹ with over 70 per cent of women indicating they have experienced gender-based violence or rape.⁷² Research indicates that 41 per cent of men have committed a non-partner rape, with the number increasing when partners are included.⁷³ This is a substantial and known risk associated with major projects in Papua New Guinea.⁷⁴
103. UN Women defines gender-based violence as: “violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Discrimination against women and inequality in the distribution of power and resources between men and women are root causes of violence against women”.⁷⁵
104. Gender-based violence is a broad term encompassing various forms of abuse, including the risk of rape, domestic violence, and other related issues. The use of this term allows for the consolidation of multiple references raised under a unified concept, ensuring comprehensive coverage of these interconnected issues. The Independent Examiner understands that risks of violence may also extend to men, and this should also be given consideration.
105. There is substantial evidence that the risk of violence and sexual abuse against women and children is exacerbated by extractive sectors in Papua New Guinea,⁷⁶ with large levels of rape and child abuse indicated in areas that have been associated with natural resources like Porgera and Bougainville.
106. While violence perpetrated by security personnel has been flagged as a general risk, there are other aspects of this project that present significant risks of increased violence and abuse of women, such as the disruption of gender norms, in-migration, site workers and more.⁷⁷
107. There is little attention to gender-based violence, sexual abuse and harassment risks in the EIS. In the areas where it has been identified, it shows an inadequate and inappropriate understanding of the level of risk in the country, the drivers of violence and abuse and appropriate responses. For example, one of the main areas where domestic violence was cited, indicated it was a risk due to: ‘Pressures on family relationships (possibly including domestic violence) arising from adultery (suspected or actual).’⁷⁸

70 WHO, “Violence Against Women” 25 March 2024 Violence against women.

71 International Women's Development Agency (IWDA), *Papua New Guinea and Bougainville*, n.d., accessed 20 November 2024.

72 Human Rights Watch, World Report PNG *World Report 2016: Papua New Guinea*, 2015, accessed 20 November.

73 IWDA, Papua New Guinea and Bougainville.

74 Asia Pacific Responsibility to Protect, *Atrocity crimes risk assessment series: Papua New Guinea*, University of Queensland, 2020, accessed 20 November 2024.

75 UN Women Australia “Types of violence against women and girls - UN Women Australia”, 21 November 2024.

76 Katherine Heller, *The gas and mining industries take on gender-based violence in Papua New Guinea*, 2017, accessed 20 November 2024 and other research about the Barrick Porgera mine. See for example: of the research surrounding Barrick mines for example in Porgera, Office of the United Nations High Commissioner for Human Rights, *Disproportionate impacts of business activities on women: Lessons from Papua New Guinea to inform gender guidance to the UN Guiding Principles on Business and Human Rights*, 2018, accessed 20 November 2024.

77 Asia Pacific Responsibility to Protect, *Atrocity crimes risk assessment series: Papua New Guinea*, University of Queensland, 2020, accessed 20 November 2024.

78 WGJV, *Socioeconomic Impacts Assessment*, page 18 – 39.

108. The determination is that this gender-based violence is a foreseen human rights risk that has not been adequately addressed as per the OECD Guidelines recommendation that due diligence be undertaken ‘as appropriate to [the enterprise’s] size, the nature and context of operations’ and ‘severity of the risks of adverse human rights impacts.’⁷⁹

Appropriate Human Rights Due Diligence - Modern slavery

109. While modern slavery is not directly raised by the complainants, it is an area of human rights that would comprise ‘appropriate’ due diligence as detailed above.
110. The civil society organisation Walk Free indicates that Papua New Guinea has a high vulnerability to modern slavery, ranked at 79/100 (with 100 being the highest).⁸⁰ Walk Free notes this vulnerability is due to a number of factors, including governance issues, lack of basic needs, and inequality.
111. Harmony Gold (Australia) Pty Limited and Newcrest Mining Limited submitted 2023 Modern Slavery Statements under Australia’s *Modern Slavery Act 2018* (Cth) (Modern Slavery Act). Australia’s Modern Slavery Act is a transparency framework which requires entities with an annual consolidated revenue of at least A\$100 million, based or operating in Australia to submit an annual statement detailing how they assess and address modern slavery risks in their operations and supply chains.
112. Harmony Gold (Australia) Pty Limited reported that it assesses modern slavery risks in accordance with the Modern Slavery Act via the parent company – Harmony Gold Mining Company Limited.⁸¹ The Newcrest Mining Limited’s website and modern slavery statement indicates that they plan to ‘deepen their understanding of the modern slavery risks in (their) operations and supply chains through focused risk assessment activities’.⁸²
113. The Independent Examiner could not find any other documentation related to modern slavery on the official venture website.
114. While there is no legal requirement for an entity to capture modern slavery risks outside of their modern slavery statement pursuant to Australia’s Modern Slavery Act; the lack of analysis or mitigation measures in the official project EIS documentation appears to represent an oversight. This is particularly worrisome given the enterprises intend to develop community agricultural projects such as cocoa, which often come with child labour and other modern slavery risks.⁸³
115. Adequate due diligence appropriate to the enterprises’ size, nature and context of operations and the severity of the risks of adverse human rights impacts would ensure the enterprises appropriately mitigate those risks in its operations and supply chains. Given this is not explicitly

⁷⁹ OECD, *OECD Guidelines*, 2011, Part I, Human Rights Part IV, p 31, [5].

⁸⁰ Walk Free, *Modern Slavery in Papua New Guinea: Global Slavery Index 2023 country snapshot*, 2023, accessed 21 November 2024.

⁸¹ Newcrest Mining Limited, *2024 Modern Slavery Statement*, 2023, accessed 21 November 2022; Harmony Gold (Australia) Pty Limited, *Joint Modern Slavery Statement for the period 1 July 2022 to 30 June 2023*, 2023, accessed 21 November 2024.

⁸² Harmony Gold (Australia) Pty Limited, *Joint Modern Slavery Statement for the period 1 July 2022 to 30 June 2023*, 2023, accessed 21 November 2024

⁸³ Fair Labour, *Working Conditions in OFI's cocoa supply chain in Papua New Guinea*, 2023, accessed 21 November 2024, p 7.

raised in the complaint, there has been no determination made in this area, however a recommendation has been made that this is an area that could be strengthened.

Huon coastal communities' rights

116. The notifiers indicate throughout their complaint that the rights of those in the coastal areas have been violated through a lack of due diligence that is inclusive of these communities and through FPIC processes.⁸⁴ This is a central issue in the complaint and bridges both the environmental and social issues.
117. The enterprises indicate that they use the definition of 'stakeholder' from the IFC's Performance Standard on Environmental and Social Sustainability (IFC Performance Standards) which includes 'A group or individual that has a vital interest or stake in the Project, affecting or being affected by the business of the Project.'⁸⁵ The EIS identifies the villages, communities and landholders that the Wafi-Golpu Project has assessed to be key stakeholder groups. These include villages impacted by the project footprint, being villages near the Mine Area, villages along or near the Infrastructure Corridor (including Yanga and Lae), and villages in the Coastal Area (Labu and Wagang), as well as community organisations representing those groups (such as the ELC-PNG and non-government organisations).
118. As the EIS concluded that there would be no predicted impacts from the project on the broader Huon Gulf community (being coastal villages outside the confines of the Coastal Area), there was no requirement under Papua New Guinea law or the IFC definition above to consult with the broader Huon Gulf communities.⁸⁶
119. The Independent Examiner does not see how the scientific evidence in the EIS indicates that there will be no impact on the communities in the Huon Gulf, particularly given that the EIS suggests that ecosystems will be disrupted along the near and far shore of the Huon Gulf coastline. In addition, further evidence submitted to the Independent Examiner indicates variability in the particle flow from DSTP.

⁸⁴ Complaint, pp 29, 35, 36, 41, 43.

⁸⁵ Enterprises' submission dated 27 February 2023, p 9, [5.3(c)].

⁸⁶ Enterprises' submission dated 27 February 2023, p 9, [5.3(d)].

Table 2: Indication of far shore impacts

(Source: WGJVP EIS)

		Receptor Affected	Environmental Value	Magnitude	Impact Significance
Physical effects of tailings subsurface plumes	Increased TSS concentrations associated with tailings subsurface plumes	Pelagic zooplankton and micronekton	Low	Low	Low
Physical effects of tailings subsurface and bottom-attached plumes	Increased TSS concentrations associated with tailings subsurface and bottom-attached plumes	Deep-water pelagic and demersal fish	Low	Low	Low
Physical effects of tailings subsurface plumes	Increased TSS concentrations associated with subsurface tailings plumes	Deep-diving west Pacific leatherback turtles	Very high	Low	Moderate
Tailings liquor residual toxicity impacts	Residual toxicity of tailings liquor contaminants within the mixing zone	Pelagic zooplankton and micronekton	Low	Very low	Low
Pelagic trace metal bioaccumulation impacts	Direct uptake of dissolved tailings contaminants and/or indirect uptake of particulate phase contaminants in food or sediment ingestions	Pelagic zooplankton and micronekton undertaking diel vertical migrations through tailings subsurface plumes	Low	Low	Low
Pelagic trace metal bioaccumulation impacts	Direct uptake of dissolved tailings contaminants and/or indirect uptake of particulate phase tailings contaminants in food or sediment ingestions	Pelagic zooplankton and micronekton carried in ambient currents and passively encountering tailings subsurface plumes	Low	Low	Low
Pelagic trace metal bioaccumulation impacts	Direct uptake of dissolved tailings contaminants and/or indirect uptake of particulate phase tailings contaminants in food	Pelagic macroinvertebrates (e.g., salps, jellyfish and comb jellies)	Low	Low	Low
Pelagic trace metal bioaccumulation impacts	Direct uptake of dissolved tailings contaminants and/or indirect uptake of particulate phase tailings contaminants in food	Pelagic fish	Low	Low	Low
Pelagic trace metal bioaccumulation impacts	Direct uptake of dissolved tailings contaminants and/or indirect uptake of particulate phase tailings contaminants in food (mainly jellyfish)	Deep-diving west Pacific leatherback turtles	Very high	Very low	Moderate

120. Evidence shows that many along the Morobe coastline depend on fisheries for their livelihoods and/or food security.⁸⁷ This is supported by the EIS Social Baseline that states ‘Subsistence fishing is extremely important to the people living along the coast and nearshore islands of the Huon Gulf, and fish and other marine produce is an important source of protein in their daily diet.’⁸⁸
121. In 2020, the enterprises commissioned a report on fisheries to ‘describe the baseline levels of selected metals in fish and invertebrate species caught by the local coastal artisanal fishery in the western Huon Gulf’ and in particular to assess the variability.⁸⁹ It is unclear how this report is supposed to address community concerns about the impact on fisheries.
122. The evidence submitted from the notifiers from expert Dr Charles James showed tailings particles moving across the Huon Gulf to varying degrees, depending on the month, season, and year.⁹⁰ The enterprises’ assertion of the settlement of the tailings on the ocean floor was also disputed by the government-commissioned independent reviewer Professor Ralph Mana.⁹¹
123. The Independent Examiner does not support the assertion that the scientific evidence shows conclusively that there will be no impact on coastal communities. However, given the highly technical nature of the matter, the Independent Examiner cannot conclude if there would be an impact, and if so, to what degree.

87 K. Longenecker, *Coral reef fish management plan for Kamiali Wildlife Management Area, Morobe Province, Papua New Guinea*, 2016, Bernice Pauahi Bishop Museum, DOI:10.13140/RG.2.1.1663.8968.

88 Socioeconomic Baseline, EIS, prepared by Coffey 532-1208-PF-4251_G June 2018 37.

89 Neira Marine Sciences Consulting (Marscco), *Baseline Study of Metals in Selected Local Market Fishes and Invertebrates from the Western Huon Gulf, PNG*, Final Report, December 2020, prepared for Wafi-Golpu Joint Venture (WGJV).

90 C. James, “Using a hydrodynamic model and particle tracking to assess plume modelling done for the Wafi-Golpu Joint Venture Environmental Impact Statement”, 3 August 2024.

91 Complaint, pp 3 and 13.

124. To reconcile the conflicting scientific evidence, and in line with earlier recommendations from the Papua New Guinea courts,⁹² it is recommended that further expert advice and independent reviews of baselines and other assessments are undertaken to ensure there will be no environmental impact of DSTP. In particular, this will be important to address the competing scientific views in this very technical matter, and to resolve the issue of what impacts will occur and to whom. This review should align with best practice as demonstrated by standards such as the Papua New Guinea Draft DSTP Guidelines, the IFC Performance Standard and other best practice, peer reviewed frameworks for risk assessments of DSTP.⁹³
125. The legitimacy of the Huon Gulf communities and the technical scientific basis for determining the impact of DSTP on these communities are contested several times throughout this complaint. The standing position of the Independent Examiner in relation to these issues is that:
 - 125.1. consistent with the precautionary approach, the burden of evidence to demonstrate safety falls on the enterprises, which may include extending baseline analysis to these communities so they can measure impacts; and
 - 125.2. the assertion that there will be no impact on these communities has not been demonstrated.

Free prior informed consent (FPIC)

126. The complainants allege the enterprises failed to obtain FPIC for the project.⁹⁴
127. The enterprises have indicated substantial consultations. Since January 2016, the Wafi-Golpu Project has conducted approximately 2,860 community engagements regarding the project with more than 111,200 attendees within the Morobe Province - including visiting 20 venues representing over 40 Huon Gulf coastal villages and involving some 15,000 people. They indicate that: 'Throughout the extensive consultation process, the WGJV has received significant support for the Project from the local community and stakeholders.'⁹⁵ The Independent Examiner notes that no documentation was provided by the enterprises to demonstrate this support.
128. The enterprises' approach to a community consultation and engagement for the project is described as follows: '(a) As required under the Environment Act and the Mining Act, since 2016 the WGJV has consulted with landholder areas assessed to be impacted by the Project footprint...for the purpose of negotiating mine-related compensation arrangements. (b) From

92 Correspondence with notifiers dated 3 August 2024: 'Court made these Orders on the 26 April 2023. 1. Leave is granted for review of the decision the subject of the application. 2. This matter will be dealt together with OS(JR) 35 of 2020 which is the subject of pending Supreme Court appeal on the stay granted by this Court. 3. In the meantime, the court encourages parties to talk it through and address the very science related issues or the technical issues on environment and damage to be resolved through the engagement of appropriately qualified experts who are independent and can help both the developer, the landowners, the Morobe Provincial Government and the State. 4. Since OS(JR) 35 of 2020 is stayed, this proceeding will await a lifting of the stay order and the matter will come back for directions as to further progressing and conclusion of the matter.'

93 J.L. Stauber, M.S. Adams, G.E. Batley, L.A. Golding, I. Hargreaves, L. Peeters, A.J. Reichelt-Brushett, S.L. & Simpson (Stauber et al), 'A generic environmental risk assessment framework for deep-sea tailings placement', *Science of The Total Environment*, 2022, 845, doi: <https://doi.org/10.1016/j.scitotenv.2022.157311>.

94 Complaint, p 38.

95 Enterprises' submission dated 27 February 2023, p 8, [5.2].

2016 to 2020, the WGJV engaged in extensive community engagement with stakeholders prior to and following the submission of the EIS'.⁹⁶

129. The enterprises dispute that communities in the Gulf province are relevant stakeholders. The basis for this, they have said, is that they adopt the definition of 'stakeholder' from the IFC's Performance Standard on Environmental and Social Sustainability (IFC Performance Standards), which includes 'A group or individual that has a vital interest or stake in the Project, affecting or being affected by the business of the Project'.⁹⁷
130. The enterprises have indicated that '[a]s the EIS concluded that there would be no predicted impacts from the Project on the broader Huon Gulf community (being coastal villages outside the confines of the Coastal Area), there was no requirement under PNG law or the International Finance Corporation definition above to consult with the broader Huon Gulf communities for the purpose of the EIS. However, following publication of the EIS in 2018 and in response to concerns regarding DSTP raised by the wider community, the WGJV extended its community consultation program beyond the impacted Project Area communities to other communities along the broader Huon Gulf coastline.'⁹⁸
131. The enterprises indicate that '[a]ll communities with whom the WGJV has engaged provided verbal support for the Project to commence. Only a small minority of people at community engagement events have indicated that whilst they support the Project, they are opposed to DSTP. The community has also expressed the desire that community members (including those from the broader Huon Gulf) should receive appropriate mine-related benefits from the WGJV. These benefits include compensation, royalty-streams, and community development projects which focus on skills development, local business opportunity, agribusiness, health and education.'⁹⁹
132. The notifiers in examining the Final Statement disagreed with the above comment. The notifiers allege that Yanga village, identified in Chapter 5 of the EIS as a stakeholder, did not give consent. This is also raised in the original complaint. The OECD Guidelines Chapter IV on human rights indicates that 'States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations: 1. Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved. 2. Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.'¹⁰⁰
133. The OECD Guidelines do not contain a specific definition on FPIC. As a result, the Independent Examiner has outlined below a number of ways to interpret and assist in understanding what FPIC encompasses, and what may be required by an enterprise.

96 Enterprises' submission dated 27 February 2023, p 8, [5.3(a) – (b)].

97 Enterprises' submission dated 27 February 2023, p 9, [5.3(c)].

98 Enterprises' submission dated 27 February 2023, p 9, [5.3(c) – (d)].

99 Enterprises' submission dated 27 February 2023, p 11, [5.8].

100 OECD, *OECD Guidelines*, 2011, Part I, Human Rights Part IV, p 31, [1] and [2].

134. The OECD clarify, in the supporting commentary, that the United Nations instruments referred to could include those instruments related to indigenous peoples,¹⁰¹ which may include the UNDRIP. As a resolution of the United Nations General Assembly, UNDRIP carries political and moral weight but is not a legally binding instrument – although many principles in UNDRIP reflect, or provide further content to, States’ obligations under international human rights law.
135. The UNDRIP states that States should obtain the consent of the indigenous peoples concerned in relation to the relocation of indigenous peoples from their lands or territories (article 10) and the storage or disposal of hazardous materials on indigenous peoples’ lands or territories (article 29).
136. Article 19 of the UNDRIP states, ‘States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.’¹⁰²
137. The International Labour Organization’s Convention 169 incorporates Free, Prior, and Informed Consent (FPIC), necessitating consent in cases of relocation or when legislative or administrative actions may directly impact Indigenous or tribal peoples.¹⁰³
138. The majority of people in the Wafi-Golpu Project area are defined as Indigenous.¹⁰⁴ The *OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector*¹⁰⁵ contains guidance on what might be expected by way of engagement from enterprises in the extractive sector. In terms of FPIC, the guidance amongst other documents draws on the FAO’s guidance on FPIC. This guidance is helpful in interpreting what might be expected from an enterprise.
139. The Food and Agriculture Organization of the United Nations (FAO) guidance (2016) indicates that all elements within FPIC are ‘interlinked, and they should not be treated as separate elements.’ Thus, all interlinked aspects should have occurred for FPIC to be interpreted.¹⁰⁶
140. The FAO explains that the ‘first three elements (free, prior and informed) qualify and set the conditions of consent as a decision-making process. In short, consent should be sought before any project, plan, or action takes place (prior); it should be independently decided upon (free) and based on accurate, timely and sufficient information provided in a culturally appropriate

101 OECD, *OECD Guidelines*, 2011, Part I, Human Rights Part IV, Commentary, p 32, [40], explicitly states ‘United Nations instruments have elaborated further on the rights of indigenous peoples’.

102 International Labour Organisation (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169)

103 ILO, Convention concerning Indigenous and Tribal Peoples in Independent Countries, Geneva, 1989 C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ilo.org) (ILO 169). This Convention is relevant to OECD Guidelines expectations, see Norwegian National Contact Point, Intex Resources final statement, pp 21-23.

104 As in they would meet the definition of Indigenous as outlined by the United Nations. See: United Nations, The Concept of Indigenous Peoples, 2004 (PFI/2004/WS.1/3). Background paper prepared by the Secretariat of the Permanent Forum on Indigenous Issues for the Workshop on Data Collection and Disaggregation for Indigenous Peoples, New York, 19-21 January 2004. United Nations Department of Economic and Social Affairs, Division for Social Policy and Development. Available at: workshop_data_background.doc (live.com).

Many different analysts have written on Indigeneity in PNG. The list is too exhaustive to detail but an example includes: L. Armitage, (n.d.). Indigenous Property Rights: Custom and Commerce at the Interface – A Case Study of the Ahi People’s Land, Morobe Province, PNG. Queensland University of Technology, Brisbane, Australia.

105 OECD, *OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector*, OECD Publishing, 2017.

106 Food and Agriculture Organization of the United Nations (FAO), *Free Prior and Informed Consent – An Indigenous Peoples’ right and a good practice for local communities*, October 14 2016, p 15 (FPIC Manual).

way (informed) for it to be considered a valid result or outcome of a collective decision-making process.’¹⁰⁷

141. Examining each of these definitions, it is found that ‘Free refers to a consent given voluntarily and without coercion, intimidation or manipulation. It also refers to a process that is self-directed by the community from whom consent is being sought, unencumbered by coercion, expectations or timelines that are externally imposed.’¹⁰⁸
142. ‘Prior means that consent is sought sufficiently in advance of any authorisation or commencement of activities, at the early stages of a development or investment plan, and not only when the need arises to obtain approval from the community. It should be noted that Prior implies that time is provided to understand, access, and analyse information on the proposed activity. The amount of time required will depend on the decision-making processes of the rights-holders.’¹⁰⁹
143. There are also several relevant FPIC concepts detailed in the AusNCP Final Statement for complaint 29 (2023).¹¹⁰ That is that FPIC is not always required before initial government permission, but the process toward obtaining FPIC must begin, and FPIC must be secured before final government permission and before any significant impact occurs.¹¹¹ The process of seeking FPIC is iterative, not a one-time discussion.¹¹² If consent is initially refused, it does not permanently settle the matter. However, it would be against the principles of FPIC for a company or government to continuously re-ask and engage persistently.¹¹³
144. All of the FPIC elements together, not separately, should have occurred before the authorisation or commencement of activities.
145. To align with the OECD Guidelines, FPIC should be secured for this project. While some of the elements may have yet to occur, there is still room for the enterprises to conduct these prior to the authorisation or commencement of activities and on this basis, the Independent Examiner cannot determine that FPIC has not occurred.
146. The Papua New Guinea constitution while not mentioning FPIC does set a standard on expectations around consultations ‘where a law provides for consultation between persons or bodies, or persons and bodies, the consultation must be meaningful and allow for a genuine interchange and consideration of views.’¹¹⁴
147. In interpreting this requirement, Judge Kandakasi OS (JR) 35 of 2021) suggests that this may include: ‘A proper consultation or review process necessarily for the purposes of s. 255 of the Constitution and ss.115 and 116 of the OLPLG requires a two-way dialogue with interchange of

107 FPIC Manual, p 15.

108 FPIC Manual, p 15.

109 FPIC Manual, p 15.

110 AusNCP, [Final Statement, Complaint Number 29 Project Sepik and Jubilee Australia Research Centre on behalf of Sepik River communities against PanAust Limited](#), Australian Government, 3 October 2023, accessed 28 November 2024, p 32, [84] – [85] (PanAust Limited Final Statement).

111 PanAust Limited Final Statement, p 32.

112 PanAust Limited Final Statement, p 32.

113 PanAust Limited Final Statement, p 32.

114 Papua New Guinea Parliament, Environment Act 2000, ss 4, 6 (objects and consultation), 38 (consultation and activity likely to harm), 56, 58 (all reasonable steps to minimise environmental harm) and 79 (customary rights in water).

information and views in clearly understandable language instead of a one-way dissemination of selective information only or not at all in complicated technical or difficult language. World best practice on proper consultation wherever that is required involves at least five key features. The factors include: (1) stakeholder identification; (2) planning and preparation for a consultation process; (3) prior dissemination of all relevant information; (4) incorporating feedbacks and share results; (5) maintain continuous stakeholder engagement and easy access to a grievance mechanism.’¹¹⁵

148. The *OECD (2017) Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector* states, ‘In countries where FPIC is not mandated, enterprises should consider local expectations, the risks posed to Indigenous peoples and to the operations as result of local opposition. They should pursue an engagement strategy that meets the legitimate expectations of indigenous peoples to the extent that it does not place them in violation of domestic law.’¹¹⁶ The text and footnotes provide some useful guidance and support documents in interpreting and meeting such local expectations.
149. Given that the Wafi-Golpu Project is being prepared in accordance with the IFC Performance Standards,¹¹⁷ the IFC’s definition of FPIC is also useful. The Performance Standard explains that FPIC ‘will be established through good faith negotiation between the client and the Affected Communities of Indigenous Peoples. The client will document (i) the mutually accepted process between the client and Affected Communities of Indigenous Peoples and (ii) evidence of agreement between the parties as the outcome of the negotiations. FPIC does not necessarily require unanimity and may be achieved even when individuals or groups within the community explicitly disagree.’¹¹⁸
150. The proposed Wafi-Golpu Project will have considerable impacts on Indigenous communities, making it essential for these groups to provide their FPIC before the project can commence. This consent is required from the affected groups, noting that who is actually considered ‘affected’ is in contention between the parties. Morobe Province is predominantly Lutheran; therefore, the ELC-PNG’s role as a representative institution is accepted. Written evidence of FPIC should be gathered to align with best practice.
151. Evidence from documentation provided by both the enterprises and notifiers; and third parties consulted through the examination process, suggests both support and opposition for the Wafi-Golpu Project within stakeholder groups in the project area.¹¹⁹
152. As the Wafi-Golpu Project is still under preparation, activities have not officially been ‘authorised’ or ‘commenced’ and public forums and other consultative processes may still be undertaken, alongside related judicial proceedings. Given that there is still scope for the project

115 Kandakasi, D. C. J. (2021). Hon. Ginson Goheyu Saonu, in his capacity as Governor of Morobe v. Morobe Provincial Government, et al. (OS (JR) 35 of 2021). National Court of Justice at Waigani, Papua New Guinea, [29] – [30].

116 OECD, *OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector*, OECD Publishing, 2017, p 96.

117 Enterprises’ submission dated 27 February 2023, p 15, [5.23]. The enterprises indicate, ‘A number of international guidelines and standards informed the design of the Project and the preparation of the EIS. These international guidelines and standards include: (a) The IFC Performance Standards.’

118 International Finance Corporation, *IFC Performance Standards on Environmental and Social Sustainability* (IFC Performance Standards), “IFC Performance Standard 7: Indigenous Peoples”, World Bank Group, 2012, pp 47 – 52.

119 This has been assessed by reviewing the Complaint, all correspondence from the enterprises and the notifiers, including comments from Yanga, the EIS, numerous media articles and stories online about protests in the project area, and by consulting PNG experts. The PNG sources consulted were consulted confidentially.

to obtain FPIC, this matter cannot be determined at this point. This finding is similar in scope and basis as found in the examination for AusNCP complaint 29.¹²⁰

153. While it is not possible to make a determination on this matter, several critical areas would need to be demonstrated, such as all those highlighted in guidance above, to ensure consistency with the OECD Guidelines in obtaining FPIC. This would include clearly communicating and disclosing all relevant information in consultations with affected communities (including pipeline location, detailed resettlement plans, a clear and quantifiable representation of the benefits and who receives these benefits, including employment), all relevant scientific information and reviews, and ensuring compliance with any standards and policies that are being referenced in consultations as a method of assurance). This must be presented in an accessible format for the communities, such as in different languages, visually, location.
154. The question of whether Huon communities represent an affected community or not needs to be clarified in light of the competing expert evidence.
155. To ensure adherence to the IFC Performance Standard Seven, if the enterprises intend to use it for assurance purposes, to demonstrate FPIC it is essential to move beyond verbal endorsements from communities and ensure the adequate 'documentation' of 'evidence of agreement' with 'affected communities of Indigenous Peoples' to support claims of FPIC.¹²¹
156. The topic of resettlement is not explicitly raised in the complaint but is relevant to the broader discussion around FPIC.
157. The Wafi-Golpu Project's Social Management Plan¹²² indicates that resettlement is a possibility. It is unclear whether this is voluntary or involuntary. However, to comply with what would be considered best practice FPIC, any relocation plans should be developed and consulted, aligned with FPIC practices, during the project preparation phase. The plan also requires enough detail to ensure that it is meaningful, addressing issues like compensation for lost assets, and ensuring that involuntary resettlement is managed in a way that aims to improve the livelihoods of affected people.
158. The IFC Performance Standard Five demonstrates best practice due diligence, which states that 'compensation at full replacement cost for land and other assets lost' is required.¹²³ The IFC defines this as: 'Replacement cost is the asset's market value plus transaction costs. Market value is defined as the value required to allow Affected Communities and persons to replace lost assets with assets of similar value. The valuation method for determining replacement cost should be documented and included in applicable Resettlement and/or Livelihood Restoration plans.'¹²⁴

120 PanAust Limited Final Statement, p 41, [114].

121 IFC Performance Standards, "IFC Performance Standard 7: Indigenous Peoples", World Bank Group, 2012, p 49.

122 WGJV (2017) EIS Attachment 4.

123 IFC Performance Standards, "IFC Performance Standard 5: Land Acquisition and Involuntary Resettlement", World Bank Group, 2012, p 36.

124 IFC Performance Standards, "IFC Performance Standard 5: Land Acquisition and Involuntary Resettlement", World Bank Group, 2012, p 32.

159. There is no doubt that if resettlement was to occur, a clear understanding of concrete and precise resettlement arrangements for communities would be an essential requirement for obtaining FPIC, and should be detailed enough to meet IFC Performance Standard Five and other best practice FPIC standards.

Chapter VI – Environment, Paragraphs 1b, 1c, 2a, 2b, 3, 4

Determination: The Independent Examiner is unable to make a determination on the failure to protect the environment for the entirety of the project given the highly technical scientific nature of the issues in contention, coupled with the likelihood that these will be dealt with by experts in the Papua New Guinea courts.

Determination: Regarding the alleged failure to address environmental impacts over the full lifecycle, the Independent Examiner does not find the enterprises' activities to be inconsistent with the OECD Guidelines requirement on timelines.

Determination: It appears the enterprises have been inconsistent with the OECD Guidelines in terms of operating 'within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment'¹²⁵ to 'assess, and address...the foreseeable environmental...impacts...with a view to avoiding or, when unavoidable, mitigating them'¹²⁶ in relation to critically endangered species.

Determination: It appears that the enterprises have not demonstrated consistency with the OECD Guidelines for establishing an 'appropriate' system of environmental management (baseline).

Determination: It appears the enterprises have not demonstrated consistency with the OECD Guidelines' recommended precautionary approach related explicitly to the due diligence associated with critically endangered species, and appropriate baseline development commensurate with the level of risk.

160. The environment complaints fall into several key areas: failure to protect the environment and human health, lack of an appropriate baseline, failure to follow the precautionary principle and failure to provide timely communications.

Protection of the environment and public health

161. The notifiers allege that the enterprises have failed to take due account of the need to protect environment and public health as defined by the OECD Guidelines recommendation to 'protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development'.¹²⁷
162. Many environmental concerns were raised by the notifiers, including the impact on Wagang and Yanga villages, and the filtrate's human impacts, concerns related to the destination of the tailings within the marine environment, tailings volume, toxicity, and biodiversity.

¹²⁵ OECD, *OECD Guidelines*, 2011, Part I, Environment Part VI, p 42.

¹²⁶ OECD, *OECD Guidelines*, 2011, Part I, Environment Part VI, p 43, [3].

¹²⁷ Complaint, pp 17 and 26.

163. The enterprises contest these impacts in their correspondence.¹²⁸ They argue that their environmental due diligence has successfully undergone a robust environmental permitting process, resulting in the issuing of an environmental permit.¹²⁹ For example, they state ‘The Wafi-Golpu Project (Project) has undergone a rigorous and robust environmental impact assessment process in accordance with Papua New Guinea (PNG) laws leading to the grant of an environment permit for the Project...The environmental impact assessment process involved the undertaking of extensive studies utilising leading experts, significant data collection and environment monitoring, and the preparation of a highly detailed Environmental Impact Statement (EIS) by the Wafi-Golpu Joint Venture (WGJV).’¹³⁰
164. The Independent Examiner recognises and appreciates that the enterprises have put significant efforts into developing their environmental studies and strategies, indicated by the various reports prepared by the enterprises. In particular, the Independent Examiner wants to highlight that where issues were raised, the Independent Examiner was not looking at the enterprises’ environmental due diligence in its entirety. The recommendations focus on the aspects of the enterprises’ conduct which relate specifically to due diligence consistency with the OECD Guidelines.
165. Given the highly technical nature of these matters and the fact that experts will likely review these in forthcoming proceedings, it is not appropriate to make a determination at this stage on the broad topic of environmental protection.
166. That being said, the Independent Examiner has found inconsistencies with the OECD Guidelines in some specific parts of the environmental due diligence, which will be covered separately.
167. On 26 April 2023, the Court made orders encouraging the parties, while awaiting proceedings, to ‘talk it through and address the very science related issues or the technical issues on environment and damage to be resolved through the engagement of appropriately qualified experts who are independent and can help both the developer, the landowners, the Morobe Provincial Government and the State.’¹³¹ The Independent Examiner agrees with this suggestion.
168. As previously mentioned in paragraph 125.1, the standing position of the Independent Examiner is that, under the precautionary approach, the burden to prove safety where there is scientific uncertainty falls on the proponent (the enterprises). As such, the Independent Examiner’s observations and recommendations below are informed by the position that, the burden is on the enterprises to demonstrate how they have complied with the OECD Guidelines.

128 Enterprises’ submission dated 27 February 2023, p 15, [5.3]. The enterprises indicate, ‘A number of international guidelines and standards informed the design of the Project and the preparation of the EIS’.

129 Enterprises’ submission dated 27 February 2023, p 15, [5.23].

130 Enterprises’ submission dated 27 February 2023, p 2, [2.2].

131 OECD, *Understanding and Applying the Precautionary Principle in the Energy Transition*, 2023, <https://doi.org/10.1787/5b14362c-en>.

Maintain a system of environmental management - baselines

169. The complainants submit that the enterprises ‘failed to collect adequate information regarding the environmental and health impacts of their activities.’¹³²
170. The complaint alleges that ‘no baseline studies have been done’ and that ‘[p]rotection of the environment, including the human right to a healthy environment requires an understanding of the quality of the receiving environment. A baseline study of the marine environment is also required to properly monitor the processes of the Enterprise (i.e., DSTP) over their life cycle, with a view to avoiding or, when unavoidable, mitigating foreseeable environmental and health impacts.’¹³³ They state that the failure to ‘identify baseline data means that the Enterprises will also be unable to establish measurable objectives (OECD Guidelines, Chapter VI, Paragraph 1(b)) or conduct regular monitoring and verification of progress towards objectives (OECD Guidelines, Chapter VI, Paragraph 1(c)).’¹³⁴
171. The notifiers also raise the issue that ‘for coastal peoples living within a 30km radius of the DSTP have not been adequately captured in the EIS.’¹³⁵
172. The complaint also indicates that Professor Mana, a CEPA-commissioned independent reviewer for the EIS, expressed concern regarding the lack of baseline data, saying that WGJV ‘does not have any substantial baseline data of Huon Gulf. Baseline data is a fundamental requirement for DSTP. Organisms will be destroyed by tailings and filtrate waste water. Monitoring will be impossible if you don’t have baseline data.’¹³⁶
173. The enterprises have indicated that: ‘The WGJV established an industry-leading baseline of environmental studies of the Huon Gulf region (consistent with the DSTP Guidelines), which commenced with detailed oceanographic studies in 2016 – 2017 for the purpose of preparing the EIS.’¹³⁷ They indicate that they have ‘gone beyond international and PNG best practice by continuing its oceanographic investigations, which have confirmed the predictions made in the EIS. The WGJV continues to undertake oceanographic data collection and environmental monitoring to verify the EIS predictions that there will be no predicted impacts to biologically productive surface waters, the coastal marine environment or the communities that use these natural resources.’¹³⁸
174. The Independent Examiner is relying on materials within the EIS, as these are what have been publicly disclosed and form part of the official documentation that was assessed in the permitting and approvals process.
175. The approach to the baseline in the EIS is covered in the enterprises’ EIS chapter titled ‘Overview of Impact Assessment Methods’,¹³⁹ which indicates that ‘the WGJV is implementing a two-staged approach to develop the baseline characterisation for the Project: Stage 1: Baseline

132 Complaint, p 36.

133 Complaint, p 20.

134 Complaint, p 36.

135 Complaint, p 36.

136 Complaint, p 37.

137 Enterprises’ submission dated 27 February 2023, p 22, [5.41(e)].

138 Enterprises’ submission dated 27 February 2023, p 22, [5.41(e)].

139 WGJV Environmental Impact Assessment Chapter titled “Overview of Impact Assessment Methods.”

characterisation as part of the EIS; Stage 2: Baseline monitoring undertaken after the EIS has been submitted and prior to commencement of construction and/or commissioning of the Project.’

176. The OECD Guidelines Chapter VI Environment states that enterprises should ‘establish and maintain a system of environmental management appropriate to the enterprise, including: collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities; [and] the establishment of measurable objectives.’¹⁴⁰ Section 2(a) also highlights that the enterprises should provide ‘adequate, measureable and verifiable (where applicable) and timely’ information on the potential environment, health and safety impacts of the enterprise’s activities.
177. Determining what level of baseline study would be ‘appropriate’, ‘adequate’ and ‘timely’, is outlined in the IFC Performance Standard, which states that: ‘the scope of the risks and impacts identification process will be consistent with good international industry practice...defined as the exercise of professional skill, diligence, prudence, and foresight that would reasonably be expected from skilled and experienced professionals engaged in the same type of undertaking under the same or similar circumstances globally or regionally.’¹⁴¹ It also details that: ‘The risks and impacts identification process will be based on recent environmental and social baseline data at an appropriate level of detail.’¹⁴²
178. Best practice risk management or ‘good international industry practice’ for DSTP, as set out by experts in peer reviewed journals¹⁴³, states that: ‘Monitoring is necessary at the pre-, on-going (operating) and recovery (DSTP ceased) phases of DSTP. Baseline monitoring for **several years** should occur before DSTP starts, to establish a benchmark against which physical and biological changes subsequent to DSTP operations can be compared, as well as to provide recovery targets and trajectories once operation ceases. Monitoring of near-shore environments is essential to ensure that pipe leaks, shallow upwellings or plume shears are not bringing tailings to the surface and impacting sensitive near-shore pelagic communities or habitats’ (emphasis added).¹⁴⁴
179. Another peer reviewed scientific paper by Vare et. al (2018) indicates that: ‘the first requirement for good practice (DSTP) concerns the completion of comprehensive, high-quality baseline studies that provide information on the receiving environment: detailed bathymetry and physical oceanography (e.g., local and seasonal information on frequency and intensity of currents and current-shearing, upwelling and downwelling, storms), sedimentology, and ecosystem (e.g., coastal and deep-sea community structure, function, connectivity, and resilience). To achieve suitable levels of background information on the dynamics of the abiotic

140 OECD, *OECD Guidelines*, 2011, Part I, Environment Part VI, p 42.

141 IFC Performance Standards, “IFC Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts”, World Bank Group, 2012, p 3.

142 IFC Performance Standards, “IFC Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts”, World Bank Group, 2012, p 3.

143 Stauber et al., ‘A generic environmental risk assessment framework for deep-sea tailings placement’, *Science of The Total Environment*, Volume 845, 2022, 157311, ISSN 0048-9697, <https://doi.org/10.1016/j.scitotenv.2022.157311>.

144 The following peer reviewed article by Stauber et. al sets out “best practice risk management”. Stauber et al., ‘A generic environmental risk assessment framework for deep-sea tailings placement, *Science of The Total Environment*’, *Science of The Total Environment*, Volume 845, 2022, 157311, ISSN 0048-9697, <https://doi.org/10.1016/j.scitotenv.2022.157311>.

and biotic systems, **studies will generally need to be conducted over many years**' (emphasis added).¹⁴⁵

180. Another peer reviewed scientific journal article by Jones et.al (2019) indicates that in a similar context where 'deep-sea mining is planned to occur in areas that are generally poorly known, especially with regard to their ecology and sensitivities. This leads to great uncertainty in the estimation of impacts and hence for establishing management activities. Managers and regulators need ways to address and reduce this uncertainty. The first approach is to reduce uncertainty through baseline data collection, experimentation and monitoring of activities. This is important, but will take a long time, particularly because of the difficulties of **sampling in remote deep-sea environments but also because effects must be measured over large timescales**' (emphasis added).¹⁴⁶ This appears consistent with the approach recommended by Christiansen, S., Bräger, S., & Jaeckel, A. (2022) for capturing the diverse weather and oceanographic patterns in baselines for deep seabed mining.¹⁴⁷
181. The peer reviewed literature reviewed appears to demonstrate a consensus that an adequate baseline for DSTP would be undertaken over a number of years.¹⁴⁸
182. While the Papua New Guinea government has not officially mandated their draft Guidelines for Deep Sea Tailings Placement, these appear to constitute best practices within the country. However, it is important to note that this is an evolving area and the draft Guidelines for Deep Sea Tailings Placement do not appear to be updated in the last decade. The draft Guidelines for Deep Sea Tailings Placement look to have been generally accepted by the Papua New Guinea Government.¹⁴⁹
183. The enterprises have accepted these draft Guidelines for Deep Sea Tailings Placement as relevant in their EIS.¹⁵⁰ The enterprises also indicate in Chapter 5 of the EIS on Community Engagement Table 5.2 covering topics they have consulted with communities about that consultation have indicated that 'Investigation of the feasibility of DSTP in the Huon Gulf has been guided by the Draft General Guidelines and Criteria for mining operations in Papua New Guinea (PNG) involving Deep Sea Tailings Placement (DSTP) (henceforth referred to as Draft Guidelines).'
184. In the enterprises' EIS attachment 'Reconciliation with Relevant Guidelines' there is a section that benchmarks the EIS with the Draft General Guidelines and Criteria for mining operations in Papua New Guinea (PNG) involving Deep Sea Tailings Placement (DSTP).¹⁵¹ In this section of the report, most areas of the EIS indicate compliance with the Draft Guidelines by indicating that

145 L.L. Vare, , M.C. Baker, J.A. Howe, L.A. Levin, C. Neira, E.Z. Ramirez-Llodra, A. Reichelt-Brushett, A.A. Rowden, T.M. Shimmield, S.L. Simpson, and E.H. Soto, 'Scientific considerations for the assessment and management of mine tailings disposal in the deep sea', *Frontiers in Marine Science*, 2018, 5, doi: <https://doi.org/10.3389/fmars.2018.00017>.

146 D.O.B. Jones, J.M. Durden, K. Murphy, K.M. Gjerde, A. Gebicka, A. Colaço, T. Morato, D. Cuvelier, and D.S.M. Billett, 'Existing environmental management approaches relevant to deep-sea mining', *Marine Policy*, 2019, 103, pp 172-181, doi: <https://doi.org/10.1016/j.marpol.2019.01.006>.

147 S. Christiansen, S. Bräger, & A. Jaeckel, 'Evaluating the quality of environmental baselines for deep seabed mining', *Frontiers in Marine Science*, 2022, volume 9, 898711.

148 L.L. Vare, , M.C. Baker, J.A. Howe, L.A. Levin, C. Neira, E.Z. Ramirez-Llodra, A. Reichelt-Brushett, A.A. Rowden, T.M. Shimmield, S.L. Simpson, and E.H. Soto, 'Scientific considerations for the assessment and management of mine tailings disposal in the deep sea', *Frontiers in Marine Science*, 2018, 5, doi: <https://doi.org/10.3389/fmars.2018.00017>.

149 Australian Mining, "[An alternative: Deep-sea tailings placement - Australian Mining](#)", 2013.

150 WGJV, EIS, Reconciliation with Relevant State of Papua New Guinea Guidelines

151 Wafi- GOLPU Enterprise, EIS, Reconciliation with Relevant State of Papua New Guinea Guidelines, 2018, from p 6 onwards.

the 'Requirements (are) met'. Some sections of the EIS table do not indicate that the requirements of the Draft Guidelines are met. These sections pertain to the baseline (section 5, which calls for 'a detailed environmental baseline',¹⁵² 5(a-c, which indicates a baseline assessment of near and far hydrography **over at least a year**,¹⁵³ and section d-e, on benthic communities) (emphasis added).¹⁵⁴

185. Specific elements of the baseline study, as indicated in the EIS in the Nearshore Marine Characterisation, do not appear to meet the 'several years' of monitoring recommended by Stauber et. al. and Vare et. al. or 'the minimum of 1 year' baseline recommendation requirement and potentially other aspects of the draft Guidelines for Deep Sea Tailings Placement and best practice standards.¹⁵⁵ Among these, include, but are not limited to:
 - 185.1. the high-resolution density model, which was run for one month and results modelled over a longer timeframe;
 - 185.2. the far-field hydrodynamic modelling, which was run for one year (with some testing locations under a year);¹⁵⁶ and
 - 185.3. the density plume modelling, which was conducted for one month, not across various timeframes and seasons.¹⁵⁷
186. These short timeframes of baselines appear to be indicated by Dr Charles James in his submission.¹⁵⁸
187. Concerns regarding the baseline were also raised during the independent review process.¹⁵⁹
188. There is evidence from previous operations in PNG utilising DSTP, such as Lihir, which show significant impacts from DSTP on the environment. For example, one study shows, amongst other impacts: "Our results demonstrate clearly that ongoing DSTP at Lihir is associated with greatly reduced infaunal abundance and changes in higher-taxon composition. The scale of impact on metazoan meiofauna and calcareous forms declines with depth (and thus, distance from the tailings outfall) but is still significant down to 1700 m. Macrofauna and organic-walled forms are severely impacted to at least 2000 m."¹⁶⁰ It is unclear what kind of baselines were used in this operation, but given some of the same enterprises were involved, it would be

152 Wafi- GOLPU Enterprise, EIS, Reconciliation with Relevant State of Papua New Guinea Guidelines, 2018, from p 17.

153 Wafi- GOLPU Enterprise, EIS, Reconciliation with Relevant State of Papua New Guinea Guidelines, 2018, from page 17.

154 Wafi- GOLPU Enterprise, EIS, Reconciliation with Relevant State of Papua New Guinea Guidelines, 2018, from page 17.

155 WGJV (2017) In the Nearshore Marine Environment Characterisation part of the EIS, the sediment, for instance, appears to be sampled over six months between Nov 2016 and Feb 2017. Section 10.5.1.

156 WGJV, EIS, Appendix J Density Current, Plume Dispersion and Hydrodynamic Modelling, p 7.

157 WGJV, EIS, Appendix J Density Current, Plume Dispersion and Hydrodynamic Modelling.

158 Charles James submission dated 3 March 2024, 'Using a hydrodynamic model and particle tracking to assess plume modelling done for the Wafi-Golpu Joint Venture Environmental Impact Statement'.

159 This was a broad complaint covered throughout the document and in particular on pp 36, 37, 38, 16, 20, and more.

160 D.J. Hughes, T.M. Shimmield, K.D Black, J.A Howe, 'Ecological impacts of large-scale disposal of mining waste in the deep sea', *Scientific Reports*, 2015, 5(9985), p 7, <https://doi.org/10.1038/srep09985>.

Impacts are also indicated in several other reports by the same researchers. See: 'Independent Evaluation of Deep-Sea Mine Tailings Placement (DSTP) in PNG8.ACP.PNG.18-B. A review and evaluation of marine environmental information on Deep Sea Tailings Placement with particular reference to Lihir and Misima mines, Papua New Guinea', 2011, *Scottish Association for Marine Science (SAMS)*. Includes Appendix 9: Deep-Sea Tailing Placement: A Review. Project duration: 21 months, starting 15th February 2007.

instructive to see how they have adapted their due diligence to avoid these kind of impacts and other impacts indicated across reports (see footnotes).

189. It appears that the enterprises' baseline has shown inconsistency with the recommendation outlined in the OECD Guidelines in providing the public and workers with 'adequate, measurable and verifiable (where applicable) and timely'¹⁶¹ information on the potential environment, health and safety impacts of the enterprise's activities. It also appears inconsistent with the recommendation to ensure that the: 'environmental management [is] appropriate to the enterprise, including: [the] collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities.'¹⁶²

Assess impacts over the full project life cycle

190. The notifiers allege the enterprises were inconsistent with Chapter VI, Paragraph 3 of the OECD Guidelines in that they 'failed to assess and address in decision-making, the foreseeable environmental and health impacts associated with the Project over the full life cycle, with a view to avoiding, or when unavoidable, mitigating these impacts.'¹⁶³
191. The basis they give for this is that '[d]espite citing a 28-year life for the Project, the Enterprises have also applied for and have been granted an Environmental Licence lasting 50 years. This means that the impact assessment of Wafi-Golpu has been significantly minimised within the Enterprises' EIS.'¹⁶⁴
192. The enterprises state that the: 'Environment Permit has been granted for a term of 50 years, as is standard for environment permits granted for mining projects in PNG, regardless of life of mine. The 50-year term is required to cover the construction period (five years), the proposed mine life (28 years) and the subsequent period of rehabilitation, closure and environmental monitoring. Similarly, the WGJV has applied for a Special Mining Lease for a term of 40 years (the maximum period under PNG law) to take account of the estimated period of construction, operation, closure and rehabilitation of the mine. To undertake any mining beyond what is approved would require further relevant and permits from PNG authorities. Depending on the activities proposed, this would include assessment by CEPA of any proposed additional activities in accordance with PNG laws.'¹⁶⁵
193. The Independent Examiner acknowledges that the project operationally extends beyond a mine's 28-year operational lifecycle, encompassing the development, closure, and rehabilitation phases. The enterprise has integrated these various stages into the impact assessments conducted. Moreover, the Independent Examiner accepts that any potential expansion of mining activities beyond the scope of the initial proposal would necessitate the acquisition of new permits. Given these considerations, the enterprises' actions do not appear to be inconsistent with the OECD Guidelines in this respect, as long as the permit process aligns with the Government of Papua New Guinea's regulations.

161 OECD, *OECD Guidelines*, 2011, Part I, Environment Part VI, p 42, [2(a)].

162 OECD, *OECD Guidelines*, 2011, Part I, Environment Part VI, p 42, [1(a)].

163 Complaint, p 35.

164 Complaint, p 36.

165 Enterprises' submission dated 27 February 2023, p 20, [5.41(b)].

Assess impacts over the full project life cycle – critically endangered species

194. The scope of the Final Statement has been determined based on a full reading of the original complaint dated 9 November 2022 and subsequent supporting documents, including the notifiers' submission dated 17 January 2024.
195. The notifiers allege that the EIS has not appropriately addressed the environmental due diligence regarding leatherback turtles.¹⁶⁶ The complaint highlights the potential impacts on the leatherback turtle, and in particular, that the largest leatherback turtle nesting population in Papua New Guinea is contained in the Huon Coast in the Morobe Province.¹⁶⁷
196. In the notifiers' submission dated 17 January 2024, there is significant detail on the leatherback turtles. Page 42 of this submission at paragraphs 109 – 111, mention their critical habitats and state that the leatherback turtle is 'critically endangered on the IUCN's Red List of Threatened Species. This is the category right before extinction in the wild.'¹⁶⁸
197. There are a number of critically endangered species identified in the enterprises' EIS that fall within the Wafi-Golpu Project's catchment. These include the west Pacific leatherback turtles,¹⁶⁹ the largetooth sawfish, and a number of other turtle species identified in Appendix S of the EIS. The notifiers also highlight that dugongs, which are considered vulnerable, also live in the project area.¹⁷⁰
198. The enterprises' EIS indicates the leatherback turtle could temporarily be interrupted across 2 per cent of the stretch of coastline between the Busu River and Wagang.¹⁷¹ The enterprises' mitigation strategy in relation to this is to 'monitor for the presence of turtles and nests during construction on the beach and shoreline and, if they are observed, record their location, avoid them where practicable, and contact the Project environmental team for guidance.....If a West Pacific leatherback turtle is present within an area about to be disturbed by the Project, suspend construction until the turtle moves away.'¹⁷²
199. The enterprises also indicate that: 'no impacts are expected to the critically endangered largetooth sawfish (*Pristis pristis*) that would have to pass through the inner Huon Gulf to reach the turbid Markham and Watut river main channels...This sawfish species was collected in the lower Watut River below the Wafi River junction (Powell and Powell, 2000) and is also known to inhabit the turbid waters of the Fly River (average TSS concentration of 120mg/L) and Strickland River (average TSS concentrations of 400mg/L) in southern Papua New Guinea (Roberts, 1978). Therefore, transient exposure to suspended sediments within the tailings subsurface and

¹⁶⁶ Complaint, p 38.

¹⁶⁷ Complaint, p 38.

¹⁶⁸ Notifier's submission dated 17 January 2024, p 42, [110].

¹⁶⁹ International Union for Conservation of Nature (IUCN), Red List: Critically Endangered, "Species of the Day: Leatherback Turtle", n.d., accessed 23 March 2024.

¹⁷⁰ Notifiers' submission dated 17 January 2024., p 45, [126].

¹⁷¹ WGJV, Wafi-Golpu Project Environmental Impact Statement, 'Chapter 16 – Nearshore Marine Environment Impact Assessment', 2018, pp 16 – 12.

¹⁷² WGJV, Environmental Management Plan, 2018, p 17.

bottom-attached plumes (if encountered) is expected to have a negligible impact on this species.’¹⁷³

200. The OECD Guidelines Chapter VI on Environment¹⁷⁴ states that, ‘Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment’. It also indicates that: ‘Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage’.¹⁷⁵
201. Paragraph 3 states that they should assess and address foreseeable environmental impacts with a view to avoiding or, when unavoidable, mitigating them.¹⁷⁶
202. The OECD Guidelines commentary states that enterprises should ‘give appropriate attention’ to environmental issues¹⁷⁷ and defines ‘sound environmental management’ as ‘embodying activities aimed at controlling both direct and indirect environmental impacts of enterprise activities.’¹⁷⁸ The commentary states that ‘enterprises should act as soon as possible, and in a proactive way, to avoid, for instance, serious or irreversible environmental damages resulting from their activities.’¹⁷⁹
203. The Papua New Guinea Constitution mandates ‘all necessary steps to be taken to give adequate protection to all our valued birds, animals, fish, insects, plants, and trees.’¹⁸⁰
204. The PNG draft Guidelines for Deep Sea Tailings Placement which the enterprises have accepted as relevant (see paragraphs 183 – 184 of this Final Statement) states that ‘There should be no potential to adversely impact on rare or valuable ecosystems identified in the EIA.’¹⁸¹
205. The enterprises indicate that they have prepared the project in accordance with the IFC Performance Standards.
206. IFC Performance Standard 6 has been utilised to assess whether the enterprises have undertaken ‘all necessary steps’ and taken due account to ‘protect the environment’ in consideration of the ‘framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards’.¹⁸² IFC Performance Standard 6 provides excellent technical guidance on what is considered best practice when dealing with critically endangered species and is, as already noted, considered relevant by the enterprises.

173 WGJV, Wafi-Golpu Project Environmental Impact Statement, ‘Chapter 17 – Offshore Marine Environment Impact Assessment’, 2018, pp 17-25.

174 OECD, *OECD Guidelines*, 2011, Part I, Environment Part VI, p 42.

175 OECD, *OECD Guidelines*, 2011, Part I, Environment Part VI, p 43, [4].

176 OECD, *OECD Guidelines*, 2011, Part I, Environment Part VI, p 43, [3].

177 OECD, *OECD Guidelines*, 2011, Part I, Environment Part VI, Commentary, p 44, [61].

178 OECD, *OECD Guidelines*, 2011, Part I, Environment Part VI, Commentary, p 45, [63].

179 OECD, *OECD Guidelines*, 2011, Part I, Environment Part VI, p 46, [69].

180 Government of Papua New Guinea PNG, [Constitution of the Independent State of Papua New Guinea](#).

181 PNG Draft Guidelines for Deep Sea Tailings Placement, [8].

182 OECD, *OECD Guidelines*, 2011, Part I, Environment Part VI, p 42.

207. The IFC's Guidance Notes on its performance standard states that the 'critical habitat' definition presented in Paragraph 16 of IFC Performance Standard 6 is considered as 'areas of high biodiversity value that include at least one or more of the five values: Criterion 1: Critically Endangered (CR) and/or Endangered (EN) species: Criterion 2: Endemic or restricted-range species: Criterion 3: Migratory or congregatory species: Criterion 4: Highly threatened and/or unique ecosystems: Criterion 5: Key evolutionary processes.' By this definition, the project area where the leatherback turtle nests would meet the definition of 'critical habitat'.¹⁸³
208. The IFC Guidance Notes states, 'If habitat is critical due to the presence of critically endangered or endangered species, recognised species specialists must be involved (for example, including individuals from IUCN Species Survival Commission Specialist Groups).'¹⁸⁴ Other requirements are also necessary to meet the standard, including evidence that the project will not lead to a net reduction in population, a Biodiversity Action Plan, and a number of other requirements.¹⁸⁵
209. There is no evidence that the enterprises have retained species specialists, developed a Biodiversity Action Plan, or demonstrated that there will not be a net reduction in species as recommended in the IFC's guidelines in relations to Critically Endangered Species.¹⁸⁶ The absence of some of these also appear to be inconsistent with Harmony Gold (Australia) Pty Limited's biodiversity policies.
210. Regarding the enterprises' due diligence related to critically endangered animals, the Independent Examiner finds that the enterprises have been inconsistent with the OECD Guidelines, due to their failure to: consider 'relevant international agreements, principles, objectives, and standards,¹⁸⁷ and, take account of the need to protect the environment. Further, the due diligence related to critically endangered species does not meet the requirement of the precautionary principle, which states that 'where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.'¹⁸⁸ The enterprises have not given appropriate attention to the mitigation measures necessary to avoid, 'serious or irreversible environmental damages [to critically endangered species] resulting from their activities.'¹⁸⁹ The enterprises could strengthen their processes in alignment with the OECD Guidelines.

183 International Finance Corporation (IFC), [International Finance Corporation's Guidance Notes: Performance Standards on Environmental and Social Sustainability](#), 2012.

184 IFC, [International Finance Corporation's Guidance Notes: Performance Standards on Environmental and Social Sustainability](#), 2012, p 8.

185 There are also a number of other requirements under Items 17 and 18: '17. In areas of critical habitat, the client will not implement any project activities unless all of the following are demonstrated: No other viable alternatives within the region exist for development of the project on modified or natural habitats that are not critical; The project does not lead to measurable adverse impacts on those biodiversity values for which the critical habitat was designated, and on the ecological processes supporting those biodiversity values; The project does not lead to a net reduction in the global and/or national/regional population of any Critically Endangered or Endangered species over a reasonable period of time; and A robust, appropriately designed, and long-term biodiversity monitoring and evaluation program is integrated into the client's management program. 18. In such cases where a client is able to meet the requirements defined in paragraph 17, the project's mitigation strategy will be described in a Biodiversity Action Plan and will be designed to achieve net gains of those biodiversity values for which the critical habitat was designated.'

186 WGJV, EIS Chapter 24 Study Team, 2017.

187 OECD, *OECD Guidelines*, 2011, Part I, Environment Part VI, p 42.

188 OECD, *OECD Guidelines*, 2011, Part I, Environment Part VI, p 43, [4].

189 OECD, *OECD Guidelines*, 2011, Part I, Environment Part VI, p 46, [69].

Precautionary approach

211. The notifiers' complaint alleges that the enterprises failed to use a precautionary approach.¹⁹⁰
212. The notifiers provided evidence of scientific uncertainty surrounding using DSTP.
213. The notifiers indicated potential risks, amongst others in the complaint. This included allegations that the enterprises did not adequately consider: seismic risks to the pipelines' corridor; health impacts over the full intended life cycle of the mine (a period longer than 28 years); foreseeable environmental and human health impacts of deploying filtrate into the ocean near Berth 6 in Lae; the specific ways and locations in which the villages of Wagang and Yanga's access to food, drinking water sources, bathing, food gathering, hunting will be inhibited and impeded during construction, and across the full intended operation of the mine; the risks posed by the pipeline corridor going through the Busu River's floodplain; the impacts felt by the environment and other villages located across the Huon Gulf; the role of two ocean currents in the area, which will transport the mining waste in two directions; impact assessments on productive wetlands located along the Huon Gulf intertidal zones where the affected communities harvest fish, mud crabs, eels, lobsters and clams for food.¹⁹¹ As there is still scientific uncertainty around DSTP, in the face of significant risks, the precautionary approach is relevant.¹⁹²
214. Chapter VI of the OECD Guidelines, focused on the Environment, contains two sections relevant to the precautionary approach: The first states, 'Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development.'¹⁹³ This is highlighted as relevant because one such international framework that should be considered is the Rio Declaration (1992).
215. The second reference is in Paragraph 4 of Section VI, which highlights the need for a precautionary approach: 'Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.'¹⁹⁴
216. The Rio Declaration on Environment and Development, 1992, Principle 15, on the precautionary approach, states: 'To protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.'¹⁹⁵ Section VI, paragraph 68 of

¹⁹⁰ Complaint, p 32.

¹⁹¹ Complaint, p 35.

¹⁹² Stauber et al., 'A generic environmental risk assessment framework for deep-sea tailings placement', *Science of The Total Environment*, Volume 845, 2022, 157311, ISSN 0048-9697, <https://doi.org/10.1016/j.scitotenv.2022.157311>.

¹⁹³ OECD, *OECD Guidelines*, 2011, Part I, Environment Part VI, p 42.

¹⁹⁴ OECD, *OECD Guidelines*, 2011, Part I, Environment Part VI, p 43, [4].

¹⁹⁵ United Nations Conference on Environment and Development, "Rio Declaration on Environment and Development, Principle 15," 1992.

the OECD Guidelines commentary states, ‘Several instruments already adopted by countries adhering to the Guidelines, including Principle 15 of the Rio Declaration on Environment and Development, enunciate a ‘precautionary approach.’¹⁹⁶ These instruments do not explicitly address enterprises, although enterprise contributions are implicit in all of them.¹⁹⁷

217. There is no universally accepted definition of the precautionary approach. However, the OECD¹⁹⁸ indicates that most formulations include the following elements: the need for (environmental or health) protection, the presence of a threat or risk of serious damage, the understanding that a lack of scientific certainty should not be used to avoid taking action to prevent that damage, and — in the case of stronger formulations — an obligation to act in the face of uncertainty, and the need to provide evidence of safety (‘reverse burden of proof’). The key to a precautionary approach is that prevention is better than cure.
218. The OECD defines the reverse burden of proof as: ‘The polluter or resource user bears the onus of proving his activity is not harmful to the environment before he can proceed’.¹⁹⁹ They also highlight that ‘The precautionary approach favours erring on the side of risk aversion’.²⁰⁰
219. The Papua New Guinea *Environmental Act (2000)* highlights the need for a ‘Precautionary Approach to the assessment of the risk of environmental harm and ensure that all aspects of environmental quality affected by environmental harm are considered in decisions relating to the environment.’²⁰¹
220. Peer-reviewed expert research on best practice risk assessments for Deep Sea Tailing Disposal suggests that given the uncertainty surrounding this area and no published risk frameworks ‘a precautionary approach’ should be undertaken.²⁰²
221. Therefore, the precautionary approach is applicable in this instance.
222. The precautionary approach dictates that if an action or policy has a suspected risk of causing harm to the public or the environment, in the absence of scientific consensus, the burden of proof falls on those taking the action to provide enough evidence to convince decision-makers of safety.
223. The Independent Examiner is unable to make a determination on the project in its entirety given the highly technical nature of some of the scientific matters in dispute.
224. However, in several key areas the project did not satisfy the preventive aspects or burden of proof required under the Precautionary Approach. These areas are the EIS baseline study (which did not meet the recommended monitoring period of several years) and adequate

196 OECD, *OECD Guidelines*, 2011, Part I, Environment Part VI, Commentary, p 45, [68].

197 OECD, *OECD Guidelines*, 2011, Part I, Environment Part VI, Commentary, p 45, [68].

198 OECD, *Understanding and Applying the Precautionary Principle in the Energy Transition*, 2023.

199 OECD, OCDE/GD(95)124, Environmental Principles and Concepts Organisation For Economic Co-Operation and Development Paris 1995 25360.

200 OECD, OCDE/GD(95)124, Environmental Principles and Concepts Organisation For Economic Co-Operation and Development Paris 1995 25360.

201 Government of Papua New Guinea, *Environment Act 2000*, Part 2 4(h).

202 Stauber et al., ‘A generic environmental risk assessment framework for deep-sea tailings placement’, *Science of The Total Environment*, Volume 845, 2022, 157311, ISSN 0048-9697, <https://doi.org/10.1016/j.scitotenv.2022.157311>. The author indicates that although several recommendations in the literature to develop robust quantitative risk frameworks for DSTP have been made, none have been published; hence, a precautionary approach is usually recommended (Reichelt-Brushett, 2012; Morello et al., 2016).

assessments and risk mitigation strategies related to the protection of critically endangered species.

Provide adequate information and communication with communities

225. The complaint alleges that the enterprises have also failed to provide the public with adequate information on the potential environmental and health impacts of Wafi-Golpu DSTP and have also failed to engage in adequate and timely communication and consultation with the communities affected by the enterprises' decision to implement DSTP (Chapter VI, 2(b)).
226. The enterprises believe this 'is not a fair or accurate characterisation of the extensive community engagement and information provision program.'²⁰³ The enterprises indicate that 'Since January 2016, the WGJV has conducted approximately 2,860 community engagements with more than 111,200 attendees within Morobe Province and in three languages (English, Tok Pisin and Bukaua). Throughout the extensive consultation process, the WGJV has received significant support for the Project from the local community and stakeholders.'²⁰⁴ This includes engagement in the Huon Gulf coastal area, involving discussions with over 40 villages and about 15,000 people in the coastal area and through the public Information Centre, which opened in Lae for the public to access project information, attracting around 1,500 visitors.²⁰⁵
227. The OECD Guidelines state that, subject to business confidentiality and protection of intellectual property rights, enterprises should 'provide the public and workers with adequate, measurable and verifiable (where applicable) and timely information on the potential environment, health and safety impacts of the activities of the enterprise' and 'engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.'²⁰⁶
228. The Independent Examiner recognises that the enterprises have undertaken substantial consultations with communities it considers both affected and unaffected, in different formats and languages and has broadly satisfied the requirements of the OECD Guidelines on providing information.
229. The adequacy of the information at the centre of communications is disputed between the parties and, given the reasons already discussed, is not suitable for determination here.
230. There is another interrelated matter worth commenting on. While the Independent Examiner acknowledges the reasons for not disclosing Professor Mana's report (being that, it is a Government of PNG document), one would argue that the document would constitute important information for the public on the risks of this project.
231. It is important to note that enterprises should disclose predictable risks as part of the FPIC process, so the enterprises are encouraged to work with the Papua New Guinea government to release the Independent Reviews of the EIS as part of a legitimate two-way dialogue.

²⁰³ Enterprises' submission dated 27 February 2023, p 8, [5.1].

²⁰⁴ Enterprises' submission dated 27 February 2023, p 8, [5.2].

²⁰⁵ Enterprises' submission dated 27 February 2023, p 10, [5.4(f)].

²⁰⁶ OECD, *OECD Guidelines*, 2011, Part I, Environment Part VI, p 42, [2(b)].

Recommendations

232. In consideration of the notifiers' original requests, and in relation to the findings of the examination, the following **28 recommendations** are proposed.
233. It is important to note that many of the requests by the notifiers go beyond the scope of the AusNCP examination, which is to examine the enterprises' consistency with the OECD Guidelines.
234. There are numerous recommendations in this Final Statement, 28 in total, many with different timelines. These are summarised in [Figure 2](#) and in the table at [Annex E](#).

Develop a plan to implement Final Statement recommendations

235. Given the large number of recommendations, the first recommendation is for the enterprises to develop an open and transparent action plan which documents all of the recommended actions in this Final Statement into a coherent framework. The plan should include relevant timeframes and responsibilities for implementation to enable the plan to be monitored and reported on for stakeholders. Noting that most of these activities relate to FPIC and due diligence, it is envisaged that all activities would be undertaken before the project receives its final approvals, and formally commences its operations. The initial plan should be developed within three months of the final report being released and should be disclosed publicly. An update should be provided at six months and twelve months.

Strengthen Human Rights Due Diligence

236. Strengthen human rights due diligence to include comprehensive analysis of risks related to gender inequalities, violence against women, and Protection from Sexual Exploitation, Abuse and Harassment (PSEAH) (including child abuse).
237. Develop and implement a standalone gender action plan, which has been widely consulted with stakeholders in the area including women from the project area (including, for example, the mine site area, the DSTP outfall and filtrate disposal area), focused on addressing gender-based violence and inequality, prepared by an expert. This plan should be publicly disclosed.
238. Develop a standalone plan to evaluate and address PSEAH risks, prepared by an expert, and widely consulted with stakeholders from the project area, especially women. This should be publicly disclosed.
239. Ensure due diligence is in place to identify and mitigate risks associated with modern slavery, particularly in the agricultural components of the project and other high-risk areas. Publicly disclose plans to address modern slavery.
240. If people, or their assets are to be relocated, provide clear and precise guidance on compensation and support mechanisms for communities affected by resettlement (including those that may be displaced by pipeline corridor), with special attention to possible elite capture.
241. Respond to the notifiers' request to provide a clear and quantifiable explanation of the impacts, including impacts on access to water, food-growing areas, education, and employment. In

addition, it is recommended that impact on fisheries both as a sector, and as a primary source of protein in the region, is examined in greater detail.

Free, Prior, and Informed Consent (FPIC) Processes

- 242. To ensure consistency with the OECD Guidelines as the project progresses through the approval process, demonstrate full compliance with FPIC principles and definitions outlined in OECD guidance and relevant guidelines, such as IFC Guidelines/performance standards.
- 243. Clearly demonstrate the rationale for including or excluding certain stakeholders as affected parties, based on existing and more recent scientific evidence. This is currently unclear in relation to coastal communities.
- 244. Given the predominant role the Evangelical Lutheran Church of Papua New Guinea plays in the Morobe Province, it is recommended that the enterprises ensure they are including the Church in all consultations and public forums as a representative body of a certain proportion of the citizens in the project area.
- 245. The enterprises are encouraged to document proof of FPIC to meet the IFC standard, if the standard is to continue being used for assurance purposes, either officially or unofficially. Verbal proof, as indicated, does not meet the standard. Documentation regarding FPIC was not provided to the Independent Examiner.
- 246. Release all relevant information to ensure a two-way dialogue consistent with the Papua New Guinea constitution and FPIC guidance. This includes working with CEPA to encourage the release of the Independent Assessment and publicly detailing the map of the pipeline with enough detail to determine which households/streets will be impacted. These need to be communicated in a format that is easily accessible and understandable to communities. It should also be published on the WGJV website.

Improve Environmental Due Diligence

- 247. Given the risk of irreparable harm, improve due diligence regarding the protection of critically endangered species in the project area or that pass through the project area. This includes all critically endangered species, and ideally those that are not critically endangered but still at risk, such as the dugong.
- 248. To ensure the protection of critically endangered species, contract independent species experts for every critically endangered species in the project catchment area, to evaluate risks and put in place recommendations and mitigation strategies. These reports should be publicly disclosed.
- 249. Given the importance of the fishery sector to both the diet and income of the local communities, as demonstrated in the EIS, it is recommended that a fishery expert is employed to assess the impact on fisheries.
- 250. To ensure alignment with IFC Performance Standards, if they are to continue being used, and as per Harmony Gold (Australia) Pty Limited's Biodiversity and Rehabilitation Position

Statement,²⁰⁷ ensure and demonstrate that there is only a net gain in biodiversity and not a net loss in biodiversity as a result of this project. Likewise, ensure alignment with other recommendations under the IFC Performance Standards.

- 251. Uphold the precautionary principle, particularly where environmental impacts on critically endangered species and local ecosystems are uncertain.
- 252. Ensure all baselines meet best practice standards (such as those highlighted by Stauber et. al and other peer reviewed scientific papers cited in this Final Statement) and comply with the standards cited in the EIS (including the Papua New Guinea Draft DSTP Guidelines).
- 253. Given the complexity of interpreting baseline assessment results, all baseline assessments should be distilled into a clear, easily digestible table. This table should summarise each study, the methodology used, key impacts, suggested mitigation measures, the compliance standards used (if any), the assessor, and the assessment timeframes and scope.

Ensure all baselines use recent data, are comprehensive and are publicly released

- 254. Review documents to ensure all baseline data and sources are recent and relevant to a best practice standard. This includes information undertaken in desk reviews. Some sources are very outdated and need to be excluded or updated.
- 255. Noting there are limitations around desk reviews in establishing a baseline, for example, a desk review will not readily identify new species, ensure that all other studies are comprehensive and have no gaps.

Policy Development and Disclosure Improvements

- 256. Develop and/or revise disclosure policies to include the disclosure of 'foreseeable risks'.
- 257. Ensure comprehensive and accessible public disclosure of project risks, impact assessments, and mitigation strategies as part of the FPIC process. In particular, many of the assessments and background documents are not in plain English or language that is accessible.
- 258. The enterprises are encouraged to disclose all relevant information as part of the FPIC process, including benefits (and who will receive these), social and environmental impacts, the content and quantity of the filtrate (including processing chemicals), job gains and losses (including impacts on fishery sectors and other sectors), compensation arrangements, forecast inflationary pressure and other relevant information.

Address Technical and Scientific Contentions

- 259. To ensure the enterprises meet the precautionary approach, provide evidence to address concerns and conflicting scientific views raised by independent reviewer Professor Mana,

207 Harmony Gold Mining Company Ltd, *Biodiversity and Rehabilitation Position Statement*, July 2023, accessed 21 November 2024.

Dr Charles James, and address the issues, alongside the Government of PNG, that were raised by Judge Kandakasi.

260. Under the precautionary approach, the burden of proof falls on the proponent to provide evidence of safety. This includes understanding the impact of particle flow over long timeframes, lessons learned from other DSTP projects in the country, greater detail on seismic risks, flooding risks, levels of contaminants in relevant marine areas, and the efficiency and effectiveness of current monitoring and review systems. In particular, given the evidence of harm caused by Lihir mine, indicate how these impacts will be avoided or addressed in the use of DSTP in this instance.
261. If the enterprises wish to exclude coastal communities as relevant stakeholders in terms of FPIC, they will need to better demonstrate that there will be no impact on coastal communities to a standard that meets the precautionary principle. The current evidence and competing analyses do not fully demonstrate that there will be no impact. The onus is on the enterprises, particularly in the face of competing evidence, to provide evidence that there will be no impact and that they meet appropriate baseline standards. Likewise, it is alleged by the notifiers that Yanga village was not appropriately informed about where the infrastructure corridor/pipeline was going to be placed. If the pipeline/infrastructure will be going through Yanga village or significantly impacting this community, there is an onus on the enterprises to document their discussions and FPIC with this community.

Review Documentation

262. Review EIS and all project documentation, and revise or provide clarifying information, if necessary, to ensure alignment with the standards, processes and corporate policies stated, as well as within documentation. There were several areas where there was potential non-compliance with stated standards/policies/guidelines.
263. The AusNCP will follow up on these recommendations in 12 months.

Aleta Moriarty

Independent Examiner

Australian National Contact Point for Responsible Business Conduct

OECD Guidelines for Multinational Enterprises on Responsible Business Conduct

Email: secretariat@ausncp.gov.au

Annexes

Annex A: Schedule of events

Submission	Date
<ul style="list-style-type: none"> Complaint submitted to the AusNCP by notifiers 	9 November 2022
<ul style="list-style-type: none"> Complaint acknowledged to the notifiers by the AusNCP, and further information sought 	10 November 2022
<ul style="list-style-type: none"> Governance and Advisory Board notified about complaint by the AusNCP 	10 November 2022
<ul style="list-style-type: none"> Enterprises notified about the new complaint by the AusNCP 	11 November 2022
<ul style="list-style-type: none"> Enterprises acknowledge receipt of new complaint 	16 November 2022
<ul style="list-style-type: none"> Complaint listed on AusNCP website 	24 November 2022
<ul style="list-style-type: none"> Parties notified of appointment of Independent Examiner Shiv Martin 	24 November 2022
Initial Assessment	
<ul style="list-style-type: none"> AusNCP correspondence to enterprises about Initial Assessment process and inviting submissions 	6 December 2022
<ul style="list-style-type: none"> Enterprises' correspondence to AusNCP seeking a copy of Annex A to complaint with names of complainants 	15 December 2022
<ul style="list-style-type: none"> Enterprises' correspondence to AusNCP seeking extension to date for Initial Assessment submissions 	13 January 2023
<ul style="list-style-type: none"> AusNCP correspondence to enterprises granting extension to 27 February 2023 for Initial Assessment submissions 	20 January 2023
<ul style="list-style-type: none"> AusNCP correspondence to notifiers providing an update on Initial Assessment progress 	15 February 2023
<ul style="list-style-type: none"> Enterprises' correspondence and submission for Initial Assessment process 	27 February 2023
<ul style="list-style-type: none"> AusNCP correspondence providing notifiers with a copy of enterprises' submission for Initial Assessment 	21 March 2023
<ul style="list-style-type: none"> Notifiers' correspondence and submission in response to enterprises' submission for the Initial Assessment 	24 April 2023
<ul style="list-style-type: none"> AusNCP correspondence to enterprises providing a copy of notifiers' submission and outlining next steps 	4 May 2023
<ul style="list-style-type: none"> AusNCP correspondence to notifiers outlining next steps 	4 May 2023
<ul style="list-style-type: none"> Enterprises' correspondence providing an update on matters relating to the complaint, including court proceedings and an earthquake in PNG 	12 May 2023
<ul style="list-style-type: none"> Draft Initial Assessment statement provided to Governance and Advisory Board for comment 	18 May 2023
<ul style="list-style-type: none"> Draft Initial Assessment statement provided to parties for comment 	8 June 2023
<ul style="list-style-type: none"> Enterprises' correspondence and submission with feedback on draft Initial Assessment statement 	22 June 2023
<ul style="list-style-type: none"> Notifiers' correspondence with feedback on draft Initial Assessment 	27 June 2023

• Embargo draft Initial Assessment provided to Governance and Advisory Board and parties	13 July 2023
• AusNCP correspondence providing notifiers with a copy of enterprises' feedback on draft Initial Assessment	18 July 2023
• Enterprises' correspondence with feedback on embargo draft Initial Assessment	21 July 2023
• Revised embargo Initial Assessment provided to Governance and Advisory Board and parties	26 July 2023
• Initial Assessment statement published on www.ausncp.gov.au and reported to the OECD	1 August 2023
Good Offices	
• AusNCP letter to parties with offer of Good Offices and invitation to information session to discuss Good Offices process	3 August 2023
• Notifiers' correspondence confirming acceptance of Good Offices information session	8 August 2023
• Enterprises' correspondence declining participation in Good Offices and information session	10 August 2023
• AusNCP correspondence advising notifiers' that enterprises declined Good Offices	11 August 2023
• Notifiers' correspondence in response to enterprises' rejection of Good Offices	1 September 2023
Final Statement	
• Notifiers' correspondence concerning Newmont Corporation's proposed acquisition of Newcrest Mining Limited	14 September 2023
• AusNCP correspondence to parties regarding next steps move to examination and Final Statement and new Independent Examiner	15 September 2023
• Meeting between AusNCP and notifiers to discuss implications for complaint concerning Newmont Corporation's proposed acquisition of Newcrest Mining Limited	19 September 2023
• AusNCP correspondence about proposed appointment of new Independent Examiner for Final Statement and conflicts of interest declaration	25 October 2023
• AusNCP correspondence to parties introducing new Independent Examiner, outlining timeline for Final Statement and inviting further submissions or meetings	28 November 2023
• AusNCP coordination with US NCP following Newmont Corporation acquisition of Newcrest Mining Limited	6 December 2023
• Enterprises' correspondence in response to proposed Final Statement and timeline	13 December 2023
• Notifiers' submission for Final Statement	17 January 2024
• Notifiers' expert report submission for Final Statement	1 March 2024
• Notifiers' response to Independent Examiner questions for Final Statement	8 March 2024
• Draft Final Statement provided to Governance and Advisory Board for comment	6 May 2024
• Draft Final Statement provided to parties for comment by 13 August 2024	24 July 2024

• Enterprises' submission to draft Final Statement shared with notifiers	25 July 2024
• Notifiers' submissions to draft Final Statement shared with enterprise	26 July 2024
• Enterprises' correspondence to AusNCP seeking extension to the date for Final Statement submissions	9 August 2024
• AusNCP correspondence to parties granting extension to 23 August 2024 for Final Statement submissions	12 August 2024
• Enterprises' correspondence to AusNCP seeking a further extension to the date for Final Statement submissions	19 August 2024
• AusNCP correspondence to parties granting extension to 6 September 2024 for Final Statement submissions	20 August 2024
• Enterprises' correspondence to AusNCP seeking a further extension to the date for Final Statement submissions	5 September 2024
• AusNCP correspondence to parties granting an extension to 13 September 2024 for Final Statement submissions	6 September 2024
• AusNCP letter to notifiers, and shared with enterprises, providing update to disclosure of interests for Independent Examiner	12 September 2024
• Enterprises' submission with feedback on draft Final Statement	13 September 2024
• Notifiers' submissions with feedback on draft Final Statement	13 September 2024
• Letter from Independent Examiner to parties regarding the scope draft Final Statement, and attaching as Annexures, each of the notifiers' and enterprises' submissions to the draft Final Statement	4 October 2024
• Further draft Final Statement shared with parties for comment by 23 December 2024.	9 December 2024
• Enterprises' submission with feedback on further draft Final Statement	23 December 2024
• Notifiers' submission with feedback on further draft Final Statement	23 December 2024
• AusNCP correspondence to parties sharing each of the enterprises' and notifiers' submissions dated 23 December 2024 with the other party respectively, and overarching feedback from the Independent Examiner in response to the submissions.	15 January 2025
• AusNCP correspondence to parties notifying them that the complaint is being put on hold due to related court proceedings	16 May 2025
• AusNCP correspondence to parties notifying them that the complaint is being taken off hold and proceeding to publication.	4 August 2025
• Embargoed copy of the Final Statement provided to parties, Governance and Advisory Board and US NCP.	15 August 2025
• Final Statement published on www.ausncp.gov.au and reported to the OECD.	29 August 2025

Annex B: Publications and Bibliography

Asia Pacific Responsibility to Protect. (2020). PNG Atrocity Crimes and Risk Assessment. Retrieved from [Risk_Assessment_PNG_vol11_january2020_2.pdf](#)

Australian Business Register. (2000). Current details for ABN 20 005 683 625 - Newcrest Mining Limited Registration. Retrieved from <https://abr.business.gov.au>

Australian Business Register. (2000). Current details for ABN 64 091 439 333 - Harmony Gold (Australia) Pty Limited ASIC Registration. Retrieved from <https://abr.business.gov.au>

Australian National Contact Point for Responsible Business Conduct (AusNCP) [Initial Assessment complaint submitted by Evangelical Lutheran Church of Papua New Guinea, Centre for Environmental Law and Community Rights Inc and Jubilee Australia Research Centre on behalf of affected Morobe Province communities against Newcrest Mining Limited and Harmony Gold \(Australia\) Pty Limited](#), AusNCP, Australian Government, 2023

Centre for Environmental Law and Community Rights (CELCOR). (2019, March 8). Further answers to AusNCP queries. Submitted to the Australian National Contact Point

Coffey. (2018, June). *Social Baseline, EIS*. Prepared for Wafi-Golpu Joint Venture. Document 532-1208-PF-4251_G

Evangelical Lutheran Church of Papua New Guinea, Centre for Environmental Law and Community Rights Inc., & Jubilee Australia Research Centre. (2022, November 9). Complaint against Newcrest Mining Limited and Harmony Gold (Australia) Pty Limited. Submitted to the Australian National Contact Point for Responsible Business Conduct

Fair Labor. (2023). PNG Cocoa Supply Chain Baseline Assessment. Retrieved from [03.30.23-Baseline-Assessment-PNGs-cocoa-supply-chain.pdf](#)

Food and Agriculture Organization of the United Nations. (2016, October 14). Free Prior and Informed Consent – An Indigenous Peoples’ right and a good practice for local communities. FAO.

Government of Papua New Guinea. (1975). Constitution of the Independent State of Papua New Guinea. Retrieved from <https://paclii.org/>

Government of Papua New Guinea. (2000). Environment Act 2000.

Harmony Gold. (2021). Risk Policy. Retrieved March 23, 2023, from <https://harmony.co.za/harmony-enterprise-risk-policy-approved-february2021.pdf>

Harmony Gold. (2023). Code of Conduct, COD001-code-conduct-12May2023.pdf. Retrieved April 23, 2024, from <https://www.harmony.co.za/>

Harmony Gold. (2023). Modern Slavery Statement. Retrieved from and Harmony Gold Modern Slavery Statement #2023-2221 (<https://modernslaveryregister.gov.au/statements/15210/>) 1 July 2022

Human Rights Watch. (2011.). Gold's Costly Dividend: Human Rights Impacts of Papua New Guinea's Porgera Gold Mine. Retrieved from ([Gold's Costly Dividend: Human Rights Impacts of Papua New Guinea's Porgera Gold Mine | HRW](#))

Human Rights Watch. (2016). World Report 2016: Papua New Guinea. Retrieved from [World Report 2016: Papua New Guinea | Human Rights Watch](#)

Human Rights Watch. (2020). World Report 2020: Papua New Guinea. Retrieved from [World Report 2020: Papua New Guinea | Human Rights Watch](#)

International Finance Corporation. (2012). IFC Performance Standards on Environmental and Social Sustainability. "IFC Performance Standard 7" Retrieved from [ifc-performance-standards.pdf](#)

International Finance Corporation. (2012). IFC Performance Standard Guidance on Environmental and Social Sustainability. last retrieved on the 12/2/2024 [ifc-performance-standards.pdf](#)

International Finance Corporation. (n.d.). Guidance Notes: Performance Standards on Environmental and Social Sustainability. Retrieved from <https://www.ifc.org/en/home>

International Union for Conservation of Nature. (2024, March 23). Species of the Day: Leatherback Turtle. Retrieved from <https://nc.iucnredlist.org/redlist/species-of-the-day/dermochelys-coriacea/pdfs/original/dermochelys-coriacea.pdf>

International Women's Development Agency. (n.d.). Papua New Guinea & Bougainville. Retrieved from [Papua New Guinea & Bougainville | IWDA](#)

James, C. (2024, March 8). Using a hydrodynamic model and particle tracking to assess plume modelling done for the Wafi-Golpu Joint Venture Environmental Impact Statement.

Jones, D. O. B., Durden, J. M., Murphy, K., Gjerde, K. M., Gebicka, A., Colaço, A., Morato, T., Cuvelier, D., & Billett, D. S. M. (2019). Existing environmental management approaches relevant to deep-sea mining. *Marine Policy*, 103, 172-181. <https://doi.org/10.1016/j.marpol.2019.01.006>

Kandakasi, D. C. J. (2021). Hon. Ginson Goheyu Saonu, in his capacity as Governor of Morobe v. Morobe Provincial Government, et al. (OS (JR) 35 of 2021). National Court of Justice at Waigani, Papua New Guinea.

Longenecker, K. (2016). *Coral reef fish management plan for Kamiali Wildlife Management Area, Morobe Province, Papua New Guinea*. Bernice Pauahi Bishop Museum. <https://doi.org/10.13140/RG.2.1.1663.8968>

Neira Marine Sciences Consulting. (2020, December). *Baseline Study of Metals in Selected Local Market Fishes and Invertebrates from the Western Huon Gulf, PNG*. Final Report. Prepared for Wafi-Golpu Joint Venture (WGJV).

Newcrest Mining Limited, & Harmony Gold (Australia) Pty Limited. (2023). Australian National Contact Point complaint relating to the Wafi-Golpu Project: Submission regarding the application of the Initial Assessment criteria (pp. 5, 5P15 5.23). Dated 27/02/23.

Newcrest Mining Limited, & Harmony Gold (Australia) Pty Limited submission. (27 February 2023).

Newcrest Mining Limited. (2021-2022). Market Disclosure Policy. Retrieved April 23, 2024, from <https://www.newcrest.com/>

Newcrest Mining Limited. (2022). Disclosure Committee Charter. Retrieved April 23, 2024, from <https://www.newcrest.com/>

Newcrest Mining Limited. (2023). Modern Slavery Statement. Retrieved from [230921_Newcrest Modern Slavery Statement 2023.pdf](#)

Organisation for Economic Co-operation and Development, Evangelical Lutheran Church of Papua New Guinea (ELC-PNG), the Center for Environmental Law and Community Rights Inc. (CELCOR) and Jubilee Australia Research Centre & Newcrest Mining Limited and Harmony Gold (Australia) Pty Limited, OECD Database of specific instances, n.d., accessed 8 April 2024

Organisation for Economic Co-operation and Development. (1995). Environmental Principles and Concepts. OCDE/GD(95)124. [https://one.oecd.org/document/OCDE/GD\(95\)124/En/pdf](https://one.oecd.org/document/OCDE/GD(95)124/En/pdf)

Organisation for Economic Co-operation and Development. (2011). OECD Guidelines for Multinational Enterprises: Recommendations for responsible business conduct in a global context. OECD Publishing.

Organisation for Economic Co-operation and Development. (2011). OECD Due Diligence Guidance for Responsible Business Conduct. OECD Publishing.

Organisation for Economic Co-operation and Development. (2017). OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector. OECD Publishing.

Organisation for Economic Co-operation and Development. (2023). Understanding and Applying the Precautionary Principle in the Energy Transition. <https://doi.org/10.1787/5b14362c-en>

Shimmiel T.M., Black K.D, Howe J.A, Hughes D.J., 'Ecological impacts of large-scale disposal of mining waste in the deep sea', *Scientific Reports*, 2015, 5(9985), <https://doi.org/10.1038/srep09985>

Shimmiel, T. M., Black, K. D., Howe, J. A., Hughes, D. J., & Sherwin, T. (n.d.). *Final report: Independent evaluation of deep sea mine tailings placement (DSTP) in PNG* (Project No. 8.ACP.PNG.18B/15).

Stauber, J. L., Adams, M. S., Batley, G. E., Golding, L. A., Hargreaves, I., Peeters, L., Reichelt-Brushett, A. J., & Simpson, S. L. (2022). A generic environmental risk assessment framework for deep-sea tailings placement. *Science of The Total Environment*, 845, 157311. <https://doi.org/10.1016/j.scitotenv.2022.157311>

United Nations Conference on Environment and Development. (1992). Rio Declaration on Environment and Development

United Nations. (2007). UN Declaration on the Rights of Indigenous Peoples. Retrieved from [UN Declaration on the Rights of Indigenous Peoples | Australian Human Rights Commission](#)

Vare, L. L., Baker, M. C., Howe, J. A., Levin, L. A., Neira, C., Ramirez-Llodra, E. Z., Reichelt-Brushett, A., Rowden, A. A., Shimmiel, T. M., Simpson, S. L., & Soto, E. H. (2018). Scientific considerations for the assessment and management of mine tailings disposal in the deep sea. *Frontiers in Marine Science*, 5. <https://doi.org/10.3389/fmars.2018.00017>

Wafi-Golpu Joint Venture. (2017). EIS Attachment 4

Wafi-Golpu Joint Venture. (2017). EIS Section 10.2 of Nearshore Characterisation

Wafi-Golpu Joint Venture. (2017). Environmental Impact Assessment: Overview of Impact Assessment Methods

Wafi-Golpu Joint Venture. (2017). Environmental Impact Statement: Nearshore Marine Environment Characterisation

Wafi-Golpu Joint Venture. (2018). Environmental Impact Statement: Reconciliation with Relevant State of Papua New Guinea Guidelines

Wafi-Golpu Joint Venture. (2018). Wafi-Golpu Project Environmental Impact Statement Executive Summary (June 2018)

Wafi-Golpu Joint Venture. (2018). Wafi-Golpu Project Environmental Impact Statement, Chapter 16 – Nearshore Marine Environment Impact Assessment

Wafi-Golpu Joint Venture. (2018). Wafi-Golpu Project Environmental Impact Statement, Chapter 17 – Offshore Marine Environment Impact Assessment, Document No: 532-1208-EN-REP-0009-1

Walk Free. (2023). Papua New Guinea Slavery Report. Retrieved [GSI-Snapshot-Papua-New-Guinea.pdf](#)

World Bank. (2015). The gas and mining industries take on gender-based violence in Papua New Guinea. Retrieved from [The gas and mining industries take on gender-based violence in Papua New Guinea](#)

Yahoo Finance. (n.d.). Harmony Gold Mining Company Limited (JSE:HAR) institutional shareholders. Retrieved from <https://www.yahoo.com>

Annex C: Institutional arrangements

- The Australian Government is committed to promoting the use of the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD Guidelines – updated 2023) and implementing them effectively and consistently. Through business cooperation and support, the OECD Guidelines can positively influence business conduct and ultimately economic, environmental and social progress.
- The OECD Guidelines are recommendations on responsible business conduct addressed by governments, including Australia, to multinational enterprises. They provide voluntary principles and standards for responsible business conduct consistent with applicable laws and internationally recognised standards. Companies operating in Australia and Australian companies operating overseas are expected to act in accordance with the principles set out in the OECD Guidelines and to perform to the standards they recommend. In countries where domestic laws and regulations conflict with the principles and standards of the OECD Guidelines, enterprises should seek ways to honour such principles and standards to the fullest extent, which does not place them in violation of domestic law.
- The OECD Guidelines represent international standards of behaviour, which in some areas, may impose higher standards than Australian law. Importantly however, while Australia is an adhering country to the OECD Guidelines and the OECD Guidelines have been endorsed within the OECD international forum, they are not a substitute for, nor do they override, Australian or international law.
- The OECD Guidelines can be seen as:
 - A useful aid to business in developing their own code of conduct. They are not aimed at replacing or preventing companies from developing their own codes.
 - Complementary to other business, national and international initiatives on corporate responsibility, including domestic and international law in specific areas such as human rights and bribery. For example, the human rights chapter in the OECD Guidelines as well as other key concepts align with the [United Nations Guiding Principles on Business and Human Rights](#).
 - Providing an informal structure for resolving issues that may arise in relation to implementation of the OECD Guidelines in complaints.

Annex D: Governance

- Governments adhering to the OECD Guidelines have flexibility in organising their National Contact Points for Responsible Business Conduct (NCPs). NCPs are expected to meet core effectiveness criteria, by operating in a manner that is visible, accessible, transparent, accountable, impartial and equitable, predictable, and compatible with the OECD Guidelines. NCPs are also expected to seek the active support of social partners, other stakeholders and relevant government agencies.
- Accordingly, the OECD Guidelines stipulate that:
 - NCPs will be composed, organised and sufficiently resourced to provide an effective basis for dealing with the broad range of issues covered by the OECD Guidelines, have access to expertise on all relevant aspects of the NCP mandate, and operate in an impartial manner and maintain an adequate level of accountability to the adhering government.
 - NCPs can use different forms of organisation to meet the effectiveness criteria and maintain stakeholder confidence.
 - Governments are encouraged to include representatives of the business community, worker organisations, civil society and other non-governmental organisations in advisory or oversight bodies to assist the NCP in its tasks and contribute to the effectiveness of the OECD Guidelines.
- The [AusNCP Governance and Advisory Board](#) (AusNCP Board) includes representatives from Australian Government agencies, business, civil society and trade unions. The AusNCP Board provides independent expert advice and assistance to the AusNCP and the Independent Examiners on complaints handling. Board members use their networks, events and publications to promote responsible business conduct standards under the OECD Guidelines and the AusNCP services. The AusNCP Board is consulted on all AusNCP statements.
- The AusNCP Board helps to ensure that the AusNCP meets the effectiveness criteria of the OECD Guidelines. AusNCP Board Members may be called on to conduct procedural reviews of AusNCP complaints and may be consulted on various operational and administrative matters as needed.

Annex E: Complaint, Examination and Recommendations

The following table provides a summary of issues raised by the notifiers in the complaint under relevant chapters of the OECD Guidelines and the Independent Examiner's determinations and recommendations in this Final Statement.

Complaint	Independent Examiner Determination	Recommendation
<p>Chapter II – General Policies (Paragraphs 2, 10, 11) allegation:</p> <p>Failure to respect fundamental human rights, including the right to life, a healthy environment, culture, equality, non-discrimination, children's rights, and self-determination.</p>	<p>Determination: The Independent Examiner has covered the relevant human rights and environmental complaints in the respective sections of the Final Statement.</p>	<p>Develop a plan to implement Final Statement recommendations</p> <ul style="list-style-type: none"> - Given the large number of recommendations, the first recommendation is for the enterprises to develop an open and transparent action plan which documents all of the recommended actions in this Final Statement into a coherent framework. The plan should include relevant timeframes and responsibilities for implementation to enable the plan to be monitored and reported on for stakeholders. Noting that most of these activities relate to FPIC and due diligence, it is envisaged that all activities would be undertaken before the project receives its final approvals, and formally commences its operations. The initial plan should be developed within three months of the final report being released and should be disclosed publicly. An update should be provided at six months and twelve months.
<p>Chapter III - Disclosure (Paragraph 2(f)) allegation:</p> <p>Failure to disclose key information regarding foreseeable risks.</p>	<p>Determination: The enterprises' policies do not appear to be consistent with paragraph 2(f) of the OECD Guidelines.</p>	<p>Policy Development and Disclosure Improvements</p> <ul style="list-style-type: none"> - Develop and/or revise disclosure policies to include the disclosure of 'foreseeable risks'. - Ensure comprehensive and accessible public disclosure of project risks, impact assessments, and mitigation strategies as part of the FPIC process. In particular, many of the assessments and background documents are not in plain English or language that is accessible. - The enterprises are encouraged to disclose all relevant information as part of the FPIC process, including benefits (and who will receive these), social and environmental impacts, the content and quantity of the filtrate (including processing chemicals), job gains and losses (including impacts on fishery sectors and other sectors), compensation arrangements, forecast inflationary pressure and other relevant information.

Complaint	Independent Examiner Determination	Recommendation
<p>Chapter IV –Human Rights (Paragraphs 1, 2, 5) allegation:</p> <p>Failure to respect internationally recognised human rights (FPIC) and failure to conduct appropriate human rights due diligence.</p>	<p>Determination: The enterprises appear to have been inconsistent with the OECD Guidelines requirements to conduct human rights due diligence ‘appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts’.</p> <p>Determination: The Independent Examiner is unable to determine the matter of FPIC at this stage.</p>	<p>Strengthen Human Rights Due Diligence</p> <ul style="list-style-type: none"> - Strengthen human rights due diligence to include comprehensive analysis of risks related to gender inequalities, violence against women, and Protection from Sexual Exploitation, Abuse and Harassment (PSEAH) (including child abuse). - Develop and implement a standalone gender action plan, which has been widely consulted with stakeholders in the area including women from the project area (including, for example, the mine site area, the DSTP outfall and filtrate disposal area), focused on addressing gender-based violence and inequality, prepared by an expert. This plan should be publicly disclosed. - Develop a standalone plan to evaluate and address PSEAH risks, prepared by an expert, and widely consulted with stakeholders from the project area, especially women. This should be publicly disclosed. - Ensure due diligence is in place to identify and mitigate risks associated with modern slavery, particularly in the agricultural components of the project and other high-risk areas. Publicly disclose plans to address modern slavery. - If people, or their assets are to be relocated, provide clear and precise guidance on compensation and support mechanisms for communities affected by resettlement (including those that may be displaced by pipeline corridor), with special attention to possible elite capture. - Respond to the notifiers' request to provide a clear and quantifiable explanation of the impacts, including impacts on access to water, food-growing areas, education, and employment. In addition, it is recommended that impact on fisheries both as a sector, and as a primary source of protein in the region, is examined in greater detail. <p>Free, Prior, and Informed Consent (FPIC) Processes</p> <ul style="list-style-type: none"> - To ensure consistency with the OECD Guidelines as the project progresses through the approval process, demonstrate full compliance with FPIC principles and definitions outlined in OECD guidance and relevant guidelines, such as IFC Guidelines/performance standards. - Clearly demonstrate the rationale for including or excluding certain stakeholders as affected parties, based on existing and more recent scientific evidence. This is currently unclear in relation to coastal communities. - Given the predominant role the Evangelical Lutheran Church of Papua New Guinea plays in the Morobe Province, it is recommended that the enterprises ensure they are including the Church in all consultations and public forums as a representative body of a certain proportion of the citizens in the project area.

Complaint	Independent Examiner Determination	Recommendation
		<ul style="list-style-type: none"> - The enterprises are encouraged to document proof of FPIC to meet the IFC standard, if the standard is to continue being used for assurance purposes, either officially or unofficially. Verbal proof, as indicated, does not meet the standard. Documentation regarding FPIC was not provided to the Independent Examiner. - Release all relevant information to ensure a two-way dialogue consistent with the Papua New Guinea constitution and FPIC guidance. This includes working with CEPA to encourage the release of the Independent Assessment and publicly detailing the map of the pipeline with enough detail to determine which households/streets will be impacted. These need to be communicated in a format that is easily accessible and understandable to communities. It should also be published on the WGJV website.
<p>Environment</p> <p>Chapter VI – Environment (Paragraphs 1b, 1c, 2a, 2b, 3, 4) allegation:</p> <p>a) Failure to protect the environment and avoid causing serious and irreversible environmental damage</p> <p>b) Failure to engage in the precautionary approach</p> <p>c) Failure to establish and maintain a system</p>	<p>Determination: The Independent Examiner is unable to make a determination on the failure to protect the environment for the entirety of the project given the highly technical scientific nature of the issues in contention, coupled with the likelihood that these will be dealt with by experts in the Papua New Guinea courts.</p> <p>Determination: Regarding the alleged failure to address environmental impacts over the full lifecycle, the Independent Examiner does not find the enterprises activities to be inconsistent with the OECD Guidelines requirement on timelines.</p> <p>Determination: It appears the enterprises are inconsistent with the OECD Guidelines in terms of operating 'within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect</p>	<p>Improve Environmental Due Diligence</p> <ul style="list-style-type: none"> - Given the risk of irreparable harm, improve due diligence regarding the protection of critically endangered species in the project area or that pass through the project area. This includes all critically endangered species, and ideally those that are not critically endangered but still at risk, such as the dugong. - To ensure the protection of critically endangered species, contract independent species experts for every critically endangered species in the project catchment area, to evaluate risks and put in place recommendations and mitigation strategies. These reports should be publicly disclosed. - Given the importance of the fishery sector to both the diet and income of the local communities, as demonstrated in the EIS, it is recommended that a fishery expert is employed to assess the impact on fisheries. - To ensure alignment with IFC Performance Standards, if they are to continue being used, and as per Harmony Gold (Australia) Pty Limited's Biodiversity and Rehabilitation Position Statement, ensure and demonstrate that there is only a net gain in biodiversity and not a net loss in biodiversity as a result of this project. Likewise, ensure alignment with other recommendations under the IFC Performance Standards. - Uphold the precautionary principle, particularly where environmental impacts on critically endangered species and local ecosystems are uncertain. - Ensure all baselines meet best practice standards (such as those highlighted by Stauber et. al and other peer reviewed scientific papers cited in this Final Statement) and comply with the standards cited in the EIS (including the Papua New Guinea Draft DSTP Guidelines). - Given the complexity of interpreting baseline assessment results, all baseline assessments should be distilled into a clear, easily digestible table. This table

Complaint	Independent Examiner Determination	Recommendation
<p>of environmental management; failure to address environmental impacts over the full lifecycle</p> <p>d) Failure to provide adequate information and adequate communication with communities.</p>	<p>the environment’ to ‘assess, and address...the foreseeable environmental...impacts with a view to avoiding or, when unavoidable, mitigating them’ in relation to critically endangered species.</p> <p>Determination: It appears that the enterprises have not demonstrated consistency with the OECD Guidelines for establishing an ‘appropriate’ system of environmental management (baseline).</p> <p>Determination: It appears the enterprises have not demonstrated consistency with the OECD Guidelines’ recommended precautionary approach related explicitly to the due diligence associated with critically endangered species, and appropriate baseline development commensurate with the level of risk.</p>	<p>should summarise each study, the methodology used, key impacts, suggested mitigation measures, the compliance standards used (if any), the assessor, and the assessment timeframes and scope.</p> <p>Ensure all baselines use recent data, are comprehensive and are publicly released</p> <ul style="list-style-type: none"> - Review documents to ensure all baseline data and sources are recent and relevant to a best practice standard. This includes information undertaken in desk reviews. Some sources are very outdated and need to be excluded or updated. - Noting there are limitations around desk reviews in establishing a baseline, for example a desk review will not readily identify new species, ensure that all other studies are comprehensive and have no gaps. <p>Address Technical and Scientific Contentions</p> <ul style="list-style-type: none"> - To ensure the enterprises meet the precautionary approach, provide evidence to address concerns and conflicting scientific views raised by independent reviewer Professor Mana, Dr Charles James, and address the issues, alongside the Government of PNG, that were raised by Judge Kandakasi. - Under the precautionary approach, the burden of proof falls on the proponent to provide evidence of safety. This includes understanding the impact of particle flow over long timeframes, lessons learned from other DSTP projects in the country, greater detail on seismic risks, flooding risks, levels of contaminants in relevant marine areas, and the efficiency and effectiveness of current monitoring and review systems. In particular, given the evidence of harm caused by Lihir mine, indicate how these impacts will be avoided or addressed in the use of DSTP in this instance. - If the enterprises wish to exclude coastal communities as relevant stakeholders in terms of FPIC, they will need to better demonstrate that there will be no impact on coastal communities to a standard that meets the precautionary principle. The current evidence and competing analyses do not fully demonstrate that there will be no impact. The onus is on the enterprises, particularly in the face of competing evidence, to provide evidence that there will be no impact and that they meet appropriate baseline standards. Likewise, it is alleged by the notifiers that Yanga village was not appropriately informed about where the infrastructure corridor/pipeline was going to be placed. If the pipeline/infrastructure will be going through Yanga village or significantly impacting this community, there is an onus on the enterprises to document their discussions and FPIC with this community.

Complaint	Independent Examiner Determination	Recommendation
		Review Documentation <ul style="list-style-type: none"> - Review EIS and all project documentation, and revise or provide clarifying information, if necessary, to ensure alignment with the standards, processes and corporate policies stated, as well as within documentation. There were several areas where there was potential non-compliance with stated standards/policies/guidelines.