

Follow Up Statement

Complaint submitted by

Project Sepik and the Jubilee Australia Research Centre on behalf of Sepik River communities, concerning PanAust Limited

22 December 2025

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Executive summary

1. In October 2023, the Australian National Contact Point for Responsible Business Conduct (AusNCP) issued a Final Statement for a complaint made by Project Sepik and the Jubilee Australia Research Centre (notifiers) in December 2021, on behalf of Sepik River communities in Papua New Guinea, regarding PanAust Ltd (enterprise). This Follow Up Statement examines the extent to which the recommendations in the Final Statement have been implemented. The Independent Examiner is satisfied the majority of the recommendations were implemented. This is explained in this statement, which is summarised below.
 - 1.1. The enterprise and notifiers engaged directly, facilitated through the AusNCP during the Follow Up, which is encouraged, even though it did not result in an agreement on these matters.
 - 1.2. Of the five recommendations made to the enterprise in the 2023 Final Statement, the enterprise implemented four recommendations ahead of the Follow Up process, and partially implemented one recommendation.
 - 1.2.1. These recommendations included action around meaningful engagement with the notifiers; use of the *Voluntary Principles on Security and Human Rights* where relevant; Free, Prior and Informed Consent (FPIC) in locally understood languages; consistency between internal company procedures and international standards on FPIC; and stakeholder engagement regarding the expected life of the Sepik Development Project's (the project) hydroelectric dam.
 - 1.2.2. For the enterprise's partially implemented recommendation, the enterprise had not initially disseminated a 2018 dam break analysis (which modelled a theoretical dam failure, to inform safety design and planning).
 - 1.2.3. The enterprise had instead provided other relevant material and undertaken engagement about dam safety and design. However, it is not evident that these actions meet the expectation of the *OECD Guidelines for Multinational Enterprises* (OECD Guidelines) to provide the public with adequate, measurable and verifiable (where applicable) information on potential environmental, health and safety impacts.
 - 1.2.4. After reading this draft statement, the enterprise then provided the notifiers with the 2018 dam break analysis (and made that publicly available), consistent with the 2023 Final Statement recommendation.
 - 1.3. Both parties provided the AusNCP with extensive submissions identifying alleged deficiencies in the others' engagement, and also aspects of the Independent Examiner's decision with which they disagree. The Independent Examiner has considered these submissions carefully in finalising this statement, and the AusNCP has provided these submissions to each party, so they have the opportunity to better understand the others' concerns, which could help in future meaningful engagement.

- 1.4. The publication of this Follow Up Statement concludes the AusNCP's processing of this matter.
2. This statement has been prepared with reference to the 2011 version of the OECD Guidelines and the 2024 version of the AusNCP complaint procedures (see paragraph 10 of this statement). This statement is published by the AusNCP and is available on the AusNCP website at www.ausncp.gov.au.

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Follow Up Statement

Background

3. In 2023, the AusNCP published a Final Statement about a complaint from the notifiers, who represent communities in Papua New Guinea, concerning the activities of the enterprise.¹ The notifiers' complaint alleged that, through its subsidiary in Papua New Guinea, the enterprise's proposals to develop the project (a mine and related infrastructure) did not comply with the OECD Guidelines. The Independent Examiner's decision was that most of the enterprise's actions identified in the complaint were not inconsistent with the OECD Guidelines. However, there were some aspects which were inconsistent, and the Independent Examiner made recommendations to the enterprise and the notifiers. 12 months after the Final Statement, the AusNCP engaged with both parties in a Follow Up process to understand the progress regarding the recommendations.
4. The Follow Up process seeks to examine what has occurred regarding the Independent Examiner's recommendations in the previous statement. The recommendations from the Independent Examiner's 2023 decision² comprise the following eight items (five directed to the enterprise and three to the notifiers):
 - 4.1. To the enterprise:
 - 4.1.1. review their interaction with the notifiers, and consider the role and use of meaningful engagement per the OECD Guidelines and various OECD Due Diligence Guidance documents
 - 4.1.2. if dealing with the role and use of security, consider and use the 2022 toolkit of *Voluntary Principles Initiative on Security and Human Rights*³
 - 4.1.3. ensure that, for any Indigenous group from which FPIC is required, that engagement occurs in a language easily understood by that group (which may mean more languages than Tok Pisin or English) – informed by a review of the totality of community engagement in relation to the project – by the Government of Papua New Guinea and by the enterprise
 - 4.1.4. review its internal company procedures regarding FPIC to ensure consistency with international standards (particularly that compensation is not understood as an alternative to FPIC)
 - 4.1.5. the company's future stakeholder engagement in relation to the project should:
 - (a) include the notifiers
 - (b) consider the views from the Haus Tambaran that the notifiers work with

¹ Independent Examiner, *Complaint submitted by Project Sepik and Jubilee Australia Research Centre on behalf of affected Sepik River communities against PanAust Limited* (3 October 2023), Australian National Contact Point for Responsible Business Conduct, Department of Treasury (Final Statement).

² Contained in paragraphs [119]-[121] of the Final Statement.

³ Geneva Centre for Security and Governance et al., 2022, *Addressing Security and Human Rights Challenges in Complex Environments*, International Committee of the Red Cross, Geneva Center for Business and Human Rights, accessed 14 August 2025, <https://www.voluntaryprinciples.org/resource/addressing-challenges-in-complex-environments-toolkit/>.

- (c) disseminate the 2018 dam break analysis
- (d) address the full lifetime of the dam and any facilities which are expected to continue even after the enterprise's mine has finished.

4.2. To the notifiers:

- 4.2.1. review their interaction with the company, and consider the role and use of meaningful engagement per the OECD Guidelines and various OECD Due Diligence Guidance documents
- 4.2.2. if dealing with the role and use of security, consider and use the 2022 toolkit of *Voluntary Principles Initiative on Security and Human Rights*
- 4.2.3. consider using the grievance mechanism established by the enterprise to raise their concerns, if that grievance mechanism accords with the United Nations Guiding Principles on Business and Human Rights' (UNGPs) effectiveness criteria.

Process

5. The OECD Guidelines encourage National Contact Points (NCPs) to 'engage in follow up where relevant once the specific instance has closed, on the implementation of recommendations'.⁴ The AusNCP's 2023 Final Statement in this matter identified that a Follow Up would occur 12 months after its publication. The parties engaged with each other, and the AusNCP, regarding the Follow Up. This included the AusNCP facilitating discussions between the parties in Brisbane, through Independent Examiner Shiv Martin, to assist in identifying any agreement or resolution between the parties. There was some exchange between the parties through that process, but no agreement was reached, and this process finished on 5 June 2025. Independent Examiner Martin transferred the case for a Follow Up examination to be conducted by a different AusNCP Independent Examiner, John Southalan, which included the following explanations (copied to the parties):

I would like to acknowledge and thank both parties for their cooperation and meaningful engagement with our first facilitated discussion on Wednesday 5 February 2025.

At the parties' request at the end of this first meeting, the parties corresponded to arrange a second facilitated discussion. Unfortunately, the parties were unable to come to an agreement on appropriate confidentiality undertakings, given proposed participants for the second facilitated discussion. I recognise both parties' concerns and do not consider any bad faith conduct to have occurred. ...

[T]o ensure the confidentiality and without prejudice nature of the facilitated discussion stage, I [Examiner Martin] will not disclose any further information to you [Examiner Southalan] in relation to the parties' conversations during the facilitated meetings. ...

6. The AusNCP commends the parties for that engagement and emphasises that the complaint process under the OECD Guidelines is fundamentally about the NCP 'offer[ing] a forum for discussion and its expertise on the Guidelines to assist the ... parties concerned to resolve the issues raised'.⁵

⁴ OECD Guidelines, *Implementation Procedures* I C [5].

⁵ OECD Guidelines, *Implementation Procedures* I C.

Consistent with this, Independent Examiner Southalan agreed with the parties that the Follow Up process would:

- 6.1. not have any information or material that the parties exchanged in the facilitated discussions (which remain confidential to the parties and Independent Examiner Martin)
 - 6.2. focus on the recommendations made in the 2023 Final Statement
 - 6.3. examine the extent to which the recommendations of the 2023 Final Statement had been implemented. Each party could provide submissions (by an agreed date) addressing what has occurred regarding the recommendations in the 2023 Final Statement.
7. Consistent with procedural fairness and the AusNCP complaint procedures,⁶ this Follow Up Statement focuses on the Final Statement's recommendations and the parties' submissions regarding those recommendations (which have been shared with each party). The Follow Up does not address new concerns raised by each party about the other, nor rely on material which the other has not had the opportunity to consider and address.
8. The AusNCP complaint procedures require that a Follow Up Statement provide a summary of the updates received from each party. In summary, the notifiers raised the following issues:
 - 8.1. the enterprise has not disclosed the 2018 dam break analysis, but instead disclosed a more recent document with different information
 - 8.2. various aspects of the 2023 Final Statement – separate from its recommendations – were incorrect and should be reconsidered in the Follow Up Statement, with different explanations of the OECD Guidelines, and further observations on the company's actions and decisions
 - 8.3. the notifiers provided their observations on the AusNCP's 2025 facilitated discussions (with Independent Examiner Martin), and why these did not resolve the matters
 - 8.4. the notifiers raised new matters of concern under the OECD Guidelines and Papua New Guinea law, and requested the Independent Examiner's assessment and statement on these matters
 - 8.5. the notifiers recommended the Independent Examiner make observations on the enterprise's compliance with the OECD Guidelines and identify these to various Australian Government agencies.
9. In summary, the enterprise raised the following issues:
 - 9.1. described the company's community engagement (more generally, and specifically with the notifiers)
 - 9.2. raised concerns about various statements made by the notifiers

⁶ AusNCP, *Complaint Procedures*, paragraph 64.

- 9.3. explained its provision of a Dam Technical Report, and a summary available online in both English and Tok Pisin languages
- 9.4. gave detail in relation to each of the recommendations to the enterprise (which are included in the observations below).
10. Over the period from when this complaint was first lodged, to now, there have been changes to both the OECD Guidelines (updated in June 2023) and the AusNCP complaint procedures (revised in April 2024). The AusNCP's earlier examination, which produced the 2023 Final Statement and its recommendations, were assessed against the content of the 2011 OECD Guidelines,⁷ in determining the enterprise's consistency with those expectations. The standards formally used for this Follow Up are the 2011 OECD Guidelines, and the procedures are the 2024 AusNCP complaint procedures. In substance, there is little difference regarding the main issues arising in this Follow Up (meaningful stakeholder engagement and FPIC), because the AusNCP's application of the relevant OECD Guidelines have been similar between the 2011 and 2023 versions.⁸ There is also no relevant change in the AusNCP Follow Up process.⁹

Observations about the implementation of recommendations

11. Both parties provided extensive submissions to the AusNCP about perceived deficiencies in the other sides' engagement in matters unrelated to the implementation of the recommendations, and urged the AusNCP to reprimand the other party. As the objective of the Follow Up process is to examine the extent to which the recommendations of the previous Final Statement have been implemented, many of these additional points are not detailed in this statement. However, the AusNCP notes that each party has been provided with relevant parts of the other's submissions, outlining their concerns and what they consider to be the other's shortcomings. To the extent that the parties genuinely seek meaningful engagement, those submissions will help each party to better understand and engage with the other.
12. The enterprise raised concerns about a statement made by a representative of the notifiers at a conference in November 2024,¹⁰ when speaking in a panel about 'The Climate Crisis and Disinformation', which is publicly available online. The representative explained the difficulties and frustrations they have in engaging with government, companies, the OECD's NCP process, and particularly the progress of this AusNCP complaint. The representative emphasised the vastly different resources and perspectives of the parties. At one point, talking about the AusNCP process, the representative stated that: 'in the last two weeks, they applied to the independent investigator and the independent investigator deleted and erased all our evidence'.¹¹ The video

⁷ Final Statement, paragraph 36.

⁸ The 2023 OECD Guidelines' expectation on 'meaningful stakeholder engagement' (ch II A [15]) incorporates additional text to that in 2011, drawn from OECD Due Diligence Guidances, which the AusNCP already included in its analysis – see eg. Final Statement, paragraphs 50, 52-53, 79 & 119. Similarly – regarding FPIC which is an addition in the commentary of the 2023 OECD Guidelines – this was already seen as relevant by the AusNCP see Final Statement, paragraphs 77, 79-89.

⁹ The key aspects of follow up (its purpose and process) remain identical in the 2024 AusNCP complaint procedures as they were under the previous version of the procedures.

¹⁰ The conference *Disinfo Pacific* was organised by the 'United Nations Information Centre for the Pacific ... with Griffith University, with support from the European Union delegations in Australia, Papua New Guinea and Fiji': <https://disinfopacific.org/>

¹¹ At 9'15" of <https://www.youtube.com/watch?v=e7kEZj8tY4I> (accessed 22 Sep 2025).

then appears to cut after that statement, and the next point is about something different, suggesting more may have been said on this point, but it is not available on the video. The Independent Examiner understands the representative to be expressing frustration that not everything the notifiers provided and alleged to the AusNCP was acted upon or reflected in public statements. The AusNCP Independent Examiners, in dealing with this matter (both in the earlier Final Statement process, and in this Follow Up process), have directed the parties to focus on what is required and relevant for the OECD Guidelines, or determining whether the 2023 recommendations have been implemented. This is evident in the previous Final Statement,¹² and also the paragraph above in this Follow Up Statement. The AusNCP was also clear – and the parties agreed – that any information or material they exchanged in the facilitated discussions (which remains confidential to the parties and Independent Examiner Martin) would not be used in the Follow Up. The parties had an opportunity, through submissions to Independent Examiner Southalan, to explain what material and issues should inform his Follow Up assessment, and both parties identified various aspects of the other’s material as irrelevant or wrong. The Independent Examiner understands that parties can be frustrated when arguments or material they provide to the AusNCP are not accepted or reflected in the Independent Examiner’s decisions and statements. However, for the sake of clarity, it has not been the case that the enterprise ‘applied to the [AusNCP] and the [AusNCP] deleted and erased all [of the notifiers’] evidence’.

13. The notifiers raised concerns regarding an online media article, from the Papua New Guinea Post-Courier, about the AusNCP proceedings, after the parties had been provided with the draft Follow Up Statement. The article is no longer available on the Post-Courier’s website.¹³ An internet archive / cache search of what is available reveals a story headlined ‘AusNCP cleared Frieda River Project: OECD guidelines met, complaint rejected’.¹⁴ This article stated that (1) a ‘Frieda River Limited Country Manager ... confirmed that the matter had been reviewed by the... AusNCP’, (2) ‘the AusNCP Examiner released a Final Statement rejecting the complaint lodged against PanAust’, and (3) ‘[t]he decision concluded that the Frieda River Project had not breached OECD guidelines’. It is not clear, from this article, what the company official said, and what may be the journalist’s words. It is also ambiguous whether this article concerns this Follow Up Statement, or the 2023 Final Statement. For the sake of clarity however, it is not the case that the ‘complaint was rejected’.
14. The notifiers, in their response to the draft Follow Up Statement, also reiterated concerns and disagreement with the Final Statement’s assessment of environmental impacts and FPIC. The AusNCP’s Follow Up process (where further mediation has not led to a different outcome) is about the recommendations made in the earlier Final Statement, and whether they have been implemented.¹⁵ It is not about reviewing other aspects of the earlier Final Statement. Relevantly here is whether the notifiers (or any persons they represent) are impacted to the extent that their FPIC would be required before relevant developments proceed.¹⁶ For the sake of clarity, however, the Independent Examiner repeats three paragraphs from the Final Statement:

¹² e.g. Final Statement, paragraphs 25, 29, 57-58.

¹³ The article appears to have been at <https://www.postcourier.com.pg/ausncp-cleared-frieda-river-project-oecd-guidelines-met-by-enterprise-complaint-rejected/>, which currently returns the message ‘Oops! That page can’t be found’ (accessed 18 October 2025).

¹⁴ From <https://archive.li/vz9Tj#selection-1093.0-1097.259> (accessed 18 October 2025), this shows the opening two paragraphs of an article dated 11 October 2025 by Alu J Kalinoe.

¹⁵ AusNCP, *Complaint Procedures*, paragraphs 70-73.

¹⁶ Final Statement, paragraphs 89-91.

[88] *The enterprise informed the AusNCP that it ‘has been undertaking stakeholder engagement with the ultimate aim of satisfying all legislative and policy requirements, including the requirement to seek FPIC from relevant affected landholders – before development commences’. The examiner’s assessment, and conclusions, have been made in express reliance on that statement and commitment by the enterprise.*

...

[92] *...[T]he enterprise’s actions to date are not inconsistent with it obtaining any necessary FPIC in the future. The enterprise will need to obtain FPIC from various communities if it is to proceed with the proposed project because of the significance of the impacts on them. However, there was not enough information provided to the examiner in the context of this complaint to determine that FPIC is needed from the notifiers or the Sepik River communities they represent.*

...

[89] *The presence, or absence, of FPIC ... cannot be determined simply by one party’s assertion that they are Indigenous and what their opinion is. Instead, it depends on: [1] an objective understanding of the physical impacts; [2] a subjective understanding of the cultural impacts - referenced to the relevant Indigenous culture and credibly substantiated within that; [3] consideration of whether either of those types of impacts are of such significance that FPIC would be required ...; and [4] the relevant group’s views after appropriate engagement.*

15. The remainder of this statement focuses on the recommendations from the Final Statement (five to the enterprise and three to the notifiers) and their implementation.

1. Enterprise’s ‘meaningful engagement’ with notifiers

16. The 2023 Final Statement recommended that both parties review their interaction and consider the role and use of meaningful engagement per the OECD Guidelines and various OECD Due Diligence Guidance documents. The 2023 Final Statement identified the relevant guidance as to what meaningful engagement involves,¹⁷ and acknowledged that:

- 16.1. the OECD Guidelines expect companies to engage with stakeholders, with Chapter 2 noting that meaningful engagement is important for companies to provide opportunities for the views of relevant stakeholders to be considered, particularly around planning and decision-making for projects or activities that could significantly impact local communities
- 16.2. the OECD Due Diligence Guidance for Responsible Business Conduct¹⁸ explains that meaningful stakeholder engagement is important throughout the due diligence process, and ‘in some cases, stakeholder engagement or consultation is a right in and of itself’, referencing the United Nations Declaration on the Rights of Indigenous Persons and the International Labour Organization Convention No. 169 provisions. These OECD documents (the OECD Guidelines and OECD Due Diligence Guidance) are broadly similar to the UNGPs, which should also inform company actions and decisions

¹⁷ Final Statement, paragraphs 39, 53, 79, 82 and 119.

¹⁸ *OECD Due Diligence Guidance for Responsible Business Conduct* (2018), https://www.oecd.org/en/publications/2018/02/oecd-due-diligence-guidance-for-responsible-business-conduct_c669bd57.html

- 16.3. it is evident that the enterprise and the notifiers do not have meaningful engagement as is understood by the OECD Guidelines, which emphasises ongoing engagement that is two-way, conducted in good faith and responsive.
17. The enterprise explained that, since the 2023 Final Statement, it has:
- 17.1. engaged a law firm, experienced in the OECD Guidelines, to review its Stakeholder Engagement Policy and advise on the OECD Guidelines
 - 17.2. considered and revised its Stakeholder Engagement Policy, including expanding guidance on non-governmental organisations and updating its “Stakeholder Engagement Principles”, which are to be followed by the enterprise and subsidiary personnel when engaging with stakeholders
 - 17.3. expanded its community engagement, including with communities along the Sepik River, which the enterprise described as ‘conducting additional, in-depth engagement with communities along the Sepik River to reflect observations made by the Independent Examiner’, and is further detailed below
 - 17.4. in February 2024, the enterprise (and its subsidiary) met with community leaders from the near-mine communities, including Wabia and Ok Isai, under the auspices of a Community Leaders Forum – to provide information and understand peoples’ views on the proposals for the mine, dam and associated infrastructure
 - 17.5. met with Haus Tambaran representatives and local leaders to seek permission to conduct engagement sessions and speak with 44 villages along the Upper and Middle Sepik River
 - 17.5.1. After receiving that permission, the sessions were conducted in July 2024.
 - 17.6. taken steps to ensure that meetings accord with the cultural norms of the villages and communities with which it is engaging (with the enterprise advising that its internal procedures include identifying a risk of ‘disregarding or ignoring Local Customs and traditions of the local people’, and that controls include ‘once aware of the traditions and customs, team to respect all aspects of it regardless of status’)
 - 17.7. in May 2025, after an invitation from ‘village elders and cultural leaders from the Murik Lakes area of the Lower Sepik region ... to visit their villages and discuss the Project’, the enterprise (and its subsidiary) met with leaders and visited villages of Murik Lakes, Kopar, Watam, Bin, Mabuk, and Sigrin.
18. The enterprise also explained it has provided assistance for various actions, including funding for specialist health and surgical services to communities, providing sporting goods and subsidising school fees for students from local areas, providing skills training to interested community members, and providing logistical support for registration with the Papua New Guinea National Identification scheme (which assists in accessing some government services). These initiatives are not ignored nor criticised by the AusNCP, as they can be examples of the OECD Guidelines’ expectation that enterprises should ‘contribute to economic, environmental and social progress with a view to achieving sustainable development’.¹⁹ However these types of activities are different to the purpose of this recommendation, which concerned the OECD Guidelines’

¹⁹ OECD Guidelines, ch II, A, [1].

expectation about ‘provid[ing] meaningful opportunities for ...[stakeholders] views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities’.²⁰ Accordingly, these activities were not considered regarding this recommendation.

19. In their submissions for the Follow Up process, the notifiers provided no statement or information contrary to the above points. The notifiers did raise concerns regarding the facilitated discussions through the AusNCP in 2025 (but that is not what this recommendation concerned), and the engagement regarding the dam break analysis (which is addressed below).
20. The Independent Examiner is satisfied that the enterprise has implemented this recommendation on the basis of the general actions summarised above, and also other actions concerning specific engagement with the notifiers (addressed in 34-36 below).

2. Security and the enterprise’s use of 2022 toolkit of Voluntary Principles Initiative on Security and Human Rights

21. The 2023 Final Statement recommended that, if dealing with issues about security personnel, the enterprise should consider and use the 2022 toolkit of the *Voluntary Principles Initiative*.
22. The enterprise explained that:
 - 22.1. it has been a member of the *Voluntary Principles Initiative* since 2013
 - 22.2. it regularly conducts risk assessments in respect of its operations in Papua New Guinea (with the most recent, regarding stakeholder engagement, conducted in May 2025), which includes consideration of the *Voluntary Principles on Security and Human Rights* and use of the associated toolkit
 - 22.3. it does not engage private security firms in Papua New Guinea
 - 22.4. where law enforcement officials accompany personnel from the enterprise or its subsidiary during Sepik Engagement Programs, the enterprise ‘communicates its expectation that those officials act in a manner consistent with human rights and company policies regarding ethics’, and ‘are given briefings and training on appropriate conduct, security measures and human rights before each engagement campaign, and their performance is monitored’
 - 22.5. it also ‘communicates regularly its expectation to the Government of Papua New Guinea that law enforcement personnel:
 - (i) must refrain from using force except where absolutely necessary
 - (ii) must not prevent members of the public from peacefully exercising their rights’.
23. In their submissions for the Follow Up process, the notifiers provided no statement or information contrary to the above points.

²⁰ 2011 version of the OECD Guideline (ch II, paragraph 14), which is similar to the current version to ‘Engage meaningfully with relevant stakeholders ... to provide opportunities for their views to be taken into account with respect to activities that may significantly impact them related to matters covered by the Guidelines’: OECD Guidelines, ch II, paragraph 15.

24. The Independent Examiner is satisfied, on the basis of the information provided by the parties, that the enterprise has implemented this recommendation.

3. Use of an understandable language where FPIC is required

25. The 2023 Final Statement recommended the enterprise ensure that, for any Indigenous group from which FPIC is required, that engagement occurs in a language easily understood by the group concerned (which may mean more languages than Tok Pisin or English).
26. The enterprise reaffirmed the position it explained in the original examination, that it understands FPIC will be required for some communities and Indigenous persons, because of the extent of the impact of the proposed developments. The enterprise also noted its express agreement with the AusNCP's observation in the 2023 Final Statement that '[i]nformed consent requires engagement in a manner and language which the relevant community can understand'.
27. The enterprise explained that since the 2023 Final Statement, it has revised the language protocol in its Stakeholder Engagement Plan, and has provided some extracts (emphasis from the original):

The design and implementation of stakeholder engagement activities under this Engagement Plan must be undertaken in a way that is consistent with the following cultural and language protocols.

Language – Engagement activities must be planned and undertaken taking into consideration the language of the stakeholders.

The majority of villages related to the Project can speak or understand the national language of Tok Pisin. English speakers are however few and often reside with a small number of community leaders.

Where English or Tok Pisin are not understood in a village and FPIC is required from that community, materials provided to stakeholders in that village should be written in the local language and oral translations provided at the village. The oral translations should be provided by a certified interpreter approved by the stakeholders. Where a certified translator is not available, PanAust/FRL [FRL is the subsidiary company of PanAust] should document the steps it has taken to engage a certified interpreter, why an interpreter cannot be obtained and how translation services were provided to the village, including whether the interpreter was approved by the stakeholders.

28. In their submissions for the Follow Up process, the notifiers provided no statement or information contrary to the above points.
29. The Independent Examiner is satisfied, on the basis of the information provided by the parties, that the enterprise has implemented this recommendation.

4. Ensure enterprise procedures regarding FPIC are consistent with international standards

30. The 2023 Final Statement recommended the enterprise review its internal company procedures, which suggested that compensation can be a mitigation instead of obtaining a group's FPIC where that would otherwise be required.

31. The enterprise's submissions explained the following in relation to this issue:

PanAust has revised its internal guidance and training on FPIC to remove any reference to compensation being an alternative to FPIC. This includes, for example, amendment of PanAust's Stakeholder Engagement Plan.

PanAust has also communicated its view that compensation is not an appropriate mitigant for FPIC to the Government of Papua New Guinea in discussions regarding stakeholder engagement and the Project more broadly.

32. It does not appear that PanAust's Stakeholder Engagement Plan is publicly available, but the OECD Guidelines do not require that of all company procedures and internal guidance. The Independent Examiner is proceeding on the accuracy of the statements that the enterprise has made in its submissions (which are extracted here), and that the enterprise will ensure the project proceeds accordingly. This paragraph serves to document that.
33. In light of the above, the Independent Examiner is satisfied that the enterprise has implemented this recommendation.

5.1 Enterprise's stakeholder engagement to include notifiers and Haus Tambaran

34. The 2023 Final Statement recommended the enterprise's future stakeholder engagement should: (a) include the notifiers, (b) consider the views from the Haus Tambaran that the notifiers work with, (c) disseminate the 2018 dam break analysis, and (d) address the full lifetime of the dam and any facilities which are expected to continue even after the enterprise's mine has finished.
35. As noted above (see paragraph 17), the enterprise revised its stakeholder engagement after the 2023 Final Statement, and relevantly explained this included:

35.1. identifying each notifier as a key stakeholder

35.2. investigating and responding to concerns raised by the notifiers, and responding in October 2024 in which it 'provided detailed information on its engagement with Sepik River communities ...[and] offered to meet with the Haus Tamabaran, which the notifiers claim to represent, to discuss any concerns regarding the Frieda River Project'

35.3. offering to 'meet with the notifiers directly as individually interested parties', suggesting dates and venues in Port Moresby or 'Brisbane if that would be more suitable to the notifiers', and informing the notifiers of planned visits to communities along the Sepik River

35.4. engaging with, and considering the views of, Haus Tambaran along the Sepik River (including Haus Tambaran in villages listed in the *Supreme Sukundimi Declaration*)

35.5. the May 2025 meetings (explained in paragraph 17.7 above), where several of the villages were among those whose Haus Tambaran were said to support the notifiers' complaint, and the enterprise had 'informed the notifiers that they and FRL intended to accept the invitation ...[and] welcomed Project Sepik's involvement in these engagements'

35.6. explaining that the format of the May 2025 meetings 'adhered to the appropriate cultural protocol and were led by FRL personnel with familial and cultural links to each village.

Notably, the protocols were the same as those outlined by the notifiers in the background paper to the *Supreme Sukundimi Declaration* in which betelnuts, tobacco and mustards were presented to each of the men's houses in the villages to initiate formal engagements within a public community setting'.

36. The enterprise stated, in its submissions to the AusNCP for the Follow Up, that it considers the notifiers are both 'stakeholders in their own capacity as interested non-governmental organisations [and] stakeholders in their representative capacity for an indeterminate number of persons who may belong to potentially affected Indigenous groups'.
37. In their submissions for the Follow Up process, the notifiers provided no statement or information contrary to the above points. The notifiers' submissions raised issues about engagement in the AusNCP process, but that is a different issue (of equity in the NCP process – addressed in paragraph 55 below), and does not discount the efforts that the enterprise has taken to engage with the notifiers and Haus Tambaran about the proposed project. It is *that* which is the focus of this aspect of the OECD Guidelines (namely, to 'provide opportunities for their views to be taken into account with respect to activities that may significantly impact them related to matters covered by the Guidelines') and this recommendation, not the processes of an NCP complaint.
38. In light of the above, the Independent Examiner is satisfied that the enterprise has implemented this part of the recommendation.

5.2 Enterprise should disseminate the '2018 dam break analysis'

39. One issue in the 2023 Final Statement was the enterprise's 2018 dam break analysis (the 2018 analysis), which modelled a theoretical dam break scenario to inform safety considerations in design. The enterprise explained that this document was 'not an assessment of the likelihood or probability of a dam break', but rather 'model[led] what the impacts would be if a dam were to fail' – to inform risk assessment and management. This document had been provided to relevant Papua New Guinea Government officials.²¹ The document had not been provided to the notifiers, despite being requested, and the 2023 Final Statement considered that the enterprise did not have valid reasons for not providing it.²² The 2023 Final Statement noted the OECD Guidelines' expectations about providing information to communities about potential impacts from an enterprise's activities,²³ and recommended that the enterprise 'disseminate [or] disclose the dam break analysis to relevant communities, with accompanying supplementary analysis if needed'.²⁴
40. During Follow Up, the enterprise explained that in 2024, it had 'commissioned and obtained an up-to-date Dam Technical Report by international engineering firm, SRK consulting, which assesses the potential risks posed by a failure of the ... dam wall ... based on current proposals for the dam'. This 2024 Dam Technical Report (the 2024 Report) had been provided to the notifiers and communities – in hard copy at consultations, with summaries in Tok Pisin and English available online. At the time the initial draft of this Follow Up Statement was prepared, the 2018 analysis had not been provided to the notifiers nor communities. Both parties made submissions

²¹ Final Statement, paragraph 69.

²² Final Statement, paragraphs 69-72.

²³ Final Statement, paragraphs 56, 70 & 73, which drew from the 2011 OECD Guidelines' Environment chapter, with now similar expectations located in the OECD Guidelines ch III (Disclosure) [3] and ch VI (Environment) [1].

²⁴ Final Statement, paragraph 120.3 (referring to paragraph 73).

about the 2024 Report and its relevance to the part of the recommendation about disclosing the 2018 analysis.

- 40.1. The enterprise stated that the 2018 analysis ‘modelled a “worst-case” scenario assuming 100% of stored tailings, waste rock and water were released instantaneously ...[and that] given that the proposed ... design places tailings behind waste rock approximately 1 km from the main embankment, it is overly conservative for risk assessment and emergency planning purposes’. Additionally, the enterprise considered the 2018 analysis was ‘a scenario that physically could not occur in nature ...[because of] the engineering fact that the physical features of the dam mean that 100% of the water contained in it cannot be released ... and, therefore, does not provide an accurate assessment of potential risks from the dam’.
- 40.2. The enterprise considered the 2024 Report (which models different scenarios of extent of breach and seasonal conditions) a more realistic assessment of potential events. The enterprise stated this document and information sheets will be circulated and available at future engagement sessions, and that ‘audience members will be able (and encouraged) to ask questions regarding the safety and potential risks of the proposed dam’.
- 40.3. The notifiers’ submissions identified various concerns from their understanding of the 2024 Report, including:
 - 40.3.1. that the document fails to model impacts to much of the Sepik River. The modelling and reporting of potential flood impacts from dam failure stop at the Swagup village on the Sepik River indicated that, in the worst of the 2024 scenarios, the water level around the Swagup village could be over 7 metres above seasonal high-water level. There are many villages downstream from Swagup, which would presumably also be significantly impacted, but seem to not be considered by this assessment
 - 40.3.2. the potential for evacuation being inadequately addressed. The 2024 Report indicates that ensuring downstream risks associated with any dam failure are properly addressed includes ‘an effective warning and response system ...[such as] alarm systems and local responses such as evacuation or access to higher ground’. The notifiers explain that ‘much of the region next to the River is flat, and that the River is in many cases the only source of transport, [raising important] questions as to how communities will be able to effectively evacuate in the event of a dam break’.
41. The notifiers also noted that all the scenarios in the 2024 Report ‘assume ... only water could be released’, and do not involve calculations of release of any tailings or waste, which would also be stored in the dam. The notifiers maintained their assertion that the 2018 analysis – which did include that assessment – is necessary for communities to properly understand the potential risks.
42. At the time of writing the initial draft of this Follow Up Statement, the enterprise had not implemented the part of the recommendation to disseminate the 2018 analysis, which the 2023 Final Statement indicated as necessary for consistency with the OECD Guidelines. The enterprise considered its additional work and dissemination of the 2024 Report ensures that consistency, and the enterprise asserts that the unrealistic assumptions of the 2018 document (see paragraph

40.1 above) mean that ‘releasing such an analysis would not assist furthering understanding of the potential risks of the Project’.

43. In assessing this part of the recommendation, the Independent Examiner makes the following points:

43.1. As noted in the 2023 Final Statement, and as evident in the 2024 Report and the enterprise’s other material – the enterprise does not shirk from potential dam failure being a catastrophic and life-threatening event. The enterprise’s material understands and engages with the significance of that risk.

44. The 2018 analysis was provided by the enterprise to relevant Papua New Guinea authorities, along with other materials, as part of the environmental impact assessment process,²⁵ which is still underway.

45. The notifiers have identified various concerns about potential impacts from dam failure, which they consider inadequately addressed by the 2024 Report.

45.1. The enterprise’s submissions explained that ‘the dam remains in the feasibility stage...[and that] several key engineering inputs like the dam face profile and safety mitigants remain under consideration’. This suggests very significant factors are still being determined, including questions of how to address community safety.

- 45.2. The OECD Guidelines’ rationale, as explained in the 2023 Final Statement, remains relevant and applicable, and so is repeated here:

*Information about the activities of enterprises ... and associated environmental impacts is an important vehicle for building confidence with the public. This ... is most effective when information is provided in a transparent manner and when it encourages active consultation with stakeholders such as ... local communities and with the public-at-large so as to promote a climate of long-term trust and understanding on environmental issues of mutual interest. Reporting and communication are particularly appropriate where ... at risk environmental assets are at stake.*²⁶

- 45.3. Given the life-threatening implications of dam failure (and examples where that has occurred with tailings dams in recent memory), it is understandable that potentially affected communities may be unwilling to rely on a company’s assurance of what is (and is not) relevant.

- 45.4. There are various ways in which the enterprise could have investigated making the 2018 analysis available to the notifiers or other interested parties, while still addressing the concerns that the enterprise has raised about its relevance. For example, through the confidentiality arrangements of the AusNCP facilitated discussions, or some arrangement of disclosure and explanation to the experts who previously assisted the notifiers.

²⁵ e.g. Final Statement, paragraph 57 & 69.

²⁶ This, in Final Statement paragraph 70, is from the 2011 OECD Guidelines commentary. Similar statements are in the 2023 OECD Guidelines commentary, paragraphs [67], [70] & [72].

46. The enterprise's non-dissemination of the 2018 analysis, as recommended in the 2023 Final Statement, remained an inconsistency with the OECD Guidelines. That was only partially rectified by the enterprise's actions regarding the 2024 Report. The notifiers identified concerns in the 2024 Report about the extent of assessment along the Sepik River past the Swagup village, and its assumptions regarding evacuation options. It is not evident that the 2024 Report (and the enterprise's action to date) accords with the 2011 OECD Guidelines' expectation to 'provide the public ... with adequate, measurable and verifiable (where applicable) and timely information on the potential environment, health and safety impacts of the activities of the enterprise'.
47. The Independent Examiner was therefore not satisfied that the enterprise had met this part of the recommendation. The enterprise and the notifiers were both provided with a draft of this statement for comment. The enterprise sought an extension to provide comments (which was granted to both parties), and on the last day those comments were due, the enterprise provided the notifiers with the 2018 analysis, and also made that available online. In assessing this aspect, the Independent Examiner makes the following observations:
- 47.1. The enterprise also suggested various amendments to this statement, based on the content of the 2018 analysis. However, the choice the enterprise made, in timing when it provided the 2018 analysis to the notifiers, prevented the notifiers from being able to consider and address that in their submissions.
- 47.2. After the notifiers received the 2018 analysis document, they raised questions about perceived differences in this document to what they understood was the '2018 dam break' report, which had previously been provided to the Papua New Guinea Government. The AusNCP facilitated an exchange between the parties about this, so each was aware of the others' understanding of this document. PanAust has stated, in writing, that what it provided to the notifiers in September 2025 was 'the 2018 dam break analysis ... the same document which PanAust provided to the Government of Papua New Guinea in 2018. There is no other dam break analysis'.
- 47.3. The Independent Examiner is satisfied that PanAust has met the recommendation (of the 2023 Final Statement) to 'disseminate [or] disclose the dam break analysis to relevant communities'. The 2024 Report (para [40] above) provides some supplementary analysis of relevant issues.
- 47.4. The AusNCP's role will finish with the publication of this Follow Up Statement, but the AusNCP encourages the enterprise to continue its community engagement and information regarding the dam risks and planning. The 2023 OECD Guidelines' chapters on disclosure and environment are relevant measures which should inform the enterprise's future conduct in this regard.²⁷

5.3 Enterprise's stakeholder engagement should address the full lifetime of dam

48. The 2023 Final Statement recommended the company's future stakeholder engagement in relation to the project should address the full lifetime of the dam and any facilities which are expected to continue even after the enterprise's mine has ceased operating or has closed.

²⁷ For example, OECD Guidelines 2023, ch III (disclosure) 1 & 3, and ch VI (environment), 1-5.

49. The enterprise emphasised that the project is premised on the dam continuing for more than 100 years, to generate hydroelectricity and prevent pollution from the stored tailings. The mine is only expected to exist for 30 to 40 years, and so much of the planning and management will entail approval and involvement of the Papua New Guinea Government. As part of its submissions, the enterprise indicated that:
- 49.1. 'detailed plans for post-closure maintenance and monitoring criteria will be developed ... to ensure the protection of the environment and communities downstream of the dam in perpetuity. These are likely to include – but not be limited to – ongoing embankment surveillance and continued inspections and monitoring programs ... based on ANCOLD and ICOLD guidelines'
- 49.2. it 'considers that a fund should be established from the mine proceeds to help pay for post-closure and long-term operational and maintenance costs as well as the dam's decommissioning'
- 49.3. it 'will continue to provide potentially affected communities with information on the dam, including its risks and management of its full lifetime as they become available', and 'anticipates being in a position to provide more specific information on measures to address the lifetime of the dam during the detailed engineering design phase of the Project. That phase is presently two to three years away'.
50. In their submissions for the Follow Up process, the notifiers provided no statement or information contrary to the above points.
51. The Independent Examiner is proceeding on the accuracy of the statements the enterprise has made in its submissions (which are extracted above), and that the enterprise will ensure these are followed.
52. In light of the above, the Independent Examiner is satisfied that the enterprise has addressed this part of the recommendation.

6. Notifiers 'meaningful engagement' with the enterprise

53. The 2023 Final Statement recommended both parties review their interaction and consider the role and use of meaningful engagement per the OECD Guidelines and Guidances. The content and expectations around 'meaningful engagement' are explained above (see paragraph 16).
54. The notifiers did not address this in their submissions for Follow Up. However, it appears that the notifiers have endeavoured to engage with the enterprise, including through the AusNCP facilitated discussions, about which Independent Examiner Martin noted she did 'not consider any bad faith conduct to have occurred'.
55. The notifiers' submissions stated that throughout the notifiers' engagement in the AusNCP process, from December 2021 (when the AusNCP complaint was submitted) to June 2025 (4.5 years), they had no opportunity 'to sit in a mediated space with the Enterprises' on an equal playing field, with both parties supported with legal representation'. This raises a different issue – of equity in the NCP process – rather than direct engagement with the enterprise (outside the context of an NCP complaint). Two observations should be made of this:

- 55.1. The OECD Guidelines – through their implementation procedures – emphasise the importance of the NCP process being impartial and equitable, and that NCPs ‘seek to ensure ... that the parties can engage in the process on fair and equitable terms, for example by seeking to ensure that power and resource imbalances do not prevent the parties from effectively engaging in the process’.²⁸ It is this last point which is the important determinant – enabling parties to effectively engage in the process – and that does not mean an NCP must ensure both parties are supported with legal representation. The NCP system would struggle if that were a requirement which NCPs had to ensure before any engagement. Based on all information available to the Independent Examiner in this case, the Independent Examiner considers that, from the initial complaint and examination, through facilitated discussions and now Follow up, the AusNCP has sought to ensure that there were not power and resource imbalances which prevented the notifiers from effectively engaging in the process.
- 55.2. The fact that the notifiers had limited opportunity to ‘to sit in a mediated space with the Enterprises’ through the AusNCP processes does not mean the notifiers were unable to meaningfully engage with the enterprise. The enterprise’s submissions indicated various occasions where the notifiers could have availed of further engagement with the enterprise or its subsidiary.
56. In response to the draft Follow Up Statement (including the above paragraphs), the notifiers stated they ‘are not interested in participating in a stakeholder consultation’, for the following reasons:
- [T]he position of the Notifiers is that the communities they represent are rightholders, not stakeholders. Stakeholders have very little rights in being able to influence the decision on whether the mine should go ahead. All communities ‘consulted’ in a stakeholder process could reject the mine, or some of them could, and the Enterprise and the government could still approve the project. This is why the Notifiers are not interested in participating in a stakeholder consultation—it is one without power for the communities who participate. And the Notifiers have no reason to encourage communities sceptical about such participation to do so. This is why the Notifiers did not engage in or encourage participation in this process.*
57. The Independent Examiner makes four observations on this position:
- 57.1. A party can be a rights holder and still not be in the position that FPIC is required.
- 57.2. Whether FPIC is required (and whether it has been obtained) is determined by the matters explained earlier.²⁹
- 57.3. Engagement does not mean that consent is being given. If the particular proposal and the party’s interests are such that FPIC is required, then that will need to be obtained and is not simply fulfilled by engagement.

²⁸ OECD Guidelines, Implementation Procedures, Commentary, [10e].

²⁹ See paragraph 14 of this statement and 89 of the Final Statement.

57.4. Deciding not to engage (and encouraging non-engagement) can preclude the understanding of companies and government agencies as to whether and how FPIC might be required.

7. Security and the notifier's use of 2022 toolkit of Voluntary Principles Initiative on Security and Human Rights

58. The 2023 Final Statement recommended the notifiers – if dealing with the role and use of security, consider and use the 2022 toolkit of *Voluntary Principles Initiative on Security and Human Rights*. The notifiers did not address this in their submissions for the Follow Up, but also did not raise any new concerns about the role and use of security.

8. Notifier's assessment and use of enterprise grievance mechanism

59. The 2023 Final Statement recommended the notifiers consider using the enterprise's grievance mechanism. The notifiers did not address this in their submissions for Follow Up, and so the Independent Examiner makes no further observation on this.

Conclusion

60. A draft of this Follow Up Statement was provided, for comment, to the AusNCP's Governance and Advisory Board (AusNCP Board), and then to the parties. The parties were also provided with a copy of each other's submissions. All comments were considered by the Independent Examiner in finalising this statement, with decisions remaining the Independent Examiner's responsibility.³⁰

61. In accordance with its procedures, the AusNCP will provide a published copy of this statement to the notifiers, the enterprise, members of the AusNCP Board, and relevant government agencies (which, in this case, should include the Department of Industry, Science and Resources; the Australian Trade and Investment Commission; and the Department of Foreign Affairs and Trade).³¹ The notifiers had requested the Independent Examiner draw instances of inappropriate conduct to the attention of other government agencies (including but not limited to the Department of Foreign Affairs and Trade). The Independent Examiner considers that, in this instance, the publication of this Follow Up Statement under the usual AusNCP procedures, and the analysis in this statement, is sufficient, and no further observations are necessary on either parties' conduct.

62. The publication of this Follow Up Statement concludes the AusNCP's processing of this complaint.

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³⁰ The AusNCP *Complaint Procedures* provide for the examiner to consider the views of the Board and comments of the parties and that 'The examiner may make changes at their discretion': paragraphs 74 and 75.

³¹ The AusNCP *Complaint Procedures* require Follow Up Statements to be 'published on the AusNCP website, shared with the parties and the Board, reported to the OECD and, provided to relevant Australian Government agencies and NCPs': paragraph 76.