

Before the Expert Panel

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 or the Application**)

Memorandum of Counsel on behalf of Taharoa Ironsands Limited
providing a final response to the Panel's Further RFI

Dated 1 October 2026

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MAY IT PLEASE THE PANEL

INTRODUCTION

1. In a Memorandum of Counsel dated 8 September 2026, Taharoa Ironsands Limited (**TIL**) summarised the steps set out by the Panel in Minute 24 dated 20 August 2026 to respond to the Panel's Further RFI, which we repeat here:¹
 - (a) Step 1: TIL is to provide its proposed conditions for RFIs 1, 2, 4, 10, 13 and 18 to the EPA and the parties by 8 September.
 - (b) Step 2: Expert conferencing is to occur on RFIs 1, 2, 4, 6, 10, 13 and 18 between experts of parties who participated in the Panel Facilitated Conference, with Joint Witness Statements (**JWS**) to be filed with the Environmental Protection Authority by 22 September 2026.
 - (c) Step 3: TIL is to provide a final response to the Further RFI along with any response to the outcomes of the expert conferencing and responses to the balance of the matters raised in the Further RFI by 1 October 2026 (**Final RFI Response**).
2. TIL completed Step 1 by filing a Memorandum of Counsel dated 8 September 2026 with the EPA (which was also served on the relevant parties who were directed to participate in conferencing). This Memorandum of Counsel provided TIL's interim responses to RFIs 1, 2, 4, 10, 13 and 18. TIL also provided an interim response to RFIs 6 and 9. TIL provided a response to RFIs 6 and 9 because the Panel directed for expert conferencing to occur in respect of RFI 6 and because RFI 9 is intrinsically linked to RFI 10.
3. Step 2 was completed in respect of RFIs 1, 2, 4, 6, 9, 10, 13 and 18 within the required timeframe, with JWS in respect of air quality, hydrogeology & hydrology and wetland ecology topics filed with the EPA by 22 September 2026.

¹ Memorandum of Counsel on behalf of Taharoa Ironsands Limited providing an interim response to further RFIs 1, 2, 4, 10, 13 and 18 dated 8 September 2026, at [2].

4. This Memorandum of Counsel and the following attachments comprise TIL's Final RFI Response as set out in Step 3 above:
 - (a) **Appendix A:** TIL's final written responses to the Panel's Further RFI (which refers to the following documents).
 - (b) **Appendix B:** Air Quality Response to Panel RFIs for Taharoa Ironsands, Andrew Curtis (PDP) dated 1 October 2026 (which updates PDP's Air Quality Response dated 8 September 2026).
 - (c) **Appendix C:** An updated set of proposed conditions prepared by Grant Eccles, Technical Director, Planning, at Tonkin + Taylor, which incorporates proposed amendments to conditions (in track changes) responding to matters raised in:
 - (i) the Panel's first RFI dated 29 June 2026;
 - (ii) the Panel Facilitated Conference, which took place on 22 and 23 July 2026;
 - (iii) the Panel's Further RFI; and
 - (iv) the JWS on air quality, hydrology & hydrogeology, and wetland ecology.
 - (d) **Appendix D:** Letter to the Panel from Mr Modher Barakat dated 17 September 2026 regarding TIL's monitoring and records of lack of seepage into mining pits from freshwater bodies.
 - (e) **Appendix E:** TIL Geological Model of the Taharoa Ironsands Mine.
 - (f) **Appendix F:** TIL Overview of the Loss of Resources from Additional Mining Setbacks dated 19 June 2026.
 - (g) **Appendix G:** Written Approval to TIL's resource consent application by Peggy Willison.
 - (h) **Appendix H:** Response to RFI 12 from the Proprietors of Taharoa C Block Incorporated (**Taharoa C**).

5. In respect of **Appendix A**, TIL has taken the following approach to its final responses to RFIs 1, 2, 4, 6, 9, 10, 13 and 18, which were subject to expert conferencing:
 - (a) Retained TIL's interim responses to the RFIs (provided to the Panel on 8 September 2026) in the table, for context;
 - (b) Provided a final response to each RFI, prepared by Mr Grant Eccles (TIL's planning expert), informed by TIL's interim response and the JWS arising from expert conferencing on the RFIs.
6. The balance of this Memorandum of Counsel includes legal submissions in relation to RFIs 7, 9 and 10, as well as those RFIs that were the subject of expert conferencing on wetland ecology. These submissions form part of TIL's Final RFI Response and should be read in conjunction with the documents listed in paragraph 4. TIL's legal submissions address:
 - (a) TIL's final response to the air quality RFIs (RFIs 9 and 10);
 - (a) The Panel's request for legal submissions on the relevance of viability and practicality to consent conditions (RFI 7); and
 - (b) The approach taken by the experts representing the Department of Conservation (**DOC**) at expert conferencing on wetland ecology (as informed by the JWSs).
7. We expand on the points in paragraph 6 below.

AIR QUALITY RFIS (RFIS 9 AND 10)

8. In TIL's Memorandum of Counsel dated 8 September 2026, we set out submissions relating to the following two topics on air quality matters arising from RFIs 9 and 10:
 - (a) An air discharge permit is not required;² and

² At paragraphs [8] – [28].

- (b) The requirement for the Panel to only consider evidence that is before them in making their decision.³
9. These submissions continue to form part of TIL's Final RFI response. We do not repeat them here for brevity.
10. Since those submissions were filed on 8 September, TIL's experts (Mr Eccles and Mr Curtis), and WRC's experts (Mr Chrisp and Mr Stacey) completed expert conferencing on Tuesday 15 September in respect of RFIs 9 and 10, and they agreed, (as recorded in the JWS) as follows:⁴
- (a) All experts at the expert conferencing agreed that in respect of RFI 9:⁵
- (i) While taking a literal interpretation, PM¹⁰ is a hazardous substance, an air discharge consent is not required solely on the basis that PM¹⁰ is generated at the site. This is because Rule 6.1.16.1 is a Permitted Activity rule.
 - (ii) No mineral extraction activity would be able to comply with that rule if subclause (e) of 6.1.16.1 was interpreted in an absolute manner.
 - (iii) The comma at the end of clause (e) suggests that the clause is an unfinished sentence, and for this reason cannot be relied on because it is incomplete and does not work in practice.
- (b) Mr Chrisp and Mr Eccles agreed that in respect of RFI 9:⁶
- (i) If the Panel considers that an Air Discharge Consent is required and it imposes Condition 8, then by virtue of compliance with that condition, then the activity is a permitted activity.
 - (ii) If the relevant Permitted Activity standards are then imposed as a condition of an Air Discharge consent (on the assumption that they will be complied with), it then negates the need for

³ At paragraphs [29] – [37].

⁴ Air Quality Joint Witness Statement signed and dated 21 September 2026.

⁵ Ibid page 4

⁶ Ibid at page 4.

requiring an Air Discharge consent in the first place.⁷ This was considered a further reason not to require an Air Discharge consent and to rely on the proposed conditions (including Condition 8) that are currently proposed to apply to AUTH142035.01.01.⁸

11. This conclusion is consistent with and reinforces TIL's submissions that:
 - (a) an air discharge permit is not required;
 - (b) there is no evidence before the Panel to the contrary.
12. For the reasons set out in TIL's Memorandum of Counsel dated 8 September 2026, the Panel can only make a decision based on the evidence before it. To do otherwise would amount to an error of law.⁹ The evidence before the Panel from all relevant experts is aligned in reaching the conclusion that an air discharge permit is not required. For the Panel to determine otherwise, therefore, would be to come to a decision without evidence or, alternatively, one that could not reasonably be reached on the evidence that is before the Panel.

RELEVANCE OF VIABILITY AND PRACTICALITY TO CONSENT CONDITIONS

13. RFI 7 states that:¹⁰

At the PFC the experts agreed that a 1.5 mm screen was necessary to avoid potential entrainment effects on juvenile protected/threatened or at risk indigenous fish species and that the technology was available for that standard to be met, but that some time would be needed to put in place a new screen and transition to operation of it.

To assist with our deliberations on this issue (and others such as the width of riparian wetland margins), the Panel requests Counsel for the Applicant to prepare submissions on how viability and practicality inform whether a consent condition is reasonable under the RMA and whether any different approach is required under the FTAA (citing any relevant case law)."

⁷ Ibid at page 4.

⁸ Ibid page 4.

⁹ *North Eastern Investments Ltd v Auckland Transport* [2017] NZHC 2355, [2017] ELHNZ 248 at [51], applying *Countdown Properties (Northlands) Ltd v Dunedin City Council* HC Wellington AP214/93, 7 March 1994.

¹⁰ This matter was also raised by Mr Williams at the Panel Facilitated Conference (PFC) on 22 July 2026 in the context of discussion regarding section 83 of the FTAA.

14. At paragraph 40 of its memorandum of counsel dated 5 December 2025 (**5 December Memorandum**) in support of the Substantive Application, TIL identified key technical issues arising from the decision by the Independent Hearings Panel (**IHP**) to grant TIL the majority of the approvals required for TIL to continue its mining operation dated 22 November 2024 (**2024 Hearing Panel Decision**) and from pre-application consultation. TIL identified that the conditions imposed by the IHP in response to some key issues would result in unreasonable conditions that would be more onerous than necessary in terms of section 83 of the Act and would be inconsistent with the purpose of the FTAA. This included the following:
 - (a) A reduction in the size of the mesh screens on TIL's water intake system in the Wainui dam water reservoir from the existing 12 mm screens to 1.5mm.
 - (b) 200m setbacks from the boundaries of third-party properties, 100m setbacks from perennial waterbodies (including the Mitiwai Stream and Wainui Stream) 100m setbacks from natural inland wetlands (compared to the setbacks required under TIL's existing resource consents of 30 m from perennial waterbodies only).
15. Some section 53 parties who have commented on TIL's application have continued to seek conditions of this nature. In its Memorandum of Counsel dated 22 June 2026 in response to section 53 comments (**22 June Memorandum**), TIL confirmed that its planning lead, Mr Eccles considers that a number of conditions proposed by section 53 parties would be more onerous than necessary. These comprise the smaller fish screens and extended setbacks addressed above, proposed extensive stock proofing and the extensive annual monitoring and reporting of all wetlands on the site. The reasons for TIL's position on each of these issues is set out at paragraphs 80-85 of the 22 June Memorandum.
16. TIL considers that the conditions it has proposed in respect of its application (most recently updated as part of TIL's Final RFI Response) will appropriately manage potential adverse effects and meet the requirements and purpose of the FTAA.

17. TIL understands that this background is the basis for the Panel's RFI question regarding the relevance of practicality and viability to decision-making about consent conditions under the RMA and the FTAA.
18. In summary, TIL's position is that:
 - (a) The RMA confers a broad power to impose consent conditions, but conditions which are so impractical/non-viable that they frustrate the grant of a consent (for example, setbacks which undermine the viability of a project) are unlikely to be lawful.
 - (b) Although the RMA decision-making framework is imported by reference into the FTAA, decision-making regarding consent conditions under the FTAA needs to be overlain by consideration of the requirements of that Act. The FTAA intentionally has a different and more enabling purpose to the RMA and includes the requirement that consent conditions must not be more onerous than necessary.
 - (c) A decision-maker is required to consider whether a condition of consent is "necessary to achieve the purpose for which it is set". This inquiry has a subjective element insofar as the Panel will need to decide, informed by the evidence and relevant planning framework, what level of effects is acceptable.
 - (d) The assessment of what is "necessary", and what is "more onerous than necessary" needs to be informed by consideration of the FTAA's purpose. Viability and practicality are matters that are relevant in this context: if it is not viable or practicable for an applicant to implement a proposed condition, then the approval is unlikely to "facilitate the delivery of infrastructure" and its associated national and regional benefits in accordance with the purpose of the Act.
19. We expand below.

Relevance of viability and practicality to identification of "reasonable" consent conditions under the RMA

20. In terms of the relevance of "viability" to consideration of applications under the RMA (meaning, in this context, "financial viability"), the High Court's decision in *NZ Rail v Marlborough District Council* is longstanding authority

for the proposition that while economic well-being generally is a relevant consideration in terms of Part 2 of the Act, the “*narrower consideration of financial viability [involving] the consideration of the profitability or otherwise of a venture and the means by which it is to be accomplished*” is not.¹¹ In that case, the appellant had argued that the first instance decision-maker should have considered that the cost of the development was likely to be significantly greater than estimated, and therefore may be financially non-viable. The Court disagreed.

21. This means that the decision-maker's role is not to interrogate the financial viability of a project. A later division of the High Court has stated that “*decisions on the cost and economic viability, or profitability, of a project must sensibly be regarded as decisions for the promoter of the project. Otherwise, the Environment Court will be drawn into making, or at least second-guessing, business decisions. That is surely not its task.*”¹²
22. While this principle is well-established, the position is more nuanced in relation to the identification of appropriate conditions of consent. Among other things, the *Newbury Principles* require that:
 - (a) Conditions of consent must fairly and reasonably arise out of the subject matter of the consent.¹³
 - (b) A condition which frustrates the exercise of the consent would not be fair and reasonable and would therefore be unlawful.¹⁴
23. In *Kiwi Property Management Limited v Hamilton City Council*¹⁵ the Court stated that a consent is not negated or rendered impracticable merely because it requires the carrying out of works which might be expensive. However, a condition which takes away a substantial part of the benefit of the consent could be invalid: this is a matter of fact and degree.¹⁶ In *S and M*

¹¹ *New Zealand Rail Limited v Marlborough District Council* [1994] NZRMA 70 (HC) page 22.

¹² *Friends and Community of Ngawha Inc v Minister of Corrections* AP110/02, 20 June 2002 at [20].

¹³ *Newbury District Council v Secretary of State for the Environment* [1981] AC 578; [1980] 1 All ER 731 (HL).

¹⁴ *Ravensdown Growing Media Limited v Southland Regional Council* C194/2000; *Taranaki Regional Council v Willan* W150/96; *Director-General of Conservation v Marlborough District Council* [2004] 3 NZLR 127.

¹⁵ (2003) 98 ELRNZ 249 at [65].

¹⁶ *Kent County Council v Secretary of State for the Environment and Anor* (1976) 33 P & CR 70.

*Property Holdings Limited v Wellington City Council*¹⁷ the Court considered an application for judicial review concerning the Council's rejection of a proposed condition on a development consent which required unreasonably large setbacks. The condition would have removed a substantial part of the benefit of the consent and required a complete redesign of the development. The Court found that the Council had appropriately concluded that a significant restriction of this nature could not be imposed because it would thwart the benefit of the consent.¹⁸

24. In the present case, some section 53 parties have sought significant mining setbacks from the boundaries of the site and significantly larger setbacks from the Mitiwai and Wainui Streams and retained natural inland wetlands. These proposed setbacks would sterilise a large portion of the site from production, giving rise to an extremely significant financial cost to both TIL and the shareholders of Taharoa C through lost production / export revenue.

[REDACTED]

[REDACTED] Such conditions would therefore effectively frustrate the exercise of the consent.

Relevance of viability and practicality under the FTAA

25. While the RMA limits the extent to which economic impacts may be taken into account in respect of conditions, considerations of economic viability and practicality have a much more important role under the FTAA.
26. The legislation was passed in response to concerns that RMA processes are complex and costly and condition requirements are often excessively onerous and complex, hindering the timely delivery of significant

¹⁷ *S and M Property Holdings Limited v Wellington City Council* HC Wellington CP257/01, 7 August 2002.

¹⁸ *Ibid* at [65].

¹⁹

[REDACTED]

infrastructure.²⁰ The FTAA therefore represents a deliberate departure from the standard RMA consenting framework.

27. The purpose of the Act set out in section 3 is to:

facilitate the delivery of infrastructure and development projects with significant regional or national benefits.

28. The feasibility of delivering a project (in terms of its economic viability) and the contribution that a project will make in terms of economic benefits is necessarily a key consideration in terms of this purpose.

29. A decision maker needs to give greatest weight to this purpose when making decisions in accordance with section 85 and clause 17 of Schedule 5 to the Act. The Act also expressly limits the circumstances in which the Panel may decline an application. The Panel *may* decline an approval if the adverse impacts of the project are out of proportion to its national and regional benefits²¹, but it cannot determine that an adverse impact meets this threshold solely on the basis that the adverse impact is inconsistent with a provision of a relevant statutory or planning instrument.²² In *Maitahi Village*, the Expert Panel observed that:²³

“...even if the factors in s 85(3) are met, the Panel can still grant the approval. In other words, even if the adverse impacts are significantly out of proportion to the anticipated benefits, it appears that the Panel still has a discretion to allow the approval(s) to proceed. That discretion will necessarily be informed by the purposes of the Act.

Secondly, and following on from that first point, the mere fact that a project generates or may generate adverse impacts, does not mean it is not allowed to proceed. In other words, a degree of adverse impact is “hard baked” into the legislative regime. This is also reflected in s 85(4).”

30. Accordingly, the Act contemplates that a greater degree of adverse impacts may be acceptable than under the RMA.

²⁰ Supplementary Analysis Report: Fast-track Approvals Bill dated 29 February 2024 at pg 10 - 11; Introduction of Fast-track Approvals Bill as reported from the Environment Committee dated 18 October 2024; Press release by Hon Chris Bishop and Hon Shane Jones ‘One-stop shop fast-track bill passes third reading December’ dated 17 December 2024.

²¹ Section 85(3).

²² Section 85(4).

²³ Decision of the Expert Panel in *Maitahi Village*, 18 September 2025 at [94]-[95].

31. While the Panel has the same broad discretion²⁴, and the same principles apply regarding the lawfulness of conditions, the purpose and permissible outcomes anticipated by the FTAA are significantly different to the RMA, and decision-making about conditions needs to be consistent with this purpose
32. In addition, section 83 of the Act (unlike the RMA) expressly requires that when exercising a discretion to set a condition, the Panel must not set a condition that is “more onerous than necessary to address the reason for which it is set.”
33. The term “*necessary to address the reason for which [the condition] is set*” is not defined in the Act. While superficially simple, in practice what conditions are “necessary” may be the subject of debate. In this regard:
 - (a) The decision-maker will need to assess the effect that the condition is intended to address, in the manner contemplated by the standard RMA decision-making framework. In most cases, this assessment will be at least partly subjective (i.e. the Panel will need to decide, informed by the evidence and relevant planning framework, what level of effects is acceptable); and
 - (b) In accordance with section 10(1) of the Legislation Act 2019, the meaning of legislation must be ascertained from its text and in the light of its purpose and its context. The assessment of what is “necessary” therefore also needs to be informed by consideration of the Act’s purpose and the scheme of the Act which (as observed by the Panel in *Maitahi Village*) “hard bakes” a degree of adverse impact into the legislative regime. Reducing adverse effects to zero is neither contemplated or required.
 - (c) Viability and practicality are matters that are relevant in this context: if it is not viable or practicable for an applicant to implement a proposed condition, then the approval is unlikely to “facilitate the delivery of infrastructure” and its associated national and regional benefits in accordance with the purpose of the Act.

²⁴ Clause 18 of Schedule 5 to the Act specifies that when setting conditions on a consent, the provisions of Parts 6, 9, and 10 of the Resource Management Act 1991 that are relevant to setting conditions on a resource consent apply to the panel, subject to all necessary modifications.

34. The upshot of this means that the Panel must take particular care to ensure that conditions are proportionate. Excessively complex or restrictive consent conditions, particularly those that significantly undermine the delivery of economic or other benefits, or which excessively burden an applicant for little / no environmental benefit, are unlikely to be consistent with section 83.
35. In the context of TIL's existing mining operations, TIL's position regarding proposed new conditions has been informed by empirical evidence of long-standing operations and the effectiveness of current consent conditions. In terms of the particular conditions identified at paragraph 1(a) above, as noted, TIL's application includes technical evidence which demonstrates that the consent conditions proposed are appropriate to manage potential adverse effects to an acceptable level and that the more onerous conditions proposed by section 53 parties and (in some cases) imposed by the IHP, would be unnecessary. In summary:

Regarding the proposed increased setbacks from the boundaries of the site, from the Mitiwai and Wainui Streams, and from retained natural inland wetlands:

- (a) Appropriate effects management can be achieved through mitigation measures, including:
 - (i) The suite of dust management conditions proposed to apply to AUTH142035.01.01 and in the Dust Management Chapter of the EMP;
 - (ii) Monitoring of flows and water levels in the Mitiwai Stream and retained wetlands and augmentation of them if required, as per the proposed conditions to apply to AUTH142035.14.01 and AUTH142035.64.01; and
 - (iii) The requirement for the Site Rehabilitation Plan to set out a timeline for interim rehabilitation of areas within 200m of the Consent Area boundary once mining has been completed (see Schedule 1 General Condition 20(b)).
- (b) There is also no effects-based justification for a buffer greater than 30m applying to the Mitiwai and Wainui streams or retained natural

inland wetlands. The mine has been operating for approximately 53 years and there has been no discernible effect on these water bodies which suggests that a greater setback is required.

- (c) TIL's expert ecologists, Mr Dean and Ms Mueller, have provided evidence to demonstrate that a 30m planted buffer is sufficient to manage the adverse effects of mining operations on freshwater bodies and wetlands (as set out in TIL's response to the Panel's RFIs dated 23 July 2026). They restated this position in the JWS on wetland ecology. While ecologists for other parties have suggested that a larger buffer and/or additional greater setback is required, no evidence has been to demonstrate that such a setback is either necessary or appropriate.
- (d) In contrast, additional setbacks would materially constrain mining activities, threaten the economic viability of the mine, and reduce the ability of the Mine to generate regional and national benefits. The impact is set out in detail in TIL's response to RFI 11 in **Appendix A** and the following application documents:
 - (i) Pages 1 – 3 of Appendix G – Key Issues Table to the Substantive Application Report;
 - (ii) Pages 29 – 31 of the Memorandum of Counsel dated 22 June 2026 in response to comments on the Application;
 - (iii) Section 2.3 of Attachment B – Planning Response to Memorandum of Counsel dated 22 June 2026; and
 - (iv) Pages 4 – 6 of Attachment 1 to Memorandum of Counsel dated 17 July 2026 – response to the Panel's RFI 3 dated 23 July 2026.

Regarding the size of the mesh on the fish screen at TIL's water take system in the Wainui Dam reservoir:

- (e) The current system has proven effective in supporting aquatic life while maintaining functional integrity. The Freshwater Ecology Assessment prepared by SLR Consulting and feedback during consultation indicate that fish numbers have increased significantly

since TIL took over the Mine in 2017. Replacing the existing screens with finer mesh is also not practical:²⁵ retrofitting finer mesh screens would require a complete redesign of the intake structure with a rearranged pipe network, which would require operations to cease while this work was completed. In addition, the finer the screen the more it gets blocked by weeds and other debris which compromises the reliability of the water intake pump and overall system performance. If finer screens were mandated, divers would need to be permanently engaged to remove weeds - this is neither realistic, sustainable, or practical. 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.

36. In summary, therefore:

- (a) TIL has proposed conditions of consent which are appropriate to manage adverse effects to an acceptable (and low) level. The more onerous conditions sought by some parties are unnecessary for this reason alone.
- (a) Even if a greater level of adverse impact was anticipated by the application and proposed conditions (which is not the case):
 - (i) All decision-making, including in relation to appropriate conditions of consent, should be consistent with the purpose of the FTAA, which is to facilitate the delivery of infrastructure and development projects with significant regional or national benefits.
 - (ii) The specific direction to ensure that conditions imposed are not “more onerous than necessary” necessarily requires a subjective assessment of what is “necessary”. The standard required needs to be informed by consideration of the FTAA’s purpose.
 - (iii) The effect of this is that the economic and practical implications of proposed conditions are relevant when determining what

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See Key Issues Table, Appendix G to the Application.

level of adverse effect is acceptable, and accordingly, whether a proposed condition is “necessary.”

- (iv) Conditions which significantly undermine the delivery of economic or other benefits for little, or no environmental benefit cannot be said to be “necessary” in terms of the purpose of the Act and must therefore be considered to be “more onerous than necessary, and therefore precluded by section 83.

DOC EXPERTS’ APPROACH TO CONFERENCING ON WETLAND ECOLOGY

37. The JWS on wetland ecology includes several annexures setting out an alternative condition framework for water augmentation, planted buffers and the wetland offset and compensation site. Paragraph 16 of the JWS indicates that these conditions were proposed by Ms Fleur Maseyk, on behalf of DOC.
38. These conditions were not shared with TIL prior to expert conferencing. It is also evident from the JWS that these conditions were prepared and introduced without any meaningful engagement with the amended and/or new conditions proposed by TIL as part of its interim response to the RFIs relating to wetland ecology. This is evident because the alternative suite of conditions put forward by Ms Maseyk largely replicates what is already provided for in the amended and/or new conditions proposed as part of TIL’s interim response to RFI 4. This is set out in more detail in TIL’s final response to RFI 4, which is included in **Appendix A** to this memorandum.
39. TIL is disappointed with DOC’s decision to table an entirely new suite of proposed conditions at expert conferencing, without providing any opportunity for TIL, its experts or other parties to review, consider and provide comment on them ahead of time (unlike TIL’s proposed conditions, which were provided in advance of conferencing), and which did not engage with TIL’s proposed conditions. It cannot be said that such an approach is in the interest of collaboration or efficiency.
40. It is, unfortunately, another example in what has become a repeating pattern with respect to DOC’s engagement with TIL’s application. For example, DOC took a similar approach to its s51 report, where the majority of matters raised

had not been previously canvassed with TIL despite TIL's continued efforts to engage with DOC on draft wildlife approval conditions, and DOC's previous advice to TIL that it had only minor residual comments on TIL's proposed Wildlife Authority conditions.

41. Notwithstanding the merits of the conditions suggested by DOC's experts at conferencing, which TIL does not agree with in many cases (for the reasons set out in **Appendix A**), in refusing to engage with or comment on TIL's amendments to the existing set of proposed conditions, DOC's experts have ultimately reduced the productivity and usefulness of the conferencing on wetland ecology.
42. We note that paragraph 14 of the JWS on wetland ecology states that "*not all matters were able to be addressed within the conferencing timeframe*". As is evident in subsequent sections of the JWS, the experts were not able to conference on all of the matters which the Panel directed they were to conference on – namely the points set out in paragraphs 40 and 44 of the previous JWS on ecology dated 6-7 July 2026. This is likely due to DOC putting forward an entirely new suite of conditions, requiring the experts to spend time discussing previously unseen wording, time which could have been more efficiently spent working through the points covered in RFI 4 and the proposed amendments to conditions TIL had presented in its interim response.
43. Such an approach runs directly counter to the view expressed by DOC in its feedback on TIL's proposed approach to responding to the Panel's Further RFI,²⁶ in which DOC stated that "*enabling DOC's experts an opportunity to freely discuss reasoning and various options with TIL's (and other) experts, will provide solutions or narrow issues in a more efficient way than internal TIL discussions with a feedback loop.*"²⁷ TIL fails to see how DOC's approach has provided a more efficient way of narrowing or solving issues. Instead, DOC has introduced a new suite of conditions that have not been agreed by all experts and are substantively incomplete.
44. Despite the above, to assist the Panel, TIL has carefully reviewed the alternative condition framework put forward by DOC and considered whether

²⁶ As set out in the Memorandum of Counsel on behalf of TIL dated 14 August 2026.

²⁷ Email from Amy Robinson to the Expert Panel dated 18 August 2026.

there are any aspects which should be translated into its proposed conditions. This is particularly the case in respect of those elements of DOC's conditions which all ecologists agreed were appropriate and/or necessary.

45. The updated set of conditions submitted as part of TIL's Final RFI Response (which are provided as **Appendix C** to this memorandum) includes a number of amendments to conditions that respond directly to the matters raised in the JWS on wetland ecology. The rationale for these changes (including why some aspects have not been adopted) is set out in TIL's final response to RFI 4 in **Appendix A**.

CONCLUSION

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

DATED this 1st day of October 2026



Stephanie de Groot / Tom Atkins
Counsel for Taharoa Ironsands Limited