

**Before the Expert Panel**

**FTAA 2112-1153**

Under the Fast-track Approvals Act 2024 (**FTAA**)

And

In the matter of an application for approvals by Taharoa Ironsands Limited to continue existing mineral sand extraction, including land preparation works, constructing a water supply reservoir, extracting ironsand material, processing extracted material, and transporting raw and processed material on 911 hectares at Taharoa Road, Taharoa, approximately 8 kilometres south of Kawhia and 45 kilometres northwest of Te Kūiti (**Central and Southern Block Mining Project**)

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Memorandum of counsel on behalf of Taharoa Ironsands Limited  
to the Expert Panel in Response to Comments

Dated 22 June 2026

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## MAY IT PLEASE THE PANEL

### INTRODUCTION

1. As you know, we act for Taharoa Ironsands Limited (**TIL**), the applicant in respect of the substantive application for the Central and Southern Blocks Mining Project (**Application**) under the Fast-track Approvals Act 2024 (**FTAA**).
2. This memorandum provides the Panel with TIL's response to:
  - (a) comments on the Application made by invited parties under section 53 of the FTAA (which are due to be filed by 22 June 2026);
  - (b) the Department of Conservation's (**DOC**) report under section 51 of the FTAA; and
  - (c) the peer review report dated 29 May 2026 prepared by the Panel's appointed hydrology/hydrogeology adviser, Mr Philip Kelsey (Earthtech) (**Earthtech Report**).
3. In particular this memorandum provides:
  - (a) **An overview of comments received on the Application (page 2), including:**
    - (i) a list of the parties who submitted comments (page 2);
    - (ii) the parties' various positions (page 3);
    - (iii) a summary of technical reports provided with comments (page 4); and
    - (iv) TIL's comments on material submitted with comments relating to TIL's earlier RMA application (page 5).
  - (b) **TIL's response to comments on the Application (page 6), including:**
    - (i) reports and documents that have been produced by TIL in response to comments and which are attached to this memorandum (page 6);

- (ii) TIL's comments on the nature and tenor of the comments received from parties (page 8);
- (iii) submissions on legal issues arising from the comments (page 15);
- (c) **An overview of TIL's response to DOC's section 51 report and other comments relating to the wildlife authority application (page 47); and**
- (d) **An overview of TIL's response to Heritage New Zealand Pouhere Taonga's (HNZPT's) section 51 report and other comments relating to the archaeological authority (page 54).**

#### **Overview of comments received**

4. The following parties submitted comments on the Application:

- (a) The landowner, The Proprietors of Taharoa C Block Incorporated (**Taharoa C**);
- (b) Waikato Regional Council (**WRC**);
- (c) Waitomo District Council (**WDC**);
- (d) Minister for Economic Growth;
- (e) Minister for Māori Development and Minister for Māori Crown Relations;
- (f) Minister for Infrastructure and RMA Reform;
- (g) The Department of Conservation (**DOC**);
- (h) Heritage New Zealand Pouhere Taonga (**HNZPT**);
- (i) Te Ruunanga o Ngaati Mahuta ki te Hauaauru Charitable Trust, Maketuu Marae, Te Kooraha Marae, and Aaruka Marae (Ngaati Mahuta ki te Hauaauru) (**NMKTH**).
- (j) Roy Wetini Whaanau Trust (**Wetini Trust**);
- (k) Te Nehenehenui;

- (l) Te Whakakitenga o Waikato Incorporated (**Waikato Tainui**); and
- (m) Co-submission of Natasha Willison-Reardon, named applicant for the Marine and Coastal Area (Takutai Moana) Act 2011 application CIV-2017-419- 082-P (rohe moana to Tirua Point), and named applicant for the Marokopa Mātaitai Reserve (Fisheries Notice 2010 No. F567) and Aroa Pou, Co-Chair of Mirumiru Pā ki Marokopa (**Mirumiru Pā ki Marokopa**).

**The commenting parties' position on the Application:**

5. The commenting parties' positions on the Application fall into three main categories: support, neutrality and opposition subject to amendments.
6. **Support for the Application:**
  - (a) There is broad support for the Application expressed in comments.
  - (b) Taharoa C, the Minister for Economic Growth, and the Minister for Infrastructure and RMA Reform support the Application.
  - (c) WRC, the relevant regulatory authority in respect of the resource consent applications, also supports the Application, subject to certain conditions being imposed.
  - (d) HNZPT did not have any comments on the Application. However, HNZPT has recommended the grant of TIL's Archaeological Authority application in its section 51 report subject to conditions that have been agreed with TIL.
  - (e) In addition, the Minister for Māori Development and the Minister for Māori Crown Relations expressed conditional support for the Application, noting that the Panel should give proper consideration to the views of Māori groups, relevant Treaty settlement provisions, and the complexities and timeframes those groups have identified.
7. **Neutrality:** WDC has adopted a neutral position in respect of the Application. However, WDC advised the Panel on 7 May 2026 that it considers that mining activities have been lawfully established on the Project

site, and no resource consents are required under the Proposed Waitomo District Plan for the Project.

8. **Opposition to the Application, subject to amendments:**

- (a) Some parties have expressed opposition to the Application in its current form but indicate that their concerns could be addressed through amendments to the proposed conditions.
- (b) This group includes the Wetini Trust, Waikato-Tainui, Te Nehenehenui, NMKTH, Mirumiru Pā ki Marokopa, and DOC.

9. **No comment:** The Minister for Treaty of Waitangi Negotiations / Minister for Arts, Culture and Heritage, Ministry for Primary Industries (Biosecurity NZ) and HNZPT had no comments on the Application.

**Technical submissions:**

10. Only WRC and DOC provided assessments from experts on technical aspects of the Application. This includes:

11. **WRC:**

- (a) Memorandum from Peter Stacey – Air Quality (Appendix A to WRC response);
- (b) Memorandum from Sung Soo Koh – Hydrology (Appendix B to WRC response);
- (c) Memorandum from Kaitlin Morrison – Wetlands (Appendix C to WRC response);
- (d) Memorandum from Josh Smith – Water Intake Structure (Appendix D to WRC response); and
- (e) Memorandum from Michael Townsend – Coastal Sedimentation (Appendix E to WRC response).

12. **DOC:**

- (a) Memorandum from James Blyth, Collaborations – Hydrology assessment (Appendix A to DOC response);

- (b) Memorandum from Nicole Calder-Steele and Matthew Jones, Aqualinc – Hydrogeology assessment (Appendix B to DOC response);
  - (c) Memorandum from Dr Catherine Beard, DOC – Wetland assessment (Appendix C to DOC response);
  - (d) Memorandum from Dr Rhys Burns, DOC – Terrestrial ecology assessment (Appendix D to DOC response);
  - (e) Memorandum from Dr Fleur Maseyk, The Catalyst Group – Effects management, offsetting and compensation assessment (Appendix E to DOC response); and
  - (f) Memorandum from Sarah Ongley, Barrister – Existing environment legal opinion (Appendix F to DOC response).
13. Some of the comments on the Application include expert assessments or other material that was submitted by parties in respect of the processing of TIL's application under the RMA in respect of the Central and Southern Blocks. This includes statements of evidence filed with the Hearing Panel that considered that application.
14. We note that aspects of this material may have some relevance – and indeed some of it is cited in TIL's Application. However, we caution the Panel in considering and adopting that material because:
- (a) While TIL's Fast-track Application is substantially the same as its RMA application, there are some differences, and TIL's proposed conditions and mitigation measures have continued to develop since the RMA application was considered;
  - (b) The relevant consenting regimes are different; and
  - (c) The information provided to the Panel by commenting parties in respect of the RMA application is also incomplete e.g. where statements of evidence have been put before the Panel by commenting parties, the primary and rebuttal statements of evidence filed by TIL have not been provided.

15. Accordingly, some of the material relating to TIL's RMA application may not be relevant or may be out of date. Material created or submitted directly in respect of TIL's Fast-track Application is the best source of information.

#### **TIL'S RESPONSE TO COMMENTS**

16. TIL's consenting team has prepared the following documents in response to the comments, all of which are attached to this memorandum:
- (a) A guidance table, summarising topics raised in the comments of invited persons and outlining where TIL has responded to those comments (**Attachment A – Response to Comments**);
  - (b) The following technical reports and memoranda which supplement the original assessment reports submitted as part of the Application:
    - (i) Planning Response prepared by Grant Eccles, Technical Director, Planning at Tonkin & Taylor Limited (**T+T**) (**Attachment B**) (**Planning Response**);
    - (ii) Coastal Processes Response prepared by Dr Eddie Beetham, Senior Coastal Geomorphologist at T+T (**Attachment C**);
    - (iii) Marine Ecology Response prepared by Dr Pete Wilson, Senior Coastal Scientist at SLR Consulting (**Attachment D**);
    - (iv) Marine Mammals Response prepared by Deanna Clement, Team Leader – Marine Mammal Ecology at Cawthorn Institute (**Attachment E**);
    - (v) Hydrology Response prepared by Josh Mawyer, Senior Hydrologist, and Jon Williamson, Managing Director, at Williamson Water & Land Advisory (**Attachment F**);
    - (vi) Hydrogeology Response prepared by Jake Scherberg, Senior Hydrogeologist, and Jon Williamson, Managing Director, at Williamson Water & Land Advisory (**Attachment G**);
    - (vii) Terrestrial Ecology – Fauna and Wetlands Response prepared by Dr Hannah Mueller, Director and Principal Ecologist at

- Phoenix Ecology Limited, and Hamish Dean, Principal Ecologist at SLR Consulting (**Attachment H**);
- (viii) Freshwater Ecology Response prepared by Keren Bennett, Technical Director of Freshwater Ecology at SLR Consulting (**Attachment I**);
  - (ix) Air Quality Response prepared by Cameron Brown, Air Quality Engineer, at Pattle Delamore Partners Limited (**Attachment J**);
  - (x) Acoustic Response prepared by Darran Humpheson, Technical Director, acoustics at T+T (**Attachment K**);
  - (xi) Archaeological Response prepared by Glen Farley, Archaeologist at Clough and Associates Limited (**Attachment L**);
  - (xii) Lizards and Wildlife Approval Response prepared by Katherine Muchna, Senior Principal Ecologist at Boffa Miskell – including an update to the proposed Wildlife Authority conditions and an amended Draft Lizard Management Plan (**Attachment M**);
- (c) A letter from Taharoa C dated 22 June 2026 responding to comments made on the Application which relate to its interests (**Attachment N**);
  - (d) An updated set of proposed conditions prepared by Grant Eccles, Technical Director, Planning, at T+T, which includes in track changes proposed amendments to conditions to address matters raised in comments (**Appendix O**);
  - (e) An amended Draft Lake Level and Water Management Plan (**Appendix P**); and
  - (f) An amended Draft Natural Inland Wetland and Buffer Management Plan (**Appendix Q**).

17. The following technical reports referred to above also address additional matters as follows:
- (a) **Attachment M** (Lizards and Wildlife Approval Response) additionally addresses the matters raised in relation to lizards and the wildlife approval in DOC's section 51 report; and
  - (b) **Attachments F and G** (Hydrology and Hydrogeology Response, respectively) additionally address the Earthtech Report prepared by Mr Philip Kelsey.<sup>1</sup>

### **The nature of specific comments received on the application**

#### ***The majority of issues raised in the comments are well-known***

18. As outlined by the Panel in Minute 11, while the comments received on the Application are "wide ranging", the issues are largely well-known to TIL.<sup>2</sup>
19. Many of the issues raised in comments by NMKTH, Te Nehenehenui, Waikato Tainui, Mirumiru Pā ki Marokopa, and the Wetini Trust, and some of the issues raised by WRC, were raised during the RMA application process or in consultation prior to filing TIL's Fast-track Application. They have been thoroughly considered by TIL's consenting team and are already addressed in TIL's Application.<sup>3</sup> For ease of reference, we set out what the overlapping issues are and where they have been addressed in the Application:

| <b>Key Issue</b>                                                                                                                                    | <b>Reference to response in TIL's Substantive Application documents</b>                                                                                                                                                              |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Whether a setback from the boundaries of third-party properties, natural inland wetlands and a larger setback from the Mitiwai Stream is necessary. | <ul style="list-style-type: none"> <li>• <a href="#"><b>Appendix G - Key issues table at pages 1 – 3.</b></a></li> <li>• <a href="#"><b>Appendix Z - Summary of responses to consultation letters at pages 6 – 7.</b></a></li> </ul> |

<sup>1</sup> Minute 12 of the Expert Panel dated 29 May 2026 at paragraph [6].

<sup>2</sup> Minute 11 of the Expert Panel dated 25 May 2026 at paragraph [7].

<sup>3</sup> See the Substantive Application Report, Memorandum of counsel to support the application, Appendix G – Key issues table and Appendix Z – Summary of responses to consultation letters.

| Key Issue                                                                                                                                               | Reference to response in TIL's Substantive Application documents                                                                                                                                                                       |
|---------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The size of the mesh screens on TIL's water intake system in the Wainui dam water reservoir, and whether the current size of the screens is acceptable. | <ul style="list-style-type: none"> <li>• <a href="#"><b>Appendix G</b> - Key issues table at pages 3 – 4.</a></li> <li>• <a href="#"><b>Appendix Z</b> - Summary of responses to consultation letters at pages 10 – 11.</a></li> </ul> |
| Monitoring of mud around the mooring buoy.                                                                                                              | <ul style="list-style-type: none"> <li>• <a href="#"><b>Appendix V</b> - Marine Ecology Assessment at section 5.2.</a></li> </ul>                                                                                                      |
| Whether TIL should be responsible for excluding stock owned by third parties from the Site.                                                             | <ul style="list-style-type: none"> <li>• <a href="#"><b>Memorandum of counsel to support the application at paragraph [40].</b></a></li> <li>• <a href="#"><b>Appendix G</b> - Key issues table at page 4.</a></li> </ul>              |
| The required residual flow in the Wainui Stream.                                                                                                        | <ul style="list-style-type: none"> <li>• <a href="#"><b>Appendix G</b> - Key issues table at pages 5 – 6.</a></li> <li>• <a href="#"><b>Appendix Z</b> - Summary of responses to consultation letters at pages 10.</a></li> </ul>      |
| The extent and nature of stabilisation and rehabilitation.                                                                                              | <ul style="list-style-type: none"> <li>• <a href="#"><b>Appendix G</b> - Key issues table at page 6.</a></li> <li>• <a href="#"><b>Appendix Z</b> - Summary of responses to consultation letters at pages 7– 8.</a></li> </ul>         |
| Water use – ship loading frequency.                                                                                                                     | <ul style="list-style-type: none"> <li>• <a href="#"><b>Appendix Z</b> - Summary of responses to consultation letters at page 13.</a></li> </ul>                                                                                       |
| Consideration of the cultural effects and how these will be mitigated.                                                                                  | <ul style="list-style-type: none"> <li>• <a href="#"><b>Substantive Application Report at Section 8.1.18.</b></a></li> </ul>                                                                                                           |

| Key Issue                                                                                                                                                                                                          | Reference to response in TIL's Substantive Application documents                                                                                                                                                                                                                                            |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                    | <ul style="list-style-type: none"> <li>• <a href="#"><u>Appendix Z - Summary of responses to consultation letters at pages 4 – 6.</u></a></li> </ul>                                                                                                                                                        |
| How the conditions should provide for on-going consultation with key stakeholders and provision of information to stakeholders, including the extent of monitoring information made available on a public website. | <ul style="list-style-type: none"> <li>• <a href="#"><u>Appendix G - Key issues table at pages 9 – 10.</u></a></li> <li>• <a href="#"><u>Appendix Z - Summary of responses to consultation letters at pages 3 – 4.</u></a></li> </ul>                                                                       |
| The term of the consents.                                                                                                                                                                                          | <ul style="list-style-type: none"> <li>• <a href="#"><u>Memorandum of counsel to support the application at paragraphs [66] – [69].</u></a></li> <li>• <a href="#"><u>Appendix G - Key issues table at page 8.</u></a></li> </ul>                                                                           |
| The approach to imposition of a bond condition.                                                                                                                                                                    | <ul style="list-style-type: none"> <li>• <a href="#"><u>A detailed explanation of the approach taken to drafting the bond condition is set out in Appendix BB to the Application.</u></a></li> <li>• <a href="#"><u>Appendix Z - Summary of responses to consultation letters at page 9.</u></a></li> </ul> |

20. TIL's response to comments on these issues supplements this information. Where possible, TIL's consenting team have avoided repeating existing Application material in their response to comments.
21. TIL's position on these issues, informed by further advice from its technical expert team, has not changed. However, Mr Eccles (planning expert for TIL) has proposed some changes to conditions relating to these issues in

response to comments – mostly in the nature of refinements to existing conditions.<sup>4</sup>

22. In addition, some new or slightly different issues have emerged from the comments. These relate to:
- (a) The adequacy of TSP monitoring instead of PM<sub>10</sub>;
  - (b) The timing of mining activities and stabilisation of the northern boundary of the Central Block;
  - (c) The potential for any saline incursion and how this will be managed;
  - (d) Monitoring and management of retained wetlands;
  - (e) The modelling underpinning TIL's proposed wetland offset area – and management approaches for that area;
  - (f) The management of any archaeological material identified during mining operations, namely which tangata whenua representatives are involved in processes under the Archaeological Authority; and
  - (g) The proposed conditions of TIL's proposed Wildlife Authority and associated Draft Lizard Management Plan.
23. These issues are dealt with in detail in TIL's technical reports and memoranda referred to in paragraph 16. Additionally, Mr Eccles has proposed some changes to conditions and management plans addressing these matters.<sup>5</sup> Most substantially these include:
- (a) Amendments to AUTH142035.01.01, and Schedule 1 – General Conditions to specify: timeframes within which work in the Priority Stabilisation Area along the northern boundary of the Central must be completed and stabilisation undertaken; the locations and type of PM<sub>10</sub> monitoring to be undertaken; a transition to PM<sub>10</sub> monitoring at certain locations to allow appropriate PM<sub>10</sub> triggers and responses to be developed;

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<sup>4</sup> See the Planning Response, section 4.

<sup>5</sup> See the Planning Response, section 3.4.

- (b) Amendments to AUTH142035.14.01 and AUTH142035.16.01 to specify that freshwater with an appropriate salinity level must be used for augmentation of flows in the Mitiwai Stream and water levels in wetlands respectively, as well as temperature, turbidity and pH limits for augmentation of wetlands;
- (c) Amendments to AUTH142035.16.01 to require ecological health monitoring of a representative sample of retained natural inland wetlands and review of trigger levels for augmentation if ecological health is observed to be declining as a result of mining operations; and
- (d) A suite of changes to the draft conditions for the Wildlife Authority.

***The tenor of the Ministry comments on the Application***

24. As set out in paragraph 6, the comments received from Government Ministries and/or Ministers on the Application are all generally supportive of the Project.<sup>6</sup> Several Ministers specifically highlight and express support for the economic benefits of the Project,<sup>7</sup> and recognise these benefits as being nationally and regionally significant in accordance with FTAA.<sup>8</sup>

***The tenor of WRC's comments on the Application***

25. WRC's comments are broadly supportive of the Application. In particular, WRC recognises that the Project will deliver significant national and regional benefits and concurs with the views expressed by TIL's expert consenting team that the effects of the Project are not sufficiently significant to outweigh these benefits.<sup>9</sup> WRC also supports granting the resource consents sought for a term of 35 years.
26. WRC's comments focus on TIL's proposed resource consent conditions and whether these are adequate to address the environmental effects of the Project. TIL met with WRC on 25 May 2026 to discuss WRC's comments and where there was still disagreement between the parties. This was a

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<sup>6</sup> Minister for Infrastructure, Minister Responsible for RMA Reform, Minister for Economic Growth, Minister for Māori Development and Minister for Crown Relations.

<sup>7</sup> Minister for Infrastructure, Minister Responsible for RMA Reform, Minister for Economic Growth.

<sup>8</sup> Section 3, Fast-track Approvals Act 2024.

<sup>9</sup> Mitchell Daysh, WRC Section 53 Comments, at page 5.

valuable and productive meeting from TIL's perspective, with progress being made towards reaching agreement on the outstanding conditions.

27. TIL's response to WRC's comments incorporates the additional feedback and information received through this engagement with WRC. TIL considers that the technical reports and proposed changes to conditions that accompany its response will address WRC's remaining areas of concern. Nonetheless, TIL remains open to engaging further with WRC and has sought a further meeting with WRC to discuss conditions following TIL's response to comments being submitted.

***The tenor of DOC's comments on the Application***

28. DOC's comments focus on TIL's resource consent application given its section 51 report focusses on the wildlife authority application.
29. In respect of TIL's resource consent application, while DOC agrees that the reports prepared in support of the Application "have generally used appropriate methodologies", DOC's technical experts are highly critical of the application, raising various points asserting that the effects and risks of the Project have been underestimated, and the effects management measures proposed are not adequate. These criticisms relate primarily to the assessment of hydrological and hydrogeological effects, and how these interact with impacts on terrestrial and freshwater ecology (including wetlands).
30. TIL's experts have carefully considered DOC's comments and maintain their view that the assessments they prepared in support of the application, and the suite of conditions and management plans that have been developed based on those assessments, are appropriate, comprehensive and robust. A limited number of changes to the Application have been recommended to respond to DOC's comments, being targeted refinements to conditions and managements plans intended to improve clarity and ensure consistency only.
31. Overall, TIL's expert responses to DOC's comments suggest the following about DOC's comments:
  - (e) a preference by DOC for a particular methodology, typically involving greater complexity, rather than identifying any material errors or flaws;

- (f) a disproportionately critical and extremely conservative approach;
  - (g) a lack of consideration for the context – being that the Mine has been operating since the 1970s, that the effects of the operation are well known and tested, and that TIL's expert team have an in-depth knowledge of the site; and
  - (h) in places, a misunderstanding of the Application and approaches to assessing effects.
32. DOC was involved in TIL's previous consent application under the RMA, however, withdrew prior to the hearing. Prior to withdrawing, DOC filed expert evidence raising some of the same issues that are canvassed in its comments on this Application. After DOC withdrew, TIL provided comprehensive rebuttal evidence in response to the matters raised in DOC's previous evidence. It does not appear that DOC or its expert team have considered this evidence in formulating their views on the Application.
33. Finally, we note that Mr Binks (DOC's Technical Advisor - Freshwater) is critical of the approach taken in the Freshwater Ecology Assessment (Appendix L of the Application). However, no detailed technical assessment has been provided to substantiate his comments in DOC's comments. Accordingly, the Panel should give greatest weight to other substantiated expert opinions presented to the Panel on this matter.
34. We address DOC's comments on TIL's wildlife authority application separately below.

***The tenor of the iwi group's comments on the Application***

35. As noted above, the issues raised by the iwi groups (NMKTH, Wetini Trust, Te Nehenehenui, Waikato Tainui and Mirumiru Pā ki Marokopa) are substantially the same as those raised by the relevant parties in respect of TIL's RMA application and in consultation on the Fast-track Application. They are well known to TIL, have been considered in detail by TIL's consenting team, and have already been comprehensively addressed and responded to in the Application.
36. The overall position of the iwi groups is that if the Application is granted the conditions granted in the decision by the 2024 RMA Hearing Panel should be

imposed. TIL used this set of conditions as the starting point in respect of this Application, with amendments to correct issues of workability and to address new matters and feedback received during pre-application consultation. As set out above, these conditions have been further amended in response to comments. TIL's approach to conditions takes into account stakeholder views, is grounded in expert advice and TIL's experience in managing the Mine.

37. Notably, there is limited recognition in NMKTH, the Wetini Trust, Te Nehenehenui and Waikato-Tainui's comments on the Application of the fact that the Application site is Māori land, owned by Taharoa C and that Taharoa C supports the Application, or that Taharoa C holds mana motuhake in relation to the whenua. Waikato-Tainui does not refer to Taharoa C at all in its comments. The importance of Taharoa C's voice is addressed later in this memorandum.

#### **Submissions on legal issues arising from all comments**

38. Below we set out a legal response to the following issues raised in comments from invited parties:
  - (a) The significant regional and national benefits of the Project;
  - (b) Section 85 of the FTAA;
  - (c) Conditions of resource consents – when conditions are more onerous than necessary;
  - (d) The importance of the views of the Māori landowner;
  - (e) Existing environment;
  - (f) Compliance history;
  - (g) Imposition of a bond condition;
  - (h) Relevance of Marine and Coastal Area (Takutai Moana) Act 2011 claims; and
  - (i) Weight to be given to other evidence.

39. Some of these matters relate to TIL's Application as a whole (items (a), (b), (d)). The remainder relate to the resource consent application component of TIL's Application.

***Significant Regional or National Benefits of the Project***

40. The purpose of the FTAA is to facilitate projects with significant regional or national benefits (section 3). The purpose of the FTAA must be considered by the Panel in determining the Application:
- (a) Clause 17(1) of Schedule 5 sets out that when considering a resource consent application, the Panel must take into account, giving the greatest weight, to the purpose of the FTAA;
  - (b) Section 81 and clause 5 of Schedule 7 of the FTAA sets out that the Panel must take into account the purpose of the FTAA for an application for a wildlife approval; and
  - (c) Clause 4 of Schedule 8 of the FTAA sets out that the Panel must take into account the purpose of the FTAA application for an archaeological authority.
41. Below we set out the meaning of nationally or regionally significant, reiterate how the Project exceeds this requirement, and confirm that the comments support this conclusion.

*The meaning of nationally or regionally significant*

42. The phrase "*nationally or regionally significant*" is not defined in the FTAA. The Panel for Maitahi Village interpreted "*significant*" in accordance with its ordinary meaning, being "*sufficiently great or important to be worthy of attention; noteworthy*".<sup>10</sup> Several panels have also expressly rejected the

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<sup>10</sup>

Decision of the Expert Consenting Panel for Maitahi Village dated 18 September 2025 at paragraph [516].

argument that 'significance' requires "game-changing" GDP-scale impacts but rather it is an indication of scale.<sup>11</sup>

43. The Maitahi Village Panel further stated that section 22 of the FTAA (criteria for assessing a referral application) provides a useful, though non-determinative guide to assessing regional or national significance.<sup>12</sup> This approach has been adopted in subsequent decisions.<sup>13</sup> Section 22(2)(a) identifies a range of relevant considerations, including whether the project.<sup>14</sup>
- (a) has been identified as a priority project in a central government, local government, or sector plan or strategy (for example, in a general policy statement or spatial strategy), or a central government infrastructure priority list:
  - (b) will deliver new regionally or nationally significant infrastructure or enable the continued functioning of existing regionally or nationally significant infrastructure:
  - (c) will increase the supply of housing, address housing needs, or contribute to a well-functioning urban environment (within the meaning of policy 1 of the National Policy Statement on Urban Development 2020):
  - (d) will deliver significant economic benefits:
  - (e) will support primary industries, including aquaculture:
  - (f) will support development of natural resources, including minerals and petroleum:
  - (g) will support climate change mitigation, including the reduction or removal of greenhouse gas emissions:

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<sup>11</sup> Decision of the Expert Consenting Panel for Waihi North dated 18 December 2025 at paragraph [843]; Decision of the Expert Consenting Panel for Waitaha Hydro Scheme dated 18 May 2026 at paragraph [781].

<sup>12</sup> Decision of the Expert Consenting Panel for Maitahi Village dated 18 September 2025 at paragraph [515].

<sup>13</sup> Decision of the Expert Consenting Panel for Kaimai Hydro-Electric Power Scheme Re-consenting dated 15 May 2025 at paragraph [58]; Decision of the Expert Consenting Panel for Waitaha Hydro Scheme dated 18 May 2026 at paragraph [780].

<sup>14</sup> Section 22, Fast-track Approvals Act 2024.

- (h) will support climate change adaptation, reduce risks arising from natural hazards, or support recovery from events caused by natural hazards:
  - (i) will address significant environmental issues:
  - (j) is consistent with local or regional planning documents, including spatial strategies:
44. Panels have also clarified that the FTAA does not require a project to be nationally *and* regionally significant. In considering this, Panels have typically assessed the scale of the project in both a national context and within the relevant region, recognising that thresholds of significance may differ between regions.<sup>15</sup>
45. An additional matter considered by Panels is the assessment of a proposal against the “counterfactual” scenario, i.e. what the position in the absence of the project. For example, the Panel for the Homestead Bay Project found that while there is no express obligation under the FTAA to adopt or apply a counterfactual, “when a panel identifies the benefits a project will deliver it is implicitly asking what the position will be without the project, so explicit consideration of counterfactuals may be a useful analytical tool”.<sup>16</sup> The Panel noted that, in practical terms, the benefits of a project are always understood “relative to some “without project” scenario.”<sup>17</sup> In other words, while it is not strictly required under the FTAA, evaluation of the opportunity cost of not granting approval for a project, and the economic benefits of that project not being realised, is a relevant and helpful tool for Panels when considering the regional or national significance of those benefits.

*The Project is clearly nationally and regionally significant*

46. The significant economic benefits of the Project are set out at length in the Economic Assessment (Appendix C of the Application).<sup>18</sup> Our covering

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<sup>15</sup> Decision of the Expert Consenting Panel for Waitaha Hydro Scheme dated 18 May 2026 at paragraph [793]-[795].

<sup>16</sup> Decision of the Expert Consenting Panel for Homestead Bay dated 18 February 2026 at paragraph [390].

<sup>17</sup> Ibid at paragraph [393].

<sup>18</sup> At section 8.1.3 of the Substantive Application Report; Sections 2.2 – 3.2 of Appendix C - Economic Assessment; and paragraph 20 of the Memorandum of Counsel to accompany substantive application dated 5 December 2025.

memorandum of counsel dated 5 December 2025, and the Planning Response, sets out some of the key points. To reiterate:

- (a) Priced in today's dollars, the export contribution of the Mine to the New Zealand economy to date exceeds \$5 billion, with planned export sales of \$14 billion to 2055.<sup>19</sup>
- (b) Currently, the operation generates \$316 million in export revenue annually.<sup>20</sup>
- (c) The Mine generates tax revenue that has [REDACTED]  
[REDACTED]  
in the last eight years under the current ownership, which is significant on a national scale.<sup>21</sup>
- (d) TIL is the largest single export company in the Waikato region and is the country's largest single exporter by gross tonnage. The mine is expected to increase annual production to over 5 million tonnes, accounting for approximately 9% of New Zealand's total export tonnage.
- (e) TIL's three purpose-built slurry vessels form New Zealand's largest dedicated commercial fleet and are the only vessels of their kind. These ships are around 290 metres long and have a replacement value of \$600 million.<sup>22</sup>
- (f) Since May 2017, the Mine has generated spending on regional goods and services of \$1.2 billion and is expected to generate an additional spend of \$9 billion, or \$298 million per year, over the next thirty years.<sup>23</sup> Principal inputs into the operation over the past seven years, include domestic capital spending of over \$140 million and direct purchases of labour inputs of \$208 million.<sup>24</sup>

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<sup>19</sup> Section 2.2 of Appendix C - Economic Assessment.

<sup>20</sup> Ibid at section 2.2.

<sup>21</sup> Ibid at section 2.4.

<sup>22</sup> Ibid at section 1.2.

<sup>23</sup> Ibid at page 2 (Key Points).

<sup>24</sup> Ibid at section 2.5.

47. These figures place TIL's contribution on par with New Zealand's wool industry and ahead of the entire arable sector, making it one of the most valuable privately owned export operations in the country.<sup>25</sup>
48. Alongside these benefits, the Project will continue to heavily benefit local communities – socially and culturally. Through the operation of the Mine and the Project:
- (a) Taharoa C (the landowner) receives \$5 million annually through the operation of the Mine providing income to the Ngāti Mahuta shareholders.<sup>26</sup> [REDACTED]
  - (b) Approximately 350 full-time equivalent jobs are supported and the Mine maintains a core workforce of 70-80 people. Approximately 70% of the mine's workers are from Ngāti Mahuta hapū.<sup>28</sup> Many of these staff members live in heavily subsidised accommodation (\$28 per week) owned by TIL. They also receive up-skilling opportunities, 10% superannuation and generous salaries. Business is also provided to contractors.<sup>29</sup>
  - (c) The Mine provides high-paying employment in a remote area, enabling Māori to remain connected to their whenua while accessing modern economic opportunities.<sup>30</sup>
  - (d) TIL also owns and maintains many of the facilities in Taharoa Village including sports facilities, shops, a town hall and a school. TIL has also funded, and is continuing to fund, a range of initiatives including subsidised employee housing, and the provision of community infrastructure to support the local village.<sup>31</sup>

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<sup>25</sup> Ibid at section 2.2

<sup>26</sup> Ibid at section 3.2.

<sup>27</sup> Planning Response, section 3.3.

<sup>28</sup> Substantive Application Report, section 3.2.3; Page 2 (Key Points) of Appendix C - Economic Assessment.

<sup>29</sup> Sections 2.2 and 3.2 of Appendix C - Economic Assessment.

<sup>30</sup> Ibid at page 3 (Key Points) and section 3.2.

<sup>31</sup> Substantive Application Report, section 3.2.3; Appendix C - Economic Assessment, section 3.2.

- (e) TIL's port also provides important search & rescue support to the New Zealand Police and Maritime New Zealand in relation to incidents along the coastline – it is the only operator in the area that has the required health & safety skills and equipment to assist.
49. In addition, the Project provides for several of the matters specified in section 22(2) of the FTAA:
- (a) Section 22(2)(b): The Project will enable the continued functioning of existing regionally or nationally significant infrastructure. Under the Waitomo District Plan the Mine is considered a "Significant mineral resource".
  - (b) Section 22(2)(d): The Mine will deliver significant economic benefits as set out in detail in Appendix C - Economic Assessment to the Substantive Application Report.
  - (c) Section 22(2)(f): The Project accesses the largest deposit of ironsand in New Zealand. As set out in the Substantive Application Report the sand contains titanomagnetite, a mineral composed of iron and titanium. The sand is excavated and processed on-site at Taharoa, and titanomagnetite is then exported as a slurry, primarily to China and Japan where it is used for the manufacture of steel.
  - (d) Section 22(2)(j): Mining on the entirety of the Taharoa C Block (the land on which the Mine is situated) has been a Permitted Activity since the early 1970s. Mining operations commenced in 1972 and has operated to the present day. TIL also holds existing use rights for the mining operation as confirmed by WDC.
50. The Project was also recognised by the Government as nationally and regionally significant when listing it in Schedule 2 of the FTAA.
51. For these reasons, the opportunity cost of declining the Application would be immense. As set out in the Planning Response – the Mine would need to close and the existing and projected regional and national economic benefits, together with the significant social and cultural benefits, will be lost.<sup>32</sup>

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<sup>32</sup>

Planning Response at section 2.1.

52. The benefits quite clearly meet, and indeed exceed, the threshold to be considered nationally and regionally significant.

*The comments on the Application support a finding that the Project is nationally and regionally significant*

53. With respect to comments on the Application, as set out in section 2.1 of the Planning Response:
- (a) The significant regional and national benefits of the Project have been recognised across the spectrum of parties that commented on the Application.
  - (b) In their comments on the Application, Taharoa C, confirms that it has received substantial economic returns from the operation of the Mine, including payments of over \$150 million. In addition, Taharoa C states the Mine has helped shareholders retain and remain on their ancestral land, strengthening their connection to the whenua, and that the mine *"is the only significant commercial operation and employer in the district."*
  - (c) WRC, the regulatory authority responsible for enforcing the resource consents sought under the Application, has specifically agreed that: "the environmental effects of the proposal are not sufficiently significant as to be out of proportion such that they outweigh the regional and national benefits".<sup>33</sup>
  - (d) The Minister for Economic Growth and Minister for Infrastructure and RMA Reform have stated support for projects that are aligned with the Government's growth and infrastructure priorities including delivering significant regional and national benefits<sup>34</sup> and projects that "deliver positive outcomes for New Zealand, including regional employment, export revenue, and the wellbeing of remote communities".<sup>35</sup>

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<sup>33</sup> Comments on behalf of WRC at Section 2, page 5.

<sup>34</sup> Comments from Hon Nicola Willis, Minister for Economic Growth dated 11 May 2026.

<sup>35</sup> Comments from Hon Chris Bishop, Minister for Infrastructure and RMA Reform dated 14 May 2026.

- (e) No parties have challenged the overall scale of the Mine's regional and national benefits. Even those parties who oppose the Application, including the Wetini Trust and Te Nehenehenui acknowledge the historical and current benefits of the Mine.
54. The unchallenged nature of the regional and nationally significant benefits of the Project weighs heavily in favour of the Application being granted. This is addressed further below in the context of section 85.

***Section 85 – when a Panel must or may decline an approval***

55. Section 85 of the FTAA sets out the circumstances in which an expert panel *must* decline an approval or *may* decline an approval.
56. In TIL's covering memorandum of counsel dated 5 December 2025, we set out that the Application does not meet any of the circumstances in which the Panel must or may decline an Approval. Accordingly, there is no basis for the Panel to decline the Application.
57. Some comments have been made by the parties on section 85 and how it should be applied to the Application. We respond to these comments below. They do not change TIL's position that there is no basis for the Panel to decline the Application.

***Comments on section 85(1)(b)***

58. In its comments, Te Nehenehenui state that:<sup>36</sup>
- (a) The Application should be declined by the Panel because section 85(1)(b) of the FTAA prevails over the "the discretion afforded to the Panel by section 85(3)".
  - (b) The Expert Panel must decline an approval if they consider that granting the approval would breach an obligation relating to Treaty settlements and recognised customary rights and the Maniapoto Claims Settlement Act 2022 "defines a statutory acknowledgement area which includes the coastal area adjacent to Taharoa C and the Mitiwai and Wainui Streams".

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<sup>36</sup>

Comments on behalf of Te Nehenehenui dated 19 May 2026 at Attachment A, page 1.

- (c) Even if adverse effects are addressed as low, mitigation is proposed and the regional or national benefits are significant, none of these matters would 'cure' or offset a breach of Treaty settlement obligations or recognised customary rights.
- 59. We do not dispute Te Nehenehenui's assessment of the requirements of section 85(1)(b) and 85(3). The panel *must* decline an approval if it considers that granting the approval would breach section 7 (which requires that all persons performing and exercising functions, powers and duties under the FTAA must act in a manner that is consistent with obligations arising under existing Treaty settlements and MACA).<sup>37</sup>
- 60. However, this is not a case where the Panel must decline the Application under section 85(1)(b), and Te Nehenehenui does not appear to dispute this either. The Application is consistent with the obligations arising under relevant Treaty settlements including the Maniapoto Claims Settlement Act 2022, and MACA. We address the Maniapoto Claims Settlement Act 2022 in further detail below and the MACA in paragraphs 120 to 124.
- 61. At section 2.2.2 of the Planning Response, Mr Eccles confirms that the Application has been prepared in a manner that is consistent with the TIL's obligations as an applicant for resource consent arising under the Maniapoto Claims Settlement Act 2022 and does not breach section 7 of the FTAA:
  - (a) Section 2.6.2 of the Substantive Application Report outlines the relevant principles and provisions in respect of the Ngāti Maniapoto Settlement recorded in the Maniapoto Claims Settlement Act 2022;
  - (b) The Maniapoto Deed of Settlement grants Ngāti Maniapoto participation in resource management processes for activities affecting Ngā Wai o Maniapoto including joint management agreements and planning document participation. Te Nehenehenui has a Joint Management Agreement (JMA) with WRC and WDC which relates to RMA planning processes, including preparation, review, change or variation of RMA planning documents (rather than the resource consent process). The JMA contains general principles

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<sup>37</sup>

And the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 which is not relevant to this approval.

pertaining to working in good faith, co-operation and co-management in that context;

- (c) A full assessment of the Application against the Ngati Maniapoto Environmental Management Plan was provided at section 8.3.10 of the Substantive Application Report.
- (d) Te Nehenehenui were also invited to consult on the Application (however the offer to meet to consult was not taken up by Nehenehenui); and
- (e) For these reasons, Mr Eccles considers that the Application has been prepared in a manner that is consistent with the obligations arising under the Act (noting these relate to planning document participation rather than resource consent processes).

62. In terms of the statutory acknowledgement area referenced by Te Nehenehenui, TIL acknowledges that this applies in respect of the coastal area adjacent to the Central and Southern Blocks and the Mitiwai Stream. However, this statutory acknowledgement does not extend to the Wainui Stream, as asserted by Te Nehenehenui:

- (a) the Maniapoto Claims Settlement Act 2022 defines the statutory acknowledgement area as “an area described in Parts 1 and 2 of Schedule 3, the general location of which is indicated on the deed plan for that area”;
- (b) Part 1 of Schedule 3 refers to the “Coastal statutory acknowledgement area” (as shown on OMC-049-04) and “Ngā Wai o Maniapoto” (as shown on OMCR-049-18);
- (c) as shown on OCR-049-04, the “Coastal statutory acknowledgement area” does not include any terrestrial waterbodies – it is limited to the coastal environment; and

- (d) the Matauwai Stream (renamed to the Mitiwai Stream in April 2024<sup>38</sup>) is identified on OCR-049-18, “Ngā Wai o Maniapoto”. However, the Wainui Stream is not.

63. The Application has been prepared in a manner that is consistent with the requirements of the Maniapoto Claims Settlement Act 2022 in relation to statutory acknowledgement areas. Under section 33 of that Act, the “only purposes of the statutory acknowledgement” are those set out in sections 34 to 39, none of which are relevant to this Application other than section 39. This section provides that the statutory acknowledgement may be used as evidence of the association of Maniapoto with a statutory area, which Te Nehenehenui have done through their comments. The Application therefore does not breach section 7 of the FTAA in respect of the statutory acknowledgement area referenced by Te Nehenehenui.
64. At section 2.2.2 of the Planning Response, the potential adverse impacts of the activities for which consent is sought “have been assessed and will be managed by the proposed conditions in a manner that is in accordance with the statutory acknowledgement”.

*The proportionality test – section 85(3)*

65. Section 85(3) of the FTAA provides that a panel *may* decline an approval if adverse impacts of the proposal are “sufficiently significant to be out of proportion to the project’s regional or national benefits” even after taking into account any conditions that the panel may set, or any conditions that the applicant may agree to or proposed to avoid, remedy, mitigate, offset or compensate for those adverse impacts.
66. While not directly addressing the section 85(3) test, NMKTH’s position is that the economic and social benefits of the Application do not outweigh the adverse environmental and cultural effects experienced by mana whenua.
67. TIL does not agree with this assessment. Section 85(3) is not met because the environmental effects of the proposal are not sufficiently significant as to

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<sup>38</sup> Despite its use historically by locals to the area, Mitiwai Stream was a recorded but unofficial name for the stream. The official place name of the stream was Matauwai Stream. A proposal to approve Mitiwai Stream as the official place name was notified in the New Zealand Gazette on 1 August 2023, and approved by the Minister for Land Information on 4 April 2024. See here for more information: [Notice of the Final Determination of the Minister for Land Information on an Official Geographic Name - 2024-In1436 | New Zealand Gazette](#).

be out of proportion such that they outweigh the regional and national benefits. In respect of the Application, T+T has assessed the potential adverse effects after mitigation as low (at worst), and an assessment of the comments received on the Application have not changed this conclusion.<sup>39</sup> The demonstrated regional and national benefits of the Application are so pronounced that they overwhelmingly exceed this level of impact.

68. WRC agrees that section 85(3) is not triggered. At section 2 of its comments, WRC states that “I also agree with statements in the application that the environmental effects of the proposal are not sufficiently significant as to be out of proportion such that they outweigh the regional and national benefits. On that basis, section 85 of the FTAA does not require that the application be declined in this instance”.

### ***Conditions of resource consents***

69. Several parties have sought resource consent conditions in comments which are more onerous than necessary to mitigate the potential or actual effects of the Application, and in some cases, are so onerous that they would have a material detrimental impact on the regional and national benefits of the Application.
70. Below we set out TIL’s response to conditions of this nature. This issue is of particular importance to TIL, given the implications.

### ***The FTAA provides that conditions cannot be more onerous than necessary***

71. We address the legal framework in respect of conditions in our Memorandum of Counsel dated 5 December 2024 accompanying the Application.<sup>40</sup>
72. In respect of resource consents, we noted that, in addition to the requirements set out in the RMA, section 83 of the FTAA requires that the Panel must not set a condition that is more onerous than necessary.<sup>41</sup> Practically, this means that the purpose and implications of conditions must

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<sup>39</sup> Planning Response, section 2.2.1.

<sup>40</sup> Memorandum on behalf of Taharoa Ironsands Limited dated 5 December 2025 in relation to the lodgement of a substantive application Overview of the application, key issues to be determined, statutory assessment and procedural matters at paragraphs [59] – [64].

<sup>41</sup> Ibid at paragraph [62].

be carefully assessed to ensure that it will not be disproportionate to the level of effects it is intending to manage or unreasonably burden the Applicant.<sup>42</sup>

73. Consistent with our assessment, in the Waitaha Hydro Scheme decision, the Panel noted that in practice, it would assess whether proposed conditions were necessary to achieve their intended purpose, having regard to section 83. The Panel stated that it had amended a number of conditions to ensure that they did not extend beyond what was necessary to manage adverse effects.<sup>43</sup>
74. We note that section 83 applies to conditions of all forms of approvals sought under the FTAA. However, the focus of this section is on resource consent conditions.

*TIL's approach to proposed resource consent conditions*

75. As noted, T+T has used the suite of conditions imposed by the Independent Hearing Panel in the 2024 RMA Hearing Panel Decision as the base for the proposed conditions submitted with the Application. Key changes made to those conditions are described in our Memorandum of Counsel dated 5 December 2025 accompanying the Application and include changes to:<sup>44</sup>
  - (a) address TIL's points of appeal to the Environment Court;
  - (b) address feedback raised by key-stakeholders during pre-application consultation;
  - (c) further refine and rectify workability issues;
  - (d) incorporate additional resource consents that have been sought as a result of changes made to the Application since the 2024 RMA Hearing Panel Decision. This includes removal of pine forest and excavation activities within and near natural inland wetlands.
76. As noted in paragraph 21 above, following receipt of comments from invited parties and assessment of those comments by TIL's technical expert team,

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<sup>42</sup> Ibid.

<sup>43</sup> Decision of the Expert Consenting Panel for Waitaha Hydro Scheme dated 18 May 2026 at paragraph [1118].

<sup>44</sup> Memorandum on behalf of Taharoa Ironsands Limited dated 5 December 2025 at paragraphs [38] and [63].

T+T has made targeted changes to the proposed conditions. These changes are summarised in Section 3.4.2 of the Planning Response.

77. T+T considers that the proposed conditions represent a measured and proportionate response to the known effects of the mining and export activities.<sup>45</sup>
78. TIL has not incorporated a number of conditions proposals made in comments because they are more onerous than necessary and therefore do not meet the test set out in section 83. Further, many of the amendments sought have not been substantiated by expert evidence, are disproportionate to the scope and effects of the consents sought or are directed at general state-of-the-environment.<sup>46</sup>

*Proposed conditions that are more onerous than necessary*

79. As set out in the Planning Response, Mr Eccles (and TIL) considers that the following conditions are more onerous than necessary and would breach the requirement in section 83:<sup>47</sup>
  - (a) extended setbacks (being 200m from third party landowner boundaries, 100m from the Mitiwai Stream and 100m from natural inland wetlands – as sought by the Wetini Trust and MNMKTH) ;
  - (b) extensive stock-proof fencing around all wetlands and the planted riparian margins around streams;
  - (c) the installation of smaller fish screens;
  - (d) extensive annual monitoring and reporting of all wetlands on the site (as proposed by WRC).
80. The proposed setbacks are of grave concern to TIL because of the enormous economic impact (and the associated national and regional benefits). The Planning Response notes:<sup>48</sup>

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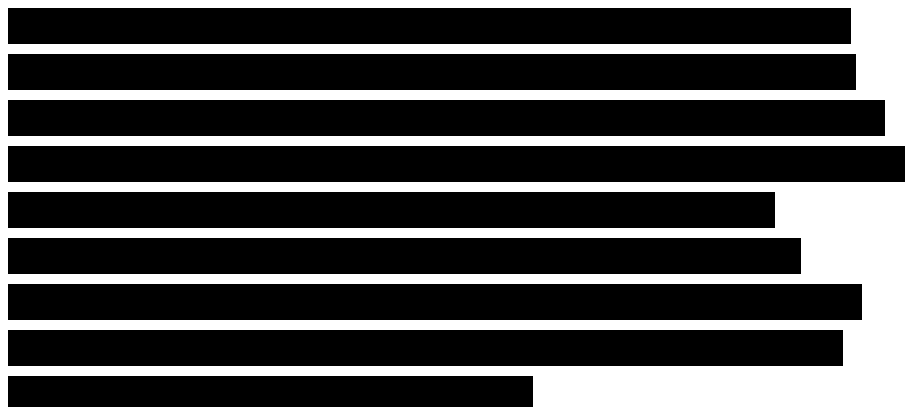
<sup>45</sup> Attachment B – Planning Response at section 2.3

<sup>46</sup> Ibid at section 2.3.

<sup>47</sup> Ibid at section 2.3.

<sup>48</sup> ibid at section 2.3.

*There is an extremely significant financial cost to both TIL and the shareholders of Taharoa C (and thus to the wider Taharoa and regional community) through both lost production/revenue and associated royalties to Taharoa C that will be generated if several of the overly onerous and unnecessary mining setbacks<sup>49</sup> requested by parties (which align with those imposed by 2024 Hearing Panel) are imposed.*



*By sterilising this resource from extraction, the grade of the material that would be exported would be significantly diluted ...*

81. None of TIL's experts consider that setbacks of the nature proposed by the Wetini Trust or NMKTH are necessary to mitigate the potential effects of the Application. The Planning Response notes the following in that regard:

*The extreme adverse impacts set out above do not need to occur, because based on the available evidence, those setbacks (which have the effect of sterilising access to a regionally significant resource<sup>50</sup>) are a more onerous method than necessary to address the potential adverse impacts of dust emissions (in the case of the 200 m setback), hydrological impacts on the Mitiwai Stream (in the case of the 100 m setback), and impacts on natural inland wetlands (noting that the need for such a setback has now been superseded by the current application to undertake mining activity within 100 m of natural inland wetlands).*

82. Quite simply, the setbacks proposed are a blunt management tool that is not necessary to effectively manage the potential effects of the Project on freshwater bodies and adjacent property owners. They are not necessary when considered on an effects basis, and when compared to the economic

<sup>49</sup> 200 m from third party landowner boundaries, 100 m from the Mitiwai Stream, 100 m from natural inland wetlands – all as sought by the Roy Wetini Whaanau Trust and NMKTH.

<sup>50</sup> As identified in the Proposed Waitomo District Plan.

effects outlined above are clearly inconsistent with section 83 and the purpose of the FTAA.

83. Given clause 17(1) of schedule 5 of the FTAA requires the purpose of the Act to be given the most weight when considering a resource consent application, above other matters such as effects management under section 104 of the RMA, conditions of this nature must be rejected.
84. The other proposed conditions also raise major concerns for TIL:
  - (a) **Stock-proof fencing:** There are practical difficulties associated with maintaining fencing in the dune environment at the site, and it is not uncommon for new fences at the site to be overwhelmed by windblown sand within 12-24 months of establishment.<sup>51</sup> They are not an effective tool at the site for keeping stock out of wetlands or the riparian vegetation. As set out in the Key Issues table (Appendix G to the Substantive Application) – any stock that may wander onto the Mine site are not owned by TIL and the duty of care is on the owners of the stock to keep their animals secure and to prevent trespass. Despite this, TIL already takes extensive steps to manage stray stock – it has built a cattle stop at the entrance to the site, large parts of the boundary of the Site with Lake Taharoa have been fence and TIL seek to round up and remove stock whenever practicable. As noted in the updated Natural Inland Wetland Management Plan, vegetation can survive despite the presence of stray stock. Extensive stock fencing would also generate substantial upfront establishment costs and ongoing monitoring costs.
  - (b) **Smaller fish screens:** This issue is addressed at length in the Key Issues table (Appendix G to the Substantive Application) and is not repeated here. TIL is not proposing to change the status quo and has sought consent to retain its existing mesh screens. In addition to the reasons set out in the Key Issues Table – Mr Eccles sets out in his Planning Response that TIL has previously obtained an estimate, and the upfront cost of installing 1.5mm fish screens on the

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<sup>51</sup>

Planning Response, section 2.3.

freshwater intake pumps in the Wainui Stream will be approximately \$1 – 1.5 million.

- (c) **Widespread wetland monitoring:** TIL’s expert ecologists have already proposed targeted and robust monitoring of lake edge wetlands affected by the Project. TIL has agreed to include a new requirement to monitor the ecological health of a representative sample of retained natural inland wetlands (new Condition 5A of AUTH142035.16.01). TIL’s expert ecologists do not consider that extensive annual monitoring and reporting of the condition of all natural inland wetlands on the site, of the kind proposed by WRC, is necessary. In addition, the Planning Response notes:<sup>52</sup>

*The cost of annual monitoring and reporting of the condition of all the wetlands on the site as sought by WRC will be over \$1 million annually, equating to a total of more than \$35 million over the course of a 35 year consent term. This is an onerous cost imposition when the informational value of the monitoring is questionable, and the majority of the “wetlands” that would be being monitored do not meet the NES-F definition of a “natural inland wetland”. Further, the previous RMA consent process that culminated in the 2024 Hearing Panel decision did not require such extensive monitoring, and instead recognised that the focus should be on the high value flax and raupo wetland habitats around the margins of Lake Taharoa and the Wainui Stream.*

85. For these reasons, the proposed conditions relating to these issues are more onerous than necessary and should be rejected under section 83.

### ***Importance of the views of Māori landowner***

86. There is limited recognition in NMKTH, the Wetini Trust, Mirumiru Pā ki Marokopa, Te Nehenehenui and Waikato-Tainui’s comments on the Application of:

- (a) the fact that the Application site is Māori land, owned by Taharoa C and that Taharoa C supports the Application; or

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<sup>52</sup>

At section 2.3.

- (b) that Taharoa C holds mana motuhake in relation to the whenua and that this requires recognition that as landowners, Taharoa C have authority over what happens on the whenua.

87. Waikato-Tainui does not refer to Taharoa C at all in its comments.

88. In *Ngāti Maru Trust v Ngāti Whātua Ōrakei Whaia Maia Ltd*, the High Court found that:<sup>53</sup>

*...when addressing the s 6(e) RMA requirement to recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga, a consent authority, including the Environment Court, does have jurisdiction to determine the relative strengths of the hapū/iwi relationships in an area affected by a proposal, where relevant to claimed cultural effects of the application and wording of the resource consent conditions. But any assessment of this kind will be predicated on the asserted relationship being clearly grounded in and defined in accordance with tikanga Māori and mātauranga Māori and that any claim based on it is equally clearly directed to the discharge of the statutory obligation to Māori and to a precise resource management outcome.*

89. Taharoa C acknowledge that it does not have mandate as mana whenua (this is claimed by NMKTH in respect of the Project area, and NMKTH are currently opposed to the Application unless their desired changes are made to conditions. However, Taharoa C holds mana motuhake over the Project site and represents over 2,200 shareholders – many of whom whakapapa to the local Marae and hapū. It supports the Application.<sup>54</sup>

90. As set out in Taharoa C's comments on the Application, Taharoa C's voice as Māori landowner is critical to consideration of this Application, as "Taharoa C and its shareholders hold mana motuhake over the whenua and must be consulted directly on the Application and on activities affecting its whenua."<sup>55</sup>

91. As holders of mana motuhake over the Central and Southern Blocks, Taharoa C "bring both historical knowledge and an intergenerational

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<sup>53</sup> *Ngāti Maru Trust v Ngāti Whātua Ōrakei Whaia Maia Ltd* [2020] NZHC 2768 at [133].

<sup>54</sup> Having provided its written approval to the resource consent application component of TIL's Application, its written consent for the Project to be undertaken on Māori land, and its written consent for the archaeological authority.

<sup>55</sup> Taharoa C comments, Cover Letter, paragraph 3(a).

perspective that are essential to informed decision-making.”<sup>56</sup> Given their direct relationship with the whenua and also their historic and ongoing relationship with the mining operation, TIL supports Taharoa C’s comments that they are “uniquely placed to provide informed views on the mining operation, its implementation, and the economic and social value that it has delivered”.<sup>57</sup>

92. Taharoa C’s comments highlight their duty to uphold mana motuhake and kaitiakitanga over the Central and Southern Blocks.<sup>58</sup> As the consent authority in respect of this Application, the Panel is required to have particular regard to kaitiakitanga under section 7(a) of the RMA.
93. Taharoa C exercise kaitiakitanga over the land through, for example, observance of tikanga by kaumātua nominated by Taharoa C when koiwi has been discovered at the Mine. TIL has provided for this exercise of kaitiakitanga to continue into the future, including through amendments to the proposed archaeological authority conditions to expressly provide for involvement of kaumātua nominated by Taharoa C, along with other requirements that were developed in consultation with Taharoa C.
94. TIL notes that, as kaitiaki, Taharoa C have emphasised in their comments that “mining has very much informed the historical context of the whenua”, and that “ongoing mining is appropriate, when done the right way”.<sup>59</sup> Taharoa C have confirmed that the Application aligns with this objective, stating their support for the Project and noting that mining is expected to remain part of the future foreseeable use of the land.
95. Additionally in its letter of response to comments on the Application, with respect to kaitiakitanga, Taharoa C notes that TIL’s proposed conditions of consent and the proposed Environmental Management Plan provide for on-going engagement with Taharoa C and with mana whenua.<sup>60</sup> As stated by Taharoa C, these mechanisms provide for considerably more involvement of

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<sup>56</sup> Taharoa C comments, Cover Letter, paragraph 3(b).

<sup>57</sup> Taharoa C comments, paragraph 3(g).

<sup>58</sup> Taharoa C comments, Appendix, paragraph 7.

<sup>59</sup> Taharoa C comments, Appendix, paragraph 18.

<sup>60</sup> Taharoa C Response at paragraph 10(e).

mana whenua and Taharoa C in consent processes than there has been in the past.<sup>61</sup>

96. In the Planning Response, Mr Eccles states his view that *“Given the only new activities for which resource consent is specifically sought are limited to mining interaction with groundwater, wetland disturbance, and plantation forestry harvesting, the cultural conditions already proposed remain relevant and appropriate”*.<sup>62</sup>

### **Existing environment**

97. Paragraph 5.5 of DOC’s comments state that TIL has:<sup>63</sup>
- (a) conceptualised the “existing environment” as not including the dam on the Wainui Stream; and
  - (b) Relying on this interpretation, concluded that *“many of the small lakes [on the site] are there as a result of the sand mining and the associated damming of the Wainui Stream, and therefore those lakes (and associated wetland values) are not part of the existing environment for the purposes of this application.”*
98. In addition, the supporting report from Catherine Beard suggests that TIL’s approach to the existing environment introduces ecological uncertainty and risks overstating baseline resilience and adaptive capacity, and underestimates the consequences of additional stressors on systems that may already be transitional or contingent on ongoing management inputs.<sup>64</sup>
99. DOC states that the “existing environment” should be conceptualised as including the dam, and therefore effects on all lakes and wetlands upstream of the dam should be assessed. Further, DOC states that this is necessary to achieve consistency with Policy 1.6(3)(b) of the NPS-FM which requires assessment that where information is uncertain, it is interpreted in the way that will best give effect to the NPS-FM. At Appendix F of its comments,

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<sup>61</sup> Taharoa C Response at paragraph 10(e).

<sup>62</sup> Planning Response at page 33.

<sup>63</sup> Comments on fast-track consenting application: Central and Southern Block Mining, Department of Conservation, 21 May 2026.

<sup>64</sup> Appendix C to the Comments on fast-track consenting application: Central and Southern Block Mining, Department of Conservation, 21 May 2026.

DOC has provided a legal opinion in support of this interpretation (**DOC legal opinion**).

100. Respectfully, DOC's comments misunderstand the approach that TIL has taken to assessment of effects on the existing environment.
101. TIL's conceptualisation of the "existing environment" intentionally represents a conservative approach consistent with established legal principles, that was intended to ensure that the broadest range of effects would be considered, including the effects of damming the Wainui Stream on fish passage, and the effects of water abstraction and discharges as well as the effects of reintroducing mining in a rehabilitated landscape. The DOC Legal Opinion concurs that the approach adopted (except in respect of the dam) is conservative.<sup>65</sup>
102. At Appendix CC to the Substantive Application, counsel for TIL provided an assessment of the existing environment for the Project.
  - (a) In identifying the conceptual "existing environment", TIL strictly applied the principles set out by the High Court in *Ngāti Rangi Trust v Manawatu-Whanganui Regional Council* in which the Court found that "*Effects caused by activities for which a renewal consent must be excluded "unless it would be fanciful or unrealistic to assess the existing environment as though those structures authorised by the consent being renewed did not exist"*".<sup>66</sup>
  - (b) TIL considered that it was appropriate, and not fanciful or unrealistic, to ignore the presence of the dam, on the basis that the dam and associated infrastructure may be removed at the end of the Mine's life. Factors relevant to this assessment include:
    - (i) the dam is not authorised in perpetuity;
    - (ii) The Existing Consents provide for a bond for the removal of the dam (if required). This condition indicates the Council expects that the dam will not be kept in perpetuity and expects its

<sup>65</sup> Appendix F to the Comments on fast-track consenting application: Central and Southern Block Mining, Department of Conservation, 21 May 2026.

<sup>66</sup> *Ngāti Rangi Trust v Manawatu-Whanganui Regional Council* [2016] NZHC 2948.

removal at some point (unless of course, that position is modified through consenting);

- (iii) Contrary to the assertion in the DOC legal memorandum, removal of the dam can be undertaken as a permitted activity, subject to compliance with standards. In this regard:
  - (A) The DOC Legal Opinion refers to a 2007 Site Closure Plan and a Closedown Option Study prepared by Beca Simons in 2003 in support of the conclusion that removal of the dam is uncertain and would require resource consent. Those documents are 20 years old and are significantly out of date with respect to this issue.
  - (B) the Planning Response confirms that the Waikato Regional Plan provides for removal of structures from a stream bed as a permitted activity (Rule 4.2.20.2) and the dam could be removed as a permitted activity, subject to careful management of sediment.<sup>67</sup> Otherwise, it would otherwise be a controlled activity. There is therefore no uncertainty created through the plan provisions with respect to its removal.

103. TIL is aware that recent Fast-track decisions such as the Tekapo Power Scheme have taken a broader approach to what is “fanciful or unrealistic” and have conceptualised the existing environment as including existing infrastructure and water takes on the basis that “*it is unrealistic in the particular circumstances of the scheme to postulate an alternative environment as the starting point for the existing environment.*” In that case, the Panel determined that: “*..in the case of the Scheme and this Application, that the existing environment includes the consented takes, uses, diversions, damming and discharges.*”<sup>68</sup>

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<sup>67</sup> Attachment B – Planning Response at section 3.2.1.

<sup>68</sup> Decision of the Expert Consenting Panel for the Tekapo Power Scheme dated 25 August 2025 at paragraph 102.

104. The same approach could be applied to TIL's application. The simple result (which weighs in favour of the Application) is that it would result in a narrower assessment of environmental effects.
105. In any event, contrary to the concerns raised in the DOC comments, the Application has considered the values and effects on all existing lakes and wetlands and has not excluded any on the basis that they may not be present in the conceptual existing environment. The Terrestrial Ecology – Fauna and Wetlands Response (Attachment H) submitted with the application acknowledges that *"when considering the 'existing environment' a few of the induced wetlands may not exist or would be significantly changed in the conceptual environment where TIL's existing consents have expired, mining under those consents has ceased and the Site has been rehabilitated."*<sup>69</sup> However, recognising that there is some uncertainty about wetland values in the conceptual post-mine scenario, and also because the conceptual existing environment represents a point in time post closure before existing wetlands would have fully adjusted to the new environment, and because TIL is applying for resource consent to modify or destroy some wetlands, all wetlands have been considered in their current state. This ensures a comprehensive assessment of wetland values which is consistent with Policy 1.6(3)(b) of the NPS-FM in terms of interpreting uncertain information in a manner that is consistent with the NPS-FM.
106. This is confirmed in the Terrestrial Ecology – Fauna and Wetland Response (Attachment H) which states that all water bodies on the site were surveyed. Only those that had no hydrophytic vegetation or clearly met the NPS-FM constructed water body exclusion were disregarded early in the process.<sup>70</sup> This means that water bodies have not been excluded on the basis that they would not be present in the conceptual existing environment.
107. In addition, in terms of Ms Beard's concern about the risk of overstating baseline resilience, the Terrestrial Ecology – Fauna and Wetland Response confirms that the authors are confident that baseline resilience and the consequences of introducing additional stressors (i.e. the project) have not been underestimated as a result of the application of the conceptual existing

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<sup>69</sup> Appendix K to the Substantive Application - Wetlands and Vegetation Assessment, SLR, 13 October 2025, page 18.

<sup>70</sup> Attachment H - Fauna and Wetlands Response at page 12.

environment. Existing wetland values and the effects of the proposal on those values have been assessed.<sup>71</sup>

108. In summary, TIL's approach to the conceptual existing environment has been designed to enable broad assessment of the effects of the project, including the effects of the dam. This has not limited the assessment of effects on wetland values: the assessment encompasses all existing natural wetlands and the effects of the project on them.

### ***Compliance history***

109. Some parties have alleged issues in respect of TIL's compliance with its existing resource consent conditions.
- (a) Te Nehenehenui state that *"We consider that the remoteness of the site and the applicant's compliance history are critical matters for the Expert Panel to bear in mind when imposing consent and monitoring conditions. The site has a history of non-compliance which has been variously attributed to operational error, wind, stock encroachment and challenging rehabilitation conditions."*
  - (b) NMKTH states that TIL's compliance history and compliance concerns are factors that conclude that proposal will adversely affect the mauri of the wai, taonga species, waahi tapu, on the ability of NMKTH uri to exercise kaitiakitanga.
  - (c) The Wetini Trust cite various non-compliance in respect of noise rules, light emission rules, mining of the ridgeline and rehabilitation works. The Wetini Trust also alleges that there has been mining outside of consent limits, including along the northern boundary of the Central Block.
110. Mr Peter Stacey, WRC's air quality expert, also queries how TIL responded to dust complaints made in early 2026.
111. A summary of TIL compliance history<sup>72</sup> is set out in section 2.10 of the Substantive Application Report. We note that this compliance history refers

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<sup>71</sup> Attachment H - Fauna and Wetlands Response at page 11.

<sup>72</sup> Compliance or enforcement action taken against TIL.

to two Formal Warnings issued by WRC relating to dust discharges. These were cancelled by WRC earlier this year following requests for reconsideration made by TIL and should be disregarded.

112. Overall, TIL has a good compliance history. WRC has recognised this in recent communications to the Environment Court.<sup>73</sup> This is notable, especially for the size of the operation and the harsh / challenging coastal environment in which it operates. Any historical enforcement action that has been taken is related to one-off events which have all been rectified or remedied. TIL takes compliance very seriously, and in all cases, steps have been taken to ensure that similar incidents do not occur again.
113. The issues of compliance raised by the commenters go beyond the compliance history set out in the Substantive Application, are not supported by any evidence, are inaccurate, and are in many cases are conjecture. TIL considers that these allegations unfairly paint it in a bad light. Notably this is not Taharoa C's experience of TIL. In its comments on the Application, Taharoa C notes that "TIL has proven to be a credible and skilled operator of the Mine".<sup>74</sup>
114. In response to some of the specific compliance issues raised in comments, TIL notes:
  - (a) In response to Mr Stacey's query: TIL investigates, responds and reports to WRC in response to all dust complaints that are reported to it. TIL was notified of nine dust related complaints received by WRC on 15 February, 16 February and 2 March 2026. TIL investigated and responded to these complaints with two separate reports to WRC (dated 15 February 2026 and 2 March 2026) on 11 March 2026. TIL did not receive notice from WRC of four complaints made on 16 February 2026 or one made on 2 March 2026 (which are noted in Mr Stacey's report) but notes that its response to these complaints would have been the same as the response to the other complaints given they relate to the same days. TIL's conclusion in respect of the complaints reported to it is that they are vexatious and are not supported by data. WRC has not provided any substantive

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<sup>73</sup> Memorandum of Counsel on behalf of Waikato Regional Council dated 19 December 2025.

<sup>74</sup> Comments of Taharoa C dated 20 May 2026 at paragraph 5 of the cover letter.

response to the reports provided by TIL. TIL also queries why Mr Stacey is asking the Applicant for this information as it will be held by WRC (Mr Stacey's client).

- (b) In respect of comments regarding a deficit of rehabilitation, WRC have recorded in correspondence that "...*WRC monitoring staff have confirmed that all of the outstanding rehabilitation has been completed and in place as of mid 2025.*"<sup>75</sup>

115. In terms of the relevance of compliance issues to the Panel's decision:

- (a) The FTAA does not expressly direct panels to consider an applicant's compliance history when determining a substantive application.
- (b) Compliance history is principally addressed at the referral stage and therefore has already been considered in respect of TIL's Project). In particular, section 21(5)(d) requires consideration of an applicant's compliance record as part of the decision on whether a project should enter the Fast-track process.<sup>76</sup>
- (c) Consistent with the above, Panels have taken the view that historic compliance issues fall outside the scope of their substantive decision-making role. In the Kings Quarry application, the Panel acknowledged compliance concerns raised by commenters but ultimately concluded that those matters were "*not a matter for the Panel*".<sup>77</sup> Similarly, in the Ayrburn Screen Hub application, the Panel found that historic consent compliance was a matter for the relevant territorial authority rather than the panel.<sup>78</sup>
- (d) The Ayrburn Screen Hub Panel accepted the applicant's submission that it was entitled to proceed on the basis that any consent conditions imposed would be complied with, consistent with the

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<sup>75</sup> Letter from Ana-Maria D'Aubert (Manager Regional Consents) to Roy Wetini Whanau Trust, dated 26 February 2026.

<sup>76</sup> Section 21(5)(d), Fast-track Approvals Act 2024.

<sup>77</sup> Decision of the Expert Consenting Panel for the Kings Quarry Expansion dated 18 December 2025 at paragraph [335].

<sup>78</sup> Decision of the Expert Consenting Panel for Ayrburn Screen Hub dated 13 May 2026 at paragraph [420].

authorities of *Barry v Auckland City Corporation* and *88 The Strand Ltd v Auckland City Council*.<sup>79</sup>

- (e) We note that the FTAA incorporates sections of the RMA relevant to resource consent decision-making. Schedule 5, clause 17(1) of the FTAA enables panels to consider "*the provisions of Parts 2, 3, 6, and 8 to 10 of the Resource Management Act 1991 that direct decision making on an application for a resource consent...*". Section 104(2EA) of the RMA (within part 6) permits a consent authority, when considering a resource consent application, to have regard to any previous or current abatement notices, enforcement orders, infringement notices, or convictions under the RMA received by the applicant within the preceding seven years.<sup>80</sup>

116. Accordingly, to the extent that compliance history is relevant under the FTAA consenting framework:

- (a) the Panel's consideration is confined to formal enforcement action of the kind identified in section 104(2EA) – and which is addressed in paragraph 115 above;
- (b) the Panel may not have regard to compliance allegations or conjecture raised by the invited parties in comments, or complaints;
- (c) allegations of compliance with TIL's existing resource consents or planning instruments are a matter for the relevant councils (and in any case, are not substantiated); and
- (d) consistent with *Barry v Auckland City Corporation* and *88 The Strand Ltd v Auckland City Council*, the Panel should proceed on the basis that any consent conditions imposed will be complied with.

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<sup>79</sup> Ibid at paragraph [420], citing *Barry v Auckland City Corporation* [1975] 2 NZLR 646 (CA) and *88 The Strand Ltd v Auckland City Council* [2002] NZRMA 475 (HC).

<sup>80</sup> Section 104(2EA) of the RMA.

### ***Imposition of bond condition***

117. The Wetini Trust have commented that the bond condition proposed by TIL is inappropriate and they do not support a transfer of responsibilities from TIL to Taharoa C, including proposed conditions 46-60, for the following reasons:<sup>81</sup>

- (a) Transferring responsibility would give no financial incentive to TIL to complete rehabilitation works and would place significant financial risk on Taharoa C; and
- (b) The bond conditions do not take into account the 'significant rehabilitation deficit' that exists.

118. TIL has set out the basis for the proposed bond condition in a Memorandum to the Panel dated October 2025 included in Appendix BB to the Application. At paragraph 3.2(c) of that memorandum we state that TIL has proposed amendments to WRC's standard bond condition, including to:

*... require the consent holder to provide the bond, but ensure it can be provided by someone else, on behalf of the consent holder. In this instance, the Māori landowner (The Proprietors of Taharoa C Block Incorporated) has agreed to provide the bond to reflect their 50-year ongoing partnership with the mine operator and their confidence in the operation of the mine.*

119. In response to the Wetini Trust's comments:

- (a) TIL's proposed bond conditions comply with the requirements of the FTAA.<sup>82</sup>
- (b) Irrespective of whether the bond is provided by TIL or a third party on behalf of TIL, TIL will be the consent holder and is bound to comply with the conditions of consent, including rehabilitation obligations.
- (c) TIL is ultimately responsible (as consent holder) for ensuring that a suitable bond is provided in favour of WRC— whether that bond is a cash bond or a guarantee provided by a bank or third party (as

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<sup>81</sup> Comments from the Roy Wetini Whaanau Trust dated 20 May 2026 at page 19.

<sup>82</sup> See our Memorandum to the Panel dated October 2025 included in Appendix BB to the Application.

contemplated by the proposed consent conditions). Any guarantor would also need to be acceptable to the Council.

- (d) TIL is a commercially-astute and well-funded operator and will ensure that the conditions of consent, including those relating to rehabilitation and site closure are complied with. TIL's lease arrangements also impose obligations on TIL to ensure these outcomes. TIL refutes any suggestion that its proposed bond conditions place significant financial risk on Taharoa C.
- (e) Taharoa C has already agreed with TIL that it will provide the bond on TIL's behalf. This decision, and any alleged 'risk' is solely up to Taharoa C.
- (f) There is no 'significant rehabilitation deficit' as noted by the Wetini Trust - see paragraph 117 above.
- (g) WRC (as regulator) has not raised any concerns with TIL's approach to the bond.

***Relevance of Marine and Coastal Area (Takutai Moana) Act 2011 claims***

120. A co-submission was filed between Natasha Willison-Reardon, named applicant for the Marine and Coastal Area (Takutai Moana) Act 2011 application CIV-2017-419- 082-P (rohe moana to Tirua Point), and named applicant for the Marokopa Mātaitai Reserve (Fisheries Notice 2010 No. F567) and Aroa Pou, Co-Chair of Mirumiru Pā ki Marokopa.

121. In their comments Mirumiru Pā ki Marokopa states:

- (a) Section 62 of MACA operates as a statutory protection preventing the grant of any consent that would have more than minor adverse effects on customary marine title or protected customary rights while the application is being determined;
- (b) The Panel must consider the 'live' MACA application as a relevant matter before granting any consent that affects the rohe;<sup>83</sup> and

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<sup>83</sup>

Comments on behalf of Mirumiru Pa ki Marokopa – Marokopa Marae dated 19 May 2026 at section 3.6.

- (c) Under section 7 the Panel must perform its functions in a manner consistent with the obligations arising under Treaty settlements and recognised customary rights.<sup>84</sup>
122. As confirmed by the Ministry for the Environment (**MfE**) in its Section 18 report, while there are several applicants currently seeking protected customary rights or customary marine title within the Project area (under MACA), there are no groups with court orders, or agreements that recognise customary rights or customary marine title within the Project area.<sup>85</sup> For completeness, the Project area is also not within ngā rohe moana o ngā hapū o Ngāti Porou (as set out in the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019).
123. There are no obligations on the Panel under the FTAA or the MACA to consider the effects of a substantive application under the FTAA on an application for protected customary rights or customary marine title under MACA.
124. For completeness:
- (a) Mirumiru Pā ki Marokopa's submission in respect of section 62 of MACA is incorrect. Section 62 does not provide the "statutory protection" asserted. The "more than minor adverse effects" threshold sits under section 55 of MACA and applies only to protected customary rights, not applications for such rights. Section 5 of the FTAA has the same effect as section 55.
  - (b) We agree with Mirumiru Pā ki Marokopa's comment that panels must perform their functions in a manner consistent with the obligations arising under Treaty settlements and recognised customary rights. However, section 7 states that when persons are performing and exercising functions, powers, and duties under the FTAA, it must be consistent with customary rights *recognised* under MACA or and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019. No rights have been recognised in the Project area.

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<sup>84</sup> Comments on behalf of Mirumiru Pa ki Marokopa – Marokopa Marae dated 19 May 2026 at section 3.1.

<sup>85</sup> Treaty settlements and other obligations (Section 18) report by Ministry for the Environment dated 11 March 2026 at section 26-29.

***Statement of evidence of Nicholas Conland***

125. NMKTH has attached a statement of evidence dated 13 February 2024 prepared by Nicholas Conland. TIL submits that this statement of evidence should be disregarded by the Panel.
126. TIL challenged the expertise of Mr Conland during the course of the RMA hearing. This was on the basis that Mr Conland's scope of expertise appeared to extend across a very broad range of disciplines. He noted experience in water quality monitoring, farming, agriculture, and catchment modelling. Additionally, his evidence spanned water allocation, planning, environmental and risk management, and air quality matters. TIL's position was that this breadth of experience and subject matter pointed to Mr Conland being a 'generalist' in resource management practice rather than a specialist with technical expertise in each of the fields on which he offered opinion evidence. TIL submitted that little weight should have been afforded to Mr Conland's evidence when compared to TIL's specialist expert witnesses. TIL's expert witnesses are all senior experts who are well-known in their respective fields and have highly specialised technical expertise in relation to the matters they assess in relation to the Application.
127. In reaching this view, TIL cited *Upper Clutha Environmental Soc Inc v Queenstown Lakes District Council* to contend that courts should avoid "generous license in allowing experts to offer opinions not based on their relevant specialist skill and knowledge".<sup>86</sup>
128. The Hearing Panel did not address this matter in its decision on the application. However, TIL maintains its view that little weight should have been afforded to Mr Conland's evidence.
129. Mr Conland's statement of evidence dated 13 February 2024 also addresses TIL's RMA application and is out of date.
130. For these reasons, TIL submits that the statement of evidence of Mr Conland dated 13 February 2024 should be disregarded by the Panel when considering comments on the Application.

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*Upper Clutha Environmental Society Inc v Queenstown Lakes District Council* [2019] NZEnvC 46 at [23].

## WILDLIFE AUTHORITY RESPONSE

### DOC section 51 report

131. DOC submitted its s51 report to the Panel on 6 May 2026. In summary, DOC raised the following matters relating to TIL's wildlife approval application:
  - (a) sufficiency of surveys conducted and certainty regarding what species are likely present on site;
  - (b) suitability of the release site and adequacy of information relating to flood risk, fencing, and monitoring/maintenance;
  - (c) provisions for capture and holding of lizards under the proposed incidental discovery protocol;
  - (d) trigger for post-release monitoring of salvaged lizards;
  - (e) process for determining compensation measures; and
  - (f) responses to feedback received from Treaty partners.
132. TIL was surprised by the tenor of DOC's s51 report and the number of concerns raised, as these matters had not been previously canvassed with TIL or its experts despite ongoing engagement between the parties.
133. TIL made continued efforts to engage with DOC regarding the wildlife approval application and provided multiple opportunities for any concerns to be raised prior to 6 May. This included:
  - (a) providing a set of draft conditions to DOC for review and comment on 7 April 2026;
  - (b) meeting with DOC to discuss their comments on the draft conditions on 9 April 2026;
  - (c) providing DOC with an updated draft set of conditions on 20 April 2026 (which responded to comments provided by DOC on 15 April 2026);
  - (d) providing DOC with CVs for persons listed as authorised personnel (by email on 28 April 2026), in response to DOC's request; and

- (e) clarifying the triggers for compensation proposed as part of the wildlife approval application (by email dated 29 April 2026), in response to DOC's query.
134. The comments TIL received from DOC throughout this ongoing engagement suggested that the draft conditions were largely agreed. DOC did not raise the majority of matters set out in its s51 report, other than indicating to TIL further work *may* be needed on the management plan component of the conditions. No further detail was provided regarding what aspects were considered to require further work, with DOC instead resolving to provide its comments directly to the Panel via its s51 report.
  135. TIL therefore had no opportunity to respond to these matters or make any further amendments (should they have been appropriate) to the draft conditions prior to the submission of DOC's report. This was disappointing, given that TIL repeatedly made it clear to DOC that it was willing to work collaboratively to reach agreement on a set of draft conditions prior to submission of the s51 report.
  136. Notwithstanding the above, TIL remains committed to working with DOC to reach agreement on the draft conditions for the wildlife approval. In the interest of resolving matters with DOC, and to assist the Panel in making its determination on the wildlife approval application, TIL has carefully considered the concerns identified in the s51 report with its expert advisor, Katherine Muchna, who has prepared a revised set of draft conditions and draft Lizard Management Plan (**LMP**). These are attached as Attachment M – Lizards and Wildlife Approval Response.
  137. The rationale for the proposed changes to the draft conditions is set out in more detail in the Lizards and Wildlife Approval Response, including the reasoning for agreeing or disagreeing with changes proposed in DOC's s51 report. We also provide a response on some aspects below.

***Need for wildlife approval***

138. It is important to set the context within which TIL has sought a wildlife approval as part of its Application.

139. As the Panel is aware, TIL's Application is to continue existing mining operations at Taharoa – this is not an application for a new activity on a greenfield site. The site is a working mine, and has been since the early 1970s, with continuous lawful mining activity for more than 50 years. As noted in the draft LMP (Appendix KK of the Application), large areas of the site are subject to active mining and do not offer suitable habitat for lizards. The likelihood of lizards being present across most of the site is therefore very low.<sup>87</sup>
140. TIL acknowledges that there are limited areas of the site – specifically those areas adjoining adjacent (i.e. unmined) areas – where established vegetation provides habitat that is potentially more suitable such that lizards *may* be present. However, the likelihood of lizards being present in these areas is still considered to be low:
- (a) SLR undertook lizard surveys in these potential habitat areas using triple-stacked artificial retreats and manual search methods. No native or invasive skinks were identified during the surveys undertaken by SLR.
  - (b) No targeted gecko surveys were undertaken, as the habitat types within the site were assessed as unsuitable for native arboreal gecko populations.
141. In terms of lizard presence in the wider area surrounding the site, surveys conducted on the Northern Block (which we note for completeness is not the subject of this Application) detected only a single copper skink.<sup>88</sup>
142. As set out in the draft LMP, the results of the surveys undertaken across the site, as well as the scarcity of suitable habitat and history of disturbance and vegetation clearance associated with mining activities, indicate that lizards are either absent, or present but in low densities.<sup>89</sup>
143. Given that the presence of lizards could not be ruled out definitively, TIL elected to seek a wildlife approval, out of an abundance of caution, to provide for the unlikely scenario where lizards are encountered during the course of

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<sup>87</sup> See LMP, section 5.3.

<sup>88</sup> See LMP, section 5.1.

<sup>89</sup> See LMP, section 5.1.

mining operations. To be clear, it is not expected that any lizards will be discovered. TIL has applied for an approval on a precautionary basis, and to save time in the event that lizards were discovered and a wildlife approval might be required.

### ***Scope of wildlife approval***

144. The wildlife approval sought as part of TIL's Application relates to copper skink, as this is the only species that has been found in the vicinity of the site (we note again that an individual skink was found on the Northern Block, not on the Central or Southern Blocks that are the subject of this Application).
145. DOC's s51 report asserts that there may be other species present on the site, based on three additional species being identified within 30km of the site in DOC's Herpetofauna (BioWeb) Database. These species are the forest gecko (*Mokopirirakau granulatus*), pacific gecko (*Dactylocnemis pacificus*) and elegant gecko (*Naultinus elegans*). DOC considers that it may be beneficial to include these other lizard species in TIL's wildlife approval.
146. As set out in the Lizards and Wildlife Approval Response, it is highly unlikely that lizard species other than copper skink are present within the site. We note that DOC's assessment is based on a desktop review of records which, in DOC's own words, "are relatively sparse".<sup>90</sup>
147. However, in the interest of resolving DOC's concern, Ms Muchna has proposed to expand the scope of the wildlife approval application to include the three species of gecko DOC has identified. Ms Muchna has amended the draft conditions accordingly.
148. As set out in the Lizards and Wildlife Approval Response, no further amendments to the conditions or LMP are required because the survey and salvage approach is designed to detect both skink and gecko species.

### ***Surveys and Potential Lizard Habitat***

149. In its s51 report, DOC asserts that the geographic coverage of the surveys undertaken by SLR was insufficient, meaning there is uncertainty as to what species of lizard are likely to be present on site (and suggests that gecko

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<sup>90</sup> DOC s51 report, paragraph 6.5.3.

may be present). As set out in the Lizards and Wildlife Approval Response, on the basis of the surveys undertaken by SLR in 2021 and 2022, arboreal geckos are unlikely to be present within the site. However, it is acknowledged (as noted in the draft LMP) that surveys with more intensive and wider coverage would help to inform any assessment of potential lizard habitat.<sup>91</sup>

150. It is also important to recognise that mining activities continue to lawfully occur on the site, and the nature and extent of any habitat within which lizards could potentially be present may change over time. This could include reduction in some areas due to mining operations, or expansion of others where no mining has occurred and existing vegetation has matured and/or additional vegetation has established.
151. Under the draft conditions, Potential Lizard Habitat is currently defined by reference to maps in the draft LMP, which identify areas of habitat based on the surveys undertaken by SLR and review of aerial photography by Boffa Miskell. According to the draft conditions, TIL's wildlife approval applies only in respect of activities that may impact lizards in "Potential Lizard Habitat" (defined as "Project Works"). This means that the areas within which the conditions of the wildlife approval would apply would potentially not reflect the nature and extent of potentially suitable lizard habitat on the site at the time the authority is granted and TIL looks to undertake the Project Works under the authority.
152. Therefore, both in response to the concern raised by DOC regarding the sufficiency of previous surveys and to account for practical realities of the site being an operational mine, Ms Muchna has proposed the following amendments the draft wildlife approval conditions:
  - (a) amend the definition of "Potential Lizard Habitat" to refer to areas "identified through Updated Habitat Surveys and defined in the certified LMP"; and
  - (b) add a new definition of "Updated Habitat Surveys", which are defined as "Further baseline surveys to be undertaken by a suitably qualified

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<sup>91</sup>

See draft LMP, section 5.1.

and experienced person to reassess and confirm the areas of Potential Lizard Habitat within the Project Site.”

153. The definition of “Updated Habitat Surveys” also provides that these surveys will inform the LMP that is to be provided to DOC for certification. This provides the opportunity for DOC to review and respond to the outcomes of the Updated Habitat Surveys and the revised areas of Potential Lizard Habitat as defined in the final LMP.

### ***Certification***

154. DOC proposed an additional condition that would prevent TIL from commencing Project Works until at least 10 weeks after the LMP is certified, due to the need for set out and establishment of lizard capture infrastructure and lizard salvage to occur in advance of any works. This requirement is neither practicable nor necessary to achieve DOC’s stated objective of avoiding putting lizards at risk from Project Works.
155. As set out in the Lizards and Wildlife Approval Response, there is no reason why the necessary preparatory, survey and salvage works could not occur in parallel with the preparation and certification of the LMP. Ms Muchna has therefore proposed amendments to the conditions to enable this to occur and avoid unnecessary delay to the commencement of Project Works.
156. DOC’s conditions also provide no timeframe within which DOC must certify the LMP. According to DOC’s s51 report, this is because “DOC cannot guarantee how long an LMP will take to get certified”.<sup>92</sup> This provides no certainty as to when mining activities could commence within the areas of Potential Lizard Habitat.
157. Ms Muchna has proposed amendments to the conditions relating to certification to adopt a similar approach to that taken in the wildlife authority granted for Southland Wind Farm. That authority includes a specified process for certification which both TIL, as the approval holder, and DOC, as certifier, must follow.
158. TIL considers such an approach will provide DOC with further clarity and certainty regarding the steps to be taken by TIL to ensure the LMP is able to

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<sup>92</sup>

DOC s51 report, paragraph 6.6.2, bullet 2.

be certified, and is both necessary and appropriate to provide surety to TIL that the Project Works will not be unduly delayed by the certification process.

## **Response to comments on TIL's wildlife authority application**

### ***Comments from Te Nehenehenui and NKMTH***

159. Te Nehenehenui and NKMTH also provided comments in relation to TIL's wildlife approval application. In summary, Te Nehenehenui and NKMTH raised concerns regarding the proposed term of the wildlife approval, monitoring requirements, procedures for discovery and relocation of lizards, and future amendments to the LMP.
160. These comments were also provided to DOC as part of its s51 reporting process and were summarised and responded to in DOC's s51 report. Accordingly, Ms Muchna has considered the views expressed by Te Nehenehenui and NKMTH when developing the updated set of draft conditions and amended LMP in response to DOC's comments. She has also separately responded to some of Te Nehenehenui and NKMTH's comments in her report.

### ***Comments from Mirumiru Pā ki Marokopa***

161. Mirumiru Pā ki Marokopa – Marokopa Marae's comments on the Application note that "any activity likely to affect a Māui dolphin requires Wildlife Act authorisation..." and that TIL has not sought any such authorisation.
162. A wildlife approval is not required in respect of the Māui dolphin or any marine mammals as part of TIL's Application.
163. With regards to interactions with marine mammals (including the Māui dolphins), a Wildlife Act permit only needs to be sought if a person proposes to undertake commercial activities involving marine mammals (for example whale/dolphin watching) or a person proposes to take, hold, import or export marine mammals/marine mammal parts. TIL is not undertaking or proposing to undertake any of those activities.
164. Further, a Wildlife Act permit cannot be granted that authorises the killing or injuring of an animal (including marine mammals), noting that there is no evidence to suggest that any of the longstanding export activities in the CMA

associated with the Mine have or will generate Māui dolphin mortalities, or otherwise injure Māui dolphins, and TIL is certainly *not* proposing to kill or injure any Māui dolphins.

165. It should be noted that DOC has not raised the need for any such authorisation in their s51 report, or in any of the consultation undertaken by TIL with DOC since 2021.

## **ARCHAEOLOGICAL AUTHORITY RESPONSE**

### **HNZPT s51 report**

166. HNZPT submitted its s51 report to the Panel on 6 May 2026. In that report, HNZPT confirmed that the granting of the archaeological authority for the Application is consistent with the Heritage New Zealand Pouhere Taonga Act 2014 and that the agreed conditions will effectively manage the identification and recovery of archaeological information within the site.<sup>93</sup>
167. TIL worked with HNZPT to reach agreement on draft conditions, including updating its incidental discovery protocol<sup>94</sup> to ensure alignment across the two documents.
168. TIL also engaged with Taharoa C regarding the updates to the conditions and protocol agreed with HNZPT, to ensure that any amendments were agreed by Taharoa C, as the Māori landowner with mana motuhake. Taharoa C confirmed in their comments on the Application that they reviewed and provided input into the updated conditions and discovery protocol.<sup>95</sup>

### **Comments received in relation to archaeological authority**

169. Comments on the archaeological authority were received from Taharoa C, NMKTH and Te Nehenehenui. A response to the matters is set out in the Archaeological Response prepared by Glen Farley (Attachment L) and in the Planning Response. Of particular relevance:

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<sup>93</sup> HNZPT s51 report, paragraphs 18 to 20.

<sup>94</sup> Taharoa Mine Site Health and Safety - Environmental Procedure: Discovery of Human Remains and/or Items of Cultural Significance.

<sup>95</sup> Comments from Taharoa C, paragraph 28.

- (a) Taharoa C's comments highlight the longstanding relationship between Taharoa C and TIL, and the input Taharoa C has provided into the key aspects of the archaeological authority application including the Archaeology Assessment, draft conditions, Archaeological Management Plan (**AMP**), and the discovery protocol. Taharoa C have raised no additional issues that would require further updates to the conditions or AMP.
- (b) The comments raised by NMKTH essentially replicate the comments provided to TIL prior to lodgement of the Application. Mr Farley already considered and comprehensively responded to these comments, delaying the filing of the Application in order to provide sufficient time to formulate its responses. Mr Farley's responses to NMKTH's comments are set out in the Archaeological Authority Application Bundle (Appendix X to the Application), specifically Appendix A to the Archaeological Application.
- (c) Te Nehenehenui's comments identify concerns relating to the proposed buffers around archaeological sites – this is a resource consent conditions matter and is addressed in the Archaeological Response and the Planning Response.
- (d) Te Nehenehenui note the differing views between parties regarding mana whenua representation in archaeological processes. These matters have been addressed in Appendix A to the Archaeological Authority Application and in the additional responses set out in the Archaeological Response. In Taharoa C's Response to comments, Taharoa C reiterates the longstanding practice whereby kaumātua recognised by Taharoa C have taken responsibility for assisting with tikanga, kawa and the management of any archaeological discoveries.<sup>96</sup> They note this is an established practice that TIL has respected, and it seeks to continue. Taharoa C considers that the exercise of mana motuhake should also be recognised in the context of archaeological finds which recognises the ability of Taharoa C to

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<sup>96</sup>

Taharoa C Response at paragraph 10(b).

engage with kaumātua representatives and to lead any tikanga processes on its whenua as appropriate.<sup>97</sup>

170. HNZPT, as the statutory regulator, has confirmed that the agreed conditions will ensure that the archaeological works are undertaken in a culturally appropriate way, mitigate any adverse effects on archaeological values, allow for any information collected to be recorded, and can be monitored and measured to ensure compliance.<sup>98</sup>

## CONCLUSION

171. TIL is grateful for the Panel's attention to this memorandum.

**DATED** this 22<sup>nd</sup> day of June 2026



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**Stephanie de Groot / Tom Atkins**  
Counsel for Taharoa Ironsands Limited

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<sup>97</sup> Taharoa C Response at paragraph 10(b).

<sup>98</sup> HNZPT s51 report, paragraph 24.