

## Appendix G      Key Issues Table

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## APPENDIX G

### Summary of key issues raised by the Independent Hearings Panel in its decision and Taharoa Ironsand Limited's (TIL) response

The table below sets out the key issues raised by the Independent Hearings Panel in its decision on TIL's 2020 application under the Resource Management Act 1991 (RMA) for the necessary resource consents to continue activities within the Central and Southern Blocks of the Taharoa Ironsand Mine, and the coastal marine area.

The key issues raised by the Panel were, in most cases, resolved through conditions of consent. However, many of these conditions were appealed by TIL to the Environment Court.

TIL's view on each key issue, including how the issue has been addressed in TIL's substantive Fast-track application is set out below. This table should be read alongside TIL's appeal to the Environment Court of the Panel's decision, which is attached to TIL's substantive application as Appendix F.

Matter raised by the Panel and its approach to conditions in response	TIL's view, and how this matter is addressed in this application
<p><b>Scope of the application as it related to wet-mining or mining below the water table</b></p> <p>The Panel found that the scope of the application did not include wet-mining activities and could not be amended to include wet-mining activities, and therefore that the necessary resource consents to enable TIL to continue wet-mining activities could not be granted.</p> <p>The Panel also found that the application could not be amended to "make up for the absence of applying for a consent for an aspect of the activity" (at [460-474]).</p>	<p>TIL appealed the Panel's decision on this matter. TIL maintains its view that the application provided scope for the Panel to grant the necessary resource consents for mining activities that interact with groundwater ('wet-mining') and disagrees with the Panel's assessment and decision on this issue.</p> <p>Further, the Panel's decision did not recognise the fact that wet-mining has long been undertaken at the Mine since it was established in the 1970s, including under TIL's existing resource consents. It was the primary method of mining when the existing resource consents were granted and was so up until the current owners of the Mine acquired the business in 2017.</p> <p>Nevertheless, this issue has been fully resolved by TIL's substantive Fast-track application which clearly includes an application (and all necessary supporting information) for all necessary resource consents to undertake mining activities that interact with groundwater. This includes the diversion of groundwater, the take of surface water, and the discharge of mine process water to land and to water. These are the resource consents that the Waikato Regional Council considered were required to resolve the scope issue raised by the Panel during the 2024 hearing process.</p> <p>A detailed hydrogeology assessment has also been undertaken to support the application and ensure that the Panel has all necessary information to grant all required resource consents.</p>
<p><b>Setback from the boundaries of third-party properties</b></p> <p>Under TIL's current consents there is no requirement for its operations to be setback from the boundary of the site. There was disagreement between the experts whether a boundary setback was required to mitigate nuisance effects and what an appropriate setback would be (if any) (at [185]-[188]).</p> <p>The Panel ultimately imposed 200m setbacks from the boundaries of third-party properties to reduce potential nuisance effects, based on oral evidence given by the Council's air-quality</p>	<p>TIL appealed the imposition of these conditions and has proposed conditions aligned with the conditions of consent that TIL is currently operating under (i.e. a 30m setback from perennial waterbodies within and adjacent to the Consent Area, a 100m setback from the Mean High Water Springs and a 30m setback from all retained natural inland wetlands within the Consent Area).</p> <p>In TIL's view, a setback from third party properties, and a 100m setback from the Mitiwai Stream, significantly constrains mining activities, departs from the setbacks previously applied, reduces the ability of the Mine to generate regional and national benefits and are not reasonably necessary to appropriately mitigate the potential adverse effects of TIL's activities.</p>

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<p>expert during the hearing (at [193]). The Panel also imposed a new 100m setback from the Mitiwai Stream.</p>	<p>In imposing the additional setbacks, the Panel did not:</p> <ul style="list-style-type: none"> <li>(a) Acknowledge that air discharges associated with the proposed activities are permitted activities and that there are other conditions of consent designed to managed air discharges.</li> <li>(b) Acknowledge that the closest sensitive receptors that TIL will mine near are the Wetini and Kana homesteads to the north-east of the Central Block. Mining is this area, close to the boundary with these sensitive receptors, is currently enabled by way of existing use rights. TILs mine plan anticipates that mining will move into this area soon and may be completed before TIL's Fast-track application is determined, or otherwise, soon afterwards. Mining will then move away from that area.</li> <li>(c) Recognise that applying a blanket approach to all boundaries is unreasonable. There is a small strip of land adjacent to Lake Taharoa which TIL does not own which means a 100m setback would have been unreasonably applied along that boundary and there is otherwise no need for a 100m buffer to buffer any effects from an unoccupied strip of land.</li> <li>(d) Imposed the setbacks without sufficient evidential support and give no / insufficient weight to the evidence of TIL's experts who did not consider that the setbacks proposed by the Panel were necessary to adequately mitigate potential effects on adjoining properties and the Muriwai Stream.</li> </ul> <p>TIL's experts have carefully considered the issue of setbacks again in assessing the potential effects of the Project for TIL's Fast-track application. They have not identified any effects-based reasons for those setbacks to be applied. Instead, they have recommended a range of measures to mitigate potential effects on adjacent properties, surface water bodies and natural inland wetlands – the blunt management tool of applying increased setbacks is not needed when these other mitigation measures are being applied to manage effects.</p> <p>TIL acknowledges concerns raised by the Mine's nearest neighbours and has proposed to include it its Site Rehabilitation Plan methods to provide visual screening of mining operations from the Wetini property. TIL has also proposed a condition requiring it to prioritise stabilisation of a 100m area adjacent to the boundary with the Roy Wetini Whanau Trust within three months of mining being completed in that area.</p> <p>This matter also needs to be considered in light of the significant operational and economic impact of applying large setbacks across the site. The value of the iron product increases towards water bodies, and the quantity of material that would be lost from the proposed setback areas (in volume and economic terms) will significantly impact our ability to fill ships and meet customer commitments and deliver the economic and other benefits that have been forecasted. TIL has calculated that a 100m setback around the perimeter of the site (excluding the Northern Block boundary and 100m coastal setback) would reduce the mine's potential revenue by over \$1.5 billion over a period of 35 years.<sup>1</sup> Given the location of TIL's current mining operation, TIL has advised that it would reduce the output in the next 3 years by 20%. It is important for the on-going operation of the mine that setbacks are not imposed beyond what has been proposed by TIL. To do so would be inconsistent with the requirement under the FTAA that conditions are not more onerous than necessary to address the reason for which those conditions are set (section 83, FTAA).</p>

<sup>1</sup> This calculation is based on the assumption that there is a 100m setback around the perimeter of the Central and Southern Block, the average mining depth is 50m, the perimeter is 11km (along the Mitiwai and around the eastern boundary of the Central and Southern Block (excluding the western boundary along the CMA already subject to a 100m setback and the Northern Block boundary), there are 2.8 tonnes of product per m<sup>3</sup> of headfeed, approximately 20% yield and approximately 50% usable material.

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<p><b>Setback from all natural inland wetlands</b></p> <p>TIL did not make an application for resource consent to mine between 30m-100m from natural wetlands under the National Environmental Standard for Freshwater 2020 (<b>NES-F</b>) on the basis that it proposed a condition requiring a hydrological report to confirm an appropriate setback before mining would take place within that area.</p> <p>The Panel determined that an application was required under the NES-F and it needed evidence of the hydrological effects of mining within 30m-100m of these wetlands before it could confirm an appropriate setback from the wetlands and grant that consent (at [37] and [336]).</p>	<p>TIL has taken a different approach to its substantive Fast-track application which resolves these matters.</p> <p>As part of its substantive application, TIL has applied for resource consent under the NESF to mine within 30-100m of natural inland wetlands, and additionally to remove some of the natural inland wetlands on the site.</p> <p>A site-wide hydrological assessment has been undertaken by Williamson Land and Water Advisory to determine appropriate conditions to mitigate the potential effects of drawdown on the natural inland wetlands that are to be retained on site. These mitigation measures have been proposed as conditions of consent.</p>
<p><b>Size of the mesh screens on the water intake structure</b></p> <p>The Panel found that TIL needed to reduce the mesh screen size on the water intake structure in the Wainui dam reservoir from 10mm to 1.5mm to comply with the Waikato Regional Plan (at [106] &amp; [113]).</p>	<p>TIL currently uses 12mm mesh screens on its water intake system, a configuration that has been in place for many years.</p> <p>Since TIL assumed operation of the Mine in 2017, freshwater ecological conditions have demonstrably improved; the Freshwater Ecology Assessment prepared by SLR Consulting, alongside feedback received during consultation, confirms a significant increase in fish numbers over this period. This positive trend confirms that the existing intake system is not adversely affecting aquatic life.</p> <p>Accordingly, TIL is not proposing to change the status quo and has sought consent to retain its existing mesh screens.</p> <p>While the Waikato Regional Plan provides that all water intake structures shall be screened with a mesh aperture size not exceeding 1.5mm in diameter at locations less than 100 metres above mean sea level, or 3mm in diameter at locations greater than 100 metres above mean sea level, this is a standard that does not apply to TIL's proposed activities. It is a permitted activity standard but, in this case, consent is required as a controlled activity, and there is therefore no requirement to comply.</p> <p>Replacing the existing screens with finer mesh is also not practical. TIL is not proposing to install / reinstall a new dam (it is already there). This means that the screens would need to be upgraded to reduce the mesh aperture. This is not a straightforward exercise and is not as simple as just replacing the existing screens. Retrofitting finer mesh screens would require a complete redesign of the intake structure - Initial investigations by TIL suggest that a completely new intake structure with a rearranged pipe network would be required to implement a reduced mesh aperture size and to prevent blockage due to weed growth. TIL has also found that the finer the screen the more it gets blocked by weeds and other debris which creates operational issues for the water intake pump. TIL has trialled smaller 6mm screens and found that they were ineffective and unworkable because they were continuously blocked and required constant maintenance. The finer the mesh, the greater the risk of obstruction, which compromises the reliability of the water intake pump and overall system performance.</p> <p>As part of the Freshwater Ecology Assessment SLR have undertaken an assessment of the effect of retaining the existing fish screens and has determined that there is a risk that particularly small fish and larval fish are entrained into the intake pumps. However, this potential ecological effect must be balanced with the operation of the intake system as</p>

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	<p>a whole. With the existing system TIL already regularly engages divers to remove weeds from the system. If finer screens were mandated, TIL has advised that divers would need to be permanently engaged to remove weeds - this is neither realistic, sustainable, or practical and would also require that the intake would need to be completely redesigned (as explained above). The fish pass inlet has already been deliberately positioned away from the pump inlets, specifically to limit the potential for fish to be swept into the pumps or downstream. Therefore, it is entirely appropriate for the existing screens to be retained.</p> <p>While TIL appreciates the desire to ensure it operates consistently with industry guidelines / standards etc, in this particular case the current system has proven effective in supporting aquatic life while maintaining functional integrity. Imposing a condition to reduce mesh aperture would be unreasonably onerous, technically impractical, and would be unreasonably onerous in circumstances where no significant adverse effects are anticipated.</p>
<p><b>Stock exclusion</b></p> <p>The Panel considered that stock and horses have an adverse effect on the progress of remediation and are a feature of the environment connected to the activity of mining that must be managed in some form (at [170] and [530]). The Panel considered the construction of stock proof fencing around rehabilitation areas necessary to ensure successful mitigation.</p> <p>The Panel imposed two conditions relating to stock exclusion on the land use consent:</p> <p>(a) one requiring TIL to ensure “as far as practicable” that all livestock and horses are excluded from the Consent Area at all times and that it will remove them as soon as reasonably practicable.</p> <p>(b) one requiring TIL to construct and maintain a stock proof fence to exclude stock from planted wetland buffers and areas planted for stabilisation or rehabilitation.</p>	<p>TIL appealed the imposition of these conditions on the basis that the stock referred to by the Panel are owned by third-parties who have an obligation to keep them from straying onto the Central and Southern Blocks.</p> <p>The Resource Management (Stock Exclusion) Regulations 2022 and the Waitomo District Council Public Health and Safety Bylaw 2023 place the duty of care on stock owners to keep their animals secure and to prevent trespass. Their presence constitutes trespass under the Trespass Act 1980, for which the owners are liable. The enforcement of the Regulations and Bylaw are regulatory tools falling under the jurisdiction of local authorities, not the consent holder.</p> <p>TIL maintains its position is that it should not bear further responsibility by way of consent conditions to remove stray livestock and horses from the site, since these animals are owned by neighbouring landowners. TIL already takes extensive steps to manage stray stock – it has a cattle stop at the entrance, large parts of the boundary of the Site with Lake Taharoa have been fenced, and TIL seek to remove stock when practicable.</p>
<p><b>Discharge of minor and irregular discharges of stormwater and process water into the Wainui Stream</b></p> <p>TIL sought consent to authorise minor and irregular discharges to the Wainui Stream.</p> <p>The Panel imposed a new condition requiring a water sample to be collected upstream and downstream of the discharge point within 24 hrs of a discharge and for that sample to be analysed for turbidity, pH, heavy metals and hydrocarbons.</p>	<p>TIL is continuing to seek resource consent for this activity. As set out in TIL's substantive Fast-track application, there may be small/incidental discharges of settled stormwater and washdown water from around the workshop, stores compound and administration building into the Wainui Stream from time to time during high rainfall events. This water will reach the stream on a diffuse basis and flows over the ground (not through a pipe), and is unlikely to create erosion that would result in suspended particles or a change in water colour/clarity. The discharge will not result in any oil or grease films, scums or foams – and a condition of consent to this effect has been proposed by TIL.</p> <p>However, requiring discharges of this nature to be monitored to the extent required by the Panel is disproportionate to the scale and significance of the potential adverse effects of this incidental activity. The conditions imposed by the Panel are also not practical – it is not clear when sampling would be triggered or how/where an incidental diffuse</p>

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<p><b>Monitoring of the stormwater discharge to the Coastal Marine Area</b></p> <p>The Panel at considered that additional baseline information was necessary to understand the degree of sediment loading in stormwater or process water discharged into the CMA.</p> <p>It imposed a condition requiring water sampling in the holding pond(s) prior to discharges of stormwater to the CMA, imposed pH levels and imposed a condition requiring TIL to notify the Council and provide the sampling results after every discharge.</p>	<p>discharge should be monitored – as there is no point source. They do not appear in TIL's existing resource consents. For these reasons, the conditions were appealed by TIL.</p> <p>TIL appealed these conditions on the basis that they were imposed without the support of technical expert evidence and were impractical.</p> <p>The Marine Ecology Assessment prepared by Dr Pete Wilson (SLR) in respect of TIL's Fast-track application confirms that monitoring of stormwater and process water discharges prior to each discharge into the CMA is not required because the level of effect of the discharge low (and less than TIL's ship loading discharge) and the overall level of effect on the environment is less than minor.</p> <p>The conditions are therefore not reasonably necessary to manage the effects of stormwater and process water discharges to the CMA, which are temporary, infrequent and minor.</p>
<p><b>Marine monitoring programme relating to the discharge plume and potential deposition effects</b></p> <p>The Panel noted that the existing baseline monitoring data set of water quality and benthic ecology was based on a one-off assessment using a spatial gradient approach.</p> <p>The Panel considered that more frequent monitoring of water quality in the CMA was needed to understand the effects of the discharge of process water on the CMA on the basis that TIL intends to transition from mining 3 million tonnes to 5 million tonnes per annum. It imposed a condition requiring the development of a Marine Monitoring Programme to assess water quality, including sediment grain size and heavy metal concentrations, with specified sampling locations and frequencies. The condition requires ongoing monitoring to detect changes in water quality and requires ongoing reporting. If monitoring reveals adverse trends, further ecological assessments are required.</p>	<p>TIL appealed these conditions on the basis that they were not necessary to manage deposition effects and were unduly onerous, lacked sufficient clarity and contained workability issues.</p> <p>The Marine Ecology Assessment prepared by Dr Pete Wilson (SLR) in respect of TIL's Fast-track application confirms that no on-going benthic monitoring is necessary due to the low level of potential effects of the dewatering discharge on the environment. The Panel's decision also accepted that the deposition effects of the stormwater and process water discharges to the CMA are low.</p> <p>Therefore, there is no justification for the imposition of on-going monitoring conditions. The conditions are also unduly onerous because they require monitoring for up to 10 years, including if no trend in effects is identified. In TIL's view, the condition is more onerous than necessary to address the reason for which it may have been imposed, lacked sufficient clarity and contained workability issues (e.g. it was not clear what samples needed to be analysed for, other than for the purpose of determine the fate and distribution of sediment discharged).</p> <p>In any event, TIL has proposed a discharge monitoring condition, which it continues to support – this will require TIL to analyse the discharge once every six months for grain size composition, the clay mineralogy and heavy metal concentrations.</p>
<p><b>Residual flow in the Wainui Stream</b></p> <p>The Panel did not consider that there was enough evidence to support the proposed residual flow rate of 39l/s in the Wainui Stream which is below the flow rate of 160l/s anticipated by the Waikato Regional Plan (as 95% of the one in five year 7-day low flow (Q5) for streams with a mean flow less than 5 m3/s). (At [112] &amp; [354]).</p>	<p>TIL appealed this condition on the basis that the residual flow rate was imposed based on policy direction in the Waikato Regional Plan without regard to the technical assessments before the Panel or site-specific factors (such as the presence of the Dam).</p> <p>Williamson Land and Water Advisory has considered this matter further as part of TIL's substantive Fast-track application. The hydrology assessment supports:</p> <p>(a) a minimum residual flow-rate of at least 24 L/s from Lake Taharoa, to the Wainui Stream downstream of the dam, through the fish pass, based on the design requirements of the fish pass and a historic agreement with Environment Waikato that a flow rate of between 24 to 34 L/s to be maintained; and</p>



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	<p>(b) a minimum flow requirement of 10 L/s immediately downstream of the dam structure. Through discussions with TIL's freshwater ecologist, it was agreed that it was appropriate to set a minimum flow requirement based on the minimum flow from available monitoring records, and because the habitat downstream was not adversely affected when this level (and consequent downstream flow rate) had occurred, provided flows were not reduced to this level for extended periods of time. The lowest historical water level measured behind the dam structure was 9.45 m RL in early 2014. As set out in the hydrology assessment, this is equivalent to 0.09 m head above the invert of the two v-notches in the weir structure. Applying a standard weir flow calculation, the flow through the outlet weir at this level would have been 10 L/s.</p>
<p><b>The extent and nature of stabilisation and rehabilitation</b></p> <p>The Panel recognised the environmental challenges that frustrate rehabilitation efforts.</p> <p>However, the Panel considered that conditions which set timeframes for annual rehabilitation and specify the amount of work to be undertaken were necessary to effectively mitigate environmental challenges (at [208]). These conditions were primarily imposed to respond to submitter feedback.</p> <p>The Panel imposed conditions requiring:</p> <ul style="list-style-type: none"> <li>• <i>Stabilisation and rehabilitation of areas adjoining third party residential properties will be implemented within 3 months of mining ceasing in that area for a period of 3 months consecutively.</i></li> <li>• <i>Stabilisation and rehabilitation of previously mined unrehabilitated areas existing at the commencement of this Consent within the Consent Area (other than as provided for in Condition 11 of this consent) will be implemented within 10 years of commencement of this consent at a rate of 6 ha per year.</i></li> <li>• <i>Stabilisation and rehabilitation of areas that are mined during the term of this consent (excluding the areas identified in Condition 11 and 12 of this Consent) shall be implemented within 6 months of mining ceasing in that area for a period of 6 months consecutively.</i></li> </ul>	<p>TIL has made considerable effort to find effective stabilisation and rehabilitation measures to overcome practical challenges and progress rehabilitation. These challenges include environmental factors such as severe rain and wind events, interruptions caused by COVID-19 and operational and logistical factors including the availability of plants, and difficulties with establishing planting have legitimately interrupted progress with planned rehabilitation. In response to these practical challenges, TIL has adapted its rehabilitation approach and trailed new technologies and ways of stabilising the land. In 2024 TIL undertook a successful trial of coconut matting which has assisted in the successful planting of more than 74,909 plants over June and July, and successful rehabilitation across a 6.5 hectare area.</p> <p>TIL's responsibility is to ensure that the mining operations does not have unacceptable adverse effects on the neighbouring landowners and that all rehabilitation is completed on an on-going basis and before closure of the Mine. TIL is seeking that the conditions require progressive interim and final rehabilitation to be undertaken in accordance with a Site Rehabilitation Plan and Conceptual Site Closure Plan, consistent with its existing consents. However, it has proposed more detailed Site Rehabilitation Plan conditions (see condition 20 Schedule 1: General Conditions) to require the plan to –</p> <ul style="list-style-type: none"> <li>• include details of site preparation and plant establishment measures for proposed planting;</li> <li>• provide for habitat suitable for bittern and long-tailed bats (as well as NZ pipit);</li> <li>• include details of areas proposed to be temporarily and permanently contoured;</li> <li>• include procedures to monitor and report to WRC on progress made in delivering the procedures and measures required by the Site Rehabilitation Plan;</li> <li>• include a timeline for interim rehabilitation of the areas within 100-200m of the Consent Area boundary once mining has been completed;</li> <li>• include a description of permanent rehabilitation of completed mining areas in the Te Ake Ake mining cell in the north of the Central Block adjacent to the Mitiwai Stream, including methods that seek to provide visual screening of mining operations in the Central Block from the existing dwelling on the properties legally described as Taharoa A1C7A Block (the Wetini property); and</li> <li>• be prepared with input from a suitably qualified and experienced landscape architect, who shall advise on landform and groundcover, taking into account the requirements of the Conceptual Site Closure Plan.</li> </ul> <p>These conditions recognise the primary concerns of stakeholders while continuing to recognise the operational reality and difficulties in rehabilitating sand dunes on the west coast.</p>

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	<p>TIL disagrees that the conditions should dictate the extent and timing for stabilisation and rehabilitation activities (as proposed by the Panel). TIL appealed these conditions because of their impracticality.</p> <p>TIL rehabilitates mined areas in two stages: initial stabilisation to manage dust and erosion, followed by final contouring and revegetation in line with the Site Rehabilitation Plan. Once tailings have dewatered, the land is reshaped, topsoiled, and replanted using a seasonal planting programme supported by an on-site eco-sourced nursery, with native species often transplanted from areas cleared for mining. TIL's rehabilitation programme is adaptive and shaped by environmental conditions, operational constraints, and plant availability, allowing for flexible timing and techniques to achieve practical and ecologically appropriate outcomes.</p> <p>TIL's air quality expert has recommended a 100m Priority Stabilisation Area. This has been worked into TIL's proposed conditions of consent. It is intended to address, as a priority, stabilisation of the 100m area near the boundary of the Central Block adjoining the nearest sensitive receptors within three months of mining ceasing anywhere in that area, to reduce the potential for off-site dust effects associated with mining in that area.</p>
<p><b>Consideration of the cultural effects of the application</b></p> <p>At [499] the Panel discusses the importance of engaging in consultation with mana whenua to ensure that the relationship of Māori with their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga is recognised and provided for in line with the requirements under section 6(e) of the RMA (at [501]). There were concerns raised regarding the level of detail in the Cultural Impact Assessment included in the Application (at [260]).</p>	<p>A detailed cultural effects assessment has been provided in the substantive application. This assessment is based on information and assessments produced by tanaga whenua as part of hearing of TIL's 2020 RMA application, and information provided by tangata whenua through consultation on TIL's substantive Fast-track application.</p>



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<p><b>Term of the consents</b></p> <p>The Panel considered there to be a lack of certainty that the conditions would enable mana whenua to express their kaitiaki role.</p> <p>A term of 20 years was considered by the Panel to strike an appropriate balance between providing the economic certainty needed to support continued investment and operation of the mine, while also addressing potential uncertainties in the absence of a specific review condition (see discussion at [560]). The Panel relied on the Supreme Court guidance in <i>Ngati Rangī v Trust Genesis Power Ltd</i> [2009] NZCA 222 in taking this approach.</p> <p>The Panel considered that TIL had rejected a review condition that would enable the effectiveness of the mana whenua conditions to be reviewed.</p>	<p>TIL appealed the Panel's decision to impose a 20 year term for a raft of reasons, including that the decision:</p> <ul style="list-style-type: none"> <li>(a) Failed to give appropriate weight to the significant positive effects of the application;</li> <li>(b) Failed to properly recognise the significant level of capital investment which has been made in the Mine as required under section 104(2A) of the RMA, and the regional and national significance of the Mine; and</li> <li>(c) Failed to recognise that the most appropriate way to address the uncertainty issue identified in the decision was by way of a review condition of consent (rather than a reduction in term), and that the review conditions imposed did enable a review of the effectiveness of conditions in avoiding or mitigating any adverse effect on the environment (which includes effects on people and culture);</li> <li>(d) Failed to recognise or give sufficient weight to the fact that the Mine is located on Māori land and the application was supported by the Māori landowners; and</li> <li>(e) Was flawed (and premature) in finding that the conditions relating to ongoing consultation and the provision of information to mana whenua may not be effective in the future; and</li> <li>(f) Failed to recognise that a consent duration of 35 years is consistent with other consents granted by WRC for large scale industrial activities where commercial certainty is required.</li> </ul> <p>Further, the Panel considered that TIL <i>rejected a review condition that enables the effectiveness of the mana whenua conditions to be reviewed</i>. This is incorrect. TIL proposed amendments to the Council's proposed review condition to ensure it clearly meet the requirement for a review condition to address an effect and to ensure it was not repetitious. There was and continues to be review clause in TIL's proposed consent conditions (see condition 61 - Schedule 1: General Conditions). <i>Ngati Rangī</i> also provided support for the imposition of a review condition to address any issues in the future associated with the effectiveness of mitigation conditions, rather than a reduction in the term of consent.</p> <p>TIL is continuing to seek a 35 year term in respect of its substantive Fast-track application. In TIL's view a 35-year term is appropriate because a shorter term fails to give appropriate weight to all relevant matters that contribute to determining an appropriate term of consent (and which are set out above).</p> <p>WRC has always supported a term of 35 years and no parties who have been consulted with prior to filing TIL's substantive Fast-track application appear to be seeking a reduced term.</p>
<p><b>Need to implement dispute resolution provisions</b></p> <p>TIL proposed to include a dispute resolution provision to assist in resolving any disputes that any arise in respect of the certification of the Environmental Management Plan (EMP).</p> <p>It also proposed to include transitional provisions to enable the mine to continue to operate during a transitional period while the Environmental Management Plan is prepared (with input from stakeholders) and certified.</p> <p>The Panel at [517] was critical of these two conditions and did not incorporate them.</p>	<p>The transitional provision is critical to ensure that the Mine can continue to operate while the final EMP is being prepared and certified by the WRC. It is unreasonable to expect the final EMP to be complete and certified as soon as new resource consents commence given the requirements for the EMP are new and will not be confirmed until a decision is made on TIL's application.</p> <p>The dispute resolution clauses were proposed to ensure that any stalemates in the certification process can be overcome.</p>

Matter raised by the Panel and its approach to conditions in response	TIL's view, and how this matter is addressed in this application
<p><b>Consultation on archaeological discovery protocol</b></p> <p>There were concerns raised by submitters about the protocols that apply to discovery of koiwi. The Panel considered that greater consultation would increase transparency and assist in resolving concerns related to wahi tapu and koiwi (at [272]). However, it acknowledged TIL's existing protocols and practices and determined that only minor amendments were required.</p>	<p>TIL has sought an Archaeological Authority as part of its substantive Fast-track application, which has been prepared by an archaeologist. Taharoa C prepared a cultural values assessment to inform that application and it was provided to mana whenua, with a copy of the Application, for their review before lodgement.</p> <p>During pre-application consultation on TIL's Fast-track application, Heritage New Zealand Pouhere Taonga, requested that any accidental discovery protocols be removed from the proposed resource consent conditions, as these are most appropriately included in the Archaeological Authority.</p> <p>TIL's Archaeological Authority Application is accompanied by an Archaeological Management Plan, which is consistent with, but builds on TIL's historical accidental discovery, including koiwi, protocols.</p>
<p><b>The risks of flooding behind Lake Taharoa and the surrounding low lying land including part of Taharoa Road due to the damming of the Wainui Stream</b></p> <p>Expert hydrological evidence presented on behalf of TIL was that flooding adjacent to Lake Taharoa, including the flooding of Taharoa Road, was not a direct result of TIL's proposed activity and would have occurred with or without TIL's proposed take and use of water from the Lake.</p> <p>The Panel accepted this opinion but found that "<i>no assessment with respect to the source of this flooding has taken place. We find that maintaining the lake level of Lake Taharoa is likely to be contributing to flooding of directly adjoining properties and thus is contributing to a significant adverse effect to those Neighbours.</i>" (at [137]).</p> <p>The Panel imposed conditions requiring:</p> <ul style="list-style-type: none"> <li>(a) TIL to manage the water level in the Wainui Stream and Lake Taharoa as far as reasonably practicable so that it does not cause or contribute to flooding of any land surrounding Lake Taharoa; and</li> <li>(b) a flood risk assessment and feasibility study to determine a maximum lake level to apply in order to manage flood risk.</li> </ul>	<p>TIL appealed the conditions imposed by the Panel primarily on the basis that they do not fairly relate to an adverse effect of the proposed activity, and that flooding of Taharoa Road is largely a matter outside of TIL's control. Further, that the conditions, particularly the "reasonably practicable" requirement were not sufficiently certain.</p> <p>As part of TIL's substantive Fast-track application, WWLA has provided an expert technical report which, again, confirms that flooding behind Lake Taharoa is largely a matter outside of TIL's control and is not caused by the damming of the Wainui Stream. (See the Hydrology Assessment enclosed to the substantive application).</p> <p>Further, imposing any condition in line with the Panel's suggestion would require TIL to install a mechanism to allow additional water to be released through the dam. That mechanism would need to be limited to avoid damage to the weir further down the stream. WWLA concludes that even if water was released, during high rainfall events there is too much water coming in to the lake from the wider catchment to make a significant difference to lake levels.</p>
<p><b>Dissemination of monitoring information on a public website</b></p> <p>TIL agreed to setting up and maintaining a website that includes monthly and annual monitoring results as recorded in the Joint</p>	<p>As part of the RMA consenting process, TIL proposed to share a range of information on a new website – this information was agreed at expert conferencing. The Panel went further and imposed additional information to be shared on the website. TIL appealed these additional requirements on the basis that they were not supported by expert evidence and would be unreasonable.</p>

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<p>Witness Statement on Environmental Management Plans (at [284]).</p> <p>The Panel imposed further requirements proposed by submitters, including to publish monthly monitoring results, agendas and minutes from community meetings and all monitoring results (at [295]).</p>	<p>Much of the information was already included in annual reports. Repeating it monthly on the website was unnecessary and imposed a significant burden on TIL because the technical data that the Panel sought to make publicly available could be misunderstood without proper context.</p> <p>As part of its substantive Fast-track application, TIL has proposed a condition which requires TIL to maintain a public website that shares key environmental and operational information, including:</p> <ul style="list-style-type: none"> <li>• The current Annual Works Plan;</li> <li>• The certified Environmental Management Plan for the site;</li> <li>• Annual monitoring reports;</li> <li>• Details and records of monthly water abstracted from the Wainui Stream;</li> <li>• Details and records of monthly stormwater discharged into the Tasman Sea;</li> <li>• Monthly water levels in Lake Taharoa and rainfall data; and</li> <li>• Dust monitoring data.</li> </ul> <p>This is a balanced approach which requires to the sharing of key updates without requiring TIL to publish monthly monitoring results (and consequently respond to ongoing enquiries, feedback, and demands from the public) which is neither practical or fairly necessary.</p>
<p><b>Imposition of a bond</b></p> <p>The Panel imposed a condition requiring the payment of an environmental bond. The Panel did not accept arguments on behalf of TIL that a bond was not required in this case (At [510] &amp; [512]).</p>	<p>TIL has proposed a bond condition as part of its substantive Fast-track application. TIL has used Waikato Regional Council's standard bond condition as a starting point and adjusted the condition appropriately. Please see the attached letter prepared by MinterEllisonRuddWatts in support of the amendments to the bond condition, attached to the Application as Appendix BB.</p>
<p><b>NZCPS</b></p> <p>The Panel considered that the strong directives of the NZCPS required a more thorough analysis (At [318] and [319]).</p>	<p>TIL's expert team have re-visited the NZCPS as part of the substantive Fast-track application and a comprehensive assessment is included in the application documents.</p>
<p><b>Air Quality</b></p> <p>At [330] the Panel noted that WRC had assessed the National Environmental Standard Air Quality (<b>NES-AQ</b>) And considered the proposal is consistent with the NES-AQ subject to the activity complying with the proposed conditions and therefore permitted activity standards for air discharge. An assessment of the application against the NES-AQ was not included in the</p>	<p>As explained in TIL's substantive application, at 5.18, PDP considers that dust emissions at the site can be controlled appropriately by the dust mitigation and control measures so that offensive and objectionable effects are not experienced at nearby receptors. Resource consent is therefore not considered to be required.</p> <p>The NES-AQ is not relevant. PDP has advised that the discharges associated with the NES-AQ including compounds that are discharged to air from combustion processes, are not commonly associated with the activities at the mine. While small discharges of these compounds may be associated with vehicles, PDP has assessed these as</p>

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<p>Application and the Applicant relied upon the permitted activity status of its proposed discharges.</p>	<p>inconsequential. In any event, PDP confirmed that if discharges to air from combustion processes were relevant, the main compound of concern would be PM<sub>10</sub>, which is more likely to be present as a result of marine aerosols.</p>
<p><b>Iwi Management Plans</b></p> <p>The Panel acknowledged that there had been an assessment of Waikato-Tainui Environmental Plan and Maniapoto Environmental Management Plan but considered that conditions needed to be more enabling of mana whenua. (At [362]).</p>	<p>TIL's substantive application comprehensively considers the potential impacts on iwi and cultural values throughout, including in the context of the iwi Environmental Management Plans. Appropriate conditions have been proposed as fully detailed in the Substantive Application (see Cultural Effects at 8.1.18 and the iwi Management Plan assessments (at 8.3.8, 8.3.9 and 8.3.10).</p>