Appendix F 2024 RMA Hearing Panel Decision

IN THE MATTER OF	The Resource Management Act 1991
AND	
IN THE MATTER OF	Applications (App142035) by Taharoa Ironsands Limited for resource consents to authorise continued operation of existing iron sands mining activity and associated ship loading activities at Tahaaroa Road, Tahaaroa and location NZTM 1745860mE, 5773436mN.
BETWEEN	**TAHAROA IRONSANDS LIMITED** Applicant
AND	**WAIKATO REGIONAL COUNCIL**

JOINT REPORT AND DECISION OF HEARING COMMISSIONERS

21 November 2024

It is the decision of the Waikato Regional Council, pursuant to sections 104 and 104B, and subject to Part 2 of the Resource Management Act 1991, to GRANT the applications by Taharoa Ironsands Limited for resource Consents (APP142035) to authorise continuation of existing iron sands mining activity and associated ship loading activities of iron sand at Tahaaroa Road, Tahaaroa and location NZTM 1745660mE, 5773436mN.

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1 Proposal Overview, Location, and Existing Character

1.1 Introduction

1. This is a joint report and decision of independent Hearing Commissioners Barbara Mead (Chair), Juliane Chetham and Dr Ngaire Phillips[1]. We were delegated powers and functions by the Waikato Regional Council (WRC) to jointly hear and decide applications by Taharoa Ironsands Limited for resource consents to authorise the continuation of existing iron sands mining activity and associated ship loading activities of iron sand at Tahaaroa Road, Tahaaroa and location NZTM 1745660mE, 5773436mN.

1.2 Proposed Activity

2. The Applicant operates an iron sand mine at Tahaaroa and associated ship loading activities. The mine and ship loading was established in the early 1970s by a prior consent holder.[2] The scale of the mining operation has expanded since that time both in terms of annual volume and with the addition of adjoining sites beyond the Application site. The present intention is to increase the export volume from 3 million tonnes per annum to 5, million tonnes per annum within the next five years. The mine operates 24 hours a day 7 days a week. The current export volume of 3 million tonnes requires extraction of 45,000 tonnes per day being just under 16.5 million tonnes of sand per annum.[3]

3. The mining process (whether dry or wet mining) generally involves[4]:
   - Vegetation, topsoil and overburden removal;
   - Extraction and processing of ironsand;
   - Mixing of iron sand into a slurry and pumping of slurry through a seabed pipeline to a bulk carrier ship moored at Port of Tahaaroa;

[1] Under section 34A of the Resource Management Act 1991
[2] S42A report, p12.
[3] AEE, Section 3.1.4
[4] AEE, Section 1.1

- Ship-loading and dewatering; and
- Tailings disposal and rehabilitation of mined areas.

4. The Applicant seeks replacement consents in respect of the Central and Southern Blocks (**Site**)**,** to continue mining on the Central Block with existing techniques and to rework tailings on both blocks and continue mining on both blocks as new technologies enable this to occur.[5]

5. The Central Block was dry mined from 2017 to late 2023 when the block was transitioned back to wet mining. The Southern block was wet mined prior to 2017. Both wet and dry mining are carried out under the Expired Consents.[6]

6. The Applicant has provided within the AEE a summary of the processing of iron sand mining operations as they are currently undertaken on the Site (dry mining, and prior to 2017 and since mid 2023 wet mining, processing and ship loading). There is no description as to future technologies that may enable tailings to be reworked or mining to be undertaken differently.[7] We adopt the description of mining operations as set out in the AEE for the purposes of this Application and for defining the scope of any consents granted.

7. The operational activities also take place in the Coastal Marine Area (CMA)[8] to enable ship loading of iron sand product. A mooring buoy and export pipelines run from the shore facility to the mooring buoy which holds the export slurry until it may be loaded onto a ship.

8. The operations rely on water taken from the Wainui Stream that flows from Lake Tahaaroa. This water take is to supply a reservoir for the purpose of loading iron sand on to ships, for mining and concentration purposes and in the nursery to support remediation work.[9]

[5] AEE, Section 2.3.1
[6] Further Statement of Evidence of Grant Eccles dated 28 March 2024 at [31], [34] to [44]
[7] AEE, Section 3.
[8] AEE, p 5
[9] AEE, Section 5.5 and Oral Evidence of Mr Eccles received at hearing on 7 August 2024.

9. The Application proposes to mitigate adverse effects of the proposed activities by implementing a series of management plans within 3 years of the commencement of consent that build on conditions of consent.[10]

1.3 Location and Existing Character

10. The mine is located on the West Coast of the North Island, approximately 8 km south of Kawhia Harbour and 45 km to the northwest of Te Kuiti. The mine has been in operation since 1972 (owned by New Zealand Steel until 2017) and the mine covers an area of 1,300 hectares. The Applicant holds a mining lease for this Site pursuant to the Crown Minerals Act 1991.[11]

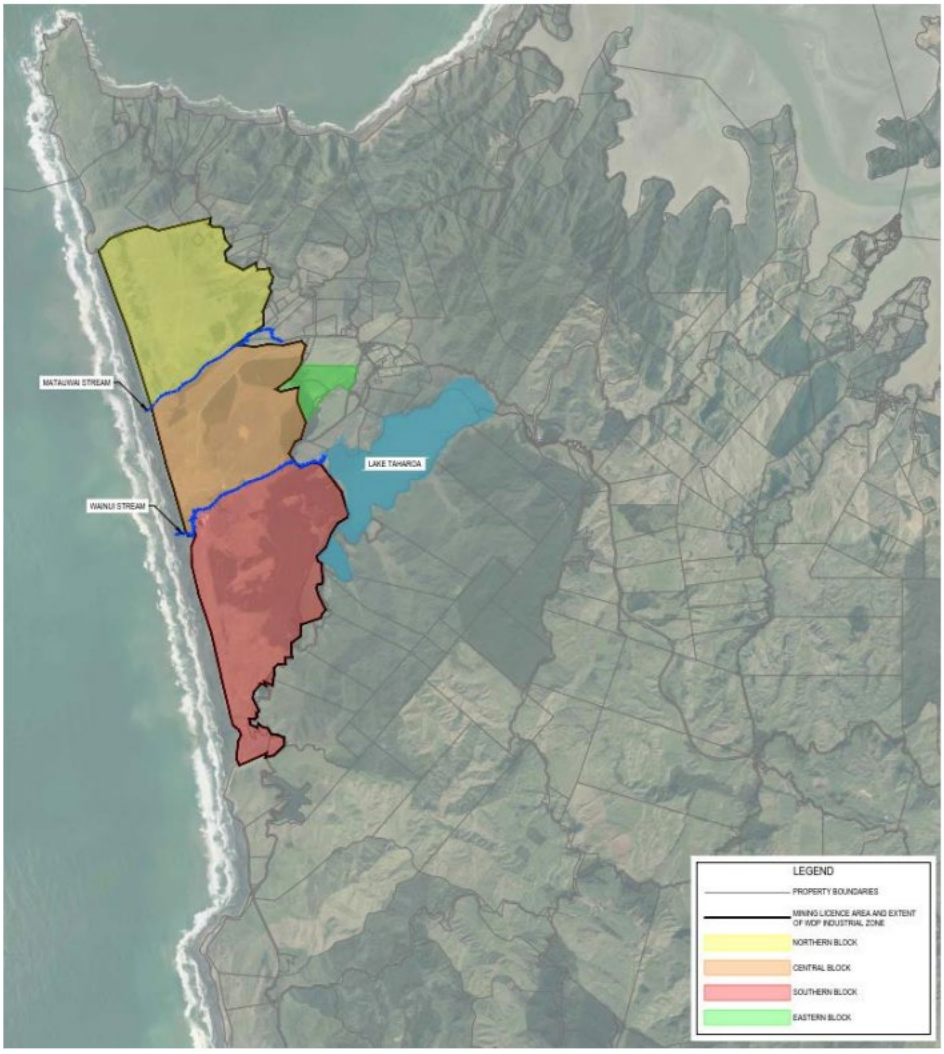

Figure 2.2: Location of current mining operations at Tahaaroa Mine, AEE, July 2020, p 7

[10] AEE, Sections 6.4.2, 6.4.4
[11] AEE, Section 2.2

11. The Application relates to the Central and Southern Blocks (**Site**) located in the area of land known as Tahaaroa C Block, south of the Mitiwai Stream and includes part of the coastal marine area known as Tahaaroa Harbour. The Central Block is between the Wainui and Mitiwai Streams and the Southern Block is south of Wainui Stream and adjoins Lake Tahaaroa.[12]

12. The Wainui Stream is connected to Lake Tahaaroa which is interconnected with two smaller lakes, Lake Numiti and Lake Rotoroa. All three lakes drain via the Wainui Stream into the sea. The Wainui Stream is classified as a Significant Indigenous Fisheries and Fish Habitat class watercourse under the Waikato Regional Plan (**WRP**)**.** Lake Tahaaroa is a freshwater lake, approximately 224 ha in area including an extensive wetland area and a catchment of approximately 35.5 km^2.[13] The characteristics of Lake Tahaaroa are set out in the s42A report at section 104 and the Panel adopts those.

13. The ship loading infrastructure, including the buoy and the surrounding waters, are legally defined as the Port of Tahaaroa. The location of the mooring buoy and end of the pipeline is NZTM 1745860mE, 5773436mN. The buoy is located 3 km off the coastline and the pipeline runs from the Southern Block to the buoy.[14]

14. The deposit of iron sand at the site is a reserve of 300 million tonnes (the largest deposit in New Zealand). The sand contains predominantly titanomagnetite and lime-soda feldspars. Over 40 million tonnes have been exported from 1970 to 2001.[15]

15. In the last 10 to 15 years (about 2009 onwards) mining has principally occurred in the Central Block of the Site. The Southern Block has been mined but mining is completed for now (unless new mining techniques enable tailings to be reworked or further mining to take place). It is now principally used for tailings cells, water

[12] AEE, Sections 2.3
[13] AEE, Section 3.1.7
[14] AEE, Section 3.1.5
[15] AEE, Section 2.1

management and stockpiling.[16]

16. The Site is owned by a Māori Incorporation known as 'Taharoa Block C'. The shareholders belong to Ngāti Mahuta hapū.[17]

17. Tahaaroa Village is located approximately 800m east of the site.[18] Between the site and Tahaaroa Village are two further mine sites operated by the Applicant and which are reliant upon the infrastructure and ship loading activities sought to be consented in this application, namely the Te Mania Extension and the Eastern Block.[19]

Figure 2: Location of the Te Mania Extension, s42A Report, December 2023 p 13.

18. The Northern Block has not been mined however the Applicant has a current application to mine a portion of the Northern Block (**Pit 1**). A decision on this application is yet to be made.[20]

19. Tahaaroa Village existed but was isolated prior to 1968, gaining road access when

[16] AEE, Sections 2.3.1 and 2.3.1.1
[17] AEE, Section 2.1.2
[18] S42A Report, December 2023, para 10.3, p 40.
[19] Oral Evidence of Grant Eccles given at hearing 7 August 2024.
[20] Oral Evidence of Mr Eccles given at hearing, 7 August 2024

the mining operation commenced. Presently the Applicant owns 65 houses on leased iwi owned land within the village which are provided to mine employees. The majority of mine employees are Ngāti Mahuta. The village also includes a community hall, Kōhanga Reo pre-school, Te Kura o Tahaaroa primary school, the Kahu Store as well as fire brigade and ambulance facilities.[21] The water and waste infrastructure and refuse collection for the village is provided for by the mine. Aaruka Marae, one of two marae in this area, is located within the village.[22]

20. The balance of surrounding land to the site is almost exclusively Māori Land or held by Māori with the area never having been alienated from Māori.[23]

21. The hapū with mana whenua over the Tahaaroa area is Ngāti Mahuta. The descendants of Ngāti Mahuta arrived in the Tainui canoe and made first landfall at Tahaaroa before reaching the Kāwhia Harbour.[24] There is no dispute between the submitters that Ngāti Mahuta has mana whenua over the Site.[25] There is some dispute as to who within Ngāti Mahuta represents the position of Ngāti Mahuta in respect of this Application.[26]

22. There are no other relevant permitted activities or consented activities being undertaken in the vicinity, except for the established land uses on surrounding sites including the Eastern Block and Te Mania Extension (which are generally located between the Consent Application Area and Tahaaroa Village).[27]

2 Report Structure

23. Our report is structured to provide a decision with respect to the resource consent Application.

24. Resource consent applications require a decision to be made, either granting

[21] AEE, Section 2.1.3
[22] Summary Evidence of Hoturoa Barclay-Kerr 5 August 2024, at [5] to [9]
[23] AEE, p 12 and Summary Evidence of Hoturoa Barclay-Kerr 5 August 2024, at [5] to [9]
[24] AEE p 11.
[25] Statement of Evidence of Taituwha King, 17 June 2024, at [3.26]
[26] Submission of Te Ruunanga O Ngaati Mahuta ki te Hauaauru Charitable Trust, 6 August 2023.
[27] S42A Report, Section 10.3

consent (with or without conditions), or declining consent. Statutorily, we must consider certain matters with respect to the resource consent application, however at the outside we note that Section 113(3) of the RMA states:

A decision prepared under subsection (1) may, instead of repeating material, cross-refer to all or a part of the assessment of environmental effects provided by the applicant concerned:

any report prepared under section 41C, 42A, or 92; or adopt all or a part of the assessment or report, and cross-refer to the material accordingly.

25. We intend to adopt the approach enabled by Section 113(3) in this decision.

26. Section 113(1) also identifies the matters that we must include in our decision.

27. Where we have generally agreed with the Applicant, s42A writer, submitters or technical expert evidence, we will cross reference where possible to avoid unnecessary duplication.

3 Resource Consents, Activity Status & Bundling

3.1 Previous Consents

28. The Applicant has applied for replacement consents to continue the operation of wet and dry mining and associated ship loading activity. The existing consents expired 31 December 2020 (**Expired Consents**) however in accordance with s124(2) of the RMA, the WRC exercised its discretion to enable the Applicant to continue its operations until final resolution of this Application.

29. The Applicant also relies on Consent 100909 for its continued operation which expires 31 December 2024. Consent 100909 authorises the discharge of process water into the ground as a result of iron sand mining operations. The consent contains a condition that directs that all process water will be directed into settling ponds/soakage areas. However the Applicant has not applied for a replacement of Consent 100909.

3.2 Resource Consents applied for

30. The Application was lodged in July 2020 and sought consent for the Northern, Central and Southern Blocks.[28] However subsequently the Applicant varied the Application to withdraw the Northern Block (Part B of the Application) confirming the Northern Block had not been mined and authorisation to mine this block was not sought as part of this application.[29]

31. The Central and Southern Blocks contain the main infrastructure, including processing facilities, water take infrastructure and ship loading pipeline that support the entire mine (including the Te Mania Extension Block and Eastern Block adjoining the Central and Southern).[30] Mining has ceased in the Southern Block but continues in the Central Block and the Applicant intends to rework tailings on both blocks as new technologies make further extraction feasible. No evidence has been received in respect of new technologies and therefore no assessment of effects of new technologies has been undertaken.

32. The Applicant also seeks to carry out wet mining in place of dry mining on these blocks. Wet mining was previously undertaken on both blocks until 2017 when the Applicant transitioned to dry mining. The Applicant transitioned in part to wet mining in mid to late 2023 in the Central Block.

33. In December 2023 TIL applied for resource consent to mine within the Northern Block (**Pit 1 Application**). The Pit 1 Application was placed on hold until April 2024 as the hearing for this Application was previously set down for February 2024. Processing has recommenced for the Pit 1 Application however the Pit 1 Application has not yet been determined. The Pit 1 Application site will rely on the processing and ship loading infrastructure sought to be consented under this Application. This Application does not provide for the Pit 1 Application site presently and a variation

[28] AEE, Section 1.1
[29] S42A Report, Section 3.1
[30] Applicant, Interim Legal Submissions, 28 March 2024 at [8]

to these consents with an assessment of effects will be required.[31]

34. In addition to the Central and Southern Blocks, in 2018 the Applicant was granted consents to mine the Eastern Block, an area of land (44 ha) situated adjacent to the Central Block on Taharoa C Block. Mining of the Eastern Block has nearly finished and the Applicant intends to remediate the land in accordance with consent requirements.[32]

35. In 2022 the Applicant was granted consent to mine the Te Mania Block (Te Mania Extension), adjacent to the Central Block and to the North of the Eastern Block. Mining will commence mid to late 2024.[33]

36. Both the Eastern Block and Te Mania Block rely on the water take, processing infrastructure, ship loading infrastructure and nursery located in the Central and Southern blocks and Coastal Marine Area. This Application has taken into account the water take and discharge volumes of the Central, Southern, Te Mania Extension and Eastern Block water take for processing, water take for ship loading and water take for nursery water requirements and associated discharges.[34]

37. On 23 May 2023 the Applicant applied for an additional resource consent under Regulation 45D(3) of the National Environmental Standard for Fresh Water (**NES FW**) to undertake earthworks, land disturbance and vegetative clearance for the purpose of the extraction of minerals and ancillary activities within 100m of a natural inland wetland (**NES FW Application**). The NES FW Application is not before us. The existing application AUTH142035.01.01 within this Application is for activities that are subject to the NES FW however the Applicant has proposed a condition that requires a hydrological report to be provided to Council prior to mining (wet or dry) within 100m of a wetland on the basis that if a consent is required under the NES FW mining will not take place.

[31] TIL Interim Legal Submissions, 28 March 2024 at [8(e)] and Oral evidence of Mr Eccles given at hearing, 7 August 2024.
[32] Applicant, Interim Legal Submissions, 28 March 2024 at [9(b)]
[33] Applicant, Interim Legal Submissins, 28 March 2024 at [8(d)]
[34] Oral Evidence of Grant Eccles given at hearing, 7 August 2024

38. The Application before us then is for mining and activities upon the Central and Southern Blocks and to enable the supporting processing and ship loading infrastructure, water take and discharge and ship loading facilities to be utilized by the Central, Southern, Eastern and Te Mania Extension Blocks.

39. In addition to the withdrawal of the Northern Block the Applicant has varied its Application to amalgamate the 18 consents sought, reducing the number to 11 consents, as follows:

a) AUTH142035.01.01: Undertake iron sand mining operations and associated land disturbance activities including construction of dredge ponds, access roads, iron sand stockpiles and ancillary buildings.

b) AUTH142035.02.01: Dam and divert the Wainui Stream for the purpose of creating a water supply reservoir for iron sand mining operations.

c) AUTH142035.03.01: Occupy the bed of the Wainui Stream via a rock weir and the associated diversion of water through a fish pass channel located adjacent to the Wainui Stream.

d) Amalgamated AUTH142035.04.01 and AUTH142035.05.01: Take up to 102,200m^3 (being an amalgamated 27,200m^3 of water per day as a 28 day rolling average from a water supply reservoir created by the damming of the Wainui Stream, for the purpose of iron sand mining operations and 75,000m^3 of water per day from a water supply reservoir created by the damming of the Wainui Stream, for the purpose of loading iron sand onto ships).

e) AUTH142035.06.01: Discharge up to 2,100m^3 of settled stormwater and washdown water per day into the Wainui Stream from the area containing the administration building, stores compound and workshops.

f) AUTH142035.07.01: Discharge process water into the ground (settling ponds/soakage areas) as a result of iron sand mining operations.

g) AUTH142035.08.01: Discharge mine overburden onto land for the purpose of

rehabilitating mined areas.

h) Amalgamated AUTH142035.09.01 (operate, maintain and replace existing pipeline in the CMA for the purpose of ship loading), AUTH142035.10.01 (to replace/reconstruct, maintain and use existing pipeline No 2 in the CMA at Taharoa, including associated occupation, disturbance and vehicle use and AUTH142035.16.1 (the use and occupation of the CMA at Taharoa by existing pipeline No 1).

i) AUTH142035.11.01: To place and use a mooring buoy and associated structures in the CMA at Taharoa, including future reconstruction/replacement and associated occupation and disturbance.

j) AUTH142035.12.01: To discharge up to 75,000 m^3 per day of ship loading water, including freshwater and fine sediment to water in the CMA at Taharoa during ship loading operations.

k) AUTH142035.13.01: To discharge up to 32,600 m^3 per day of stormwater and process wastewater to water in the CMA at Taharoa.

3.3 Activity Status & Bundling

40. The Applicant and Council are in agreement as to the overall Activity Status and bundling as set out in section 4.4 and 4.5 of the s42A report. The Panel agrees with that assessment and that the consents are treated as bundled:

a) Air Discharge Effects are a permitted activity under Rule 6.1.16.1 of the Waikato Regional Plan (**WRP**).

b) Once bundled the suite of consent applications require assessment as a discretionary activity under the WRP, the Waikato Regional Coastal Plan (**WRCP**) and Proposed Waikato Regional Coastal Plan (**PWRCP**).

c) The proposed mining activities within 100 m of natural inland wetlands also triggers the need for a resource consent as a discretionary activity under the NES-F.

4 Process Before Hearing

4.1 Consultation

41. The Applicant carried out consultation and engagement processes with both Ngāti Mahuta and the Tahaaroa Lake Trustees with respect to the Application.[35] Several submitters consider that consultation has been inadequate and that the groups consulted do not represent the views of mana whenua.[36]

42. The Applicant also consulted the Harbourmaster appointed by Maritime New Zealand and the Department of Conservation.[37]

43. The Applicant reports it also sought the views of those who have lodged claims for Customary Marine Title under the Marine and Coastal Area Act however it did not receive a response.[38]

4.2 Notification and Submissions

44. The Application was limited notified on 24 July 2023 and served on the affected/interested parties including organisations.[39]

45. A total of 13 submissions were received, however four were not accepted by WRC and have subsequently been deemed to form part of the remaining nine submissions.[40] All of the nine submissions received are in opposition to the Application. The submitters were:

    a) Taituwha King and Ngahuia Herangi on behalf of Te Kooraha Marae Trustees.

    b) Roy Wetini and whanau.

    c) Verna Tuteao on behalf of Tukotahi Tuteao Whaanau Trust and Te Ruunanga o Ngāti Mahuta ki to Hauaauru.

[35] AEE, Section 8
[36] xxxxx
[37] AEE, Section 8
[38] AEE, Section 6.2.6.3
[39] S42A report, at p 26
[40] S42A report, Section 8

d) Hilda Kana and Claude Kana Jnr.

e) Ashlee Aspinall on behalf of Te Ruunanga o Ngāti Mahuta ki te Hauaauru Charitable Trust.

f) Shirley Tuteao and Kana Whanau.

g) Department of Conservation.

h) Te Huia Pihopa Trust.

i) John David Keepa Kupa Whānau Trust.

46. On 26 February 2024 Shirley Tuteao and Kana Whānau withdrew their submission. No reason was provided to the Panel for the withdrawal. Any material associated with this submission was not taken into account by the Hearing Panel.

47. In early 2024, the Director of the Department of Conservation indicated an intention to appear at the hearing but due to a lack of resources withdrew its request to be heard. Its submission remained alive.[41] The evidence lodged in support of this submission was not taken into account by the Hearing Panel.

48. The issues raised in the submissions were summarised in the s42A Report.[42] We see no need to repeat this level of detail in this decision. We adopt that summary and address the principal issues in contention in section 7 of this decision report.

49. Seven of the submitters attended the hearing along with a large contingent of interested employees, Taharoa community members and members of Ngāti Mahuta ki te Hauāuru.

4.3 Written Approval

50. The Applicant has not received any written approvals with respect to its Application.[43]

[41] Minute 15, 26 June 2024
[42] S42A Report, December 2023, Section 8.4
[43] S42A Report, Section 5.2

4.4 Site Visit

51. The Hearing Panel undertook a site visit on 12 August 2024. We were accompanied by employees of the Applicant none of whom gave evidence at the hearing or provided evidence during the site visit.

52. We visited a number of areas by vehicle and also viewed the site by helicopter. As with most site visits, it was very useful to see the operation and we thank the staff for their co-operation.

4.5 Commissioners Minutes

53. The Panel has issued 19 Minutes in respect of these proceedings. These have principally been directed to matters of timetabling, evidence and submissions.

4.6 S42A Addendum, Interim Legal Submissions and Further Evidence

54. The s42A Report was produced in December 2023 in anticipation of the hearing taking place in February 2024. Appended to the s42A Report were:

a) WRC Technical Report by Paul Dutton, Senior Scientist, Terrestrial Ecology (Attachment A);

b) WRC Technical Report by Josh Smith, Scientist, Freshwater Ecology (Attachment B);

c) WRC Technical Report by Dr Mafalda Baptista, Senior Scientist, Hydrology (Attachment C);

d) WRC Technical Report by Kaitlin Morrison, Scientist, Wetlands (Attachment D);

e) WRC Technical Report by Dr Michael Townsend, Team Leader Coastal and Marine Science, Coastal Marine Ecology (Attachment E);

f) Copy of Submissions Received (Attachment F)

g) Copy of Notice of Direction and an Abatement Notice (Attachment G);

h) Copy of WRC Compliance Report and Compliance Letter (Attachment H); and

i) Recommended Consent Conditions (Attachment I).

55. The February 2023 hearing date was adjourned to August 2024 as a result of availability of experts, inadequate hearing time available, further evidence being required, interim legal submissions being required to address permitted baseline, cumulative effects of Te Mania Extension and Eastern Block, meaning of existing/ receiving environment and consents required to enable wet mining.[44]

56. Subsequently:

a) The Applicant filed further evidence, evidence in reply and interim legal submissions.

b) Some submitters filed further evidence as to cultural effects in anticipation of a Cultural Impact Assessment which did not eventuate.

c) Council filed interim legal submissions and an addendum s42A report (Addendum s42A Report) dated 19 July 2024.

57. The further evidence filed is set out in the s42A addendum report[45] as are the challenges faced by the Applicant and Council in providing a cultural impact assessment.[46]

5 Expert Conferencing

58. At the invitation of the Panel expert witnesses conferencing took place and Joint Witness statements were filed in respect of:

a) Planning;

b) Air Quality;

c) Coastal Processes and Marine Ecology;

[44] Minute 2, 5 February 2024,
[45] S42A Addendum Report, 19 July 2024, p 3 to 5.
[46] S42A Addendum Report, 19 July 2024, p 5 to 8

d) Environmental Management Plans;

e) Freshwater Ecology;

f) Hydrology and Wetlands; and

g) Terrestrial Ecology.

6 Hearing Overview and Matters in Contention

6.1 Hearing Panel Appointments

59. The hearing Panel comprising independent commissioners Barbara Mead (Chair), Dr Ngaire Phillips and Julianne Chetham were delegated powers and functions by the Waikato Regional Council under Section 34A(1) to hear and determine the Application.

6.2 Hearing Schedule

60. The hearing commenced at 9.30am on 5th of August 2024 and evidence and submissions were heard over five days and took place in Te Awamutu but for one day when the hearing was held at Aaruka Marae in Tahaaroa.

61. On 9 August 2024 the hearing was adjourned to enable the Applicant to circulate draft conditions and lodge its written right of reply which were received on 4 October 2024.

62. The hearing was formally closed on 11 October 2024 and an extension to timeframes for notification of our decision to 22 November 2024 as a result of the scale and complexity of the Application was granted.[47]

6.3 Applicant Appearances

63. We heard from the Applicant and their cooperate and expert witnesses. The Applicant's representative and expert witnesses were:

a) Stephanie de Groot (Legal Counsel)

[47] Minute 19, 11 October 2024.

b) Holly-Marie Rearic (Legal Counsel)

c) Wayne Coffey, Managing Director of Taharoa Ironsands Limited, Chief Executive of Block C, Director of Melrose Private Capital and shareholder of of Tahuroa Ironsands Limited (Corporate)

d) Hoturoa Barclay, Chairman of C Block, owner of Taharoa C Block and shareholder in Taharoa Ironsands Ltd (Corporate)

e) Greg Martin (Operations)

f) Joss Ivory (Senior Environmental Consultant)

g) Dr Brett Beamsley (Plume Dispersion Modelling)

h) Dr Edward Beetham (Coastal Processes)

i) Dr Peter Wilson (Marine Ecology)

j) Cameron Lines (Geotechnical)

k) Jonathan Williamson (Hydrology)

l) Keren Bennett (Freshwater Ecology)

m) Dr Hannah Mueller (Terrestrial Ecology- Fauna)

n) Hamish Dean (Terrestrial Ecology-Wetlands & Vegetation)

o) Dr Andrew Curtis (Air Quality)

p) Jared Pettersson (Environmental Management Plans)

q) Grant Eccles (Planning)

6.4 Submitter Appearances

64. We heard from the following submitters:

a) Verna Tuteao, Averill Tuteao Kiwi, on behalf of Tukotahi Tuteao Whaanau Trust (hereafter referred to as "TTT").

b) Ashley Aspinall, Verna Tuteao and Mahi Newton-King on behalf of Te Rūnanga

o Ngāti Mahuta ki te Hauāuru (hereafter referred to as "TRONMH").

c) Roy Wetini and Teina Malone on behalf of the Roy Wetini Whanau Trust (hereafter referred to as "Wetini Trust").

d) Geneva Adams and Steven King on behalf of the Te Huia Pihopa Trust.

e) Members and supporters of John David Keepa Kupa Whaanau Trust (hereafter referred to as "Keepa Trust"), were assisted by technical evidence and legal submissions. They gave technical evidence or legal submissions on behalf of John David Keepa Kupa Whaanau Trust:

f) Rachel Abraham (Legal Counsel)

g) Gerald Lanning (Legal Counsel)

h) Chris Keenan (Environmental Monitoring: Freshwater Ecology, Hydrology and Wetlands)[48]

i) Nic Conlan (Environmental monitoring: Freshwater Ecology, Hydrology & Wetlands)[49]

j) Taituwha King (Cultural)

k) Amanda Pū, David Keepa, Marree Keepa, Jaimee Tamaki

l) Fleur Passau gave evidence on behalf of the Tahaaroa Lakes Trust along with Ngahuia Herangi.

m) Ngahuia Herangi and Sonny Ruki-Willison , members and supporters of Te Kooraha Marae gave evidence and were assisted by technical evidence given by Taituwha King (cultural) on behalf of Te Kooraha Marae.

[48] Minute 10, 17 May 2024, at [5] to [14]: Panel's determination in respect of Mr Keenan's expertise.
[49] Minute 10, 17 May 2024, at [5] to [14]: Panel's determination in respect of Mr Conlan's expertise.

6.5 Council Appearances

65. We heard Council and their expert witnesses:

a) Anna Mc Conachy (Legal Counsel)

b) Mark Chrisp (Reporting Planner & s42A Report Writer)

c) Kaitlyn Morrison (Wetlands)

d) Paul Dutton (Terrestrial Ecology)

e) Josh Smith (Freshwater)

f) Josh Evans (Contaminated Land & previously WRC Monitoring Officer for the site)

g) Dr Mafalda Baptiste (Hydrology)

66. Also in attendance was Sheryl Roa, Principal Consents Advisor.

67. The main concerns of submitters in opposition included:

a) Management of Indigenous Biodiversity.

b) Adverse Ecological Effects (including flora, fauna, aquatic and marine).

c) Adverse Hydrological Effects (including flooding, groundwater seepage and loss. of useable land and access to freshwater springs).

d) Adverse Air Discharge Effects.

e) Adverse Noise Effects.

f) Adverse Lighting and Vibration Effects.

g) Remediation (including timing, site contours and plans).

h) Sustainability Effects.

i) Effects on native fauna and flora.

j) Consultation and Communication.

k) Consent Area Boundaries, access and setbacks/buffers.

l) Consent Term and Duration.

m) Existing Compliance Issues (discharges to the CMA, flooding and issue of an Abatement Notice).

n) Amendments to the Existing Resource Consent Conditions.

o) Cultural effects (taonga, waahi tapu and disturbance of ancestors).

p) Cultural effects – Consultation.

68. Several submitters agreed that the mine provided employment opportunities for the hapu and community together with infrastructure, waste services and housing in Tahaaroa Village although there were concerns about the accessibility of employment and the quality of services and infrastructure provided in the village.[50]

69. These issues are addressed in more detail in this decision.

7 Principal Issues in Contention (Effects) Panel Findings & s104(1)(a)

70. Section 113(1) of the RMA requires us to identify the principal issues of contention and to state our main findings in relation to those issues. Having considered the application documents, the submissions, the evidence presented to the hearing and the s42A report and addendum s42A Report, we consider that the following are the principal issues:

a) Wet Mining Effects

b) Stormwater/Process Water Effects

c) Water Intake Screen Mesh Size Effects

d) Wainui Stream Residual Flow Rate.

[50] Statement of Evidence, A Aspinall, 26 July 2024, at [79&91]

e) Seepage and Flooding

f) Terrestrial Ecology: Effects on Bats/Pekapeka

g) Terrestrial Ecology: Effects on Avifauna

h) Other Terrestrial Ecology Issues

i) Discharge Plume Monitoring

j) Biosecurity in the Coastal Marine Area

k) Air Discharge – Effects on neighbouring properties

l) Rehabilitation

m) Cultural Matters: Mana Whenua Relationships with the Environment

n) Cultural Matters: Mana Whenua Consultation and Engagement

71. This section sets out our discussion and findings in respect of these issues and effects and our assessment in respect of s104(1)(a). Our consideration under s104(1)(a) excludes any matters we have found as being out of scope.

7.1 Wet Mining Effects

Wet mining near Mitiwai Stream

Applicant

72. Mr Martin noted that "*wet mining has occurred on the Site since the Mine was established*" and "*the wet mining dredge plant was re-established in late 2023 with wet mining currently being undertaken in the Central Block*".[51] Unlike dry mining, wet mining involves the use of a dredge to excavate below the water table and has the potential to result in a lowering of local groundwater levels and reduced spring or baseflow.

73. The Applicant commissioned groundwater modelling to inform the possible dredge depths of wet mining around the North Te Ake Ake Block (northern part of Central

[51] Further statement of evidence, G. Martin, 29 March 2021, para 21

Block). The Applicant commenced wet mining at the end of 2023 in the Te Ake Ake Block. Modelling of wet mining adjacent to Mitiwai Stream (within this Block) indicated that, as the dredge pond moves from the upper to the lower reaches of the stream (i.e. from east to west), the baseflow of the stream could be reduced by more than 90%.[52] The duration of this reduction is not specified. Williamson also noted that "*We would comment that increasing that distance (i.e. moving the pit wall south) would not change the effects on the stream i.e. the groundwater table would still drop below the streambed and induce flow losses of a similar magnitud*e".[53]

74. To address this reduction, Mr Williamson suggested that one option to mitigate the potential loss of stream baseflow would be to supplement stream flow with clean water from the mining operations at a rate equivalent to baseflow loss.[54].

75. In her evidence, Ms Bennett noted that the predicted reduction in baseflows has the potential to remove the connection between the stream and the CMA and has the potential to result in a range of adverse effects on freshwater values, including on instream habitat availability, water quality, fish passage and saltwater intrusion.[55] Ms Bennett noted that "*the addition of supplementary flows as recommended by Mr Williamson would partially address the risk to instream habitat values by augmenting or reinstating minimum flow conditions.*[56]

76. Ms Bennett recommended a range of monitoring and management measures "*to ensure adverse effects on instream habitat quality and values are identified and minimised through management"*.[57] These measures included preliminary baseline monitoring and ongoing monitoring to mitigate effects of the mining (including the proposed flow augmentation), along with post wet mining to determine ongoing or

[52] Evidence in Chief, J Williamson, 23 January 2024, at [64]
[53]Further statement of evidence, J. Williamson, 28 March 2024, Appendix A, Attachment A.
[54] Evidence in Chief, J. Williamson, 23 January 2024 at [65]
[55] Statement of Evidence, K. Bennett, 23 January 2024, para 59
[56] Statement of evidence, K Bennett, Statement of Evidence, 23 January 2024, at [60]
[57] Statement of Evidence, K Bennett, 23 January 2024, at[61]

residual effects.[58] At the hearing, Ms Bennett stated that her assessment wasn't specifically on the basis of wet mining because she was not made aware of the potential effects on the lower Mitiwai Stream until Mr Williamson's modelling report was provided (as part of proposed works for the **Pit 1 Application** to the north). She also stated there had been some ecological work done on the stream, but that had not been available for this Application.

Council

77. At the hearing Mr Smith, for Council, agreed there was a need for information on the ecology of the stream and also on the nature of the water to be used for flow augmentation.

Expert Conferencing

78. The JWS Freshwater Ecology (Part 1) noted, in relation to effects of mining activities near Mitiwai Stream, that "there is the potential for loss of baseflow and associated effects (including loss of mahinga kai values)" and "any supplementation of baseflow may have effects that have not been assessed, included both the quality and quantity aspects of the water source."[59] In addition, the ecological experts in the JWS Wetland and Hydrology agreed that "there is a wetland and tributary system adjacent to the north boundary of the Central block that should be considered as part of the Mitiwai Stream network".[60] It is not clear if this connectivity (and potential effects) was considered in the groundwater modelling undertaken by Mr Williamson. The JWS Freshwater Ecology (Part 2) identified outstanding uncertainty related to wet mining near Mitiwai Stream, specifically the residual flow rate, source of the augmentation water and monitoring for the effects of this augmentation.[61] It was recommended that these be included in the proposed Mitiwai Stream Monitoring and Mitigation Plan. We note that the experts were

[58] Statement of Evidence, K Bennett, 23 January 2024, at [61]
[59] JWS Freshwater Ecology (Part 1), at [30] and [31]
[60] JWS Hydrology and Wetlands, at [11]
[61] JWS Freshwater Ecology (Part 2), at [35]

silent as to the appropriateness of obtaining baseline information post-grant of consent.

Submitters

79. Mr Conlan, for the John David Keepa Kupa Whānau Trust, considered that groundwater effects of wet-mining are uncertain in the absence of long-term hydrological data.[62] At the hearing, Mr Conlan commented that, in relation to what the residual flows in Mitiwai Stream should be, that this should be determined by the community given it is a taonga.

80. Mr S King, in his evidence on behalf of the John David Keepa Kupa Whānau Trust, highlighted the cultural significance of the Mitiwai stream and the important role this awa has in supporting cultural practices, as well as providing resources and supporting healthy ecosystems.[63] This was echoed by Ms Malone and several other submitters at the hearing.

81. Mr Keenan, also for the John David Keepa Kupa Whānau Trust, also noted that mining of the ridge above Mitiwai Stream was likely to be impacting on the wetland and tributary of Mitiwai Stream.[64]

Conditions

82. The Applicant proposes, as a chapter of the Environmental Management Plan, a requirement to prepare a Mitiwai Stream Monitoring and Mitigation Plan.[65] This plan would include the process to undertake baseline monitoring of Mitiwai Stream before wet-mining operations are undertaken. The purpose of monitoring is "*to establish the baseline flow* rate *and water quality prior to wet-mining to inform the augmentation of the flow (if required)*." It is not clear whether this baseline monitoring is to include an assessment of ecological or cultural values of the stream.

[62] JWS Hydrology and Wetland Ecology, 28 May 2024, at [34]
[63] Statement of Evidence of Taituwha King, 17 June 2024
[64] Further statement of evidence, C Keenan, 22 May 2024, at [12.2]
[65] Applicant Proposed conditions, Schedule 1: General Conditions, 17(c), version dated 4 October 2024

Panel Findings & Assessment

83. The Panel finds:

a) There is a potentially significant adverse effect upon the Mitiwai Stream (as the baseflow may be reduced by more than 90%).

b) There is an absence in the Application of any baseline information on the current ecological condition/values or on cultural values of Mitiwai Stream.

c) Augmentation of the baseflow with clean water may mitigate the adverse effects on baseflow. However, there is an absence of information on the effects of the proposed baseflow reduction and no evidence to assess the effectiveness of the proposed flow augmentation procedure with respect to hydrological, ecological and cultural effect.

d) What we do know, based on the evidence of Mr Williamson and Ms Bennett, is that there will be a 90% reduction and that this is a significant and ecologically relevant reduction in baseflow. We have no details of what is involved with the augmentation or whether it will work and therefore we therefore do not consider this can be considered as adequate mitigation.

Wet mining effects on other waterbodies

Applicant

84. The Applicant proposes to undertake wet mining in other parts of the Site[66], with the potential for dewatering of other surface water bodies, including wetlands in the Southern Block and adjacent to Wainui Stream.[67] Mr Williamson noted that infrastructure constraints would prevent wet mining close to Wainui Stream and the requirement for maintenance of minimum flows would "*provide protection from stream depletion effects on the Wainui Stream*".[68] Ms Bennett concurred with this conclusion, also noting the presence of the Tahaaroa Lakes as a replenishing water

[66] Statement of Evidence, G. Martin, 23 January 2024, at [43]
[67] Statement of Evidence, J. Williamson, 23 January 2024, para 17
[68] Evidence In Chief, J Williamson, 23 January 2024, at [17]

source for the stream.[69]

85. Mining within 100m of a natural wetland is a discretionary activity under the NES-Freshwater 2020 **(NES F**)**.** Ms Bennett noted "*wet mining outside of this 100m offset distance could potentially result in draining or dewatering of the smaller, isolated wetlands, such as those present in the Southern Block*".[70] Mr Williamson noted that Lake Piopio and Lake Rototapu adjacent to the Southern Block are perched lakes and thus not maintained by groundwater.[71] Consequently, the fringing wetlands of these lakes would likely be maintained despite dry or wet mining between 30 and 100m of these wetlands. However, Mr Williamson also stated that, as a precaution, monitoring of groundwater levels should be undertaken in these areas to confirm that is the case. By contrast, Mr Williamson noted that the remaining wetlands in the Southern Block are maintained by a combination of groundwater, rainfall and surface water inputs and recommended that a hydrogeological assessment be undertaken in those areas.[72] Further, Mr Williamson agreed that augmentation of flows may be required in other locations where wet mining is proposed.

86. If mining is required to occur within 100m of a wetland, the Applicant proposes to undertake a hydrogeological assessment prior to mining to identify and mitigate potential effects. Mr Dean was of the view that this approach would ensure that the location of the mining does not impact the wetland hydrology.[73] On questioning by the Panel as to how to define an acceptable level of effect on the hydrological regime of a wetland, Mr Dean stated that it was his view that the purpose of these assessments is to avoid effects on the hydrology of the wetlands. Further, he considered that it was not about putting mitigation in place or defining an acceptable level of change in hydrology.

87. On further questioning from the panel, Mr Dean stated that he considered it unlikely

[69] Further Statement of Evidence, K Bennett, 28 March 2024, at [15]
[70] Further statement of evidence, K Bennett, 28 March 2024, at [19]
[71] Further Rebuttal Statement of Evidence, J Williamson,12 July 2024, at [32(d)(i)]
[72] Further Rebuttal Statement of Evidence, 12 July 2024, J Williamson, at [32(d)(ii)]
[73] Rebuttal Statement of Evidence, H Dean, 6 June 2024, at [14]

that an assessment would be done only on a single wetland, especially in areas where there is a cluster of wetlands (such as in the Southern Block). At the hearing, Mr Williamson stated that a groundwater model for the entire Site would assist in assessing hydraulically linked wetlands. He also stated that he anticipated that a groundwater model would be developed for the Site "*at some point in the near future"*.

Council

88. Ms Morrison (for Council) at the hearing, agreed that potentially linked wetlands should be assessed collectively and should also include those that are off-site, but which could potentially be affected.

Expert Conferencing

89. All experts who contributed to the JWS Hydrology agreed that wetland water levels would need to be monitored where a hydrological assessment has been conducted and WRC have certified that mining can commence in proximity to the wetland.[74]

Submitters

90. Mr Keenan, for the John David Keepa Kupa WhānauTrust, considered that there should be a 100m setback from mining activities for all identified wetlands.[75]

Conditions

91. The Applicant has proposed the following condition in relation to mining within 100m of a wetland[76]:

    a) Mining operations shall not be undertaken within 30m - 100m of a natural inland wetland shown on the certified plan (or plans) required by condition 2(e) of this consent, until a hydro-geological assessment prepared by a suitably qualified and experienced hydro-geologist has been prepared that:

[74] JWS Hydrology and Wetland Ecology, 28 May 2024, at [49]
[75] Further Statement of Evidence, C Keenan, 22 May 2024, at [11.5(b)]
[76] Applicant Proposed Condition 7 of AUTH142035.01.01, version dated 4 October 2024

b) demonstrates that mining and any associated mitigation measures will not result in any partial or total drainage of a natural inland wetland;

c) and has been provided to and certified by WRC.

92. In addition, a condition requiring a hydro-geological assessment for any new wet mining in the Southern Block is also proposed, with the aim being to determine potential adverse effects on surface freshwater bodies.[77]

Panel Findings & Assessment

93. The Panel finds:

a) There is insufficient information before the Panel to determine the actual or potential effects of wet mining activities and potential flow augmentation measures in other parts of the Site.

b) The proposed condition does not require consideration of the hydraulic linkages between wetlands that are likely to be present in some areas of the Site, rather it infers a "wetland by wetland" approach. A "wetland by wetland" approach is not sufficient to determine the hydraulic linkages.

c) An entire Site groundwater model is required as a basis for undertaking further hydrological assessment of effects of any proposed mining (wet or dry) within 100m of a wetland.

d) The proposed condition focuses on partial or complete drainage of a wetland however hydrological effects are a broader set of effects which should be considered.

7.2 Storm water/process water Effects

Applicant

94. The AEE describes the management of stormwater and process water. In summary, in the first instance, excess stormwater and process wastewater is discharged into

[77] Applicant Proposed Condition 8 of AUTH142035.01.01, version dated 4 October 2024

one of the many settling ponds and soakage areas throughout the site. In certain circumstances, where there is no suitable area to provide for discharge on land, up to 32,600 m^3 per day of stormwater and process water can be discharged into the Coastal Marine Area, through the ship loading pipeline, when required. This occurs infrequently. The Applicant has also applied to continue to be able to discharge up to 2,100 m^3 per day of stormwater to Wainui Stream. In his evidence, Mr Martin noted "*TIL does not currently discharge stormwater to the stream but may need to do this as a reserve or emergency option in the future. TIL's existing suite of consents allow this discharge.*"[78]

95. In response to questioning by the Panel on stormwater monitoring, Ms Ivory stated that turbidity monitoring is undertaken in the lower Wainui River, which she understood to be monthly.[79] She also noted that pH and hydrocarbons are also tested for, which she stated was tested internally but had recently changed providers. She was unsure of the exact list of parameters that are tested and noted that the new environmental manager would be better suited to answering these questions.

96. Ms Bennett stated at the hearing that it was her understanding that there isn't a regular stormwater discharge and that it was more likely to be the results of accidental overflows, which she considered might need monitoring.[80] She also stated that, given the short section of stream, that a reduction in dissolved oxygen would only be a problem in Wainui Stream. She was unsure whether heavy metals needed to be measured.

Council

97. The s42A Report noted "*The CMA and Wainui Stream are sensitive environments. Based on the conclusions reached in the AEE and the WRC technical reports, the proposed structures in the CMA and discharges to the CMA and Wainui Stream are*

[78] Statement of Evidence, G Martin, 23 January 2024, at [63]
[79] Oral Evidence, Ms Ivory, August 6, 2024
[80] Oral Evidence, K. Bennett, 7 August 2024

not causing any significant adverse effects."[81] However, Mr Chrisp proposed a condition requiring the Applicant advise WRC, within 48 hours, of any discharge to Wainui Stream, including the estimated volume of stormwater and/or washdown water discharged.

Expert conferencing

98. Experts at the Freshwater Ecology expert conferencing[82] considered the effects of intermittent stormwater discharges into the Wainui Stream may include:

    a) Deterrent effects on fish migration

    b) Changes to colour and/or clarity

    c) Discharges of dissolved heavy metals; and

    d) Oxygen depletion effects.

99. Mr Conlan, for the John David Keepa Kupa Whānau Trust, did not consider the Application adequately addressed these effects, while Ms Bennett noted the Applicant had proposed conditions requiring monitoring where stormwater discharges to the Wainui Stream.

Submitters

100. John David Keepa Kupa Whānau Trust proposed a turbidity trigger value of 1280 mg/L (or equivalent in NTU/FTU) for the stormwater to be discharged (collected from stormwater holding ponds), along with actions in the event of an exceedance.

101. Mana whenua lay submitters also raised concerns in respect of the potential effects of stormwater discharge on taonga species during or after discharge, both in the CMA and in the Wainui Stream which we address elsewhere in section 7 of this report.

[81] S42A Report, Section 12.8
[82] JWS Freshwater Part 1, 30 May 2024

Conditions

102. Proposed conditions 6 and 7 of AUTH142035.13.01 require the measurement of turbidity in stormwater, including the establishment of a trigger level for response (1280 mg/L (or equivalent in NTU/FTU) and associated response measures in the event the trigger level is exceeded. This is consistent with the condition proposed by the John David Keepa Kupa Whānau Trust.

103. In addition, conditions 2 to 4 of AUTH142035.06.01 require measurement of turbidity, pH and other water quality characteristics of Wainui Stream following discharge of stormwater. Any breach of these conditions must be reported to Council within 24 hours and written notification provided within 7 days.

104. The Applicant did not, however, support the Council's proposed amendment regarding a requirement to notify Council within 48 hours of any discharge, noting "*This consent has been retained solely to authorise incidental diffuse discharges that may occur due to (for example) weather events. There is no reliable way to measure and report such diffuse discharges. As such these requirements are impracticable and unnecessar*y."[83]

Panel Findings & Assessment

105. The Panel finds:

a) The Panel did not receive testing evidence as to the degree of suspended sediment or other contaminants in stormwater and process water that may be discharged to the CMA. Evidence was received that it was likely to be similar in composition to the ship loading water discharged at the buoy. We accept that position.

b) On the basis that the stormwater and process water discharge is similar to the ship loading water the discharge is likely to have a potential minor adverse effect as the discharge is temporary and the suspended sediment will likely be

[83] Appendix G, Conditions Table, Applicant's Closing Submissions, 4 October 2024

dispersed by the dynamic coastal environment.

c) There is insufficient baseline information to determine the degree of sediment loading in stormwater or process water. However, in light of the likely temporary nature of the effect in the CMA, we consider the introduction of a trigger value for turbidity of stormwater and process water prior to discharge will address concerns regarding potential adverse effects of stormwater and process water discharged to this receiving environment.

d) With regard to Wainui Stream, we note the significance of this taonga to tangata whenua and also the concerns of experts regarding the sufficiency of information on stormwater effects. We accept the applicant has proposed conditions that address some concerns, nevertheless we consider a broader set of parameters more appropriately addresses potential adverse effects.

e) We do not accept the Applicant's concerns regarding the requirement to report on discharge volume within 48 hours, given the Applicant has proposed conditions that requires reporting within 24 hours in the event of a breach of water quality standards i.e. there is already a requirement to provide information on stormwater discharges. We do not consider providing the additional information an onerous task for the Applicant.

f) We also consider that reporting conditions (monthly and annual) should include the results of stormwater monitoring discharges to the Wainui Stream.

7.3 Water Intake Screen Mesh Size Effects

Applicant

106. Wainui Stream was dammed and diverted in the 1970's to create a water supply reservoir for the iron sand mining operations. Eight water pumps are available to abstract water from the Wainui Stream for use in the concentration and ship loading processes. The pump intakes are enclosed with a mesh screen (mesh size of 10mm) to avoid the uptake of weeds and fish.

107. Ms Bennett noted that potential effects of the proposed mining activities on freshwater values included "*potential effects of the water intake structure on fish, particularly larval and juvenile fish that can be entrained into the intake or impinged on intake screens"*.[84] She acknowledged that the current screens may result in the entrainment of larval and juvenile fish. Ms Bennett noted that "*Council has recommended best practice screen sizing as a condition of consent, and while I support this recommendation, there are practical limitations of such fine screens, particularly where exotic aquatic weed is a feature, as occurs in the Wainui Stream. However, a review of design options to minimise mesh size while maintaining operational efficiencies is recommended*". Ms Bennett also noted that the outcomes of fish sampling indicated a similar range of species in the Wainui Stream above and below the dam.[85] In addition, Ms Bennett reported that Fish QIBI scores for sites downstream of the dam were indicative of 'excellent' habitat quality or connectivity for fish migration.[86] In relation to the ability of juvenile fish (including eels and mullet) to migrate upstream, Ms Bennett assessed the adverse effects of upstream migration as being low to very low, provided that the fish pass is maintained.[87]

108. Mr Martin noted that the Applicant had tried a 6mm mesh screen and found it to be ineffective and unworkable because it was continuously blocked and required daily maintenance, at considerable cost.[88] At the hearing, he stated that "W*hile I appreciate the desire to ensure we operate to best practice, in this particular case it is not practical in my experience*". He noted that if the proposed condition were to be imposed, a redesign of the water intake structure would be required, which could take several years and require substantial modifications to the Wainui Stream.

[84] Statement of Evidence, K Bennett, 23 January 2024, at [12]
[85] Statement of Evidence, K Bennett, 23 January 2024, at [40]
[86] Statement of Evidence, K Bennett, 23 January 2024, at [41]
[87] Statement of Evidence, K Bennett, 23 January 2024, at [42] and [47]
[88] Statement of Evidence, G Martin, 23 January 2024, at [69]

Council

109. Mr Chrisp, on behalf of Council, noted that a mesh size of 1.5mm was required to meet the Waikato Regional Plan (WRP) requirements and proposed a condition that reflected this requirement. In addition, the experts who contributed to the JWS Freshwater Ecology agreed that the water intake structure is not consistent with the WRP requirements on fish screens and approach velocities and that the water intake structure should be upgraded.[89]

110. At the hearing, Mr Smith (for Council) noted that modern fish screens are self-cleaning and that there are also other options that could be considered, for example offline storage rather than pumping directly from the weir to load in the boat, which may mean having smaller fish screens.[90] Ms Bennett also noted that self-cleaning fish screens are available that may be applicable and could be investigated further.

Submitters

111. While there were no submissions that specifically addressed the issue of screen mesh size, Mr Conlan and Mr Keenan (for John David Keepa Kupa Whānau Trust) were signatories to the JWS Freshwater Ecology as described above.

Conditions

112. The Applicant has proposed a consent condition[91] which requires that, for water taken from the reservoir in the Wainui Stream, the intake must be screened with a mesh size not exceeding 10 millimeter in diameter and must be constructed so that:

a) placement of the intake does not cause fish to be entrained; and

b) the migration habits and passage of fish are not compromised or adversely affected by the placement of the intake.

[89] JWS Freshwater Ecology Part 1, at [24] and [25]
[90] Oral Evidence, J. Smith, 9 August 2024
[91] Applicant Proposed conditions, AUTH142035.05.01, Condition 17, dated 4 October 2024

Panel Findings & Assessment

113. The Panel finds:

a) The present mesh screen size is 10mm. The WRP requires 1.5mm. The present mesh fish screen size is not in accordance with the WRP plan requirements.

b) The present mesh fish screen size has the potential effect of entraining larval and juvenile fish.

c) We have not been presented with evidence that specifically addresses the effects of potential entrainment on the native fish communities. We have, however, received evidence that the fish communities within the Wainui Stream are indicative of excellent habitat quality and that the overall effects of the dam on juvenile fish have been assessed as low to very low.

d) A reduced mesh screen size in the current infrastructure is likely to be blocked regularly with weeds and require regular cleaning, potentially impacting on operations. We note that modern technologies are available that may mitigate these issues.

e) We find that a reduction to smaller mesh screen size is required to address the potential adverse effects on larval and juvenile fish (in the absence of specific evidence of effects). We find that a mesh size in accordance with the WRP of 1.5mm is required.

7.4 Wainui Stream Residual Flow Rate

Applicant

114. The Applicant is required to maintain a residual flow through the Wainui Stream outlet and in the fish pass, to provide for the upstream and downstream migration of freshwater biota and to maintain adequate water quality. There was a difference of opinion as to what that residual flow rate should be.

115. In his EIC, Mr Williamson noted that "In terms *of the appropriate residual flow level, Variation No.6 (Water Allocation) to the Waikato Regional Plan provides that the*

minimum flow should be set at 95% of the one in five year 7-day low flow (Q5) for streams with a mean flow less than 5 m3/s. The Q5 flow to the dam is 0.169 m 3/s and therefore the residual flow should be set at 0.160 m^3/s (160 L/s)."[92] Based on his understanding from expert conferencing that there is greater ecological habitat and ecological value around the perimeter of the Tahaaroa Lakes, Mr Williamson considered that it would be advantageous to maintain higher lake levels during summer low flows / lake level periods than higher residual flows to the Wainui Stream.[93]

116. Experts at the Freshwater Ecology conferencing (Part 2)[94] noted Mr Williamson's initial recommendation was a residual flow of 160 L/s (interpreted by the experts as being the Wainui Stream flow at the outlet) and his subsequent recommendation of minimum flow of 5L/s through the outlet weir and 34 L/s through fish passage (resulting in a total minimum residual flow in the Lower Wainui Stream of 39 L/s).[95] It was agreed by the experts that this was materially lower than what is normally required by the WRP (being the Q5). The experts also acknowledged that maintenance of residual flows is complex and requires consideration of effects associated with further lowering of lake levels. Several potential adverse effects of not providing residual flows were identified and it was agreed that the recording of the duration and frequency of low flow events was needed to provide appropriate triggers for monitoring and management actions. It was considered that this information could inform the Residual Flow Management Plan proposed by Applicant. It was also agreed that where adverse effects were identified, residual flow levels should be adjusted in accordance with adaptive management principles.[96]

[92] Statement of Evidence, J. Williamson, 23 January 2024, at [74]
[93] Rebuttal Statement of Evidence, J Williamson, 6 June 2024, [20].
[94] JWS Freshwater Ecology Part 1, at para [22] - [31]
[95] The applicant initially proposed a condition requiring a residual flow in the Wainui Stream immediately downstream of the dam of no less than 160 L/s, which was based on calculations provided by Mr Williamson. Statement of Evidence, G Eccles, 23 January 2024, at [88].
[96] JWS Freshwater Ecology Part 1, at para [31]

117. Ms Bennett, for the Applicant, noted in her evidence that there were potential effects of the water take on residual flows and instream conditions for the 80m section of stream between the dam face and the weir.[97] She noted that concern had been raised by the Council that under some flow conditions, when water takes for ship loading are operational, residual flows over the dam face may cease. Further, Ms Bennett supported a recommendation by Council for the development of a Residual Flow Management Plan, which would ensure residual flows below the dam and through the fish pass are appropriate.

118. Upon questioning by the Panel, Mr Williamson stated that he had modelled the effect of maintaining a residual flow of 160 L/s and noted that lake levels would be lower. He stated "*I think it increases the potential for the cease take levels to be reached. The modelling indicates it's extremely unlikely, but it obviously increases that potential*." He also noted some concerns around effects on Lake Taharoa fringing wetlands and on the reliability of the water take (which is currently very reliable).

Council

119. At the hearing, Mr Smith, for Council, noted his preference for maintaining a residual flow of 160 L/s downstream of the dam as required by the WRP. He stated that this larger flow "*provides a signal for fish at sea to key onto and come into, especially in key migration periods, which can go into March through to May for mullet when these species are arriving at the stream*". This was reflected in Council's written comments on the final version of the Applicants' consent conditions, in which Council maintained its position that there be a residual flow in the Wainui Stream immediately downstream of the dam structure of no less than 160l/s including the fish pass flow of 34l/s.[98]

[97] Statement of Evidence, K Bennett, 23 January 2024, at [12(b)]

[98] WRC comments on Applicant Proposed Consent Conditions dated 30 August 2024

Submitters

120. The John David Keepa Kupa Whānau Trust supported the Council's proposed minimum residual flow of no less than 160 L/s including the fish pass flow of 34ls.[99]

Conditions

121. The Applicant has proposed the following conditions that relate to residual flows:

a) The Consent Holder must ensure there is a residual flow in the Wainui Stream immediately downstream of the dam structure of no less than 5l/s through the outlet weir in the dam on the Wainui Stream and 34l/s in the fish pass.[100]

b) The Consent Holder must ensure there is a residual flow in the fish pass of 34 L/s when Lake Tahaaroa is below RL 9.3m.[101]

c) Water must not be taken when taking water will cause or contribute to a breach of the residual flow required by Condition 6 of consent AUTH142035.02.01.[102]

d) Preparation of a Lake Level & Water Management Plan chapter within the EMP, which includes details of how the residual flow in the Wainui Stream and in the fish pass will be monitored and maintained.[103]

Panel Findings & Assessment

122. The Panel finds:

a) The residual flow rate of the Wainui Stream is significantly adversely affected by the water take. We did not receive modelling evidence demonstrating the appropriateness of the current flow rate or the inappropriateness of increasing the flow rate on ecological or cultural aspects or indeed on

[99] John David Keepa Kupa Trust Comments on Proposed Consent Conditions, dated 30 August 2024
[100] Applicant Proposed conditions, AUTH142035.02.01, Condition 4, version dated 4 October 2024
[101] Applicant Proposed conditions, AUTH142035.03.01, Condition 6, version dated 4 October 2024
[102] Applicant Proposed conditions, AUTH142035.05.01, Condition 15, version dated 4 October 2024
[103] Applicant Proposed conditions, Schedule 1: General Conditions, Condition 17(b), version dated 4 October 2024

operational matters.

b) The existing residual flow rate is considerably lower than that required by the Waikato Regional Plan.

c) The ecology of the Wainui Stream is likely to be affected by modifying the residual flow rate. We have not received evidence that specifically assesses the effect of increasing the residual flow rate on the ecology of the Wainui Stream or Lake Tahaaroa fringing wetlands.

d) Increasing the residual flow rate of the Wainui Stream has the potential to reduce the lake levels in Tahaaroa Lake, although without evidence it is not possible to determine the magnitude of this effect. This potential effect on the lake may affect the surrounding wetland but may also reduce the likelihood of flooding due to high lake levels (we refer to Section 7.7 below).

e) The existing Lake Level has been set by way of the existing residual flow rate from the Wainui Stream which the Applicant proposes will remain the same.

f) A separate Residual Flow Management Plan should be prepared for the Wainui Stream and include the monitoring and maintenance of a residual flow in the Wainui Stream. The Applicant has proposed this be included within the Lake Level Management Plan.

g) The Panel has not been provided with sufficient evidence to support the Applicant's proposed residual flow rate of 39 l/s, which is significantly below the flow rate of 160 l/s as required the WRP.

7.5 Seepage and flooding

Applicant

Seepage

123. Mr Martin noted concerns raised by submitters regarding water seepage from the mine to adjacent private land.[104] In relation to the specific example of seepage to the Kana whanau land block, Mr Martin noted "*the seepage to the Kana land block was likely the result of, or exacerbated by, mine water that was pumped to a smaller mine pit higher up on the hill, approximately 200 metres south of the Kana block*". Further, he noted that "*This was a one-off incident that we resolved once water from the small mine pit was pumped to an alternative pit.*"[105]

124. Mr Williamson noted that potential effects of seepage from mine pit holding water could be avoided through careful consideration of local site elevations and topography, and the implementation of groundwater monitoring via piezometers prior to, and during the use of holding pits near neighbouring properties.[106]

125. Mr Williamson considered that this would require undertaking groundwater monitoring using piezometers for a period of three months in advance of or at commencement of pumping, as well as establishing background groundwater levels and an appropriate two-tier trigger level system to avoid any adverse effects (noting that trigger levels would need to be site-specific to avoid adverse effects). Mr Williamson also considered that during operation of any pumping to a pit, monitoring should continue to ensure groundwater levels are maintained at elevations less than the agreed trigger levels.

Flooding

126. Mr Williamson also noted that the issue of flooding behind (to the east of) Lake Tahaaroa and surrounding low lying land including part of Tahaaroa Road resulting

[104] Statement of Evidence, G Martin 23 January 2024, at [65]
[105] Statement of Evidence, G Martin, 23 January 2024, at [65]
[106] Statement of Evidence, J Williamson, 23 January 2024, at [55]

from raised lake levels due to the presence of the dam was also raised in the submissions and the section 42A Report. He noted that the primary area of concern regarding flooding during higher lake levels is the section of Tahaaroa Road, approximately 500m southwest of Tahaaroa community. He noted that this section of road is located along a topographic low and is very close to normal lake water levels.[107]

127. He stated that the flooding that occurred was a function of intense rainfall and the location of the roading infrastructure, and considered that it would have occurred with or without the Applicant's take and use of water from the Tahaaroa Lakes. He therefore did not consider it to be a direct result of Applicant's activities.[108]

128. Mr Williamson also noted the suggestion in the section 42A Report for specifying a maximum lake level, above which water must be spilled over or through the dam on the Wainui Stream in order to prevent upstream flooding of low-lying land to the east of Lake Tahaaroa.[109] He considered that this was likely to be impractical for a number of reasons, including the lack of an established mechanism for allowing additional water to be released through the dam, whether it would be achievable with or without modifications or adverse effects on the dam infrastructure. He considered there would need to be further investigated to determine the viability of this proposal. He did note however that an appropriate maximum lake level could be specified based on a review of detailed elevation data of the low-lying land potentially subject to flooding in conjunction with a review of measured lake water levels.

Council

129. The s42A Writer noted[110] concerns raised by submitters regarding potential flooding and water seepage effects associated with continued mining activities. He noted

[107] Rebuttal evidence, J. Williamson, 6 June 2024, at [13]
[108] Statement of Evidence, J Williamson, 23 January 2024, at [58]
[109] Statement of Evidence, J Williamson, 23 January 2024, at [57]
[110] S42A Report, Section 11.15

that no specific flood risk assessment had been included in the Application and no information had been provided around water seepage. He asked that additional hydrological information be provided to address potential flooding risks and water seepage concerns raised by submitters, specifically effects on land immediately adjacent to or surrounding the Application Site and the access road.

130. The s42A Report proposed a condition in which a maximum lake level (to be determined by TIL) above which water would need to be spilled over or through the dam on the Wainui Stream in order to prevent upstream flooding of low-lying land to the east of Lake Tahaaroa. It was noted that any such number would be subject to confirming the practicality of this proposal and invited the Applicant to provide evidence in relation to a maximum lake level trigger.[111]

Expert conferencing

131. The experts agreed that potential groundwater seepage may arise on neighbouring land adjacent to water storage facilities and tailings drainage and noted that this may result in effects in ground stability and utility of neighbouring land.[112] They also noted that there were management approaches available to address these potential issues, including the planning of the location of water infrastructure within the site to manage such effects.

132. Council and experts for John David Keepa Kupa Whānau Trust contributing to the JWS Planning recommended a condition of consent requiring notification when water level exceeds the dam crest at RL11.58m above sea level, with notification to WRC, the local community and FENZ.[113]

Submitters

133. The issues of flooding and seepage associated with mining activities was raised in the majority of submissions and included Te Kooraha Marae Trustees, Roy Wetini

[111] S42A Report, Section 13.5
[112] JWS Hydrology and Wetlands, at [31] - [32]
[113] JWS Planning, at [41]

and Whaanau, Hilda Kana and Claude Kana Jnr, Te Ruunanga o Ngaati Mahuta ki te Hauaauru Charitable Trust, Shirley Tuteao and Kana whanau, Department of Conservation, Te Huia Pihopa Trust, Geneva Rangimarie Adams and Stephen King, Averill te Ani Tuteao and John David Keepa Kupa Whānau Trust.

134. The John David Keepa Kupa Whānau Trust proposed the following conditions[114]:

The Consent Holder shall, as far as reasonably practicable, manage the water level in the Wainui Stream and Lake Taharoa so that it does not cause or contribute to flooding of any land surrounding Lake Taharoa including Taharoa Road.

The Consent Holder shall notify the owners and occupiers of land adjoining Lake Taharoa, Waikato Regional Council and Fire and Emergency NZ if the level of the lake exceeds the dam crest height of RL11.58m a.s.l.

Conditions

135. The Applicant proposed, in Schedule 1: General, Condition 22 which requires preparation of an Erosion and Sediment Control Plan. This plan is to include the following (as Condition (c)):

Processes to be followed before holding ponds are constructed or utilised within 100m of the boundary with any residential properties. These processes will include undertaking groundwater monitoring using piezometers downgradient of any holdings ponds for a period of three months, or use of a quantitative groundwater model, in advance of utilising those holding ponds and will include triggers for ceasing use of those ponds.

136. The Applicant does not propose specific conditions relating to potential flooding issues, noting that TIL and previous owners had considered the possibility of spilling water from the dam when Tahaaroa Lake reaches a certain height. It was determined, however, that this would not be an effective way of reducing the RL of the lake and preventing flooding because of the size of the lake and catchment area relative to the outflow of the dam.[115] In addition, the Applicant considered the

[114] Proposed consent conditions from John David Keepa Kupa Whānau Trust, received 16 September2024
[115] Further Statement of Evidence, G Eccles, 28 March 2024

requirement for notification to parties in the event of a high lake level "*creates inherent compliance difficulties, is not for a resource management purpose, and in light of the above is disproportionate to the scale of the alleged effect.*"[116]

Panel Findings & Assessment

137. The Panel finds:

a) There has been seepage from process water in pits which has significantly adversely affected Neighbours by way of both flooding and potential land instability, however the proposed mitigation of setbacks and monitoring appropriately mitigates.

b) We accept the opinion of Mr Williamson that flooding on Tahaaroa Road is unlikely a result of mining activities however no assessment with respect to the source of this flooding has taken place.

c) We find maintaining the lake level of Lake Tahaaroa is likely to be contributing to flooding of directly adjoining properties and thus is contributing to a significant adverse effect to those Neighbours.

d) The conditions proposed by the Applicant do not mitigate the risk of flooding to neighbours or the road sufficiently. While the Panel accepts the evidence regarding the practicality of release water from Tahaaroa Lake downstream during flooding events, nevertheless the Panel considers that the conditions proposed by submitters are necessary to mitigate adequately the adverse effects identified. In addition, the Panel considers that further investigation of the feasibility of applying a maximum lake level trigger should be undertaken as part of a flooding risk assessment.

[116] Appendix G, Applicant's Closing Submissions, 4 October 2024

7.6 Terrestrial Ecology: Effects on Bats/Pekapeka

Applicant

138. A desktop analysis of potential effects on long-tailed bats or pekapeka (*Chalinolobus tuberculatus*) was presented in the AEE, with the overall conclusion being that they would be unlikely to be present. Subsequently, in response to an s92 request, a bat survey of the Application Site was undertaken and confirmed the presence of long-tailed bats "*in and around the proposed reconsenting footprint*."[117]

139. In her evidence Dr Mueller noted that the pine plantation forest (and other habitats including stream margins and streambanks) were used by long-tailed bats for foraging and potentially roosting.[118] Automated bat monitors (**ABM**) detected long-tailed bats at 6 out of 10 locations surveyed, with "*the majority of detections being around remnant stand of pines along the eastern edge of the consenting boundary, and around the upper reaches of the Mitiwai Stream along the northern edge of the consenting boundary.*"[119] Further, Dr Mueller concluded that the value of these habitats was Very High. [120] Dr Mueller also noted "*the removal of pine trees does not form part of this consent application, though trees may be harvested in future to allow for mining of this area*."[121]

140. Dr Mueller noted that the potential adverse effects of the proposed activities included loss of nesting/foraging commuting habitat, fragmentation and effects from lighting, noise and vibration. She also noted that the level of effect that changes in noise disturbance may have on the behaviours of long-tailed bats is not currently well understood.[122] Dr Muller confirmed in oral evidence given at the hearing that the potential adverse effects on bats were high.[123]

[117] 4Sight Consulting (2022) Taharoa Ironsands Mine - Ecological Response to S92A request for further information. November 2022.
[118] Statement of Evidence, H Muller, 23 January 2024.
[119] Statement of Evidence, H Muller, 23 January 2024, at [25]
[120] Statement of Evidence, H Muller, 23 January 2024, at [29]
[121] Statement of Evidence, H Muller, 23 January 2024, at [42]
[122] Statement of Evidence, H Muller, 23 January 2024, at [37]
[123] Oral Evidence, Dr Muller, 7 August 2024

141. Dr Mueller proposed mitigation and management measures to minimise effects on bats, including preparation of a pest management plan, implementation of light management principles based on best practice guidelines, retention of a buffer zone of pines, staged and successional replanting of the pines and adoption of Bat Roost protocols. She did not consider that monitoring would be appropriate for determining the effectiveness of these mitigation measures due to likely confounding factors in the wider landscape that influence bat activity and population success.[124]

142. Dr Mueller clarified in her oral evidence at hearing, that the mitigation measures described above resulted in a reduction of effect from high to low for bats. Further. her assessment that after mitigation the effects were low, did not rely on the retention of the pines. The loss of the pines or the value which they provide presently is minimal because the immaturity (and hence size) of the trees meant few currently provided roosting habitat. The pines did offer foraging and commuting opportunities. She noted that foraging and roosting could also be found elsewhere.[125]

Council

143. In his assessment of the AEE and S92A RFI responses, Dr Dutton considered "*There has been insufficient evidence presented demonstrating that 30m is sufficient to protect bats from disturbance or whether this mitigation measure will be effective prior to canopy establishment. Appropriate monitoring and reporting of bats prior and during disturbance would provide necessary information to determine if mitigation efforts are sufficient and, if required, adaptive management implemented*."[126] Dr Dutton concluded by stating "*I consider it appropriate that a BMP is developed and includes bat monitoring to identify appropriate level of pest management required to alleviate pressure from mammalian predators and light*

[124] Statement of Evidence, H Muller, 23 January 2024, at [93]
[125] Oral Evidence, Dr Muller, 7 August 2024
[126] s42A Report, Attachment A, Specialist Report - P Dutton - Terrestrial Ecology

management principles are adopted to help mitigate the adverse effects of artificial lighting."

Submitter summary and evidence

144. The Department of Conservation expressed concern at lack of detail in the AEE regarding mitigation of effects on the "Threatened - Nationally Critical" long-tailed bats that have been found in the vicinity of the Application Site.[127] In particular, DOC was concerned effects relating to the felling of the pine forest (foraging and potentially short-term roost habitats), to lighting, noise and vibration associated with mining activities and to the appropriateness of the proposed 30m setback in mitigating effects.

145. Mr Keenan, for the John David Keepa Kupa Whānau Trust, considered that preservation of mature pine plantation in its entirely through the Southern Block was required to maintain habitat for bats and other terrestrial species.[128]

146. Mr T King, in his submission, noted that this species was a significant taonga and cultural indicator. We discuss this further in Section 7 of this report.

Expert conferencing

147. Experts for the Council and the John David Keepa Kupa Whānau Trust considered the absence of evidence in Dr Mueller's assessment of effects on bats, with Dr Dutton being of the view that "*adverse effects cannot be determined without this data*." [129] Dr Mueller acknowledged the paucity of available data on effect but considered her assessment gave appropriate consideration to these effects and recommended industry practice management measures.

148. Experts agreed that the pine plantation is likely to have increased potential as bat roosting habitat as the pines mature.[130]

[127] Submission from Department of Conservation, 23 August 2023
[128] Further Statement of Evidence on behalf of John David Keepa/Kupa Whānau Trust, C Keenan, 22 May 2024, para 11.5
[129] Terrestrial Ecology JWS Part 1, 29 May 2024, para 15
[130] JWS Terrestrial Ecology (Part 2), 27 June 2024, at [21(b)]

Conditions

149. The Applicant proposed a condition requiring the preparation of a Bat Management Plan chapter (BMP) of the Environmental Management Plan. The BMP only requires consideration of lighting design and also recommends a vegetation size trigger (>15cm diameter) for adoption of Bat Roost Protocols.[131]

150. In addition, condition 24 of Schedule 1 requires preparation of a Site Rehabilitation Plan, which includes [132]

Panel Findings & Assessment

151. The Panel finds:

a) The proposed mining operations have potentially significant ecological and cultural effects upon the long tailed bat (which is listed as 'Threatened - Nationally Critical') .

b) The proposed mitigation is appropriate and will largely reduce the effects to minor.

c) There is however an absence of data to determine whether the 30m buffer will be sufficient to mitigate all effects. As such we agree appropriate monitoring and reporting of bats prior and during disturbance is necessary to ensure mitigation is sufficient.

d) We also note an absence of mitigation for noise or vibration effects and consider best practice measures to minimise noise effects on bat populations should also be required.

e) The Panel does not rely on retention of the pine trees in its assessment given the inability of the Panel to impose a condition which requires that and the inability of the Applicant to volunteer it. Please refer to Section 12 of this report in this regard.

[131] Applicant Proposed conditions, Schedule 1, Condition 23, version dated 4 October 2024

7.7 Terrestrial Ecology: Effects on Avifauna

Australasian Bittern monitoring

Applicant

152. The "Nationally Critical" Australasian Bittern or Matuku-hūrepo (*Botaurus poiciloptilus*) has been recorded from multiple locations within the Application Site.[133] Dr Mueller noted that this species almost exclusively occupies wetland habitat. She also noted that dust, vibration and noise disturbance have the potential to impact this species during mining activities near wetlands.[134] Dr Mueller states "*I consider a planted 30m buffer to be sufficient to minimise the expected disturbance to wetland birds. Annual monitoring could be directed to monitor the present bittern population through* ongoing *operations, but it is my view that it would be difficult to ascertain whether changes in bittern presence are associated with the mining operation, or other factors beyond the proposed mining activities or changes in the landscape that could be impacting birds*."[135]

Council

153. Dr Dutton noted that no justification was provided for the 30m setback/buffer from wetlands, lakes and streams and considered that there had been insufficient evidence presented by the Applicant to demonstrate that this distance would be sufficient to protect avifauna from mine operation disturbance. [136] Further, based on published evidence he considers "*stimuli produced by* mine *operations will highly likely influence the behaviour of avifauna beyond the 30m setback*." It was his view that appropriate monitoring and reporting of avifauna prior to and during disturbance would be required to determine mitigation effectiveness.

Submitters

[133] 4Sight Consulting (2022) Taharoa Ironsands Mine - Ecological Response to S92A request for further information. November 2022.
[134] Statement of Evidence, H Muller, 23 January 2024, at [48]
[135] Statement of Evidence, H Muller, 23 January 2024, at [86]
[136] s42A Report, Attachment A, Specialist Report - P Dutton - Terrestrial Ecology

154. The Department of Conservation recommended the development of a Wetland Bird Management Plan, distinct from the Avifauna Management Plan proposed by the Applicant.[137] DOC noted that the proposed 30m buffer to wetlands may be insufficient to protect this species from disturbance during peak breeding season, with the 24 hour a day noise potentially interfering with territorial mating calls and nesting behaviours.

Expert conferencing

155. The Terrestrial Ecology experts agreed that there is no scientific reason for the proposed 30m buffer distance.[138]

Conditions

156. The Applicant had proposed a condition requiring the preparation of an Avifauna Management Plan, which is largely focused on mitigating effects of vegetation clearance prior to mining.[139]

Panel Findings & Assessment

157. The Panel finds:

a) The Australasian Bittern, which is classified as "Nationally Critical", is likely to be adversely affected by mining activities.

b) There is insufficient information to determine the degree and nature of the adverse effects.

c) There is insufficient information to determine the appropriateness of a 30m buffer/setback distance in mitigating adverse effects on the Australasian Bittern.

d) As we are unable to be satisfied that the proposed conditions by the Applicant

[137] Submission from Department of Conservation, 23 August 2023
[138] JWS Terrestrial Ecology and Planning (Also known as Terrestrial Ecology Part 2), 27 June 2024
[139] Applicant Proposed conditions, Schedule 1, Condition 19, version dated 4 October 2024

are sufficient to mitigate the adverse effects of mining activities we agree appropriate monitoring and reporting of Australasian Bittern prior to and during disturbance is necessary to ensure effects are no more than minor.

7.8 Other Terrestrial Ecology Issues

Planting of setbacks

158. The use of setbacks/buffers is an integral component of the Applicants' mitigation package, some of which are carried over from the expired consents.[140] The Applicant has proposed a condition requiring the preparation of a Natural Wetland Management Plan (NWMP) chapter of the Environmental Management Plan. The NWMP includes a maintenance, infill planting and weed control programme for the planted buffer areas around the natural inland wetlands identified in AUTH142035.01.01 and a timeline for the planting of these areas to ensure they are established[141], [142]

159. This condition, which specifically requires setbacks be planted, only applies to wetlands. By contrast, perennial waterbodies are only required to have a 30m applied but are not required to be vegetated.[143]

160. At the hearing, Dr Mueller emphasised the importance of maintaining planting and pest control around streams where bats have been recorded (such as Mitiwai Stream) as being necessary to adequately manage effects.[144]

Council

161. The s42A writer noted that the application included recommendations based on the technical assessments for "Planting of a 30m buffer from terrestrial water bodies

[140] Statement of Evidence, G. Eccles, 23 January 2024, at [103]

[142] Applicant Proposed conditions, AUTH142035.01.01 Condition 9, version dated 4 October 2024
[143] Applicant Proposed conditions, AUTH142035.01.01 Condition 2(c), version dated 4 October 2024
[144] Oral evidence, H. Mueller, July 7 2024

and wetlands to mitigate effects on wetland bird species from the noise and disturbance of mining activity."[145]

Submitters

162. Experts for the John David Keepa Whanau Trust considered that restoration planting by the Applicant should be considered in all set back areas proposed in AUTH152035.01.01 condition 2.[146] Mr Keenan also considered a 100m setback from all wetlands should be provided, along with stock exclusion and replanting with suitable indigenous vegetation.

163. Mr T King, in his submission, also stressed the importance of maintaining green corridors. We discuss this further elsewhere in section 7 of this report.

Stock exclusion/weed/pest control

Applicant

164. Experts for the Applicant emphasised the importance of weed and pest control (including livestock) in ensuring the effectiveness of setbacks as mitigation of effects from mining activities. Dr Dean noted the potential for increased risk of pest plants entering wetlands from nearby disturbance land.[147] He noted a buffer of at least 30m would likely be effective in reducing pest plant invasion of wetlands. [148.]

165. Dr Mueller noted that a comprehensive pest animal control programme and rehabilitation plan had been proposed by the applicant as part of an effects management package.[149]

166. The Applicant described the particular challenges associated with control of livestock and horses on the Application Site.[150] The Applicant considered this to be an issue that was most appropriately addressed by notification to Waitomo District

[145] s42A report, at [14.1]
[146] John David Whānau Keepa Trust comments on applicants proposed conditions dated 30 August 2024
[147] Statement of Evidence, H. Dean, 23 January 2024, at 60 [(c)
[148] Statement of Evidence, H. Dean, 23 January 2024, at 62 (a)
[149] Statement of Evidence, H. Mueller, 23 January 2024, at [58]
[150] Statement of Evidence, G. Martin, 23 January 2024, at [83]

Council under the relevant Bylaw.[151]

Council

167. The s42A Writer proposed a condition requiring that all livestock and horses are excluded from the Application site at all times (other than in areas intended for grazing). If livestock and horses gain access to the Application site they are to be removed by the Applicant within 48 hours of the Applicant becoming aware of their presence.

Expert conferencing

168. Experts for Council and John David Keepa Whānau Trust considered that flora and fauna pest management should ensure exclusion as far as practicable of pest species within the CMA exclusion buffer, as it may frustrate mitigation outcomes sought from this buffer.

Submitters

169. The John David Keepa Whānau Trust supported the condition proposed by the s42A Writer.

Panel Findings & Assessment

170. The Panel finds:

a) The planting of setbacks from natural wetlands and perennial waterbodies is essential for mitigation of potential effects on terrestrial fauna.

b) The control of pest and weed species within setbacks is also essential for reducing effects to no more than minor.

c) Livestock and horses create an adverse effect on the progress and success of rehabilitation and stabilisation efforts which are required as mitigation to address the adverse effects of mining. We consider the construction of stock

[151] Applicant Legal submissions, 26 July 2024, at [203(c)]

proof fencing around rehabilitation and stabilisation areas is necessary to ensure successful mitigation.

d) We also consider establishment of stock proof fencing is also required to prevent access of stock and horses into wetland and perennial water body set back areas to enable successful planting in those areas by the Applicant as recommended by the experts.

7.9 Discharge Plume Monitoring

Applicant

171. The iron sand concentrate is transported to the ship as a slurry and is subsequently dewatered, resulting in the discharge to sea of fresh water containing suspended sediments. Dr Wilson, for the Applicant, considered the key potential effects from this discharge on the marine environment would be the contribution of contaminants (e.g., heavy metals) and the deposition of fine sediment on benthic habitats.[152] Based on benthic fauna and sediment surveys, he concluded that the discharge did not appear to be elevating levels of heavy metals in the surrounding environment and thus considered the risk to benthic fauna due to heavy metals to be low.[153]

172. Dr Wilson noted there was evidence of some elevation of mud content near the mooring (likely as a consequence of suspended sediment loading in the discharge), reflected by a small change in the benthic community composition near the mooring relative to location 2 km away. He also noted that Dr Beamsley had conducted modelling to determine where discharged sediment may be deposited, with highest levels of sediment deposition being predicted to occur within some sheltered areas of Kawhia and Aotea Harbours north of the mooring. He considered that the predicted level of deposition was highly likely to be negligible relative to catchment-derived sources of fine sediment. Overall, he concluded that the dewatering

[152] Statement of Evidence, P Williamson, 23 January 2024, at [4]
[153] Statement of Evidence, P Williamson, 23 January 2024, at [53]

discharge was likely to cause no greater than a 'Low' level of ecological effects on the marine environment. As such, Dr Wilson did not consider that further ecological monitoring was warranted.[154] Rather he considered that 12 monthly monitoring of the quality of the dewatering discharge (including for grain size composition and heavy metal concentrations) would enable confirmation that the quality of the discharge is similar to previous discharges (and so effects in the receiving environment would be similarly low).[155]

Council

173. The Council's marine ecology expert Dr Townsend questioned the suitability of some of the reference sites used in the Applicant's benthic survey, but concluded that "*I am mostly in agreement of an overall low level of benthic effects*."[156] Dr Townsend recommended that a gradient-based monitoring approach could help address areas of uncertainty.

174. The s42A Writer proposed a condition requiring the development of a monitoring programme focused on characterising the water quality of the discharge to the CMA.[157] It includes measurement of grain size composition, clay mineralogy and heavy metals and proposes a gradient approach with annual sampling at sites close to and distant from the buoy. It also requires further ecological assessment in the event of a trend to increasing muddiness at any of the survey sites.

Submitters

175. The Council's proposed monitoring condition was supported by both the Keepa Trust and the Wetini Trust.

176. Submitters also raised concerns around the uncertainty of effects in coastal environment. We discuss this elsewhere in section 7 of this report.

[154] Statement of Evidence, P Williamson, 23 January 2024, at [53]
[155] Statement of Evidence, P. Wilson, 23 January 2024, para 50
[156] S42A report, Attachment E
[157] WRC comments on Applicant Proposed Conditions version dated 4 October 2024

Conditions

177. The Applicant has proposed a condition requiring analysis of the discharge during ship loading at least every 6 months for sediment grain size composition, clay mineralogy and heavy metal concentrations. Sampling is to be at the start, mid-way and near the end of each discharge event, at a location close to where it enters the marine environment.[158] The Applicant did not consider that the Council's proposed monitoring programme was warranted given the low level of effect identified by Dr Wilson.

Panel Findings & Assessment

178. The Panel finds:

a) The adverse effects from discharge with respect to heavy metals (excluding deposited sediment) is likely to be low as a result of the concentration of heavy metals in the discharge.

b) The adverse effects from discharge with respect to deposited sediment (muddiness) is likely to be low as a result of the dynamic environment and concentration and nature of suspended sediment within the discharge.

c) The assessments of effects is based upon the current known quality of discharge water and the current frequency and number of ship loadings per year.

d) The existing baseline monitoring data set of water quality and benthic ecology is based on a one-off assessment using a spatial gradient approach. There are uncertainties around the robustness of the data

e) As the above assessment of effects is based on current known quality of the discharge water and the Applicant wishes to transition from 3 million tonnes per annum to 5 million tonnes per annum exported we consider more frequent monitoring is necessary.

[158] Applicant Proposed conditions, AUTH142035.12.01 Condition 5, version dated 4 October 2024

f) The Panel considers the monitoring condition proposed by Council appropriately manages the effects of discharge.

7.10 Biosecurity in the Coastal Marine Area

Applicant

179. The AEE did not specifically consider the potential for introduction of unwanted organisms from ships entering the Coastal Marine Area of Tahaaroa. Further no evidence was provided with respect to the potential or otherwise of adverse effects on marine biosecurity. This position was taken as the Applicant considers any marine biosecurity concerns would be addressed via the Biosecurity and Maritime regulations.

Council

180. With respect to marine biosecurity risk, the s42A Writer (Mr Chrisp) concluded "*I do not consider that activities such as the mooring of ships, the existing mooring buoy and associated pipeline will result in any adverse effects on marine ecosystems related to marine pests and harmful aquatic ecosystems*."[159] Mr Chrisp did not refer to any evidence in support of that position. He did, however, agree with the Applicant that consideration of any effects is beyond the RMA as it was the purvey of another regulatory body.[160]

Expert conferencing

181. Experts for the Applicant, Council and Submitters agreed that biosecurity monitoring of the mooring structure for unwanted organisms and/or pest species and with appropriate responses may be appropriate to manage the biosecurity risk associated with unwanted organisms in ballast water.[161] However, Dr Wilson (for the Applicant, noted such discharges are outside the scope of the application, given they ae regulated by the Resource Management (Marine Pollution) Regulations

[159] s42A Report, Section 12.6
[160] Oral Evidence, M. Chrisp, 9 August 2024
[161] JWS Coastal Processes and Marine Ecology, 29 May 2024, at [39].

1998.

Submitters

182. The John David Keepa Kupa Whānau Trust raised concerns regarding the discharge of ballast water from ships entering New Zealand waters and the potential for unwanted organisms establishing at Tahaaroa.[162]

Panel Findings & Assessment

183. The Panel finds:

a) We have insufficient information to determine any effects that may arise with respect to biosecurity or the mitigation effects of the relevant regulatory regimes outside of the RMA which manage those effects.

b) We agree any such effects are the purview of other regulatory bodies and we refer to our discussion of the same in Section 12 of this report.

7.11 Air Discharge – Effects on neighbouring properties

Applicant

184. On the basis of his qualitative assessment of the potential for off-site dust effects, Mr Curtis noted that effects could, in particular, be generated by work undertaken in close proximity to the site boundaries in windy conditions, or from areas of tailings where rehabilitation has not occurred.[163] He noted that the Applicant had proposed a condition requiring preparation of a Dust Management Plan which included a range of reactive and proactive dust mitigation measures. He stated "*I am confident that if these measures are being implemented then the potential for off-site nuisance will be reduced in normal conditions.*"[164] He also considered by applying these measures the Applicant would be able to comply with Rule 6.1.16.1

[162] John David Keepa/Kupa Whānau Trust, 29 August 2023 and Further Statement of evidence, C. Keenan, of behalf of John David Keepa/Kupa Whānau Trust, 22 May 2024, section 9
[163] Statement of evidence, A. Curtis, 23 January 2024, at [141]
[164] Rebuttal evidence, A. Curtis, 6 June 2024, at [17]

of the WRP, as a Permitted Activity.

Council

185. The s42A Writer has proposed a condition requiring "An internal setback of 50 m from third party properties adjoining the Consent Area (excluding the Northern Block, Eastern Block and Te Mania Extension)".[165]

186. Upon questioning at the hearing as to a suitable setback from sensitive receptors to mitigate minimise nuisance dust effects, Mr Stacey stated "*My default number is 200 metres, and that is my starting point. If you can have really good mitigation measures, you can shorten that up. I honestly wouldn't go less than 100 metres. Two hundred meters is probably a pretty safe number to come up with*."[166] Expert conferencing.

187. Experts at the Air Quality expert conferencing agreed that "*The potential for off-site dust effects to occur is greatest when the activities are undertaken close to site boundaries*."[167] It was also agreed that rehabilitation is the primary tool for control of dust and needs to be undertaken on a continuing basis to minimise the potential for dust generation and that, when planning rehabilitation, priority should be given to those areas closest to site boundaries. [168] The experts also considered that a setback distance is an important mitigation tool and can be applied relative to the sensitivity of the receiving environment and the risk of effects beyond the boundary.[169] They went on the state that, in practice this may mean that the setback distances may need to be adjusted (increased or decreased) in response to measured dust levels and notifications of dust beyond the site boundaries.[170]

[165] WRC comments on Applicant Proposed Conditions version dated 4 October 2024
[166] Oral Evidence, Mr Stacey, August 8 2024
[167] JWS Air Quality, 27 May 2024, at [16]
[168] JWS Air Quality, 27 May 2024, at [40] - [41]
[169] JWS Air Quality, 27 May 2024, at [42]
[170] JWS Air Quality, 27 May 2024, at [43]

188. The experts also noted "to control dust the site will have to balance its operational areas with rehabilitation to ensure that cumulative and off-site effects are minimised."[171]

Submitters

189. At the hearing we heard from submitters, including Ms Pū, Mr Wetini and Ms Malone about their experiences of effects from dust generated from mining activities. Ms Pu stated "*So dust has been a huge issue for us especially for the well-being of our people*."[172]

190. Mr Wetini and Ms Malone spoke at length of the negative and ongoing effects of dust (as well as light and sound) on their property, describing a recent experience of arriving home to a "*brown reddish dust on benches and tables in the kitchen dining room and on the roof of our house*."[173] They considered this to be largely caused by the mining operations being carried out on the Central block southwest of their property.

191. Both the Keepa Trust and the Wetini Trust supported the Council's proposed condition, except that they have recommended a 100m setback be applied (rather than 50m).

Conditions

192. The Applicant has proposed a condition requiring the preparation of a Dust Management Plan. It considers this condition is sufficient to mitigate any effects beyond the Application site boundary that may be associated with dust generated as part of mining operations. The Applicant opposes the conditions requiring internal setbacks from third party properties and/or third-party dwellings proposed by Council and submitters, given it considers there is an absence of any evidence as to the necessity for such setbacks in light of the other effects management

[171] JWS Air Quality, 27 May 2024, at [37]
[172] Oral Evidence, Ms Pu, 8 August 2024
[173] Oral Evidence, Mr Wetini, August 9 2024.

conditions and mechanisms proposed (e.g. Dust Management Plan).[157]

Panel findings & assessment

193. The Panel finds:

a) Mining activities undertaken in close proximity to the boundary of the Application site have the potential to generate nuisance dust and potentially impact on neighbouring properties.

b) The activity of air discharge resulting from mining is a permitted activity subject to the activity meeting permitted activity standards.

c) The Applicant has offered a condition to address air discharge and intends to make provision for mitigating the effects of air discharge through the preparation of a Dust Management Plan (as a chapter within the Environmental Management Plan). These measures are relied upon by the Applicant to ensure the air discharge remains a permitted activity.

d) The use of setbacks and stabilization of land and rehabilitation of disturbed land are effective tools for mitigating off-site nuisance dust effects.

e) The Panel considers a minimum setback distance of 200m from all boundaries for undertaking mining operations is an appropriate mitigation tool. We consider the evidence of Mr Stacey is persuasive and we note Mr Curtis agreed a set back of 100m was preferable subject to good mitigation measures being in place. We also consider the absence of rehabilitation and stabilization, together with the concerns raised to sufficiency of testing merits a 200m set back.

7.12 Rehabilitation

Applicant

194. The Applicant has proposed conditions with respect to stabilization and rehabilitation via a Site Rehabilitation Plan and a Site Closure Plan and has sought consent (AUTH142035.08.01) to enable the discharge of mine overburden on to land or for the purpose of rehabilitating mined areas.

195. Proposed Condition 24 requires the Applicant to prepare a Site Rehabilitation Plan and sets out but leaves open the timeframes for commencing rehabilitation and the degree of rehabilitation, with these being determined within the plan itself.

196. The Applicant's position is that rehabilitation is a requirement of the lease and would be guided by the owners of the Site as tangata whenua who have a vested interest in the state of the land at mine closure.[174]

197. Mr Barclay-Kerr gave oral evidence during the hearing, on behalf of the Applicant with respect to what rehabilitation may look like with respect to managing the effects of mining:

I commented that cultural benefits will accrue through allowing tangata whenua to continue to exercise kaitiakitanga over the ancestral lands and waters through oversight of mining activity and rehabilitation. Managing adverse cultural effects. Mr. King has made five recommendations in his evidence to recognise and manage cultural effects. These include requiring TIL to monitor mining impacts on flora and fauna, focusing on natives, actively reduce light and noise pollution by creating native green corridors with the intention to not mine those areas, actively restore native habitats, actively engage with and involve mana whenua in environmental management, and actively support environmental education, both inside andoutside the company. There's no disagreement that TIL have a responsibility to manage and reduce its environmental and cultural effects. Overall, Mr. King seeks for TIL to take greater care in protecting the cultural values of the tribe. We are aligned in relation to TIL's responsibility to protect this whenua. I consider that the concerns raised by Mr. King and his recommendations will be addressed through existing practices and proposed conditions of

[174] Summary Statement of Evidence, W Coffey, 5 August 2024 at [27]

consent. I have explained these conditions in my statements of evidence.

198. Mr Barclay-Kerr also gave oral evidence at the hearing with respect to what rehabilitation may look at the end of the mine's life on behalf of Taharoa C, the Site owners:

Well, at the end of the day, it looks like – let me take a step back. From the time I was a little boy, and before the mining started, we'd see these rolling black sand dunes that went from inland out to the sea. So we'd ride our horses down across those sand dunes to go to fishing spots and those kinds of things.

So ideally it's returning to that rolling sand dune contour with whatever native plants that are able to be grown and survive there in a healthy state. You know, we've had – over the years, Taharoa C Incorporation has tried forestry and those kinds of things out on the dunes, but it hasn't really been a – I think because of the remoteness of the place, it hasn't really been an effective income earner for the block. So I think at the end of the day, a return to what it used to be like is probably the best thing for everybody.[175]

Council

199. Council has expressed concern about rehabilitation to date[176].

200. However, one of the issues raised in the submissions is the lack, or haphazard nature and extent, of site rehabilitation. It appears that TIL mines an area and then leaves it in an unrehabilitated state on the basis that they might go back and remine the area at a later date. A preferable approach would be for each area to be fully mined out and then rehabilitated.

201. The progressive rehabilitation of the site is an important consideration that needs to be documented and progress monitored. This is intended to be the subject of a Site Rehabilitation Plan and a Conceptual Site Closure Plan required by the recommended conditions of consent.

202. We refer to section 12 of this report with respect to non-compliance with past

[175] Oral evidence of Mr Chrisp, 9 August 2024.
[176] Oral evidence given at hearing, Mr Crisp, 9 August 2024.

rehabilitation requirements which has resulted in a significant area of land which was to be rehabilitated, not being rehabilitated or completed rehabilitation.

203. Council also considered that the amenity of the area would be maintained *provided the rehabilitation occurs in a more planned and structured order as per the Recommended Site Rehabilitation Plan.*[177]

204. Council also considered the *demonstration of appropriate progressive rehabilitation occurring at the site* was a matter that needs to be considered when considering the term of consent to be granted.[178]

205. Council therefore recommended the following condition[179]:

Any bare surfaces that result from mining activity shall be vegetated and/or recontoured in an appropriate manner consistent with the methodology and timeframes set out in the Site Rehabilitation Annual Works Plan required pursuant to condition 24-36 of this Schedule. In relation to areas that are intended to be re-mined, this shall include temporarily stabilising any open areas that will not be re-worked within the following 3 months or longer.

Submitters

206. Several submitters have expressed concerns regarding site rehabilitation[180] and we have referred to the evidence of Mr T King above to which Mr Barclay-Kerr agreed.

207. The Keepa Trust and Wetini Trust both agreed with the condition proposed by Council.

Panel Findings & Assessment

208. The Panel finds:

a) Rehabilitation during the life of the mine is necessary to mitigate the effects

[177] Comment with respect to Objective IM-09 Amenity, Waikato Regional Policy Statement, s42A Report, at section 12.3
[178] s42A Report, Section 13.6
[179] Applicant Closing Submissions, 4 October 2024, Appendix G Conditions Review Table
[180] Submitters 1, 2, 5, 6, 8, 11 and 12, S42A Report, Section 11.19

of mining as set out in our various findings with Section 7 of our report.

b) Rehabilitation must be continuous and consistent to provide effective mitigation.

c) Rehabilitation must incorporate mātauranga Māori and enable the mana whenua to express their kaitiaki in respect of this whenua.

d) The Applicant's rehabilitation efforts have been absent or frustrated by environmental challenges in the past which has led to a significant area of land that should have been rehabilitated, not being rehabilitated.

e) The present proposed conditions do not effectively mitigate the cultural and environmental effects identified in Section 7 of our report as they do not set timeframes for this work to be undertaken, set the amount of work to be undertaken or require the areas that should have been rehabilitated previously to be rehabilitated as a priority. Accordingly, we have adopted the conditions proposed by the Submitter to address these shortcomings.

7.13 Cultural Matters: Mana Whenua Relationships with the Environment

209. Issues raised by Mana Whenua were wide ranging and often overlap with other matters covered in this decision. This part of the report focuses on the effects of the application on Mana Whenua relationships with the environment of Tahaaroa, including connections to fresh and coastal waters, taonga species, ancestral lands and wāhi tapu, and their role as kaitiaki in relation to these components of the cultural landscape.

210. A key theme emerging from the evidence was the division of roles between Taharoa C Block representatives, whether as landowners, employees or kaitiaki and any combination of those, and; the role of the hapū more broadly, as neighbours, marae, rūnanga and kaitiaki. Undoubtedly, all are Ngāti Mahuta ki te Hauāuru. All are Mana Whenua. All are kaitiaki. Contention in this process has arisen because within these various layers of relationships, there are differing views as to the magnitude of

effects on cultural values, whether and how such effects can be mitigated, including who is responsible or even able to discharge their kaitiaki obligations and responsibilities. There was also an undercurrent of korero from the Applicant that attempted to minimise submitters, suggesting they were outsiders or a "small but vocal group of Taharoa C shareholders."[181]

211. It became apparent that there is a significant disconnect between the Applicant's corporate and cultural witnesses and Mana Whenua submitters about the value of the cultural landscape of Tahaaroa. Corporate witnesses and counsel for the Applicant depict it as desolate, remote and exposed,[182] as "virtually uninhabitable" and suggest that "mining is likely the only activity that can take place on this land with any success.[183]. In contrast, submitters delivered a vision of Tahaaroa underpinned by memories of the site prior to mining but future focused on their mokopuna and aspirations for reconnection, environmental restoration, reinvigoration of cultural practices, and investment in marae, papakainga and their people.[184]

212. At this juncture we wish to mihi to Ngāti Mahuta ki te Hauāuru for their manaakitanga during the Powhiri and hearing day held at Aaruka Marae and also to Mr Barclay Kerr and Mr Martin for the applicant in providing for tikanga to be upheld setting the context and tone appropriate to the subject matter of the hearing at the Te Awamutu venue.

Applicant

The Cultural Landscape of Tahaaroa, Wai, Whenua, Tāngata, Wairua

213. Speaking as the Chairperson of Taharoa C, Mr Barclay Kerr set out the history and traditions of Ngāti Mahuta, a hapū of Waikato Tainui, who are Mana Whenua of the

[181] Statement of Evidence, W Coffey, 23 January 2024, at [27] and [95]
[182] Opening Legal Submissions for the Applicant, at [4]
[183] Statement of Evidence, Mr Coffey, 23 January 2024, at [13]
[184] Oral Evidence, Te Kooraha Marae, Roy Wetini Whanau Trust, John David Keepa/Kupa Whānau Trust and others, 8 August 2024.

Tahaaroa area.[185] He provided a background to the cultural landscape of Tahaaroa, site of a significant battle with Ngāti Toa, and the importance of the waterways including Lake Tahaaroa and the Wainui Stream both historically to present in providing resources and for the cultural and spiritual wellbeing of the hapū.[186] His evidence distinguished the coastal part of the hapū as Ngāti Mahuta ki tai and explained the connection of the people to both Aaruka and Te Kooraha Marae at Tahaaroa as well as Maketu Marae in Kawhia.[187] Mr Barclay Kerr provided a history of the mine, the establishment of Taharoa C Incorporation[188] and ensuing benefits to the Tahaaroa community over the decades.[189]

214. In considering cultural effects, Mr Barclay Kerr highlighted the importance of "the land, the water, the sea and all its inhabitants, wāhi tapu, the people, the culture, traditions and language " to tangata whenua".[190] He pointed out that mining is not an offensive activity to Māori in a traditional sense and that for Taharoa C, the people are inseparable from the whenua and deem the mining of the ironsand resource appropriate.[191]

215. Mr Barclay Kerr opined that effects on the mauri and wairua of fish species, lake and wetland habitats have been appropriately mitigated by installation of the fish pass at Wainui dam and other existing consent conditions relating to setbacks and minimum levels and that the day to day management of the operation meant that incidents such as contaminant spills were very infrequent.[192]

216. Overall, Mr Barclay Kerr was of the view that "cultural benefits will accrue through allowing tāngata whenua to continue to exercise kaitiakitanga over their ancestral lands and waters through ongoing oversight of mining activity and rehabilitation, and by ensuring Ngāti Mahuta tikanga is observed at times of accidental discovery

[185] Statement of Evidence, H Barclay Kerr, 23 January 2024, at [13-15]
[186] Statement of Evidence, H Barclay-Kerr, 23 January 2024, at [16-18]
[187] Ibid, at [19]
[188] Ibid at [29 - 31].
[189] Ibid at [23-27].
[190] Ibid at [39-40]
[191] Ibid at [41-42]
[192] Ibid at [45-48]

of taonga and koiwi. In addition, the socio-economic benefits of the mine allow for a stable, marae-based community at Taharoa."[193]

217. In confirming who he represents in this process, Mr Barclay Kerr stated that he speaks on behalf of "*2,000 Ngāti Mahuta Ki Te Hauauru shareholders who are descendants and beneficiaries of the original people who run the land now known as Taharoa C Block. We will decide what happens to it and when it is no longer used for mining…. there are more Ngati Mahuta in managerial and supervisory roles in TIL operations than any time in the past. It's because of the positions that are held by our tribal members that I am confident of how the operations will be carried out. And when the time comes to rehabilitate the lands, these hapu members will ensure it's done appropriately."*[194] In exploring this statement with him at hearing, Mr Barclay Kerr accepted that potential effects of the mining operation go beyond the boundaries of Taharoa C, and other relationships, namely the marae, rūnanga, and various other whānau trusts, need consideration. He stated "*it's also important to understand that a lot of the people from these marae are Taharoa C shareholders. Of course. So it's a kind of tightrope you have to walk about what we're doing here. And I quite clearly state in my evidence that I don't even for a moment say I'm speaking on behalf of Ngāti Mahuta, the rūnanga, in this instance*."[195]

218. In response to Mr Taituwha King's evidence Mr Barclay Kerr confirmed he agrees with Mr King's explanation of Ngāti Mahuta's culture and traditions and relationship with its ancestral lands[196] and also regards the Applicant's responsibility to protect the whenua and "ensure that the legacy of mining does not harm the cultural and ecological wealth of the area."[197]

219. Discussing Mr King's recommendations on recognising and managing cultural effects, he also generally agreed with these, but their views diverged in that Mr

[193] Ibid at [53]
[194] Oral Evidence, H Barclay Kerr, 5 August 2024
[195] Ibid
[196] Supplementary Statement of Evidence, H Barclay Kerr, 27 June 2024, at [18]
[197] Ibid at [20]

Barclay Kerr considers existing mine practices and the conditions proposed by the Applicant can adequately address the cultural effects.[198]

220. Mr Barclay Kerr also addressed the matter of the bond raised by WRC, stating that imposition of the bond is not consistent with the rangatiratanga of tangata whenua. He stated "*as the enduring owners of the whenua, and a partner in the ongoing operation of the Mine, tangata whenua will themselves be able to responsibly determine how the whenua is to be left if the Mine is to close. Tangata whenua have no interest in seeing the site left in a post-closure state that would be detrimental to the environment.*"[199]

221. Mr Wayne Coffey, the Managing Director of Taharoa C Incorporation has whakapapa links to Ngāti Mahuta. His evidence focused on the relationship of Mana Whenua through Taharoa C Block who lease the land to the Applicant. Mr Coffey emphasised the importance of the mine to the economy and local community, as a main source of income for Taharoa C[200], the significant employment opportunities, including through enabling tangata whenua to return to their ancestral land to work and live, along with and housing and other community asset and infrastructure provided or maintained by the Applicant.[201]

222. Mr Grant Eccles, planning witness for the Applicant, relied on the evidence of Mr Barclay Kerr in terms of cultural effects, specifically the significant cultural benefits of the mine for Ngāti Mahuta, such as via employment, royalties accruing to Taharoa C Block, and support for the local community.[202]

223. In assessing the proposal to be consistent with the statutory provisions relevant to cultural matters (for example in the NZCPS, NPS-FM and Waikato RPS), Mr Eccles emphasized that through Taharoa C's partnership with the Applicant (along with previous companies and the Crown) rangatiratanga has been exercised and

[198] Ibid at [23 – 25]
[199] Summary Statement of Evidence, H Barclay Kerr, 5 August 2024, at [22]
[200] Statement of Evidence, W Coffey, 23 January 2024, at [48-49]
[201] Ibid, at [53] and [59]
[202] Statement of Evidence, G Eccles, 23 January 2024, at [130-131]

kaitiakitanga has historically been exercised in the operation of the mine to date.[203] He recognised that there are differing views as to the level of involvement and oversight that Mana Whenua who are not Taharoa C beneficiaries or not employed by the Applicant should have in the activities carried out at the mine, to allow for the exercise of kaitiakitanga. He stated "*there is a balance to be found amongst the various views of tangata whenua. My view is that there is a limit to how far consent conditions can and should go in influencing relationships, and that the proposed conditions attached to this statement respond appropriately to the Taharoa circumstances."*[204]

224. Mr Eccles elaborated that while the proposed conditions are not expressed specifically in mātauranga terms, they cannot be said to be absent of mātauranga Māori considerations and can address tangata whenua values. He provided examples of conditions relating to the fish pass, requiring flow augmentation, and wetland monitoring.[205] Mr Eccles concluded *"the opportunity for more specific mātauranga measures to be introduced to the monitoring of the effects of the ongoing mining activities is provided for through the proposed conditions of consent requiring consultation with the runanga, marae and hapu groups in the preparation of management plan(s) that will govern activity at the site".*[206]

Wāhi Tapu and Koiwi

225. Due to the nature of the Application site being a wāhi pakanga (historic battleground), koiwi discoveries will and do occur from time to time but Mr Barclay Kerr considered the tikanga derived from many years of such discoveries, along with the provision of demarcated urupa where no mining activities can occur, ensure appropriate tikanga is in place.[207]

226. Mr Martin, acting Mine Manager, is of Ngāti Mahuta descent and has worked at the

[203] Summary Statement, G Eccles, 7 August 2024, at [20]
[204] Ibid, at [22]
[205] Ibid, at [24-25]
[206] Ibid, at [26]
[207] Statement of Evidence, H Barclay-Kerr, 23 January 2024, at [49-52]

mine for several decades. He gave examples of the type of interactions he has with neighbours and the community and provided detail on the archaeological protocols employed by the Applicant. In response to matters raised in the S42A report Mr Martin pointed out that in his view there is a sufficient degree of separation between TIL employees and local tangata whenua when accidental discoveries are made. The reason being that there are robust procedures in place, tikanga is followed and Ngāti Mahuta kaumatua are engaged.[208] We discuss this matter further in relation to consultation more generally in Section 12 below.

227. In responding to a matter raised in the s42A report by Mr Chrisp, Mr Eccles commented on the existing accidental discovery protocol endorsing the comments of Messrs Martin and Barclay Kerr regards the appropriateness of its application. Based on his experience elsewhere, he considered it comprehensive, including its provision for defined urupa/reserve areas set aside within the Taharoa C Block for the interment of any koiwi discovered during mining activity. Regardless he indicated support for any amendments to the protocol that could be agreed between the Applicant and submitters.[209]

Council

228. In respect of kōiwi, Mr Chrisp recognized concerns raised by some submitters and invited the Applicant and submitters representing Ngāti Mahuta interests to comment on the adequacy and appropriateness of the archaeological protocols at the hearing. This matter is discussed further in section 12 below.

Submitters

The Cultural Landscape of Tahaaroa, Wai, Whenua, Tāngata, Wairua, and Wāhi Tapu and Koiwi

Tukotahi Tuteao Whaanau Trust

[208] Statement of Evidence, G Martin, 23 January 2024, at [85-90] & Appendix A
[209] Statement of Evidence, G Eccles, 23 January 2024, at [136-137]

229. Verna Tuteao and Averill Tuteao Kiwi on behalf of Tukotahi Tuteao Whaanau Trust ("TTT") provided background on their whakapapa and connections to Tahaaroa, the cultural heritage of the area and expressed memories and experiences of their whanau over generations, both pre and post the mine's existence. Both hold or have held roles on Te Rūnanga o Ngāti Mahuta ki te Hauauru or Taharoa Lakes Trust.

230. TTT highlighted concerns regards the oranga or health of the wai and whenua, and ensuing effects on the wellbeing of tāngata and wairua. This included the impacts of the structures in Wainui Stream on freshwater ecology and customary fisheries, and measures they believe should be implemented to mitigate, including modifications to the fish pass and dam structure and fisheries research.[210] Averill Tuteao Kiwi's evidence highlighted the significance of Lake Tahaaroa and Wainui Stream in providing a "corridor, ki uta ki tai for migrating fish species" and a valued pātaka kai for inanga, kanae and tuna.[211] She described the past and ongoing effects of mining operations, in particular the dam structure, as having "*disturbed a crucial passageway for migrating fish species, severely effecting mauri and wairua and threatening whakapapa and the health and wellness of the people.*"[212] Furthermore, the loss of traditional fishing and harvesting sites such as Turanga's crossing has also impacted the transfer of traditional knowledge and practices, tikanga, and korero tuku iho.[213] TTT also shared details of decades of kaitiaki mahi they have been involved with in collaboration with research institutes and agencies in respect of customary fisheries research and the management of Tahaaroa Lakes and waterways.[214]

231. TTT went on to explain the impacts of mining activities on Tahaaroa C on neighbouring properties, specifically air discharges and related health issues of whanau members they attribute to this.[215]

[210] Statement of Evidence, V Tuteao, 8 August 2024, at [22-28]
[211] Statement of Evidence, A Tuteao Kiwi, 8 August 2024, at [40-41& 51]
[212] Ibid, at [47]
[213] Ibid, at [55 - 63]
[214] Ibid, at [64] and [78]
[215] Statement of Evidence, V Tuteao, 8 August 2024, at [31-33]

232. Speaking to wāhi tapu and kōiwi, TTT hold the view that incidents in relation to the management of Tauwhare Reserve have occurred on the Applicant's watch, affecting tikanga and wairua and produced documentation of their engagement in legal proceedings in that respect.[216]

Te Ruunanga o Ngaati Mahuta ki te Hauaauru ("TRONMH")

233. Ms Ashlee Aspinall and Mr Mahi Newton-King presented on behalf of TRONMH. TRONMH is mandated by Ngāti Mahuta ki te Hauāuru, which includes Maketū, Te Kōraha, and Aaruka marae and was established to "protect, preserve, and enhance the interests of Ngāti Mahuta ki te Hauāuru rohe and uri whakatupu."[217]

234. TRONMH is preparing the claims of Ngāti Mahuta ki te Hauāuru under the Marine and Coastal Areas (Takutai Moana) Act 2011 and hold concerns that increased and ongoing mining activity could undermine these claims. Ms Aspinall's evidence was that continuation of mining contradicts the principles of kaitiakitanga and threatens the ecological balance and biodiversity of the coastal and marine environment. Connection to waahi tapu, land, and sea as well as cultural practices have been diminished by the impacts of mining and the proposed consent renewal poses significant risks to the cultural, social, and environmental well-being of Ngaati Mahuta ki te Hauaauru.[218]

235. Ms Aspinall disputed the Applicant's claims of the socio-economic benefits of the mine to the Tahaaroa community, suggesting that past educational scholarships are no longer provided by Taharoa C[219], listing concerns about the management and transparency of TMIL and TIL within Taharoa C Block[220] and relaying issues raised by whanau regards employment contracts.[221] She also voiced concerns about the quality of living and general condition of Tahaaroa Village, along with health

[216] Ibid, at [37] & Appendix 1
[217] Statement of Evidence, A Aspinall, 26 July 2024, at [41-42]
[218] Ibid, Executive summary, pg. 3
[219] Ibid, at [79]
[220] Ibid, at [91]
[221] Ibid, at [98] to [114]

concerns regarding water and air quality for whanau, the kura and kohanga reo.[222]

236. Echoing similar concerns to TTT, TRONMH relayed concerns passed on by previous and current Ngāti Mahuta ki te Hauāuru employees of the mine regarding tikanga practices. She inferred that mishandling of Kōiwi is a common occurrence with the Applicant and there appears to be confusion and inconsistency as to how protocols are applied and by whom during discoveries.[223]

Te Huia Pihopa Trust

237. Te Huia Pihopa Trust represented by Geneva Adams and Stephen King provided a conceptual outline of their dreams and aspirations for their whanau land. A key issue the Trust consider is a consequence of the Applicant's mining activities relates to the loss of flow to the puna (natural springs) on their block, which has resulted in the need to install bores for water supply and consequently electricity costs to pump it.[224] Other concerns raised by Te Huia Pihopa Trust related to effects on the water quality and hauora of the Wainui Stream, Lake Tahaaroa, native fish and birdlife as well as the erosion of the coastal marine area. Further, a need to create clearer boundary lines with sediment fencing to ensure sand stockpiles / mine tailings do not encroach on neighbouring blocks was mooted. The submitter concluded that effects of the mine ultimately flow on to the people of Tahaaroa and future generations, impacting on the continued practice of Kaitiakitanga.[225]

John David Keepa/Kupa Whaanau Trust "The Keepa Trust"

238. Mr Conland and Mr Keenan provided technical evidence on behalf of the Keepa Trust that was further informed by wānanga held in April 2024 with Mana Whenua. To mitigate the effects of the consent, the uncertainty felt by submitters due to historic non-compliance and lack of rehabilitation and issues around consultation, they supported a more structured approach in developing an integrated

[222] Ibid, at [126] to [132]
[223] Ibid, at [143] to[152]
[224] Oral Evidence, G Adams, 8 August 2024
[225] Ibid

Environmental Management Plan.

239. Mr Keenan considered a structural mechanism for community engagement critical for the effective development of the management plans required to address baseline environmental concerns. He stated that *"without such a structure, there will be no way to keep track of the differing objectives within the management plans. It is likely that the efforts to engage the community will overwhelm the resources available to address the critical matters."* He supported Mr Conland's proposed condition in this regard.[226]

240. Mr Conland's recommendation to provide for such community engagement, including through the collaborative development of an environmental data collection tool, including mātauranga Māori and displayed on a digital dashboard to report ongoing performance and compliance with management plans.[227]

241. Mr Keenan accepted that the substantially reduced consent terms sought by submitters were justified as "*there is a high risk of Management Plans not achieving appropriate environmental outcomes, particularly given the stated record of compliance. Consent term is obviously a strong incentive for TIL. Potentially a shorter term of ten years could be considered; noting the need for ongoing investment by TIL is dependent on some certainty".*[228]

242. The Keepa Trust provided feedback on the condition set circulated by the Applicant post hearing, commenting that while the Applicant had proposed some changes, it had clearly not adequately addressed the concerns submitters had expressed at the Hearing. As such, the Keepa Trust preferred the Council's version, but these did not go far enough either, particularly in relation to the engagement conditions.[229]

243. Ms Amanda Pū was raised at Tahaaroa and shared memories of growing up there and essentially living a self-sufficient life where the majority of kai came from the whenua, wai and moana. As a number of their tamariki and mokopuna are ready to move home they have recently started feasibility studies to develop papakāinga on

[226] Statement of Evidence of C Keenan, 1 February 2024, at [41]
[227] Statement of Evidence of N Conland, 13 February 2024, at [Summary, pg. 3]
[228] Statement of Evidence of C Keenan, 1 February 2024, at [50]
[229] Memorandum of Counsel on behalf of the Keepa Trust, 16 September 2024, at [3] to [4]

the whenua.[230]

244. She commented on the changes in lake levels since the Wainui Dam was constructed resulting in the loss of "*four hectares of their whenua on the flats*" as well as affecting mahinga kai.[231] Dust issues were also raised, as tailings from the mining operations blow across to their property such that dust ducts have had to be installed within their new houses to ensure air quality is safe. Ms Pū also stated that the Tahaaroa Kura principal advised that the Ministry of Education have had to do the same at the kura.[232]

245. Ms Pū and Marree Keepa described spiritual and sacred aspects of the Wainui Stream and surrounds highlighting its significance. She was supportive of the imposition of a bond as a condition of consent, to give comfort that restoration and rehabilitation can occur, declaring "*I know how my home used to look*".[233]

246. Mr David Keepa provided korero on the issue of stock exclusion, explaining that some of the horses wandering on Taharoa C block belong to him and how to him, they are like whanau. In his view, the yards the applicant has constructed, as discussed by Mr Martin, will reduce the issue of wandering stock through the mine site and in future rehabilitation areas. Mr Keepa also commented on the management of wāhi tapu such as Tauwhare, supporting a more proactive approach where skilled people in the hapū could identify areas where kōiwi were likely to be located prior to works, rather than encountering them through accidental discovery.[234]

247. Ms Jaimee Tamaki is part of the Keepa Kupa whanau and holds a role as Councillor on the Otorohanga District Council. She spoke of the importance of dialogue in resource consent processes and the need for "bridges to be forged" between the

[230] Oral Evidence, A Pū, 8 August 2024
[231] Ibid
[232] Ibid
[233] Ibid
[234] Oral Evidence, D Keepa, 8 August 2024

Applicant, Taharoa C and the community to build those relationships in order to forge a better future for everyone.[235]

Tahaaroa Lakes Trust

248. Ngahuia Herangi and Fleur Passau presented on behalf of Tahaaroa Lakes Trust. Ms Herangi is the Chair of the Lakes Trust and is employed by NIWA as a Māori environmental researcher. Ms Passau has a background in the mining industry in Western Australia. As well as her role as trustee on the Lakes Trust she is involved in the governance of the kōhanga reo in Tahaaroa. She explained how in the last few years the Lakes Trustees have been developing a 10-year strategic plan and undertaken numerous lake monitoring wānanga alongside NIWA and are focused on implementing other new projects and submitting funding proposals for potential future projects.[236]

249. Ms Herangi gave an overview of five different projects Tahaaroa Lakes Trust either has underway or has applied for funding for. They have been successful in obtaining significant funding that is supporting the capacity building of the hapū through reconnecting with freshwater taonga and developing monitoring programmes and cultural health indicator frameworks for the lakes and mahinga kai. She concluded that "*the ecological well-being of the Tahaaroa Lakes is critical to our community … and we have no certainty about how the lakes will be left once the mine is gone. Our trust in TIL is broken but we are willing to work towards building it back which is why we support better involvement of the Lakes Trust, Marae and more formal engagement. We support better visibility of the compliance information and completion of the rehabilitation plans through a digital platform. We support a term duration of seven years with the possibility of a longer renewal term".*[237]

Roy Wetini Whanau Trust

[235] Oral Evidence, J Tamaki, 8 August 2024
[236] Oral Evidence, F Passau, 8 August 2024
[237] Oral Evidence, N Herangi, 8 August 2024

250. Roy Wetini and Teina Malone presented on behalf of the Wetini Trust. Mr Wetini noted that while some submitters may not live permanently in Tahaaroa they have deep connections to it, returning regularly and for holidays with some seeking to return permanently, for example to establish papakainga.[238] The Wetini whanau own a dry stock farm property neighbouring Taharoa C Block land and are embarking on feasibility studies on sustainable land use options for the property in future. Their submission was lodged due to a concern for the health of their whanau and secondly, concern for the health of their whenua.[239]

251. Dust and noise impacts were a key concern for the Wetini Trust who described how last year the Applicant had begun mining the top of the ridge in Central Block to the south-west of their property. This hill had previously acted as a natural buffer between them and the mining works, providing protection from the prevailing south westerly wind. Over the last year they have lodged complaints with the Applicant about dust and noise impacts, however they have experienced a lack of engagement from the Applicant.[240] Mr Wetini explained that their Trust is not opposed to the mining continuing but seek appropriate conditions to manage effects and compliance.[241]

252. Ms Teina Malone is an experienced environmental planner. Her evidence described the Wetini whenua and the changes and effects witnessed and experienced by them as a result of existing operations at the mine site; responses to the Section 42A report and addendum and evidence of the Applicant, other submitters and joint witness statements' as relevant to their submission, as well as overall relief sought. Ms Malone commented that the level of detail provided by the Applicant in respect of the Site Rehabilitation Plan, Conceptual Site Closure Plan and measures proposed to mitigate effects on adjacent properties "*leaves us in the dark on TIL's plans for mining and rehabilitation of the site. This is deeply unsettling for us particularly given*

[238] Statement of Evidence, R Wetini, 8 August 2024, at [pg. 1]
[239] Ibid, at [pg. 2]
[240] Ibid, at [pg. 3]
[241] Ibid, at [pg. 4]

historic non-compliances".[242]

253. Ms Malone outlined how the whanau undertake a hikoi over their property when visiting and have observed and recorded the changes to the ridgeline over time, pointing us to photographic evidence.[243] The progressive removal of this natural buffer means they are no longer screened from mine operations and have a direct view into the inner workings of the mine site, fine red clay dust is now regularly present on and within their house, along with a noticeable increase in noise.[244] The Wetini Trust queried why, given the significance of these effects on them, including impacts on the whanau's ability to enjoy and connect to the outdoor environment of their ancestral lands,[245] no landscape architect had been engaged to assess the effects on Mana Whenua.[246] They considered such an expert should be engaged in development of a mitigation plan.[247] During questioning from us Ms Malone further clarified that given the cultural nature of the landscape effects, any such plan would need to be prepared in consultation with Mana Whenua.

254. Along with effects on visual amenity, noise and air quality impacts Ms Malone held concerns about the removal of this buffer and potential effects on the Mitiwai Stream and nearby wetlands. She endorsed the evidence of Mr King regards the cultural significance of the Mitiwai stream and its important role in supporting cultural practices, māra kai, ecosystems, aquatic life and birds.[248] She emphasized linkages between preserving the health, well-being and integrity of the Mitiwai to ensuring the health, well-being and integrity of the people. As a result the Wetini Trust supported Mr Crisp's recommendation for a setback but considered a 100 metre setback was required (rather than 50m as recommended by Mr Chrisp) to avoid impacts on the Mitiwai and associated wetland.[249]

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[242] Statement of Evidence, T Malone, 30 July 2024, at [38]
[243] Statement of Evidence, T Malone, 30 July 2024, at [Attachment 5, photos 1-4]
[244] Ibid, at [18] to [20]
[245] Ibid, at [57]
[246] Ibid, at [54]
[247] Ibid, at [105] to [107]
[248] Ibid, at [111]
[249] Ibid, at [116] to [119]

255. The Wetini Trust did not disagree that the mining operation provides economic and social benefits to the community of Tahaaroa, and are not opposed to the activity of mining itself. However, they consider the mine needs to be managed in a way that does not impact adversely on the ability of Mana Whenua to connect to their ancestral lands and that the health of Te Taiao is protected for current and future generations.[250] Ms Malone was not confident that the Applicant's proposed conditions sufficiently addressed their concerns, "*in particular to do with rehabilitation, mitigation of off-site effects, air quality, amenity, noise, erosion, saltation, impacts on water bodies and wetlands.*[251]

256. Ms Malone considered the conditions recommended by Mr Chrisp within the 42A report addendum more appropriately addressed the effects they had identified, particularly around consultation, a need for increased transparency, communication, rehabilitation impacts on wetlands, and the requirement for a bond.[252] The Wetini Trust provided further feedback into circulated conditions post hearing where they were generally aligned with WRC's position and/or the Keepa Trust. However, for the reasons set out in her statement, She held a different view to Mr Chrisp regards the term of consent, which she considered should be no longer than 14 years to match the consent term for the existing (expired) consents.[253]

Te Kooraha marae

257. Taituwha King, Sonny Ruki-Willison and Ngahuia Herangi presented on behalf of Te Kooraha Marae.

258. Mr King is the Chair of Te Kooraha Marae trustees. He explained that in April 2024 at a hui ā marae, he was mandated by representatives of various groups and trusts (including Taharoa Lakes Trust, Aaruka Marae and Te Rūnanga o Ngāti Mahuta ki te Hauāuru) to be the cultural expert and representative for descendants of Ngāti Mahuta ki te Hauāuru at

[250] Ibid, at [157]
[251] Ibid, at [160]
[252] Ibid at [160]
[253] Statement of Evidence, T Malone, 30 July 2024, at [156]

this hearing.[254]

259. Mr King provided comprehensive cultural evidence on the origins of Ngāti Mahuta ki te Hauāuru, and their connections to the cultural landscape of Tahaaroa and the significance of those connections. His korero encompassed tribal pepeha, whakapapa, rohe boundaries, whakatauki and other narratives including how Tahaaroa came to be named during the journey of their ancestress Ruaputahanga, and history of the battle at Tahaaroa when Waikato and Ngāti Maniapoto successfully drove Te Rauparaha south.[255] A wāhi tūpuna mapping project undertaken by the hapū, "Ohonga tai, ohonga whenua" was illustrative of the mahi to preserve and maintain tribal knowledge and traditions for future generations.[256] Mr King detailed the background to the three Ngāti Mahuta ki te Hauāuru marae, the relationship to Te Kingitanga, and significant sites and taonga, including Te Wharangi urupa, the Mitiwai stream and cultural indicator species of importance.[257]

260. He confirmed their role as Mana Whenua, who have the authority to speak for the land, for the water, for the sea, for the people of Ngāti Mahuta ki te Hauāuru.[258] His evidence was endorsed by all submitters and largely accepted by Mr Barclay Kerr.[259] Many submitters had taken issue with the lack of a Cultural Impact Assessment as part of the application, a matter which we had sought to address earlier in Minute 10. At the hearing Mr Lanning commented that *"the gap in advice to assist the panel in the matters you have to consider was filled by the evidence of Mr King*"[260] and we agree.

261. Expanding on the difference between the Applicant's employees and Taharoa C, Mr King stated that "*while some members of Ngāti Mahuta ki e Hauāuru are employed by TIL, their tribal representation and significance within the company remains*

[254] Statement of Evidence, T King, 17 June 2024, at [1.2]
[255] Ibid, at [4.1]
[256] Ibid, at [7.9]
[257] Ibid
[258] Ibid, at [1.3]
[259] Supplementary Statement of Evidence, H Barclay Kerr, 27 June 2024, at [18] to [25]
[260] Supplementary notes to counsel submissions for the John David Keepa/Kupa Whānau Trust, 8 August 2024, at [2]

minimal. Conversely, Taharoa C block Incorporated governing board represents only its shareholders'.[261]

262. Going in to depth regards the importance of wai, he stated "*water is more than just a complex compound to us. It embodies the mauri or the essence of Mitiwai and all the bodies of water within Ngāti Mahuta ki te Hauāuru as explained earlier. Those of us who live near these waters, who know these stories, and who both receive from and give back to them have always upheld and respected their significance*".[262] Further describing how Mitiwai Stream nurtures the hapū, Mr King described this mahinga kai as providing watercress and water for irrigation of māra kai, as well as enabling cultural practices in relation to the preparation of Kāngawai (rotten corn) to be maintained. Tuna heke, korokoro, and īnanga journey through the stream on their migration to the sea for breeding, while lamprey and freshwater koura are among other species of aquatic life in the stream, providing a haven and food source for native birds such as the kotare.[263]

263. Mr King set out a description of tohu, indicators of health and wellbeing for Mana Whenua including key indicator species such as the Pepetuna pūriri moth, pekapeka bat, and the ruru, their relationship to Ngāti Mahuta ki te Hauāuru traditions and narratives, and what their presence or absence signifies in relation to the health of the environment. He voiced a concern that "*if health indicators of the community of Tahaaroa are directly correlated to the health of its environment, then the effectiveness of our role as kaitiaki o te rohe o Ngāti Mahuta will indeed be called into question. As kaitiaki of our tribal lands, it's our duty to ensure the vitality of our environment which in turn supports the well-being of our people".*[264] As an example of the effects of mining on these indicators, he stated "*where there was once complete darkness and silence, the nightscape of Tahaaroa and Te Kooraha Marae has changed. Light and sound pollution of the machines of progress now drown out*

[261] Statement of Evidence, T King, 17 June 2024, at [3.27] to [3.28]
[262] Ibid, at [18.8]
[263] Ibid, at [26.2] to [26.12]
[264] Ibid, [21.1] to [29]

the calls of the rūrū. Like the soothing sounds of the rūrū which bring peace to the mind and spirit, the life force of the land, the life force of the people, and the life force of the tribe is fading".[265] Mr King opined that *"through diligent observation and understanding of these indicators, we can better fulfil the role as kaitiaki…. addressing ecological imbalances and ensuring the prosperity of both the environment and the community*", and *"resolute commitment to the guardianship of the land involves recognising and responding to important signs and indicators, thereby maintaining the harmony, health and well-being of Ngāti Mahuta ki te hauāuru for future generations".*[266]

264. During questioning from the panel about his perspective on site rehabilitation and the final landscape contour, Mr King explained that he takes guidance from tribal whakatauaki such as "*Tini one pango, tini one tāngata*"[267] which refers to the countless grains of the black sands relating to the lineage of Ngāti Mahuta. He recalled that as a boy there were rolling hills and dunes and that he "*would like to see sand dunes come back, but I'd also like to see areas where we can also create those green corridors for our uri and to protect the lands*".[268]

265. Mr King reiterated that in order for the Applicant's consent to protect and safeguard the environment and community, "TIL should:

    1) *Monitor mining impacts on flora and fauna with a focus on native species.*
    2) *Actively reduce light and noise pollution by creating native green corridors with the intention to not mine those areas.*
    3) *Actively restore native habitats.*
    4) *Actively engage with and involve mana whenua in environmental management.*
    5) *Actively support environmental education both inside and outside the company".*[269] *He concluded that "as descendants of Ngāti Mahuta ki te hauāuru, we are the kaitiaki (guardians) of our land, air, waterways, and sea, embodying a profound connection where we are the land and water, and they are us. Our role as kaitiaki is deeply rooted in the responsibility passed down from our ancestors to protect and preserve our*

[265] Ibid, at [29.17]
[266] Ibid, at [29.22] and [29.24]
[267] Ibid, at [28.2]
[268] Oral Evidence, T King, 8 August 2024
[269] Statement of Evidence, T King, 17 June 2024, at [29.29]

heritage for future generations. In our ongoing efforts to honour this role, we have faced significant challenges, particularly with the proposed mining activities by TIL. This proposal is fundamentally at odds with our beliefs and responsibilities, as Mitiwai is not just water but a sacred entity—a source of life, authority, achievement, home, pathways, baptism, cleansing, and an everlasting spring".[270]

266. Sonny Ruki-Willison spoke to his experience as an industrial electrician who was employed by the Applicant and their predecessors for 25 years. His whenua is at the head of Lake Tahaaroa and he held specific concerns relating to the lake levels as his whenua at Maungatangi is affected by flooding. He shared concerns voiced by the Keepa whanau about sand drift depositing in Lake Tahaaroa, and considered improved surveys, controls, measures and conditions for the consents are needed to improve understanding of what is happening and protect the health of the lake.[271]

267. In respect of wāhi tapu, he recounted that in his time working at the mine, mining occurred with the guidance of the "old fellas" who ensured that kōiwi were dealt with appropriately, however nowadays he considers such guidance to be absent.[272]

268. As an avid ocean waterman, Mr Ruki-Willison described how his connections to the land and sea motivate him to uphold the well-being of the resources passed down. In terms of discharges to the coastal marine area he spoke about observing a sediment plume in the CMA and the potential for suspended solids and contaminants in the process water such as flocculant. According to Mr Ruki-Willison the plume occurred in conjunction with the migration of mullet and a mass stranding of mullet was observed soon after. He also held concerns about marine biosecurity and the possibility of invasive marine species becoming established, and considered the responsibility falls on the Applicant to undertake monitoring to give Mana Whenua confidence their mātaitai and kaimoana is protected.[273]

269. Ms Ngahuia Herangi spoke on behalf of Te Kooraha Marae and also holds

[270] Ibid, at [30.1] and [30.2]
[271] Oral Evidence, S Ruki-Willison, 8 August 2024
[272] Ibid
[273] Ibid

governance roles on Te Wharangi urupaa and Tahaaroa Lakes Trusts' respectively. She explained that Te Kooraha Marae takes its name from a manga or stream flowing from a puna in the northern block near Te Wharangi urupaa, and traversing through Tahaaroa C Block past the marae before eventually becoming the Mitiwai stream and entering the moana. Ms Herangi described Kooraha is a source of kai and wai, a place where whaanau regularly gather watercress for hui at the marae.[274]

270. Ms Herangi described the pride the hapū take in their marae and the recent significant investment into its rebuild.[275] However, as kaitiaki of Te Kooraha Marae and Te Wharangi urupaa, they object to the Applicant's applications and seek improvements to the conditions. The Marae's values of aroha, pono and tika do not align with the manner in which the Applicant operates the mine and at hui whanau have raised the 35 year consent and its intergenerational effects as well as dust as key issues. She stressed that "*this is our home, our ukaipoo and we will defend it fiercely. Our whenua is a finite resource - if we don't look after the things that we value the most in a sustainable way, we will lose them….forever. There is no value in money if we have nowhere to live or call home. What is there to be proud of, if we have nothing to pass down to our mokopuna".*[276]

271. Ms Herangi closed the Marae's presentation with a video showing wānanga held over the last couple of years includes whanau roopu korero and haerenga to sites of significance and restoration efforts, demonstrating their *"vision of kotahitanga, rangatiratanga, manaakitanga and mahutatanga".*[277]

Panel Findings & Assessment

272. The Panel finds:

a) We agree with Mr Barclay Kerr and Mr King that the cultural landscape of Tahaaroa and the relationship of Ngāti Mahuta Ki Te Hauāuru to it is made up

[274] Statement of Evidence, N Herangi, 8 August 2024, at [7]
[275] Ibid, at [9] to [10]
[276] Ibid, at [20]
[277] Oral Evidence, N Herangi, 8 August 2024

of an intricate and interconnected web of values that is highly significant and indivisible.

b) We do not dispute that the proprietors of Taharoa C Block are Mana Whenua and have kaitiaki obligations. Indeed, a number of the submitters in opposition identified themselves as Taharoa C shareholders. Nonetheless, we agree with Mr King that the mandated authority of the tribe sits with the Ngāti Mahuta ki te Hauāuru marae when it comes to speaking on behalf of the land, the water, the sea and the people. Consequently, the responsibility for these matters must extend beyond Taharoa C, and the mine's employees to the wider Tahaaroa community.

c) We accept the genuine and heartfelt concerns expressed consistently by Mana Whenua in evidence that the mining operations have the potential to directly impact their ability to maintain their connection and relationship to their whenua, wai and taonga, as well as their ability to express kaitiakitanga.

d) We do not need to make a finding on the cultural weighting of evidence because the views of Mr Barclay Kerr and Mr King are not far apart in that regard. Mr Barclay Kerr accepts that the mining activity has potentially adverse effects on cultural values. Where the Applicant and submitters diverge is the effectiveness of conditions to mitigate said effects. We do not agree with Mr Barclay Kerr that the conditions proposed by the applicant are sufficient to mitigate the effects identified by submitters nor to achieve consistency with the relevant statutory provisions. Essentially, we prefer the manner of consultation and engagement set out in the conditions proposed by WRC and the Keepa and Wetini Trusts and we refer to our findings and assessment set out in this report in respect of consultation.

e) While we acknowledge that cultural effects on adjoining whenua, wai and moana are seen through a different lens than that of 'western science' we consider that for the most part, these have been addressed through our earlier findings in relation to wet mining and by conditions we have imposed to

mitigate environmental effects (e.g. stormwater, pump intake mesh screens, Wainui Stream residual flow rates, seepage and flooding; effects on terrestrial ecology, weed and pest control), monitoring of the discharge plume in the CMA, air discharges, and site rehabilitation requirements).

f) In respect of managing effects on wāhi tapu and kōiwi, the lack of transparency the community experiences clearly creates distrust that tikanga is being appropriately observed during mining operations. A more inclusive approach to consultation would undoubtedly assist in resolving this issue and we discuss this in the following section. Notwithstanding this, we acknowledge the existing protocols and practices carried out by the Applicant and consider the minor amendments to the Archaeological Discovery conditions offered by the parties will assist in this regard. In light of our finding on Mana Whenua authority above, and to remove ambiguity, we consider the Keepa Trust's proposed wording most appropriate as it specifies a local kaumatua "appointed by Aaruka Marae and/or Te Kooraha Marae"[278] as the point of contact in these circumstances.

7.14 Cultural Matters: Mana Whenua Consultation and Engagement

273. The previous section of this report sets out the cultural effects and responses to them set out in the parties' evidence. It is clear to us that effective consultation and engagement between the Applicant and Mana Whenua is critical to whether the effects of the mining activities on Mana Whenua can be adequately mitigated.

Applicant

274. With regard to consultation and engagement, Mr Coffey described the ongoing dialogue the Applicant has with the village and community, the attempts to consult with neighbouring landowners, and the Tahaaroa Lakes Trust.[279] He indicated a preference for informal and intuitive consultation on a personal and unstructured

[278] Applicant Closing Submissions, 4 October 2024, Appendix G Conditions Review Table
[279] Statement of Evidence, W Coffey, 23 January 2024, at [93] - [98]

basis which he considers is more valuable and effective than a more formal scheduled process as recommended by WRC.[280]

275. Mr Barclay Kerr related that Taharoa C has met with various hapū entities over the years, including the Tahaaroa Lakes Trust, but more recently engagement focus has been with on Te Rūnanga o Ngāti Mahuta as a collective voice of the hapū in dialogue with Taharoa C.[281]

276. In discussion at the hearing Mr Barclay Kerr elaborated that more recent consultation and attempts to set up a working party had faltered once the reconsenting was underway. In answering questions about the potential utility of resourcing for time or capacity building for Mana Whenua involvement he indicated general support for such a prospect explaining the Taharoa C had recently *"set up a charitable trust whose main priority is to look at these kinds of things and not just those but then these educational priorities and things like that that we try to create a pathway for. And so within that our kind of thinking was well okay if this charitable organisation can be funded through Taharoa C then some of these meetings and things that can run through that can work this whole thing out."*[282]

277. The panel also asked his opinion on the conditions proposed by the John David Keepa Kupa Whaanau Trust, particularly around accommodating sort of mātauranga Māori monitoring frameworks promoted in Mr King's evidence. Mr Barclay Kerr responded that he is a supporter and practitioner of such methods in many roles he holds and *"if there's a way that we can implement and find a pathway that mātauranga Māori can become a part of what we're talking about here I think that's a great idea."* [283]

278. In discussion with the panel Mr Martin indicated that the Applicant relies on Taharoa C Block to facilitate or guide the pathway for community engagement. He

[280] Statement of Evidence, W Coffey, 23 January 2024, at [104] to [106]
[281] Statement of Evidence, H Barclay Kerr, 23 January 2024, at [37]
[282] Oral Evidence, H Barclay-Kerr, 5 August 2024
[283] Oral Evidence, G Martin, 6 August 2024

commented that engagement with the marae and rūnanga can and should definitely occur, but in terms of the various entities - "*how far do you go with that"..* and *"I've got five kaumatua that I consult with, anything, whatever it may be, and three of them have worked down the site extensively over their life, and two of them are within C Block..."*[284] Through questioning we sought clarification as to whether the kaumatua he referred to were the same people as the 'appointed kaitiaki' mentioned in his evidence in regard to koiwi and wāhi tapu management[285], but it was difficult to discern which roopu or groups are approached in which situations. When querying whether this might create confusion for the community in understanding who is the point of contact or responsible in various circumstances, he responded "*yeah, but if you ask the right people, the confusion should not be there, if you ask the right people. You shouldn't be going to Facebook or the council …. it's just best to ring…. ring me, ring C Block, ring our kaumatua. And that has happened. That has happened, we've had families ring me and we've dealt with it."*[286]

279. Mr Eccles recognised that submitters sought greater consultation[287], but favoured the approach described by Mr Coffey and Mr Martin, suggesting consultation should be compatible with the context of the Tahaaroa community and occur in a broader manner reflecting existing inter relationships therein. He supported the Applicant's management's preference to engage directly with stakeholders rather than through a prescribed meeting.[288]

280. At the close of hearing the Applicant continued to stress that Taharoa Ironsands Ltd is a Māori owned company because along with Taharoa C's shares, Mr Coffey is the primary shareholder and he has whakapapa connections to Ngāti Mahuta ki te Hauāuru. They refuted any inference that there was a conflict between Taharoa C's

[284] Oral Evidence, H Barclay-Kerr, 5 August 2024
[285] Statement of Evidence, G Martin, 23 January 2024, at [90]
[286] Oral Evidence, G Martin, 6 August 2024
[287] Statement of Evidence, G Eccles, 23 January 2024, at [132]
[288] Ibid, at [133]

kaitiaki obligations and business operations.[289]

281. In considering the feedback provided by WRC and the Keepa Trust to the proposed conditions, Counsel set out a table responding to the amendments proposed by WRC, the Keepa Trust and the Wetini Trust including whether the changes are supported or opposed and reasons. Key reasons for not supporting engagement conditions proposed by WRC and submitters related to the vires of conditions which require the consent holder to make a financial contribution to mana whenua. We address this further in Section 12 of this decision but record here that the Applicant refuses to volunteer such a condition with Counsel confirming *"TIL already funds a range of matters which benefit the community. TIL is willing to and does engage with key stakeholders but does not consider it is reasonable to fund this engagement."*[290]

282. As regards engagement with Mana Whenua, the Applicant remained of the view that the structured approach favoured by WRC and the Keepa and Wetini Trusts' is inappropriate, whereas an informal forum for consultation provides flexibility which is best suited in the context and is most likely to lead to effective results. *"The proposed conditions will ensure that mana whenua have an opportunity to engage in planning for the environmental management of the Mine (including through Mātauranga and cultural health indicators) and access key information about the Mine's operation and environmental management."*[291]

Council

283. We have previously set out Mr Chrisp's general remarks on consultation with Mana Whenua above.

284. In his S42A Addendum Mr Chrisp noted that while the Applicant initially rejected the idea of a website to facilitate communications with the local community they have since agreed to setting up and maintaining a website which will include the results of monthly and annual monitoring, an agreed outcome recorded in the Joint

[289] Closing Legal Submissions on behalf of the Applicant, 4 October 2024, at [7&13]
[290] Ibid, at [108]
[291] Ibid, at [115]

Witness Statement relating to Environmental Management Plans.[292] He noted that in the Joint Witness Statement on Planning the experts agreed "*that structured and enhanced engagement between the consent holder and mana whenua would be beneficial, and the structure should be provided for in conditions*", however that there remains disagreement as to what the structure of ongoing engagement should look like. Mr Chrisp noted views on this topic ranged from TIL the Applicant's preference for informal engagement, to Mr Conlon's detailed framework for establishment of a Kaitiaki Stakeholder Group to facilitate engagement and provide input into management plan development.[293]

285. After listening to the submitters, at the close of hearing Mr Chrisp proposed further conditions of consent requiring regular hui and the funding of a communication process to facilitate the collective involvement of Mana Whenua in the preparation of the EMP, including its ongoing review. The purpose of the recommendations being to recognise and provide for the relationship that tangata whenua have with their ancestral water, sites and waahi tapu and other taonga and to have particular regard to Kaitiakitanga.[294]

286. However, Counsel for WRC recognised that the power to impose conditions on a consent is not unlimited[295] and pointed us to case law to assist our decision, which is discussed further in below.

287. Counsel submitted that "*a theme emerging from those submissions is a lack of consultation from TIL. It will also be apparent to the Panel that there is a need to recognise the tikanga-based relationships that the submitters have with the site, of which they are kaitiaki*."[296] It was submitted that Condition 21 as proposed by Mr Chrisp provides a method to remedy this concern and is appropriate to allow for meaningful consultation and participation.[297] The financial contribution proposed

[292] S42A Addendum Report, at [4.4]
[293] Ibid
[294]=Submissions of Counsel for WRC, 21 August 2024, at [8.2]
[295] Ibid, at [8.3]
[296]Ibid, at [8.4]
[297] Ibid, at [8.5]

by WRC was seen as a *"reasonable middle ground between TIL's position and full cost recovery. If possible, WRC submits that the proposed figures should ideally be a matter of agreement between TIL and the affected parties. That is obviously a matter for those parties to consider."* [298]

Submitters

288. Verna Tuteao's statement on behalf of TTT covered consultation issues with the Applicant. Her comments illustrated that the quality and quantity of consultation is variable, depending on the kaupapa, the particular Mana Whenua entity, and which of the Applicant's staff or Taharoa C representatives are approached.[299] Ms Tuteao outlined the history of TTT's involvement in legal proceedings in relation to mining activities, such as during the WRC prosecution of the Applicant for a diesel spill into the Wainui Stream in 2017 and an application for an injunction under the Te Ture Whenua Māori Act 1993 to halt mining of, and around Tauwhare Reserve on Taharoa C Block.[300] She indicated that the relationship between TTT and WRC over time had also been inconsistent and there was a lack of trust[301] and sought conditions requiring the Applicant to meet with and support the establishment and resourcing of a tāngata whenua committee made up of representatives selected through hui of Ngāti Mahuta ki te Hauāuru. Such a committee should collaborate with the Applicant in development of plans including such matters as Wainui Stream maintenance and enhancement, treatment of the Dam and Fish pass, opportunities for studies and restoration projects and reporting requirements to WRC.[302]

289. TRONMH also has experienced challenges meeting with both Taharoa C Block (ascribed to a disconnection between shareholders and Taharoa C Block governance) and the Applicant in relation to the resource consent renewals. While a working group was established, little engagement occurred.[303] Ms Aspinall was

[298] Ibid, at [8.14]
[299] Statement of Evidence, V Tuteao, 8 August 2024, at [15]
[300] Ibid, at [37] to [40]
[301] Ibid, at [38]
[302] Ibid, at [pg. 9 to 10]
[303] Statement of Evidence, A Aspinall, 26 July 2024, at [62]

also critical of Mr Coffey's attitude to consultation as set out in his evidence and advised the need for tikanga based engagement, determined by Mana Whenua.[304] TRONMH state that if this application is granted it must include an intensive solution focused, collaborative agreement between the Applicant and Mana Whenua.[305]

290. We have referred to the evidence of Messrs Keenan and Conland in respect of Mana Whenua engagement previously in Section 12. We note that Counsel for the Keepa Trust pointed us to the Planning JWS of 5 June 2024 in which the experts agreed that structured and enhanced engagement between TIL and Mana Whenua would be beneficial, and that such a structure should be provided for in conditions. [306] Counsel submitted that the condition proposed by the Applicant fell well short of that mark, the requirements of sections 6(e), 7(a) and 8 of the RMA; and best practice.[307]

Overall, their view is that the Applicant's proposed consultation is rudimentary and non-defined, while the conditions proposed by Mr Conland were robust, detailed and certain, as well as reasonable and proportionate given the large scale of the mining activity, its adverse effects and the requirements of the RMA.[308]

291. Ms Malone for the Wetini Trust took issue with Mr. Coffey's evidence in differentiating the submitters who do not reside in the Tahaaroa village stating "*while we may not permanently reside in Tahaaroa, this should not be used as an excuse to exclude us from consultation or to imply that the effects on ourselves and on the whenua that we are the kaitiaki for are not important".*[309]

292. With regards to ongoing engagement of Mana Whenua and kaitiaki, Ms Malone is in support of measures that would provide the Applicant's monitoring data on a single platform accessible to stakeholders and including the information Mana

[304] Ibid, at [70]
[305] Ibid, at [169]
[306] Legal Submissions on behalf of the Keepa Trust, 26 July 2024, at [4.5]
[307] Ibid, at [4.6]
[308] Ibid, at [47] and [4.10]
[309] Statement of Evidence, T Malone, 30 July 2024, at [134] to [135]

Whenua want access to. This also includes point of contact details of the Applicant's personnel to raise any issues, and transparency around rehabilitation plans and reporting.[310] In addition, the Wetini Trust seek a management approach that encompasses mātauranga Māori to monitor changes to the environment and identify and address any effects that may arise[311], supporting the mitigation measures proposed within the statement of Mr. King, including that the Applicant should actively engage with and involve mana whenua in environmental management.[312] During questions from the Panel, Ms Malone also confirmed support for the type of kaitiaki group framework that Mr. Keenan and Mr. Conlon proposed in their evidence, concluding *"really, for us, it's about having that engagement occur and there being a very clear framework for that to take place."*[313]

293. On behalf of Te Kooraha Marae, Ngahuia Herangi recounted her attendances at Taharoa C hui where in her opinion, *"as a minority shareholder you have no voice".*[314] She outlined successful communication strategies used by Te Kooraha Marae to consult with hundreds of whanau as well as a number of hui specifically held within the community in relation to this application. Her evidence was that attempts to establish a regular meeting schedule with the Applicant, the three marae and Tahaaroa Lakes Trust did not eventuate and structured engagement is needed.[315]

294. Ms Herangi went on to relay the burden Marae representatives had faced through their involvement in this consent process. She underscored the complexity of this resource consent application which had meant grappling with a significant volume of information and technical reports, a process that has been *"taxing and*

[310] Ibid, at [134]- to [135]
[311] Ibid, at [126]
[312] Ibid, at [129]
[313] Oral Evidence, T Malone, 8 August 2024
[314] Statement of Evidence, N Herangi, 8 August 2024, at [12]
[315] Ibid, at [15] and [16]

overwhelming on top of working full-time, juggling family and voluntary commitments".[316]

295. Te Kooraha Marae sought conditions that would empower them as kaitiaki and Mana Whenua to be involved in planning and decision-making around the rehabilitation of the whenua, and stressed they want to be remunerated for their involvement. They also recommended a shorter consent term of 7 years, *"a trial or test period if you will, to see how our relationship evolves and more importantly, whether practices improve".*[317] Ms Herangi also confirmed support for the framework produced by Mr Keenan and Mr Conland.[318]

Panel Findings & Assessment

a) We heard universally from submitters that the informal and "intuitive" consultation that Mr Coffey espouses is not effective or meaningful from their perspective. Evidence that they felt "powerless"[319] and "have no voice"[320] was compelling and leads us to conclude that the lack of a formalised process for engagement between the applicant and the Tahaaroa community constitutes an adverse effect in and of itself.

b) We are also cognisant of the fact that participating in complex resource consent processes and the development and implementation of the mine's management plans will continue to take significant time, effort and resources and can represent a burden to the community, who, motivated by their obligations as kaitiaki, have little other choice.

c) The Planning JWS pointed to the need for structured and enhanced engagement to be provided for in conditions. However, the Applicant's closing submissions and final set of conditions demonstrate minimal movement in this

[316] Ibid, at [19]
[317] Ibid, at [22]
[318] Ibid, at [23]
[319] Oral Evidence of T Malone, 8 August 2024
[320] Oral Evidence of N Herangi, 8 August 2024

regard. The Applicant opposes Mr Chrisp's proposed condition requiring regular and scheduled meetings with the community, continues to expect Mana Whenua to engage in the development of the EMP at their own cost and oppose any of Mr Conland's suggestions to shore up the use of cultural indicators and monitoring in the EMP. Despite this, the Applicant remains of the view that their proposed conditions will *"ensure that mana whenua have an opportunity to engage in planning for the environmental management of the Mine (including through Mātauranga and cultural health indicators) and access key information about the Mine's operation and environmental management."*[321]

d) We do not think this can be correct. Instead, we agree with the position put forward by WRC and the Wetini and Keepa Trusts' that a strengthened and structured framework for engagement is necessary to mitigate the cultural effects of the consent, including in providing for matters such as kaitiakitanga and mātauranga Māori. While we see formal engagement with the community as necessary in this context, we note there is no obstacle to the Applicant continuing informal engagement with members of the community who prefer this approach. However, for reasons set out in section below, we are unable to impose a condition requiring the Applicant to fund engagement with Mana Whenua. We are also mindful that without 'buy in' from the Applicant and support from all parties such conditions will be unlikely to result in successful outcomes.

e) Disappointingly, we think that adopting Mr Chrisp's proposed condition is as far as we can go. To incorporate Mr Conland's more comprehensive framework would be pointless without sufficient resourcing, good faith on the part of the Applicant, and support from submitters. In our view, this leaves a mitigation gap, and we discuss these matters further in our statutory assessment and in section 12 of this report in relation to the bond and term of

[321] Legal Submissions on behalf of the Applicant, 4 October 2024, at [115]

consent.

f) We have also made minor amendments to the named entities in condition 16 of the General conditions to ensure consistency. The John David Keepa Kupa Trust proposed adding *"neighbouring landowners"* to the group to be consulted. The Applicant opposes this amendment as including neighbouring landowners would include several who have not expressed an interest in the applications as well as potentially complicating development of the EMP and increasing time taken to finalise the EMP.[322] We think it appropriate to name all submitters[323] rather than introducing "neighbouring landowners," to provide more clarity, which may also assuage both the John David Keepa Kupa Trust's and the Applicant's concerns in this regard.

g) For the most part, we have also accepted amendments proposed by John David Keepa Kupa Trust regards notification of monitoring results on the website to submitter parties to enhance transparency of the mining operation performance for Mana Whenua.[324]

8 Section 104(1)(b) Consideration of Planning Instruments

296. The Applicant and Council have each provided assessment of the relevant planning instruments (**planning assessments**). Some submitters also chose to make submissions on the planning instruments. In this section will shall identify:

a) Aspects of the planning assessment which we adopt and have considered in reaching our decision.

b) Aspects of the planning assessment which we have considered in reaching our decision but have formed an additional or alternative view.

[322] Applicant's Closing Submissions, 4 October 2024, Appendix G Conditions Review Table
[323] e.g. add John David Keepa Kupa Whaanau Trust, Roy Wetini Whaanau Trust and Te Huia Pihopa Trust
[324] Applicant's Closing Submissions, 4 October 2024, Appendix G Conditions Review Table

8.1 National Policy Statements

National Policy Statement for Freshwater Management 2014 and 2020.

297. The Applicant provided a detailed assessment of the National Policy Statement for Freshwater Management 2014[325] and National Policy Statement for Freshwater Management 2020.[326]

298. Mr Chrisp, on behalf of Council assessed the NPS FM 2014 and NPS FM 2020 and considered[327]:

> *In my opinion, provided that the proposed activities are undertaken in accordance with the resource consent application and the recommended conditions of the resource consent (including development of a Freshwater Ecological Management and Monitoring Plan, A Fish Pass Monitoring Plan, and an updated Stormwater Management Plan), the proposal is not considered contrary to the objectives of the NPSFM.*

Panel Assessment

299. Since the hearing and closing submissions were lodged the Resource Management (freshwater and Other Matters) Amendment Act (Amendment Act) received Royal Assent (24 October 2024).

300. Section 2 of the Amendment Act provides the Act comes into force the day after it receives Royal Assent. There are no transitional provisions which apply in respect of this application with regard to the applicability of the following sections to our decision.

301. Section 23 of the Amendment Act amended s104 of the RMA inserting the following subsections:

> *(2F) When considering an application and any submissions received, a consent authority must not have regard to clause 1.3(5) or 2.1 of the NPSFM 2020 (which relates to the hierarchy of obligations in the NPSFM 2020)*

[325] AEE, Section 6.2.2.3
[326] Response to WRC s92 Request, G Eccles, 13 December 2024 at p 365
[327] S42A Report, Section 12.2.2

(2G) Subsection (2F) applies despite subsection (1)(b)(iii) and any other provision of this Act.

302. Clause 1.3 sets out Te Mana o te Wai as a fundamental concept. Te Mana o te Wai encompasses 6 principles that relate to the roles of tangata whenua and other New Zealanders in the management of freshwater. These include:

a) Mana whakahaere: the power, authority, and obligations of tangata whenua to make decisions that maintain, protect, and sustain the health and well-being of, and their relationship with, freshwater.

b) Kaitiakitanga: the obligations of tangata whenua to preserve, restore, enhance, and sustainably use freshwater for the benefit of present and future generations.

c) Manaakitanga: the process by which tangata whenua show respect, generosity, and care for freshwater and for others.

d) Governance: the responsibility of those with authority for making decisions about freshwater to do so in a way that prioritises the health and well-being of freshwater now and into the future.

e) Stewardship: the obligations of all New Zealanders to manage freshwater in a way that ensures it sustains present and future generations.

f) Care and respect: the responsibility of all New Zealanders to care for freshwater in providing for the health of the nation.

303. Clause 1.3(5) provides that there is a hierarchy of obligations in Te Mana o te Wai that prioritises:

(a) first, the health and well-being of water bodies and freshwater ecosystems

(b) second, the health needs of people (such as drinking water)

(c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

304. Clause 2.1 sets out the objective of the NPS FM which is to ensure that natural and

physical resource are managed in a way that prioritises:

a) *first, the health and well-being of water bodies and freshwater ecosystems*

b) *second, the health needs of people (such as drinking water)*

c) *third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.*

305. Importantly we note that ss(2G) provides that the requirement not to have regard to clause 1.3(5) and 2.1 of the NPSFM 2020 applies despite the requirement to have regard to a national policy statement in s104(1)(b)(iii). It does not apply that exception to s104(1)(b(v) relating to regional policy statements and proposed regional policy statements and (vi) plans or proposed plans.

306. This creates a difficulty in our view where operative and proposed policy statements and plans already include Te Mana o Te Wai provisions. RMA requires us to have regard to these documents and no exception has been set out.

307. The guidance within King Salmon[328] directs us to refer to an NPS where the plan or policy contains an invalidity, is incomplete in coverage, uncertain or inconsistent. However that is not the case here. Te Mana o Te Wai remains a provision within the NPS and therefore where there is an inclusion of Te Mana o Te Wai or its principles in a plan means that plan remains consistent.

308. Port Otago[329] also does not assist as that ratio aids us in determining conflicting policies, the prohibition on considering the prioritisation requirements relating to Te Mana o te Wai is a statutory requirement and not a policy. It may assist us in determining any conflict between the policies given the priorisation clauses have been moved out of play.

309. We also think it is important that Parliament elected to refer to the clauses in the NPS rather than to "Te Mana o Te Wai" itself. In doing so it narrowed the ability to

[328] *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited & Ors - [2014] NZSC 38*
[329] *Port Otago Limited v Environmental Defence Society Incorporated* [2023] NZSC 112

have regard to clauses rather than to have regard to the concepts captured within those clauses that may have been incorporated in plans to date or may have been incorporated for reasons other than the NPSFM. We consider if it had intended to include proposed and operative policies and plans it would have included these in the exception in s2(F).

310. We therefore consider we may have regard to Te Mana o te Wai as it is set out in the NPS FM and as it is set out in the lower order planning documents but of course must not have regard to clauses 1.3(5) and 2.1. We may not apply the prioritisation requirements or objective set out in the NPS FM however we may apply a prioritisation requirement if it is set out in the lower order documents.

311. We consider with respect to the NPS FW 2020 we consider the following policies of particular importance to this matter:

a) Policy 1: Freshwater is managed in a way that gives effect to Te Mana o te Wai.

b) Policy 2: Tangata whenua are actively involved in freshwater management (including decision making processes), and Māori freshwater values are identified and provided for.

c) Policy 3: Freshwater is managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis, including the effects on receiving environments.

d) Policy 6: There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.

e) Policy 9: The habitats of indigenous freshwater species are protected.

f) Policy 11: Freshwater is allocated and used efficiently, all existing over-allocation is phased out, and future over-allocation is avoided.

g) Policy 13: The condition of water bodies and freshwater ecosystems is systematically monitored over time, and action is taken where freshwater is degraded, and to reverse deteriorating trends.

h) Policy 15: Communities are enabled to provide for their social, economic, and cultural wellbeing in a way that is consistent with this National Policy Statement.

312. With respect to implementation we note the obligation imposed on regional Councils to give effect to Te Mana o te Wai by actively involving tangata whenua in freshwater management (including decision making processes)[330] , enabling the application of a diversity of systems of values and knowledge, such as mātauranga Māori, to the management of freshwater[331] and the duty to interpret the NPS in a way informed by Te Mana o te Wai[332].

313. We adopt the assessment of the Applicant (also adopted by Council) with respect to the NPS FM 2014 and 2020 however we consider the conditions we have imposed are necessary to mitigate the ecological, freshwater and cultural effects we have identified and ensure the consented condition is consistent with the NPS FW 2020.

New Zealand Coastal Policy Statement 2010

314. The Council agrees[333] with the Applicant's planning assessment[334] that the proposed activities are consistent with the NZCPS. We adopt the Applicant's assessment of the NZCPS 2020 but note the below objectives and policies are of particular importance in this matter.

315. NZCPS Objective 3 provides:

To take account of the principles of the Treaty of Waitangi, recognise the role of tangata whenua as kaitiaki and provide for tangata whenua involvement in management of the coastal environment by:

a) *recognising the ongoing and enduring relationship of tangata whenua over their lands, rohe and resources;*

[330] NPS FW 2020, clause 3.2(2)a) clause 3.4
[331] NPS FW 2020, clause 3.2(2)(d)
[332] NPS 2020 Clause 3.2(4)
[333] S42A Report, Section 12.2.1
[334] AEE, Section 6.2.2.4

b) *promoting meaningful relationships and interactions between tangata whenua and persons exercising functions and powers under the Act;*

c) *incorporating mātauranga Māori into sustainable management practices; and*

d) *recognising and protecting characteristics of the coastal environment that are of special value to tangata whenua.*

316. Policy 2 gives effect to Objective 3 and provides in taking account of the principles of the Treaty of Waitangai, and kaitiakitanga, in relation to the coastal environment:

a) *recognise that tangata whenua have traditional and continuing cultural relationships with areas of the coastal environment, including places where they have lived and fished for generations;*

b) *involve iwi authorities or hapū on behalf of tangata whenua in the preparation of regional policy statements, and plans, by undertaking effective consultation with tangata whenua; with such consultation to be early, meaningful, and as far as practicable in accordance with tikanga Māori;*

c) *with the consent of tangata whenua and as far as practicable in accordance with tikanga Māori, incorporate mātauranga Māori in regional policy statements, in plans, and in the consideration of applications for resource consents, notices of requirement for designation and private plan changes;*

d) *provide opportunities in appropriate circumstances for Māori involvement in decision making, for example when a consent application or notice of requirement is dealing with cultural localities or issues of cultural significance, and Māori experts, including pukenga, may have knowledge not otherwise available;*

317. Mr Eccles considers "*Through the Taharoa C Incorporation as joint owners of TIL, Ngāti Mahuta as tāngata whenua maintain their role as kaitiaki and have an ongoing and enduring relationship with their land, rohe, and development of the ironsand resource while ensuring that their tikanga with regards to protection of areas of special value and treatment of accidental discoveries is observed during day*

to day mining activities."[335]

318. For the reasons set out in section 7 of this report, we do not agree that complete reliance on Taharoa C owners in terms of relationships to the whenua, wai and moana and fulfilment of kaitiaki role accords with these provisions. Further, we have identified that without adequate conditions to facilitate Mana Whenua engagement we cannot be satisfied that mātauranga Māori, such as highlighted in the evidence of Mr T King, can be incorporated appropriately into the management plans.

319. We agree with counsel for the John David Keepa/Kupa Whaanau Trust[336] that the assessment undertaken by the Applicant is lacking in proper analysis and that these are strong directives. We consider the application and proposed conditions advanced by the Applicant do not accord with these policies.

320. We adopt the Applicant's assessment of the NZCPS (which Council agrees with) but for our comments in respect of mana whenua matters set out above. We consider the conditions we have imposed are necessary to ensure the consented activity is consistent with the NZCPS.

National Policy Statement of Indigenous Biodiversity 2023

321. The Applicant addressed the NPS IB and osal was consistent subject to the imposition of a 100m setback from wetlands[337]. We adopt the assessment of Council with respect to the NPS IB 2023, but for the following.

322. We note there was no assessment of Policy 1 which refers to management of indigenous biodiversity:

..... occurring in a way that takes into account the principles of the Treaty of Waitangi; and Policy 2 which states; "Tangata whenua exercise kaitiakitanga for indigenous biodiversity in their rohe, including through:

[335] AEE, at 6.2.2.4
[336] Synopsis of Legal Submissions for the Keepa Trust, 26 July 2024, at [3.21]
[337] S42A Report, Section 12.2.3

a) *(a) managing indigenous biodiversity on their land; and*

b) *(b) identifying and protecting indigenous species, populations and ecosystems that are taonga; and*

c) *(c) actively participating in other decision-making about indigenous biodiversity.*

323. We also note the decision-making principles set out in clause 1.5(c) which require the implementation of the NPS be informed by:

a) Taking into account the principles of the Treaty of Waitangi.

b) Recognising the bond between tangata whenua and indigenous biodiversity based on whakapapa relationships.

c) Recognising the obligation and responsibility of care that tangata wheuna have as kaitiaki of indigenous biodiversity.

d) Enabling the application of te ao Māori and mātauranga Māori.

e) Forming strong and effective partnerships with tangata whenua.

324. Further we consider the following policies are of particular importance in this matter:

a) Policy 2: Tangata whenua exercise kaitiakitanga for indigenous biodiversity in their rohe, including through managing indigenous biodiversity on their land, identifying and protecting indigenous species, populations and ecosystems that are taonga and actively participating in other decision-making about indigenous biodiversity.

b) Policy 10: Activities that contribute to New Zealand's social, economic, cultural, and environmental wellbeing are recognised and provided for as set out in this National Policy Statement.

c) Policy 13: Restoration of indigenous biodiversity is promoted and provided for.

d) Policy 14: Increased indigenous vegetation cover is promoted in both urban

and nonurban environments.

325. We also note implementation of this NPS IB imposes a duty on Council to enable mātauranga Māori to be applied at all stages of management of indigenous biodiversity.[338]

326. We have also taken into account when determining this resource consent application the matters set out in clause 3.18(2) affecting specified Māori Land.

327. In the same vein as our discussions on the NZCPS and NPS FW above, we consider these policies are important, and the absence of an appropriate consultation and engagement framework within the consent is not consistent with them. We also consider the mitigation proposed by the Applicant by way of conditions with respect to cultural, freshwater and ecological effects is insufficient. However, we consider the conditions we have imposed will enable the consented activity to be consistent with the NPS IB.

8.2 National Environmental Standards

National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations 2011

328. Council assessed this regulation and confirmed the site is not identified as a HAIL site in the SLUR database and that there is no evidence to suggest that a HAIL activity is being undertaken on the Site.[339] It concluded the regulations do not apply. We adopt that assessment.

National Environmental Standard for Sources of Human Drinking Water 2007

329. The Applicant assessed the National Environmental Standard for Sources of Human Drinking Water 2007 and considered the proposal was consistent with this NES.[340] The Council agreed with this assessment. We adopt the Applicant's assessment.

[338] NPS IB 2022, clause 3.3(1)(f)
[339] S42A Report, Section 12.1.3
[340] AEE, Section 6.2.2.2

National Environmental Standards for Air Quality 2004

330. Council assessed the National Environmental Standards for Air Quality 2004 and concluded the proposal is consistent with the NES AQ subject to the activity complying with the proposed conditions and therefore permitted activity standards for air discharges.[341] The Applicant did not assess the NES AQ however relied upon the permitted activity status of its proposed discharges.[342]

331. We adopt Council's assessment and have imposed conditions recommended by the air quality experts.

8.3 Regulations

Resource Management (Measurement and Reporting of Water Takes) Regulations 2010

332. We adopt the Applicant's assessment of the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010 which concluded the proposal was consistent with these regulations.[343] Council did not address these regulations.

Resource Management (National Environmental Standard for Freshwater Regulations) 2020

333. The Applicant provided an assessment of the NES F 2020[344].

334. Council assessed the NES F 2020.

Panel Assessment

335. We agree with the assessment of Council and adopt the same.

336. In particular we have set out our assessment in respect of the NES 2020 with respect to wet mining in section 12 of this report. In brief, we consider the NES F applies and requires consent if the triggers for consents are present. We consider the NES F requires this evidence must be provided prior to the granting of consent. With respect to wet and dry mining we consider this evidence has not been provided and

[341] S42A Report, section 12.1.1
[342] AEE, Section 4.4
[343] AEE, Section 6.2.2.2
[344] Response to WRC s92 Request, G Eccles, 13 December 2022, at p 268

cannot be provided as a condition (whether to indicate no consent would be required or to confirm that no activity will take place as a consent would be required).

8.4 Waikato Regional Policy Statement

337. The Applicant provided an assessment of the Waikato Regional Policy Statement and identified several issues, objectives and policies as relevant.[345] Council also carried out an assessment of the WRPS. Council agreed with the Applicant's assessment. Council included additional discussion in respect of each applicable objective.[346]

338. We adopt Council's assessment subject to the imposition of conditions as we have discussed above and in Section 7 of this report.

339. In particular we note the following:

a) Objective 3.9 (IM-07): The relationship of tāngata whenua with the environment is recognised and provided for, including the relationship of tāngata whenua with the environment is recognised and provided for, including the role of tāngata whenua as kaitiaki.

b) Policy 10.2 (HCV-P2): Recognise and provide for the relationship of tāngata whenua and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga. The implementation of this policy to be achieved by encouraging tangata whenua to identify areas that should be monitored, indicators that should be used and priorities for restoration and enhancement. Further by identifying opportunities to maintain and enhance their relationship with their rohe.

c) Policies 11.1, 11.2 and 11.3 (ECO-P1,P2,P3) which address maintaining or enhancing indigenous biodiversity including working towards achieving a no

[345] AEE, Table 6.2 and Response to WRC s92 Request, 13 December 2022, at p 268
[346] S42A Report, Section 12.3

net loss of indigenous biodiversity at a regional scale, re-creation and restoration of habitats and connectivity between habitats, contribution to natural character and amenity values and focusing on tangata whenua relationships with indigenous biodiversity. These are to be implemented by way of the regional plans.

340. Council considers the proposal is consistent with this objective as the Site is on Māori land, the owners of which are also shareholders in the Applicant. As such this provides directly for the relationship of tangata whenua. Secondly the Applicant undertook consultation with Ngāti Mahuta and Tahaaroa Lakes Trustees.

341. We agree with counsel for the John David Keepa Kupa Whaanau Trust that; "a passive and non-defined "consultation" requirement provides no role in influencing the outcome of the management plan process. It is not the "enhanced engagement" recommended by all of the experts...and "does not recognise the need for those who are "consulted" to have the support necessary to "engage" and have meaningful input into the management plans."[347]

342. As such, we consider that Mana Whenua will not be afforded adequate opportunity to utilise tikanga Māori, including mātauranga Māori nor carry out their role as kaitiaki effectively without incorporation of an appropriate engagement framework in consent conditions. We note Council were strongly supportive of a stronger consultation and engagement framework in the condition including a volunteered funding condition.

343. We consider the proposal is not consistent the WRPS. We acknowledge that imposing a condition to fund participation is not within our power. As such, we have imposed conditions in respect of provision of information and ongoing consultation to enable the consented activity to be consistent with this Objective. We have also reduced the term of consent to reflect the uncertainty with respect to this condition's effectiveness and address our reasoning in Section 12 of our report.

[347] Synopsis of Legal Submissions on behalf of the Keepa Trust, 26 July 2024, at [4.7]

344. Objective 3.21 (IM-09) provides that the qualities and characteristics of areas and features, valued for their contribution to amenity, are maintained or enhanced. Further Objective 3.2.2 (NATC-01) provides for the natural character of the coastal environment, wetlands, and lakes and rivers and their margins are protected from the adverse effects of inappropriate subdivision, use and development. Council considers amenity value will not be affected as the Application does not propose any changes to the existing mining operations and therefore will not result in any greater effects on amenity values of the surrounding environment than what has occurred since the 1970s. Council therefore considers the amenity of the area will be maintained provided the rehabilitation occurs in a more planned and structured order[348].

345. We consider the intention to re-introduce wet mining and to increase the scale of mining from 3 million tonne per annum to 5 million tonne per annum will change the amenity value of the mine. We consider this is so in respect of the landscape (although we did not receive landscape evidence we received evidence from the Wetini Trust and we observed the removal of a sand dune which separated the Wetini whanau home from the Site which affected the lived experience for that whanau in that place). We also received evidence from that submitter as to the effect of nuisance dust effects. Council also noted that despite the activity being a permitted activity as proposed, there have been 2 to 5 complaints in respect of dust per year on average and 5 to 10 complaints within the last year.[349]

346. We agree that consistent implementation of rehabilitation on an annual basis and as areas cease to be mined is necessary to meet this objective as are the conditions proposed by Council.

347. Council also refers to Objective 3.14 (LF-O1) (which provides for Mauri and values of freshwater bodies). The Council considers the imposition of management plans and conditions enables this objective to be met. We agree with this overall

[348] s42A Report, Section 12
[349] S42A Report, section 12.3

assessment but consider the proposal and proposed conditions by the Applicant (fish screen mesh size, Wainui Stream residual flow augmentation and Mitiwai Stream baseflow augmentation) are not consistent with this objective in respect of safeguarding ecosystem processes and indigenous species habitats and enabling people to provide for their social, economic and cultural wellbeing and health and safety. We refer to our findings in section 7 of this report. We consider the conditions we have imposed will enable consistency with this objective.

348. Council also refers to Objective 3.18 (HCV-O1) Historic and cultural heritage. Council considers this objective would be met subject to the archeological protocols being adequate. Council recommended comment from Ngāti Mahuta is sought in that regard. We refer to our findings in section 7 regards wāhi tapu and kōiwi. We have imposed a condition recommended by the John David Keepa Kupa Whaanau Trust which we consider assists this objective. Notwithstanding this, as evidenced by Mana Whenua historic and cultural heritage goes beyond physical archaeological sites to the broader cultural landscape of Tahaaroa and interwoven relationships to it. As such our findings in relation to Objective 3.9 (IM-07) also apply here.

8.5 Operative & Proposed Waikato Regional Coastal Plan

349. The Applicant provided an assessment of the Operative Waikato Regional Coastal Plan.[350] Council adopted the Applicants assessment in entirety.[351] We also adopt the Applicant's assessment and consider the proposal consistent with the Operative WRCP, but for Tāngata whenua Objective 2.3 and Policies 2.3.1 and 2.3.2; and Objective 2.4 and Policy 2.4.1. We note the implementation of policy 2.3.2 (Participation of tangata whenua in decision making and management of resources in the CMA will be encouraged) is to be implemented by consultation on Consent Applications (method 17.1.4) and Policy 2.4.1 (have particular regard to the tangata whenua role as Kaitiaki, and provide for the practical expression of kaitiakitanga by tangata whenua in the CMA) is also to be implemented by way of consultation in

[350] AEE, section 6.2.5 and Table 6.3
[351] s42A Report, section 12.5

consent application (method 17.4.1)

350. These provisions encourage participation of tāngata whenua in the resource consent process, the management of resources in the CMA and have, in particular with respect to their kaitiaki role. We do not think the proposed activity and conditions finds consistency with these provisions for the reasons discussed above.

351. Council provided an assessment of the Proposed Waikato Regional Coastal Plan which was publicly notified in August 2023.[352] We adopt Council's assessment and note with respect to Objective IM-O3 and policies IM-P1, IM-P7, IM-P8, and IM-P9 (which require for Te ao Māori, tangata whenua values, mātauranga Māori and tikanga Māori, and the relationships and responsibilities tangata whenua have with the coast to be recognised and provided for) .

352. Council has suggested a condition be imposed with respect to ongoing consultation and funding to facilitate consultation. The Applicant does not volunteer this condition and we consider it must be volunteered for it to be imposed. We also consider that consultation on an ongoing basis is necessary to enable the activity to be consistent with the proposed WRCP. We have imposed conditions to enable consistency.

8.6 Waikato Regional Plan

353. The Applicant provided its assessment of the Waikato Regional Plan[353] and Council adopted the Applicant's assessment.[354] Council provided particular comment in respect of section 3.3.3 of the WRP that provides when assessing a resource consent application for a surface water take, the decision maker:

"shall have particular regard to … The need to ensure that water bodies are not over-allocated (having regard to the current allocation limits of the water body as indicated by Table 3-5 and to the provisions of Policy 6, Policy 9 and Method 3.3.4.10.k)".

[352] S42A Report, section 12.6
[353] AEE, section 6.2.4 and Table 6.2
[354] S42A Report, section 12.4

354. With respect to the Wainui Stream, the primary allocatable flow allowed is significantly less than the take sought by the Applicant which equates to 868 l/s rather than 95 l/s (Primary Allocable Flow). The Applicant considered as the flow was taken from an impounded section of the stream created by a dam that had existed since 1972 it is not a 'run of the river' situation[355] where the stream flow is otherwise subject to natural weather events, including evaporation. As such the Applicant sought the assessment of flow be considered in light of that difference and in light of the intention to maintain the lake Tahaaroa level above RL8.53m. The Applicant further considered the effects of the take to be minor and that no competing takes were present.

355. Council sets out an assessment of the WRP[356] and concurred with the Applicant's assessment. In particular Council adopted the position set out by Mr Eccles for the Applicant in an email dated 22 May 2023 in section 12.4 of the s42A report.

Panel Determination

356. We adopt the assessment set out by Council.

357. We note the WRP is yet to be amended to include the NPS FM 2020. The review has been commenced but will not be notified until December 2027.[357] However on 30 June 2021, in accordance with s55(2A) and Clause 20A (Schedule 1) of the Resource Management Act 1991, the Waikato Regional Plan was amended to insert clauses 3.22(1) natural inland wetlands, 3.24(1) rivers and 3.26(1) fish passage of the National Policy Statement for Freshwater Management 2020 resulting in new objective 3.A.1 and new policies 3.A.2 and 3.A.3.[358]

358. We also note Objective 2.3.2: Uncertainty for all parties regarding the relationship between tangata whenua and resources for which they are Kaitiaki [is] minimised

[355] AEE
[356] s42A Report, section 12.4
[357] Waikato Regional Council, Freshwater Policy Review, https://www.waikatoregion.govt.nz/council/policy-and-plans/freshwater-policy-review/
[358] Waikato Regional Plan, Waikato Regional Council, https://www.waikatoregion.govt.nz/council/policy-and-plans/regional-plan/

and tangata whenua [are] able to give effect to kaitiakitanga. The plan implements this by way of facilitating consultation, information sharing, identifying key matters for protection, encouraging Iwi Managment Plans.[359] Further by way of facilitating opportunities for participation of tangata whenua in monitoring the use of resources and subsequent effects through resource consent processes where this is mutually agreeable to tangata whenua and consent applicants.[360]

359. The Applicant has been consistent in its expressions that the site and the activity is unique in that it is on Māori land, is owned by Mana Whenua (as shareholders), utilises mainly mana whenua employees and contractors that are local to the rohe and sits within a wider district of predominantly Māori owned land. They have also been clear that they consider the role of mana whenua important and that it should be ongoing. The distinction being that they consider the owners of the Site via their lease and shareholder status in the mining company and the employees of the Site constitutes sufficient engagement to meet these policies. They have proposed a one-off consultation with respect to the Environmental Management Plan and informal, ad hoc ongoing consultation. We do not consider this sufficient. We consider the conditions we have imposed enable the proposal to be consistent as it enables the wider mana whenua to engage in a meaningful way as kaitiaki for the reasons we have given in this section and section 7 of this report.

8.7 Customary Activities & Protected Customary Rights/or Customary Marine titles (Marine and Coastal Area (Takutai Moana) Act 2011).

360. There are no customary activities and there are no protected customary rights relevant to this consent process.[361]

[359] WRP, section 2.3.3 and section 2.3.4
[360] WRP at section 2.3.4.25
[361] S42A Report, section 12.7 and AEE, section 6.2.6.3

8.8 Iwi Environmental Plans

361. The Applicant has assessed the following plans[362] and Council has adopted the Applicant's assessment:

a) Waikato-Tainui Environmental Plan.

b) Maniapoto Environmental Management Plan

362. We do not agree that the Application is entirely consistent with these plans. While there is a focus in these plans on any mining occurring in partnership with iwi, and Taharoa C shareholders are Ngāti Mahuta, they contain overarching themes of protecting and enhancing landscapes, wāhi tapu and customary practices (including access to sites and the ability to carry out practices), and implementing appropriate mitigation and remediation. We have accepted the evidence of Mana Whenua submitters that the Applicant's proposed conditions are deficient in this regard, in particular that mana whenua are not enabled by the proposal to carry out their kaitiaki role. We prefer the evidence of submitters as Ngāti Mahuta ki te Hauāuru people, of Waikato Tainui descent and affiliated to Ngāti Maniapoto, as they are more qualified to make an assessment of the cultural matters outlined in the relevant iwi environmental management plans than Mr Eccles and Mr Chrisp.

9 Section 104(1)(c) Consideration of Other Matters

9.1 Consent Holder Investment

363. The Applicant has also submitted a duration of 35 years for each consent is appropriate to give certainty to continue investment.[363] Council has considered the Applicant's investment with respect to duration of consent.[364]

364. The Applicant has provided evidence of investment to date (for example, $200 million in infrastructure, processing equipment, business systems, rolling plans and

[362] AEE, Sections 6.2.6.1, 6.2.6.2 and 6.2.6.3 and Table 6.4 and 6.5
[363] Applicant Closing submissions para 3, 85. Applicant Legal Submissions July 2024 para 183.
[364] Section 42A report pg section 13.6.

marine facilities and the Tahaaroa Village) with $100,000 million being invested in new capital in 2023[365] and proposed investment.[366]

365. Section 104(2A) requires the Panel in considering this application to have regard to the value of investment of the Applicant. The Courts have confirmed the value to be considered is the capital investment value[367] and that:

'Value' is determined by book minus depreciation, not replacement value.

Wider investment {for example to comply with conditions) is not included. It may be considered instead when determining the duration of the consent in the form of recognising security for investment.

366. We did not receive evidence from the Applicant as to the 'book value' of its existing investment.

367. The investment evidence presented by the Applicant was not disputed by the parties or Council.

Panel Determination

a) As we have not received evidence of the existing 'book value' we are hindered in our obligation to have regard to the existing investment.

b) We accept the value of the existing investment as put by the Applicant is significant in and commensurate with investment required for a large scale, industrial activity such as mining.

c) We have considered the Applicant's investment in determining this Application, including with respect to the duration of consent in Section 12 of this report.

[365] Statement of Evidence, W Coffey 23 January 2024 at [39] to [43]
[366] Statement of Evidence, W Coffey, 23 January 2024 at [44] to [47] and [86].
[367] *Te Rangatiratanga* O *Ngati Rangitihi Inc v Bay of Plenty Regional Council* (2010) 16 ELRNZ 312

9.2 Benefits to the Village & Tahaaroa Community

Applicant

368. The Applicant set out a series of benefits provided by the mine to the Tahaaroa community and village[368]:

a) Provision of employment and contract work for the local community and members of mana whenua. The Applicant considers 80% of the residents within Tahaaroa are employed by the mine (that percentage was disputed by submitters).

b) Provision of accommodation within the village to employees at very low weekly rent rates and provision of waste and water services for the village.

c) Wages from employees and contractors contribute to the local Waitomo district regional economy.

d) Education grants for travel and boarding for children of employees.

e) Engaging local industry and businesses.

f) National benefits from the payment of taxes and royalties on the extracted resource.

g) Cultural benefits from allowing tangata whenua to continue to exercise kaitiakitanga over their ancestral lands and waters through ongoing oversight of mining activity and rehabilitation.

h) Socio-economic benefits of the mine allow for stable, marae-based community.

i) Environmental benefits by way of ensuing high value wetland and habitat around the fringes of Lake Tahaaroa is maintained through maintenance of lake levels within the currently consented operating range.

[368] AEE, Section 5.2

Council

369. Council concurred with the positive benefits set out by the Applicant but also noted that the benefit to the community from the operations did not benefit directly those that do not work at the mine or are not owners of Taharoa C Block.[369]

370. Council also suggested limited weight should be given to the positive benefits of employment and housing given these were temporary benefits that would cease when the mine ends. We refer Section 12.11 of our report for our consideration of this submission.

371. With respect to the temporary nature of these benefits we note the Applicant stated in Section 5.2 of the AEE, [*c*]*losure of the mine would result in significant adverse economic and social effects to the community of Taharoa and wider region with residents most likely having to relocate to gain employment.*

Submitters

372. A number of the submitters identified as shareholders in Taharoa C block, and some accepted that the mining operation has benefits to the community of Tahaaroa.[370]

373. Others, such as Mr T King and Ms Aspinall consider that hapū members employed by Taharoa Ironsands Ltd have little representation and influence within the company[371]and that the socio-economic benefits of the mine are overstated.[372]

374. Submitters disagreed with the Applicant's inference that mining is the only economic opportunity available to the Tahaaroa community. Many provided examples of other aspirations for their whenua, such as undertaking feasibility studies for future land use and development options, establishing papakainga, māra kai, and investing in marae. They suggested that mining activity, without sufficient mitigation and the ability to carry out their kaitiaki role, has the potential to

[369] S42A Report, Section 11.3
[370] Statement of Evidence, R Wetini, 8 August 2024, at [pg. 4]
[371] Statement of Evidence, T King, 17 June 2024, at [3.27] to [3.28]
[372] Statement of Evidence, A Aspinall, 26 July 2024, at [126-132]

undermine these goals and outcomes.

Panel Determination

375. We find:

j) The mine provides positive benefits as set out by the Applicant, even where the extent of those benefits may be less than presented as suggested by submitters.

k) We apply the weighting we have applied in Section 12 as submitted by Council to the benefits provided, acknowledging these benefits endure for the length of the mining operation and on the basis that the operation is carried out in a way that continues to provide those benefits. In particular we note many of those benefits are outside the scope of this consent with respect to the certainty of their continuation.

9.3 Compliance History

376. Compliance history has been considered as an 'other relevant matter'. The s42A report provides a useful summary of the compliance history of this activity.[373] We adopt that summary of the compliance history which includes:

a) Enforcement action by way of Notice of Direction and Abatement Notice issued for discharge of unauthorised sediment into the Coastal Marine Area.

b) A number of non-compliances, with an overall compliance status as 'Significant Non-Compliance' for the year July 2022 to June 2023 with respect to compliance with existing resource consent conditions. These principally relate to the remediation requirements of the current consent conditions, dust management and discharges. With respect to rehabilitation, the Applicant was to complete 62.94 ha of rehabilitation from 2017 to 2024. No rehabilitation was completed until 2021/2022. Since that time the Applicant

[373] s42A Report, sections 9.1 to 9.2 and Attachment G, H and I.

has undertaken some rehabilitation but remains 'behind schedule'.

c) Current prosecution charges against the Applicant by WRC with respect to unauthorised discharge into the Coastal Marine Area in 2023. This prosecution is ongoing with no decision at present.

377. The submitters have also raised various instances which they suggest are non-compliances with either the conditions of consent or the plan rules.

378. The Applicant has acknowledged the non-compliances (but for the matter subject to prosecution) and provided an explanation for these (one off operational errors that have since been addressed, culmination of heavy winds increasing or masking the Applicants actual level of air discharge, challenges of COVID19 to maintain operations, challenges to rehabilitation planting as a result of the environmental conditions of the mine and stock encroachment on the mine site). The Applicant has also provided evidence it is addressing these past non-compliances together with proposing modified conditions of consent to address these. [374]

379. The Applicant and Council submit the instances of non-compliance merit the application of carefully constructed conditions to ensure future compliance with a view to monitoring and enforcement. Both the Applicant and Council submit that the Applicant is entitled to a presumption of compliance with future conditions.[375]

380. Several submitters consider past non-compliance is supportive of a reduced term of consent. We address this submission in Section 12 of this report.

381. The Applicant also submits s124B does not apply to the Applicant as there are no competing consent applications for the same resources.[376]

[374] Primary Statement of Evidence of Joss Ivory dated 12 April 2024, Appendix E, at [63]. Rebuttal Evidence of Ms Ivory dated 6 June 2024 para 3, 4, 7, to para , Rebuttal Evidence of Greg Martin 6 June 2024 para 5 and 6. Applicant closing legal submissions para 178 to 179.
[375] Applicant Closing submissions, para 180 and 181. Council Legal Submissions August para 2.3,
[376] Oral Evidence of Mr Eccles, 7 August 2024.

Panel Findings and Determination

a) We find there has been a history of non-compliance as set out by Council and as per our findings set out in Section 7 of this report.

b) We also find that the conditions for rehabilitation (environmental factors and stock encroachment) have impacted upon the Applicant's ability to comply with rehabilitation requirements.

c) We also find that the nature of wind at the mine site has impacted upon the Applicant's ability to comply with air discharge requirements. We do not have sufficient evidence to determine complete cause of discharges across boundaries, however we have received evidence that lack of rehabilitation and disturbance by mining creates an air discharge.

d) Overall, we find there is a history of non-compliance with consent conditions which has impacted the Applicant's ability to mitigate the effects of the activity to the degree intended at the time of granting the consent.

e) We accept that s124B does not apply to the Applicant for the reasons given by Mr Eccles.

f) We accept the position as submitted by the parties that the Applicant is entitled to a presumption of compliance with future consent conditions and that those conditions must be crafted to enhance the likelihood of compliance and effective monitoring of the consent. Our approach to apply the conditions of consent on that basis. We note we have also imposed a condition that prior remediation which has not been completed is completed on the basis of effects mitigation as is rehabilitation of areas at the boundary of the Site.

10 Sections 105 and 107 - Discharges

10.1 Section 105

382. Section 105 of the RMA requires us to have regard to the following when considering the Application for Discharge and the application for activities in the

coastal marine area that contravene s15 or s15B of the RMA:

a) The nature of the discharge and the sensitivity of the receiving environment to adverse effects; and

b) The applicant's reasons for the proposed choice; and

c) Any possible alternative methods of discharge, including discharge into any other receiving environment.

Applicant

383. The Applicant says in respect of stormwater and process water (excluding stormwater runoff and washdown around the workshop, stores compound and administration building) [377]:

The proposed discharge of tailings and process wastewater to land and shiploading water to the sea will not result in any significant adverse effects on the environment. In terms of the discharges to land and water associated with the mining activity, given the longstanding nature of the discharges, no feasible alternative methods or receiving environments exist.

Likewise, there are limited opportunities for alternatives to the ship-loading discharge of [tailings and process wastewater to sea]. Those that do exist are assessed as follows:

Pumping ship loading water back to shore for land disposal. This would require the installation of pumping equipment on the ship as well as the installation of an additional pipeline on the seabed. TIL has determined this option would not be cost effective and would result in large amounts of water to be discharged on land as well as adverse effects associated with seabed disturbance.

Installing new filter technology on the ships to capture a greater proportion of fine sediment prior to discharge. TIL have considered this option but concluded that the work required to convert the ships would not be cost effective. Furthermore, as the material has already gone through significant processing to remove these fines, additional filtering would provide limited benefit to the environment. It is noted that the Marine Ecology effects assessment appended to this report concludes that there are low impacts on the environment from the discharges to the

[377] AEE, Section 2, 3.2, 3.4 and 5

CMA. TIL may however, when purchasing new export ships in the future, consider vessels can be fitted with advanced filtering technology if/as that technology becomes available.

Establishing a port or berthing facility at Taharoa. This would involve the erection of significant structures within the CMA and would have much greater effects on the environment than the proposed discharge that has a low environmental impact.

For all the alternatives identified above, the small scale of the environmental impacts of the existing discharges does not warrant the economic and environmental cost of implementing the alternatives.

Further, the discharge of stormwater and process wastewater is only necessary on rare occasions, with the primary method of disposal being onto land. Discharge to sea is only used on occasions when it is not possible to discharge to land – for example, at times of heavy rainfall when surface water conditions make it impracticable. The infrequent discharge to the CMA is recognised in condition 2 of TIL's existing discharge permit (100900) that requires discharge to land "in the first instance". That condition is proposed to continue to apply to the new permit sought for the discharges.

384. With respect to consent AUTH142035.06.01 the Applicant stated All stormwater runoff and washdown water from around the workshop, stores compound and administration building, is directed through an oil trap prior to discharge into the Wainui Stream. Oil and sediment are collected in concrete lined bays with treated water being discharged into the stream. The oil trap is inspected at least once a month and cleaned out as and when required.[378]

385. The Applicant did not provide reasons for the proposed choice of discharge or alternative methods for discharge, including discharge into another receiving environment.

Council

386. Council understood the discharge into the Wainui Stream of stormwater runoff and washdown around the workshop, stores compound and administration building was

[378] AEE, section 3.1.6

incidental, with the priority of recirculating the water into the mining process after treatment in an oil sump. Accordingly Council considered the magnitude of effects are to be negligible provided appropriate treatment, monitoring and response procedures remain in place.[379]

387. Council says in respect of stormwater and process water (excluding stormwater runoff and washdown around the workshop, stores compound and administration building)[380]:

The CMA and Wainui Stream are sensitive environments. Based on the conclusions reached in the AEE and the WRC technical reports, the proposed structures in the CMA and discharges to the CMA and Wainui Stream are not causing any significant adverse effects.

There may be an alternative to discharging stormwater to the Wainui Stream (as questioned by Mr Smith). I understand that the discharge of stormwater to the Wainui Stream may have already ceased in which case the application for AUTH142035.06.01 could be withdrawn. The Applicant is invited to comment on that.

I am not aware of any practical alternatives (with lesser effects) in relation to the proposed activities in the CMA.

Submitters

388. The submitters have raised concerns with the discharge into the Coastal Marine Area and with the quality of water in streams. We have addressed these in Section 7 of this Report.

Panel Findings & Recommendations

389. We adopt the Council's position for the reasons set out in the s42A report which includes the imposition of Council recommended conditions and noting our findings in Section 7. However, Council's position and assessment of effect is premised on the stormwater and washdown water being used in the mine in the first instance rather than always discharged to the stream. We consider the imposition of a

[379] s42A report at section 11.5
[380] S42A Report, Section 12.8

condition that reflects this is appropriate given that premise and having regard to the factors in s105 of the RMA.

10.2 Section 107

390. Section 107 of the RMA prevents us granting a discharge or coastal permit to do something that would contravene s15 or s15A of the RMA that results in one of the following effects arising or likely arising in the receiving waters, after reasonable mixing of the contaminant or water discharged (either by itself or in combination with the same, similar, or other contaminants or water):

The production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials:

a) *any conspicuous change in the colour or visual clarity:*

b) *any emission of objectionable odour:*

c) *the rendering of fresh water unsuitable for consumption by farm animals:*

d) *any significant adverse effects on aquatic life.*

391. However, we may grant the consent despite the above restriction if we are satisfied that[381]:

a) *Exceptional circumstances justify the granting of the permit; or*

b) *The discharge is of a temporary nature; or*

c) *The discharge is associated with necessary maintenance work;*

And it is consistent with the purpose of the RMA to grant the consent.

Applicant

392. The Applicant addressed s107 in its AEE[382] and in subsequent s92 responses. The Applicant says the discharges meet the tests set out in section 107(1)(c) to (g) of the RMA.

[381] S107(2) RMA 1991
[382] AEE, Section 6.3

Council

393. Council says the proposed discharges to the environment do not give rise to the type and/or level of adverse effects set out in section 107 of the RMA (noting that the assessment is to be undertaken "after reasonable mixing"). On that basis, section 107 of the RMA does not create any impediment to granting the consents applied for by Applicant.[383]

Submitters

394. The submitters did address concerns as to the discharge plume in the Coastal Marine area. We have given our findings in respect of these in Section 7 of this report.

Panel Finding

a) Given our findings set out in Section 7 of this report with respect to discharge in the Coastal Marine Area, we find that discharge after reasonable mixing is likely to result in a conspicuous change in the colour or visual clarity and shall also result in suspended materials.

b) We do not consider the discharge will have a significant adverse effect on aquatic life and as such s107(2A) does not apply.

c) For completeness we do not consider the effects set out in s107(1)(e), (f) and (g) arise with respect to this discharge.

d) We also consider the discharge and the effect of discharge (the conspicuous change to colour and visual clarity and suspended material) is of a temporary nature given the dynamic nature of the environment.

e) We also consider the granting of a discharge consent for this purpose to be in accordance with the purpose of the RMA as it is consistent with Part 2.

f) We may therefore grant a discharge permit into the Coastal Marine Area.

[383] s42A Report Section 12.8

11 Part 2 RMA Assessment

395. The Court of Appeal[384] has determined that while decision makers should usually consider Part 2 when making decisions on resource consent applications, where the relevant plan provisions have clearly given effect to Part 2 there may be no need to do so as it *would not add anything to the evaluative exercise*. In other words, *genuine consideration and application of relevant plan considerations may leave little room for Part 2 to influence the outcome*.

396. The Applicant did not consider assessment of Part 2 was necessary as it did not consider the WRP or WRCP to be invalid, incomplete or uncertain, however in acknowledgement that both are dated and in the early stages of review undertook an assessment of Part 2 of the RMA.[385] Council accepted the Applicant's assessment and considered the proposed activities, considered in the context of the matters of Part 2, did not compromise the overall purpose of the RMA.[386]

397. We consider for completeness given the centrality of effects on Mana Whenua to this Application, given the age of the plans, and the contrasting greater detail and emphasis that has been placed on tāngata whenua and kaitiaki matters in more recent National Policy Statements (which is not reflected in the lower order policy and plan documents), that an assessment of Part 2 is of assistance.

398. Part 2 contains several safeguards for Māori interests in sections 5, 6(e), 7(a) and 8.

399. With respect to section 5 (Cultural Wellbeing) the AEE states that *"The cultural well-being of Ngāti Mahuta will continue to be provided for through the sustaining of iwi and hapū connection to the whenua/land, the involvement of tāngata whenua in the management of water quality in Lake Taharoa, and the continuation by the consent holder of established and accepted protocols for mining activity to avoid identified urupā and for accidentally discovered koiwi and taonga to be appropriately*

[384] *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316.
[385] AEE, Section 6.4
[386] S42A Report, section 12.9

handled."[387]

400. As we have already stated, the Applicant's position is that because Taharoa C as the landowner comprises members of Ngāti Mahuta, and the Applicant employs some members of Ngāti Mahuta and subsidizes Tahaaroa Village, that cultural wellbeing is provided for. We do not have confidence in this premise and consider that the cultural wellbeing of the wider Ngāti Mahuta ki te Hauāuru is not adequately provided for.

401. With respect to section 6(e) (the Relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga) the AEE states; *"Tāngata whenua of the Taharoa area are integrally involved with the ownership and operation of the mine which is located on land that is owned by tāngata whenua."*[388]

402. Again, this assessment presumes the land ownership matter prevails over all other Mana Whenua relationships in the rohe of Tahaaroa. As per our findings in section 7, we do not agree with such a narrow interpretation of s6(e) relationships.

403. With respect to section 7(a) (Kaitiakitanga) the AEE states; *"The importance of kaitiakitanga as a form of guardianship and protection of the environment is recognised at Taharoa Mine. There are various opportunities for mana whenua kaitiaki to exercise kaitiakitanga including in relation to operation of the site, the archaeological practices and through subsequent aftercare and rehabilitation projects. This project is unique in that the site is owned by the hapū with recognised mana whenua over the area and therefore, the hapū have a significant role to play in the operation of the mine. As the consultation process continues, these opportunities will develop further and can be encapsulated through the consent conditions and other means that are deemed appropriate.*"

404. We concur with counsel for the John David Keepa Kupa Whanaau Trust that "*it is for*

[387] AEE, at [6.4.2]
[388] AEE, at [6.4.3]

tangata whenua, as a tikanga-based collective, to explain how both of these requirements should be met… in this case, the landowner (as an entity) and individual employees do not have the type of requisite relationship with the whenua that is recognised by sections 6(e) and 7(a) of the RMA."[389] As explained in section 7, we have accepted Mr T King's evidence as to where the authority of Mana Whenua sits and note that all other submitters were aligned with his evidence, with Mr Barclay Kerr (for the Applicant) not disputing this evidence. Further the reference in the AEE to further consultation and conditions providing a mechanism for these Part 2 obligations is not borne out by the Applicant's final amended proposed conditions which we consider are inadequate.

405. With respect to section 8 (Treaty of Waitangi), the AEE states; *"TIL has engaged with tāngata whenua and will continue to engage to ensure that their culture and traditions, and their ancestral land and water are considered and that the principles of the Treaty of Waitangi are taken into account."*[390]

406. It follows from our assessment of the other cultural provisions of Part 2, that by confining the Treaty relationship to the landowner and limiting opportunities for appropriate engagement of Mana Whenua, the principles of the Treaty are not adequately taken into account.

407. Counsel for the John David Keepa Kupa Whaanau Trust pointed us to authorities (such as *McGuire v Hastings District Council* [2002] 1 NZLR 577, 594 and E*nvironmental Defence Society v The New Zealand King Salmon Company Ltd* [2014] NZSC 38), stressing that these Part 2 provisions are *"strong directions to be borne in mind at every stage of the planning process".* Counsel also submitted that the Applicant's analysis was *"brief and cursory"* and *"has not translated the outcomes of its Part 2 analysis into meaningful consent conditions."*[391] We agree that it falls well short of satisfying these strong directions under Part 2 of the RMA.

[389] Synopsis of Legal Submissions, at [3.10] to [3.11]
[390] AEE, at [6.4.5]
[391] Synopsis of Legal Submissions, 26 July 2024, at [3.7]

408. For the reasons set out above, we consider the activity as proposed by the Applicant is not consistent with statutory provisions for Māori interests in Part 2.

409. We find the following with regards to Part 2 matters:

a) The proposed activity is inconsistent with Section 6(e) of the RMA. The proposed activity will have a significant impact on the relationship of Ngāti Mahuta with Section 6(e) matters.

b) Section 7 matters have not been adequately addressed by the Applicant. In particular, Section 7(a) regarding kaitiakitanga. The lack of meaningful, early and focused engagement with Ngāti Mahuta members outside of Taharoa C has a direct impact on their ability to act as kaitiaki regards the Mitiwai Stream, Wainui Stream, Lake Tahaaroa and the wider cultural landscape and in respect of areas of waahi tapu. We do not consider the consultation conditions proposed by the Applicant to be sufficient to meet the requirements of Section 7(a) either. We have imposed conditions which we consider enable the consented activity to be consistent with this section.

c) We note the attempt by the Applicant to undertake early consultation with non Taharoa C members of Ngāti Mahuta, however it has not been consistent or meaningful enough to accord with the principles of the Treaty of Waitangi. Further we do not consider the reliance upon the narrower representation of Ngāti Mahuta by members of Taharoa C Block to be sufficient to be consistent with the principles of the Treaty of Waitangi. We do not consider the consultation conditions proposed by the Applicant to be sufficient to meet the requirements of Section 8 either. We have imposed conditions which we consider enable the consented activity to be consistent with this section.

d) Section 6(a): Preservation of wetlands, lakes and their margins and protection for inappropriate use and development. We consider the Applicant's proposal to assess effects on mining within 100m of a natural wetland post-grant of consent is inconsistent with this section, as we are unable to assess whether

proposed mitigations would provide an appropriate level of protection. We discuss this further in Section 7 of this report. We have imposed conditions which we consider enable the consented activity to be consistent with this section.

12 Principal Issues in Contention (Legal)

410. Section 113(1) of the RMA requires us to identify the principal issues of contention and to state our main findings in relation to those issues, the relevant statutory and planning instrument provisions considered by us and our reasons for any variation in the term of consent granted. We have considered the evidence and submissions of the parties in respect of the following principle legal issues in contention and have set out our findings in respect of each in this section:

1) Existing Environment / Receiving Environment.
2) Wet mining – Scope of Application.
3) Regulation 45D NES FW.
4) Noise levels & Light Spill (Neighbours).
5) Condition: Funding Consultation.
6) Condition: Bond.
7) Condition: Management Plans – use & certification process (dispute resolution).
8) Condition: Pine Plantation Ownership.
9) Condition: Stock Exclusion.
10) Condition: Biosecurity in the Coastal Marine Area.
11) Condition: Village at expiry of consent.
12) Term of Consent.

12.1 Existing Environment / Receiving Environment

Applicant

411. The Applicant submitted in its opening submissions dated 26 July 2024 the existing environment does not include the existing regional resource consents sought to be replaced as part of the application (that is the effects of those consents) and

includes an environment where the site has been rehabilitated in accordance with the resource consents.[392]

412. However, this does not mean the environment is a 'pre-mined state' or 'naturalised pristine environment' as it would not be feasible and fraught with uncertainties and subjective assumptions to try and imagine such an environment. Further the environment must be seen through a 'real world' analysis.[393]

413. The existing environment at the end of the regional consents would include removal of existing infrastructure and the dam in the Wainui Stream (both of which would result in adverse effects), progressive recontouring, anticipated planning and other rehabilitation activities. Essentially it is an environment where previous mining activities had been undertaken but were not continuing and rehabilitation had taken place.[394]

414. With respect to past non-compliances the Applicant considers the effects of past non-compliances should not be taken into account as the Applicant would have addressed these in completing remediation and site closure. The Applicant points to a line of caselaw that directs fanciful or unrealistic matters should not be included in determining the existing environment.[395]

415. The Applicant then applies a 'real world' test to measure the degree of rehabilitation and site closure from the point of the 'day after' expiry of the consents. It considers the existing environment should recognise that due to the short passage of time (1 day) the environment would not have been acclimatized and the remediation and site closure works would not be complete. It is this 'real world' environment they consider should be the baseline for effects assessment.[396]

416. The Applicant acknowledges there is no caselaw to guide the Panel as the date on which it is to consider the environment, but submits given the application of 124 it

[392] Applicant Closing Submissions 31 October 2024, at [48] and [49].
[393] Applicant Submissions 24 July 2024, at [50] and [51]
[394] Applicant Closing Submissions, 4 October 2024, at [16], [17]
[395] Applicant Closing Submissions 4 October 2024, at [19]
[396] Applicant Closing Submissions, 4 October 2024 at [19]

is appropriate that the day be the date of this Panel's decision.[397]

417. The Applicant's experts presented their written evidence on this basis.

Council

418. Council is in agreement with the Applicant except as to the application of a 'real world' view in the manner that has been applied by the Applicant. Council considers as a result of past non-compliances the receiving environment is more degraded than was contemplated at the time of granting consent. Council submits this should be recognised in determining the existing environment. The Council refers to what was contemplated at the grant of consent and refers to the Joint Witness Statement of Planning dated 5 June 2011 at paragraph 11; *if additional mitigation/rehabilitation of mined areas had occurred in the past, the existing environment against which the assessment of the applications is to be undertaken would have resulted in a baseline where there would be less potential for adverse dust effects beyond the consent area'.*[398]

419. Council considers the existing environment includes[399]:

a) The physical environment as it currently exists including the effects of past mining activities but without any ongoing mining activities occurring in the areas that are the subject of the existing (now expired) consents (i.e. the Central Block and the Southern Block);

b) The ongoing ability to undertake sand mining activities in the Eastern Block and the Te Mania Extension (until 2028 and 2032 respectively) but no realistic ability to process or export ironsand as currently occurs.

c) Sensitive aspects of the environment including the Coastal Marine Area, Lake Taharoa, streams, wetlands and sand dunes; and

d) The absence of the dam (and the associated fish pass) in the Wainui Stream.

[397] Applicant Cosing legal Submissions, 4 October 2024, at [23]
[398] Council Interim Legal Submissions, 21 August 2024 at [2.1] and [2.2]
[399] S42A Report, Section 10.8

Submitters

420. The John David Keepa/Kupa Whānau Trust consider the past non-compliances have resulted in an environment that is considerably more degraded than both what it should be and what was contemplated when the expired consents were granted[400] however it considers the relevance of non-compliance goes towards the manner of conditions required should the Application be granted.[401]

Panel Assessment

421. The Council, Applicant and Submitters have all referred us to *Ngāti Rangi Trust v Manawatu-Whanganui Regional* [2016] NZHC 2948 and all agree that the effects of the existing consents are to be excluded and that the environment is to be imagined as that at the end of rehabilitation and site closure as required by the regional consents.

422. We have difficulty however with the position that a 'real world' approach requires us to then imagine the environment the day after expiry of consent and therefore with little impact from the remediation and site closure works and little redress in respect of the effects of non-compliance.

423. Further we find a 'day after approach' difficult in that mining has continued at the site by way of s124 rights and therefore the requirements of the conditions for ongoing rehabilitation and any non-compliances with those continue to have effect.

424. We have been referred to *Queenstown Lakes District Council v Hawthorn Estate Limited* (2006) 12 ELRNZ 299 (CA), as the leading authority on what constitutes the environment, that is, it includes the current state of the environment and the future state of the environment as it might be modified by permitted activities and that have been granted and are likely to be implemented. We agree with the parties that what constitutes the environment is as described by the Court of Appeal in this case.

425. We have been directed to *Ngāti Rangi Trust v Manawatu-Whangaui Regional*

[400] John David Keepa/Kupa Whānau Trust, Legal Submissions, 26 July 2024, at [3.17]
[401] Keepa Trust, Submissions 24 July 2024, para 3.18

Council [2016] NZHC 2948, the existing environment does not, in the context of renewal application for a regional resource consent, include the effects caused by the activities for which the renewal consents are sought, unless it would be fanciful or unrealistic to assess the existing environment as though those structures (or activities) authorized by the consent being renewed did not exist.

426. We have also been directed to *Queenstown Central Ltd v Queenstown Lakes District Council* [2013] NZHC 817. to apply a 'real world' approach without artificial assumptions, that would create an artificial future environment.

427. We note the *Ngāti Rangi* decision relates to replacement consents to upgrade an existing consented hydro-electric power scheme and that not all consents were to be replaced. There were no issues of non-compliance, rather the focus was on whether the Environment Court, when assessing the possible effects on the environment of the proposed consents, was required to have regard to the existing scheme or the effects on the environment by assessing the environment prior to the construction of the scheme. The Court was prepared to include 'lawful' activities. Lawful activities would be those where the effects and mitigation of the effects had been considered and deemed acceptable either by the consent granted or as they were permitted activities.

428. We agree there is no clear statement in the case law directing us to apply a 'day after expiry' approach rather than 'on the day of decision' approach, which is relevant to the absence of implementation of remediation and site closure work during the intervening almost 4 years since consent expiry if a 'real world' approach is to apply. As remediation was required to be undertaken during the operation of the consent it would continue to be a requirement when operating under s124. The Application was lodged in 2020 and accordingly there would have been 3 planting seasons available to the Applicant (we acknowledge some planting was undertaken during this time).

429. Having considered the above we find that the existing environment:

a) includes existing and likely to be implemented consents and permitted activities;

b) excludes the effects of regional consents which are sought to be replaced by this Application.

c) imagines an environment where remediation and site closure has been implemented and therefore non-compliances have been addressed via the completion of remediation and site closure.

d) is not artificially assessed on a limited 'day after expiry' basis but assessed against the imagined rehabilitated site with completed site closure.

430. We consider the above approach complies with the direction set out in the case law and with the direction of sustainable management set out in the RMA, as to exclude the effects of non-compliance with conditions or to apply a 'day after' approach that results in little remediation or site closure locks in the effects of the existing consents resulting in more degraded baseline environment. We further consider it would enable the Applicant to rely upon a degraded baseline environment that has partially been created through its non-compliance with consent conditions which is not the environment that was envisaged when the consents were granted.

431. We acknowledge several of the experts representing the parties provided evidence on the basis of the existing environment imagined on the 'day after basis' and therefore with a more degraded environment. Some expressed the difficulties from a scientific perspective in carrying out an assessment without consideration of the current environment. We have responded to this by way of requiring greater monitoring or imposing measures where uncertainty in data is present.

12.2 Wet mining - Scope of Application

Applicant

432. The Applicant seeks consent to carry out both wet and dry mining with current technology. They also seek consent to carry out reworking tailings and 'closed'

areas of the mine that were previously mined as new technology becomes available. The Applicant has not provided evidence or assessment of effects with respect to new technology yet to be developed.

433. The Applicant has described the process of wet mining as drawing up surface water from a dredge pond by a cutter that is above the floor of the pond and cuts sand from the bottom whilst drawing surface water from the pond.[402]

434. The Applicant submits the process of wet mining is the taking of surface water that has been daylighted by digging below the water table and allowing water to enter the dredge pond naturally. They submit groundwater which enters the pond becomes surface water as it meets the definition in the Waikato Regional Plan (WRP), 'water in all physical forms which is over the ground, whether flowing or not, including water within cave systems, but excludes coastal water and geothermal water'.[403]

435. During the hearing, Mr Eccles on behalf of the Applicant agreed[404] digging below the water table to allow groundwater to enter the dredge pond to facilitate wet mining was a diversion of groundwater and required consent, the addition of process water to the surface water to facilitate wet mining may result in a discharge of process water to ground in the dredge pond when mining ceases as the water naturally drains into the ground via the base and sides of the dredge pond. Mr Eccles also agreed, the draining of remaining surface water in the pond via the base and sides of the dredge pond at the end of mining is also a discharge to groundwater by surface water.

436. Further Mr Eccles gave evidence that he considered the absence of an application for a consent to discharge process water to groundwater could be addressed by varying the Application for discharge of process water and stormwater to soakage areas and storage ponds to include dredge ponds.

[402] Applicant Closing Submissions, 4 October 2024, at [26] and [27]
[403] Further Statement of Evidence, G Grant Eccles, 28 March, at [36]
[404] Oral Evidence given at Hearing, G Eccles, 7 August 2024

437. Further Mr Eccles gave evidence that as the Application had been to replace all necessary consents to continue the operation of mining and that previously wet and dry mining had been undertaken under those consents, that wet mining was within the scope of the application. He considered it was therefore within the power of the Panel to grant an application for diversion of ground water to dredge ponds and for a discharge of surface water to groundwater within the dredge ponds despite no reference to these terms as consent triggers, nor reference to the rules and policies related to them in the planning documents. Mr Eccles was unable to direct us to a section within the RMA to enable the Panel to do so.

438. The Applicant submits that lack of express reference to groundwater diversion and surface water take associated with wet mining in the Applicant's existing consent documentation issued by the Council (namely the water permits) can only be described as an oversight. NZSML's 2002 application contemplated obtaining the relevant resource consents required for wet mining and the application was granted – and the resource consents that were issued also make clear reference to wet mining activities (such as the use of a "dredge"). NZSML's 2013 application confirms this understanding. Further, no issues have ever been raised by the Council in relation to TIL's reliance on these consents for wet mining activities.[405]

439. The Applicant provided copies of the 2002 resource consent application and 2013 s127 Variation applications and decision, from our review of which we note:

a) At Section 5 the 2002 application provides a description of the activity '*The ironsand is mined by way of conventional and wet sand mining technology. Floating dredging equipment recovers the sand from a flooded pond and transfers the slurry to an adjacent concentrator plant. The sand then undergoes a five stage separation process to concentrate the titanomagnetite.*

b) At [3.1.1] the 2002 the application describes the current wet mining operations: *The existing wet mining equipment at Taharoa is an electro-hydraulically powered cutter suction unit. It has the capacity to mine 750 tonnes per hour, up to five metres below the water surface level. The mined sand is pumped via 95 metres of pontoon mounted flexible hose to the concentrator plant, located in the same*

[405] Applicant, Closing Submissions, at [35]

lagoon.

c) Also at [3.1.1] of the 2002 Application*: Periodically wet mining may need to be supplemented with dry excavation using excavators and trucks. This is necessary where the dredge is unable to move through heavy clay material or is unable to readily access mining areas.*

d) At [3.1.4] of the 2002 Application: *Water extracted from the dam on the Wainui Stream is used for two purposes: (a) To keep the wet mining dredge pond at an optimum level and to supply the concentrator plant.*

e) The 2013 Application at [1.1] refers to changes to the mining operation at Taharoa to enable greater production of ironsand. *The proposed changes to the mining operation include using a combination of two mining processes (dry mining process and/or wet mining process). Changes will be increased gradually over time, such that either method maybe used or a combination of both.*

f) At [2] the 2013 application states *The proposed changes would increase the volume of saleable product by re-introducing dry mining techniques to complement the current wet mining operation.*

g) The 2013 s127 variation decision at Section 7 in its decision/conclusion provides "*The purpose of the change is to allow flexibility in the mining methods and the planned expansion of the operation will eventually use a combination of dry and wet mining methods to achieve increase in productively levels of the mine"*.

440. We also note the opening paragraph within the Executive Summary of the Applicant's AEE in support of the present Application: Taharoa Ironsands Limited (TIL) is seeking all necessary consents in order to continue the existing ironsands mining activity at the site and the associated shiploading activities in the CMA, which began in the early 1970's.

441. In particular the Applicant submits the Panel should consider[406]:

a) The history and scope of the expired resource consents sought to be replaced;

b) the 'substance and gist' of the current application;

c) the circumstances of the application; and

d) How the application was received and dealt with by submitters and Council.

[406] Applicant ,Closing Submissions, 4 October 2024, at [35]

442. The Applicant submits that reference to the type of consent or activity in general terms is sufficient to constitute an application and that reference to the particular rules that may trigger the need for consent is not necessary. They direct the Panel to the following in support of this submission:

443. *Kaiuma Farm Limited v Marlborough District Council [2024] NZEnvC 150* which held an amendment to an application to include a discharge permit was not permissible as it was not an activity previously identified in the application. The Applicant submits this means that where an activity listed in s87 of the RMA is identified in the prescribed application form, that is sufficient. In this case the application referred to water permits, land use consents, discharge permits and coastal permits. We are directed to Paragraphs 67 and 69 of the decision[407]:

[67] In many of these cases, the court has taken a substance over form approach in terms of whether there has been compliance with statutory requirements. However, there must be limits to that. That practice cannot be used to override the statutory requirement in Sch 4, cl 2, as to the information that must be included in an application, including a description of the activity and whether any other resource consent is required for the proposal to which the application relates. …

[69] However, there can be little room for flexibility around the Form 9 requirement that an applicant specifies which type of resource consent, of those listed in s87 RMA, is being sought. This is essential information in the court's view. We note that a consent authority possesses powers under s91 RMA that are consequential upon receipt of an application that discloses that other types of resource consent are required but have not yet been applied for. This provision enables a council not to proceed with notification or hearing until an application for a further type of resource consent has been lodged, if satisfied on reasonable grounds as to the conjunctive requirements in s91(1).

444. The precise activity under section 9 to 15B of the RMA is not required as Schedule 4 of the RMA requires a description of the activity to which the application relates. The Applicant relies on s92 which also refers to 'activity' and section 102 and s103

[407] Applicant Closing Submissions, 4 October 2024, at [39] and [40]

which refer to 'proposal' in support of this position.

445. Further the Applicant refers the Panel to *Simon Hills Station Limited v Canterbury Regional Council* [NZEnvC 62 at [47] and [49]. The Court considered the scope of an application for a water permit for the taking of water to irrigate pasture and grow crops and whether the scope of the application could include irrigation for dairy grazing. The Court found that it was clear that the activity for which consent was sought was the combined taking of water for the purpose of growing pasture and crops. The Court determined it would have been clear to an ordinary member of the public that the applications did not constrain the use of water for irrigation to a particular purpose and that it was not necessary to specify the take was for dairying.[408]

446. The Applicant submits that as the application referred to wet mining and the permits sought included for surface water take, the ordinary member of the public would have understood these consents were for the purpose of mining activities including wet mining. Therefore the lack of reference to section 14 or to the specific source of take and discharge point was not fatal.[409]

447. The Applicant submits it is the activity that is applied for and not the contravention of a rule, therefore it is not necessary to reference rule in the application. They direct us to *Arapata Trust v Auckland Council* [2016] NZEnvC 236. The activity is then assessed in terms of the statutory requirements. They submit Mr Eccles addressing the rules in his Further statement of evidence dated 28 March 2024 at 34 to 44 is sufficient.[410]

448. Mr Eccles in his further evidence addresses the rules as follows:

    a) The current application for surface water take for mining operations and shiploading is pursuant to rule 3.3.4.23 of the WRP. It is for the taking of water

[408] Applicant, Closing Submissions, 4 October 2024, at [41]
[409] Applicant Closing Submissions, 4 October 2024, at [42]
[410] Applicant, Closing Submissions, 4 October 2024, at [16]

from the water supply reservoir created by damming the Wainui. This consent may be amended by including reference to 'dredge ponds'. As the current proposed conditions for the surface take address the effects of taking from the dam, these do not translate to the dredge pond. This may be amended by adding to those conditions '*For water taken from the reservoir in the Wainui Stream...*'. Alternatively a separate water take consent for dredge pond take can be issued with its own conditions.

b) If however the Panel were to disagree that wet mining is a surface take and instead view it as a groundwater take, Mr Eccles submits a discretionary groundwater take consent would be required under rule 3.5.4.5 of the WRP and the Panel has the scope to grant that consent for the reasons submitted.

c) Mr Eccles also identified the need for a groundwater diversion consent pursuant to Rule 3.6.4.13 of the WRP to authorize wet mining on the site including in the Te Ake Ake working area of the Central Block. As referred to in the evidence of the evidence of Mr Williamson, the groundwater table underlying the Site has the potential to have a hydraulic connection with surface freshwater bodies. As a result of Mr Williamson's investigations in terms of the mining being undertaken in the Te Ake Ake Block adjacent to the Mitiwai Stream, it is apparent that if mining occurs below the level of the groundwater, a hydraulic connection with the surface water flow in the Mitiwai Stream occurs. That is, groundwater at depth that influences the flow of the Mitiwai Stream is diverted into the dredge pit, where it then becomes "surface water" as explained above. The same principle would apply elsewhere on the Site where wet mining occurs and there is hydraulic connection with surface freshwater bodies. Mr Eccles considers there is scope as submitted to grant that consent.

d) Mr Eccles submits no consent is required to discharge clean water (not containing contaminants) to a body of surface freshwater (as is proposed for the Mitiwai Stream) to maintain its flow or level during wet mining, under

permitted activity Rule 3.5.4.4.

449. During the hearing Mr Eccles gave evidence that the discharge of process water added to surface water in the dredge ponds to facilitate wet mining soaking into the ground would require consent as would the process of discharge of surface water into the ground at the end of wet mining.

Council

450. Council agrees that water held in dredge ponds is surface water as it has been daylighted. The take of this water as part of a mining operation requires consent under Rule 3.3.4.23 of the WRP. Council also submits that a groundwater diversion consent is required under rule 3.6.4.13.[411]

451. The Council accepts the Application referred to wet mining, however it does not accept there is scope to include the surface water take and diversion consents within the current application because[412]:

a) The surfaces water take referenced in the application was for the take of water from the artificial dam created within the Wainui Stream/Lake Tahaaroa and no reference is made to taking surface water from elsewhere.

b) The two existing consents authorised the taking of surface water specifically from 'a water supply reservoir created by damming of the Wainui Stream' and no reference is made to surface water taken elsewhere.

c) The notification did not reference the activity associated with taking water for the bottom of dredge ponds nor the diversion of groundwater consent.

d) There are older expired consents that were utilized by the prior consent holder on site with respect to groundwater and diversion however these are expired and were not renewed and so were not part of the suite of expired consents (in 2020) being replaced.

[411] Council Legal Submissions, 26 April 2024, at [4.4] and [4.5]
[412] Council Legal Submissions 20 April 20, at [4.4] to [4.11]

452. The AEE records that *'due to different topography and geology in the current mining area, 'dry mining' techniques have been replaced by wet mining since 2017*[413] and makes further reference at paragraph 3.2:

> *In order to enable continued operation of the Taharoa Mine, TIL need to be able to undertake both wet and dry mining techniques in the future. In the past, wet mining techniques ceased as the remaining sand deposits dropped below a manageable grade and dry mining was introduced. TIL has almost mined all immediately feasible exposed dry mining areas within the existing mine site. Dependent on mining techniques, to mine deeper ironsand deposits within the Central Zone, wet mining techniques need to be applied. Historically, to undertake wet sand mining, a small lake is formed, and equipment extracts the sand from the flooded pond and transfers the slurry to an adjacent floating concentrator plant for processing. The extraction unit may have the capacity to mine between 750 and 1200 tonnes per hour up to 5 to 7 m below the water surface. It is expected that new technology may provide different forms of wet sand mining which may enable wet extraction of sand without a floating dredge or dredge pond. The mined sand is then pumped to a concentrator plant located in the same lagoon. The sand then undergoes the same titanomagnetite concentration process as the dry mining operation. Seepage to groundwater is expected from the dredging ponds so they need to be periodically topped up with water from the recycle ponds or fresh water from the Wainui Stream, as required for production. The groundwater generally percolates back into the adjacent lakes, thus returning some of the process water to its source. The existing consents were granted on the basis of wet mining being the predominant extraction methodology at the site, although they did not preclude dry mining being undertaken as evidenced by the current dry mining methodology used at the site.*

453. The AEE contains no assessment of the effects of wet mining. There is no assessment of the effects of a surface water take activity associated with the removal of sand from existing and new pits at the site. Nor is there any assessment of the effects of a groundwater diversion associated with wet mining.[414]

454. Mr Eccles accepts that the previous consents do not refer to groundwater in his

[413] AEE, Section 3.1.3
[414] Council Legal Submissions, 21August 2024 at [4.12] to [4.14]

evidence dated 23 January 2024[415]:

Wet mining has been undertaken at the mine since its inception under the scope of the consents that TIL seek to renew. The consents do not refer to groundwater matters. It is not clear why, but this may be because groundwater effects were not considered to be an issue in the past. Wet mining is proposed to recommence in the next few years (i.e. in the northern part of the Central Block), and that process will interact with groundwater.

455. Council considers the case law provides only three pathways to the Applicant[416]:

a) Modification to a consent application which is "reasonably and fairly contemplatable as being within the ambit" of the original application put forward to Council, as stated in S*hell New Zealand Limited v Porirua City Counc*il. In that situation, amendments to the consent application are permissible.

b) Modification to a consent application, which is "materially different" from that put forward to the Council. This may only be considered with the consent of the Council and if there is no prejudice to it, another party, or the public.

c) Modifications which are in substance a different application, and which are simply beyond jurisdiction. In that situation, a new consent application is required.

456. The Council canvassed various decisions in support and principally relied on an Environment Court decision of *H.I.L Ltd v Queenstown Lakes District Council* [2014] NZEnvC 45 that summarized the caselaw, including the *Estate Homes* test relied on by the Applicant. We produce the passages of that decision submitted to us by Council[417]:

Attempts to modify applications for resource consent are common. The changes may occur at various stages after lodgement. The first point is usually in response to a determination by the

[415] Council Legal Submissions, 21 August 2024, at [4.12] to [4.14]

[416] Council Legal Submissions, 20 April 2024, at [4.17]

[417] Council Legal Submissions April 24, 4.12 to 4.16

local authority that an application is incomplete (although technically that results in a new application). Other reasons for modification include changing circumstances of the applicant, following experts' advice as to how to deal with potential effects, and of course, reacting to matters raised in submissions and/or reports to the local authority. As the Planning Tribunal (Principal Planning Judge Shepherd presiding) explained many years ago in Haslam v Selwyn District Council: The Resource Management Act provides procedures for applications for resource consent stating that the focus when there was a materially different basis in the Environment Court than as exposed to Council, was whether the Council agreed to approach the matter on a material basis that are designed to enable all persons who wish to take part to do so...In practice, the lodging of submissions and the presentation of opponents' cases frequently leads to applicants or consent authorities modifying proposals to meet objections that are found to be sound. That must surely be part of the statutory intent in providing for making submissions.

In my view Waitakere City Council v Estate Homes Limited is only authority for the principle that if an applicant wishes to make relatively major ("materially different") changes to a (non-notified) application which are beyond the fair and reasonable scope of an application, then it may do so only if: (a) the amendments do not make "in substance a different application" ; (b) the local authority consents ; and (c) there is no prejudice to other parties and the public. It is difficult to know how useful that approach might be for notified applications, because normally there would be prejudice to the public in such a case.

Further, as I have indicated, there are decisions of the Environment Court and the High Court since Estate Homes which consider the test for amendments within scope, and which rely more on Shell New Zealand. I hold that:

(1) a change to a notified application is within the jurisdiction of the court if its ambit is fairly and reasonably within the scope of the original notified application: Shell New Zealand Limited v Porirua City Council;

(2) particular factors to be considered include (see Atkins v Napier City Council):

• the scale, intensity and character of the altered activity;

• the altered scale, intensity and character of the effects or impacts of the proposal;

• potential prejudice to both parties and the public.

(3) only if an amended application fails the Shell New Zealand test, might the Estate Homes approach as summarised in the previous two paragraphs possibly apply

457. Council submits that reference to the intention to carry out wet mining in the application is not sufficient. It notes[418]:

a) The consents were not applied for in the sense of identifying the activity as it relates to the resource and location of resource (surface water in a dredge pond).

b) The consents were not notified.

c) The consents were not adequately described and assessed against the planning documents.

d) The activity of wet mining was not referred to in Council's notification decision (which provided a link to the existing consents to be replaced and the application), notice issued to submitters or the notice of hearing.

458. Council also submits that the Panel does not have the power to grant consents for an activity that has not been applied for at all and that the amendments requested are not an amendment that is permissible. It relies on *King Country Energy Ltd v Waikato Regional* Council A130/09, where an amendment to an application for hydro-electric power scheme operation was allowed to substituting reference to earth dam with a reference to roller compacted concrete dam. The Court considered this an amendment to detail fairly contemplated as being within the ambit of the original application. Further the differences in effects were the same or minimally different. Council submits that in the Application before the Panel, rather than amending the description of an activity the Panel is being asked to consider a new application for consents to take surface water from the dredge ponds and a ground water diversion and therefore if this part of the Application is to be pursued, the Applicant must apply for an additional consent for take and use

[418] Council Submissions, 20 April 2024, at [4.20] and [4.21]

of surface water and groundwater diversion.[419]

Submitters

459. John David Keepa/Kupa Whānau Trust submit in support of the Council's position.[420]

Panel Assessment

460. We have considered the submissions and caselaw set out by the parties. We accept that wet mining was carried out under the prior 2002 consents which were varied in 2013.

461. We consider to carry out the activity of wet mining lawfully the Applicant requires consent to divert groundwater into dredge pits (in doing so creating surface water), a consent to take and use that surface water in dredge ponds and a consent to discharge process water and surface water from dredge ponds to ground once mining is complete.

462. The Expired Consents do not contain a consent for the diversion of ground water to dredge ponds. We cannot answer why this was so despite wet mining being referenced in the application and decision.

463. We consider in any event that we must look to whether the relevant sections and rules have been referred to within the current application and assessments provided. We consider they have not, although we acknowledge as the processing of this application has progressed the issue of diversion and discharge has been recognized.

464. With respect to whether reference to the sections of the RMA and rules, policies and objectives in a plan is required in an application we note 'Resource Consent' is defined in s87 of the RMA as being (in reference to this matter) *a consent to do something that .... would contravene any section 14* and *a consent to do something that otherwise would contravene section 15.*

[419] Council Legal Submissions April 2024, par a4.24 to 4.28.
[420] John David Keepa Kupa Whānau Trust, Legal Submissions , 26 July 24, at [4.2]

465. Sections 14 and 15 are both prohibitive sections that do not allow an activity (or aspect of a proposal) to occur unless a rule, exception or granted resource consents allows it.

466. Section 88 under the heading '*Application for Resouce Consent*' sets out that *a person may apply to the relevant consent authority for a resource consent*. Thereafter that section provides that the applicant must set out the activity along with an assessment of the effects upon the environment.

467. Section 87A describes the classes of activities and repeats in respect of each class, *If an activity is described in this Act, ...as a permitted activity* etc. This reflects the interpretation section, s2, which describes and defines each activity by way of its class.

468. Section 88A then sets out how an application may be processed after a proposed plan has been notified or other changes. In particular we note s88A(1)(b) which provides *the type of activity (being controlled, restricted, discretionary, or non-complying) for which the application.....*

469. Schedule 4, clause 2 of the RMA sets out the information required in an application for resource consent. It requires a description of the activity, which we accept must include both an outline of what is to be done and identifying the class of the activity. However it also requires:

(e) a description of any other resource consents required for the proposal to which the application relates.

(g) an assessment of the activity against any relevant provisions of a document referred to in s104(1)(b).

470. We therefore consider that an application must make reference to the section and the rule that triggers the need for consent as it relates to the actual consent it seeks be granted. We also consider that an assessment of the effects of the activity with respect to that rule and the policies and objectives triggering that actual consent, must be within the application. If it is not, it cannot be an application for that

particular ‘resource consent’.

471. In this case then, for example, mention of discharge from soakage pits would not necessarily then extend to discharge from dredge ponds, or take and use of surface water from a stream would not necessarily extend to take and use of surface water from a dredge pond. It may be attractive to do so, but for example, with reference to the diversion of groundwater to surface water, we have received no evidence as to volume of diversion, frequency of diversion or effect of the diversion upon the ground water including potential of salinization. We also note the take of surface water will maintain the diversion of groundwater. Further we have an assessment of the policies and objectives that relate to these effects.

472. The question then becomes what happens if an application is made which does not include reference to the sections, rules and policies etc for a particular consent that is required to enable the activity or part of the activity? The Applicant submitted the Panel had the power to grant the consent anyway or to treat the Application as amended.

473. In our view there is a pathway that suggests this gap was to be addressed prior to reaching a decision point. Section 88(3A) would have enabled an incomplete application to be returned to the applicant and thereafter s91 would have enabled Council to cease processing on the basis that other resource consents are required and lodgement of those was appropriate for the purpose of better understanding the nature of the proposal that those are lodged before proceeding further. We consider it is clear Parliament intended all relevant applications that impact the assessment of effects were to be dealt with together by a decision maker and put in place these measures to ensure that would be so.

474. We do accept that an application can be amended however, we do not consider amendment can be so far reaching that it makes up for the absence of applying for a consent for an aspect of the activity as described above. We consider the impacts upon notification, natural justice and the reliance upon the decision maker undertaking an assessment the absence of assessment in the AEE and s42A report

was not intended by Parliament. For these reasons we agree with the interpretation of caselaw as put forward by Council and accordingly accept that:

a) The required consents were not applied for to enable wet mining and we do not have the power to grant them in the absence of an application.

b) An amendment to the Application to include the required consent applications is not within our power to allow.

12.3 Regulation 45D, National Environmental Standard for Freshwater 2020

Applicant

475. The Applicant submits a consent may be granted by the Panel which would allow for mining within the setback prior to receiving evidence to demonstrate the consent triggers have been met (eg. Drainage of a wetland) on the basis that a condition is included which requires evidence in the form of a hydrological report is provided to Council to demonstrate the trigger has not been met prior to carrying out the activity. Should the report indicate the trigger is met the condition would prevent them from mining within the setback.[421]

Council

476. Council submits a consent must be obtained to carry out the proposed mining activities within 100m of the wetlands and does not support the granting of consent with condition as proposed by the Applicant, for the following reasons[422]:

a) The NES-F provides a specific pathway for the extraction of minerals and ancillary activities.

b) In the absence of a hydrological assessment, any effects are unknown and as such the Hearings Panel is unable to consider the potential environmental effects of the activity.

[421] Applicant, Closing Submissions, 4 October 2024, at [87]
[422] Council, Submissions 21 August 2024, at [3.12] to [3.16]

c) The proposed condition is akin to a certification of Managment Plan condition which does not apply to this circumstance. Council refers the Panel to case law that a management plan can provide information as to how parameters or limits can and will be met, it is inappropriate for the parameters or limits themselves to be left to the management plan which must be set in the consent itself. Rather the Panel must adequately define the ambit and scope of the activity authorized, including through consent conditions.[423] Therefore the adoption of a certification condition, requiring future certification, still requires an assessment of the effects on the proposed activity at the time of grant of resource consent.

d) Clause 45D of the NES F requires that a resource consent allowing mining activity within a 100m setback cannot be granted unless the consent authority has first applied the effects management hierarchy. The "effects management hierarchy" is defined in the National Policy Statement for Freshwater Management. This sets out the required approach, in relation to inland wetlands, to the management of adverse effects of an activity. Relevantly, for the effects management hierarchy to be considered, the likely effects of an activity must be known and able to be assessed at the time the consent is considered and determined. If the consent was granted and condition were imposed this would be delegated the assessment of hydrological effects to a future certification process.

e) If the hydrogeological effects assessment were to take place as part of a certification process those submitters who have engaged in the hearing would not be entitled to be heard on the matter of assessment, as they would in a consent process, which would give rise to issues of natural justice.

477. Council submits for the reasons outlined above to grant a consent for the activity in the absence of evidence of the effects on the environment would be ultra vires.[424]

[423] *Wellington Fish and Game Council v Manawatu-Wanganui Regional Council* [2017] NZEnvC 37.
[424] Council, Submissions, 21 August 2024, at [3.17]

Panel Assessment

478. Regulation 45D of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 is set out below in full:

> **45D Discretionary activities**
>
> (1) Vegetation clearance within, or within a 10 m setback from, a natural inland wetland is a discretionary activity if it is for the purpose of the extraction of minerals and ancillary activities.
>
> (2) Earthworks or land disturbance within, or within a 10 m setback from, a natural inland wetland is a discretionary activity if it is for the purpose of the extraction of minerals and ancillary activities.
>
> (3) Earthworks or land disturbance outside a 10 m, but within a 100 m, setback from a natural inland wetland is a discretionary activity if it—
>
> (a) is for the purpose of the extraction of minerals and ancillary activities; and
>
> (b) results, or is likely to result, in the complete or partial drainage of all or part of the wetland.
>
> (4) The taking, use, damming, or diversion of water within, or within a 100 m setback from, a natural inland wetland is a discretionary activity if—
>
> (a) the activity is for the purpose of the extraction of minerals and ancillary activities; and
>
> (b) there is a hydrological connection between the taking, use, damming, or diversion and the wetland; and
>
> (c) the taking, use, damming, or diversion will change, or is likely to change, the water level range or hydrological function of the wetland.
>
> (5) The discharge of water into water within, or within a 100 m setback from, a natural inland wetland is a discretionary activity if—
>
> (a) the discharge is for the purpose of the extraction of minerals and ancillary activities; and
>
> (b) there is a hydrological connection between the discharge and the wetland; and
>
> (c) the discharge will enter the wetland; and
>
> (d) the discharge will change, or is likely to change, the water level range or hydrological function of the wetland.
>
> (6) A resource consent for a discretionary activity under this regulation must not be granted unless the consent authority has first—
>
> (a) satisfied itself that the extraction of the minerals will provide significant national or regional benefits; and
>
> (b) satisfied itself that there is a functional need for the extraction of minerals and ancillary activities in that location; and
>
> (c) applied the effects management hierarchy.
>
> (7) In relation to the extraction of coal and ancillary activities, no person may apply for a consent to carry out any activity under subclauses (1) to (5) unless the activity is for the purpose of the extraction of coal or ancillary activities as part of operating or extending a coal mine that was lawfully established before 5 January 2023.
>
> (8) At the close of 31 December 2030, the extraction of coal (other than coking coal) is excluded from the purposes for which consent may be obtained under this regulation.

479. In essence a discretionary consent is required within certain setbacks of a natural inland wetland for earthworks where the work results or likely results in a complete or partial drainage of the wetland. A discretionary consent is also required for the taking, use, damming or diversion of water or discharge of water where there is a hydrological connection between the activity and the wetland and the activity will or is likely to change the water level range or hydrological function of the wetland.

480. Section 104(1)(b)(i) of the RMA requires the Panel to have regard to any relevant

provisions of a national environmental standard.

481. Section 104(1)(a) requires the Panel to have regard to the actual and potential effects on the environment of allowing the activity.

482. Section 104(6) allows the Panel to decline an application for a resource consent on the grounds that it has inadequate information to determine the application.

483. Section 108AA of the RMA provides a condition may be included where the applicant agrees to the condition or the condition is directly connected to an adverse effect of the activity on the environment or a national environmental standard.

484. We have considered the submissions and caselaw set out by the parties. We accept the position as set out in the submissions of Council as we agree with their interpretation of the case law. We also consider the references to s104 and s108 set out above support the position put by Council.

485. In summary we find we do not have the power to grant consent to undertake mining and ancillary mining activities within 100 metres of a natural inland wetland as we do not have the evidence before us to ascertain the effects of such activities and determine the appropriate mitigation for those effects which we consider is necessary to receive prior to the granting of consent. We refer to our findings in section 7 of this report in this regard.

12.4 Noise Levels and Light Spill (Neighbours)

486. We received evidence from the Wetini Trust in respect of several effects experienced at their family home in Tahaaroa, including light spill from mining infrastructure and noise from mining operations. Both effects had been amplified since the removal of vegetation and a sand dune between the mining site and the Wetini home.

487. Both the Applicant and Council considered these effects beyond the scope of this Application as they were effects generated by land use managed by the District

Council rather than arising from the activities sought to be carried out under the Application seeking regional consents.

Panel Assessment

488. We acknowledge the significant light spill and noise arising from the mining activities however we make no findings in respect of the impact of that upon neighbours as we agree this is a district matter and beyond the scope of this Application.

489. We note we have considered light spill and noise with respect to effects upon birds (noise only) and bats (noise and light) in section 7 of this report. These matters are dealt with by way of setbacks, restrictions upon activities that create noise disturbance at breeding times (birds) and appropriate fittings to reduce light spill (bats). We also note that some of these conditions may benefit neighbours in any event.

12.5 Condition: Funding Consultation

Applicant

490. The Applicant has proposed a condition to enable ongoing consultation with iwi during the operation of the mine however it opposes any condition which requires the Applicant to pay Te Ruunanga o Ngāti Mahuta ki te Hauaauru for the purposes of its collective involvement in the preparation of the EMP and preparation of proposed six monthly consultative conditions[425]. The Applicant opposes such a consent on the basis that the Regional Plan does not provide for financial contributions for mana whenua engagement in the preparation of management plans or in relation to consultation in respect of a consented activity which is required if the condition is to be imposed without the agreement of the Applicant.

491. The Applicant directs the Panel as follows in support of its position:

a) Applicant a financial contribution may only be imposed if it is for a purpose

[425] Applicant, Closing Submissions, 4 October 2024, at [100] and [102]

specified in the plan, satisfies the Newbury tests being fair and reasonable on its merits and when the level of contribution is determined in a manner described in the plan which may either be descriptive or prescriptive in its methodology to determine that level.[426]

b) The Applicant also directed the panel to *Te Rangatiratanga o Ngati Rangitihi Incorporated v Bay of Plenty Regional Council* where the Court in considering payment to kaitiaki for their presence for monitoring earthworks conditions considered it was not a matter that could be addressed within the conditions. The court considered payment for matters associated with consultation were not a matter for the Court.[427]

Council

492. The Council proposed the Applicant pay a sum of $60,000 plus GST provided to Te Ruunganga o Ngāti Mahuta ki te Hauaauru to fund all parties engaged in consultation under the proposed condition 14 in the preparation of the EMP and $30,000 plus GST CPI adjusted from 2024 every five years from certification of the first EMP to fund each five yearly review of the EMP. Separately Council proposed consultation meetings every 6 months for the first three years following commencement of the consents and at yearly intervals there after (condition 21). The Applicant would pay a sum of $15,000 plus GST and CPI adjusted from 2024 to Te Ruunganga o Ngāti Mahuta ki te Hauaauru to fund their collective preparation and participation in these meetings.[428]

493. The Council considered a condition imposing financial contributions could be imposed as so long as it meets the Newbury principles[429]:

a) Be for a resource management purpose, not for an ulterior one;

[426] Section 108 RMA, *Retro Developments Ltd v Auckland City Council* (2004) 10 ELRNZ 330 (EnvC) at [22]*, South Port New Zealand v Southland Regional Council C091/02, at [23] to [28],* Applicants Closing submissions at [103] to [105]

[427] NZEnvC 128 [2009] at [20] and [21] and Applicant's closing submissions para 106

[428] Counci, Submissions, 21 August 2024, at [8.2]

[429] *Newbury DC v Secretary of State for the Environment* [1981] AC 578, [1980] 1 ALL ER 731.

b) Fairly and reasonably relate to the development authorised by the consent to which the condition is attached; and

c) Not be so unreasonable that a reasonable planning authority, duly appreciating its statutory duties, could not have approved it.

494. Council directs the Panel to *Port of Tauranga Limited v Bay of Plenty Regional Council* [2023] NZEnvC 270, in which the Court recognized the importance of relationships with tangata whenua to enable them to exercise kaitiakitanga in a meaningful way and the challenges for tangata whenua in terms of the costs (both in time and money) in engaging. The Court was also concerned that any consultation decision with respect to kaitiakitanga must provide sufficient detail to enable the environmental outcomes to be determined. As such the applicant in that case was directed to propose details of a meaningful kaitiaki role for tangata whenua to promote the objectives and policies in the planning documents in relation to planning, implementing and reviewing monitoring programmes and contributing to management decisions arising from implementation of those programmes. The Court went further to require these details to be set out in a management structure which would also include how implementation of the plan would be funded. However the financial condition was proposed by the Applicant (simply without the detail the Court thought necessary) and the Court stated that *a condition requiring payment by one party to another is, in the absence of agreement between the parties, an insufficient measure to recognize and provide for the relationship identified in s6(e) of the RMA.*[430]

495. Council's position then is that the amended proposed condition is sufficient in detail and is for the purpose of addressing s6(e) matters. Further that the condition is a means of addressing the lack of consultation and current state of relationship between the Applicant and mana whenua (other than Taharoa C Block owners).[431] Council does not directly address the issue of whether the condition can be imposed

[430] Council, Submissions, 21 August 2024, at [8.9] and at [414] of the decision
[431] Council, Submissions, 21 August 2024, at [8.12]

without the Applicant's agreement however it appears to consider agreement is necessary in some form whether to the detail or to funding at all[432]

Submitters

496. The John David Keepa/Kupa Whānau Trust support the inclusion of a detailed consultation condition that includes funding in order to address the s6(e) matters.[433] In oral submissions Mr Lanning submitted on behalf of the Trust that it was common on large infrastructure projects to include conditions that set out in detail consultation with a representative group from the community and given the time required by that group it was *reasonable to require reasonably payment or perhaps [to] establish an expert panel to assist that group.* He further submitted that the feedback from this group should be taken into account with respect to management plans and where it is not the Applicant should be required to explain why it was not when reporting to Council to certify the plan.[434]

Panel Assessment

497. We agree with the Applicant and Submitters that consultation with respect to the EMP and ongoing throughout the operation of the consent is necessary to address s6(e) of the RMA matters.

498. We also agree that the conditions with respect to consultation should be detailed as to who is to attend, when, how and where consultation should take place and further that the feedback from consultation should be taken into account, particularly with respect to development and review of management plans. Further that a summary of the consultation undertaken and feedback received should be provided to Council when seeking certification of any management plan.

499. We consider the above detail is necessary as we find that prior consultation and engagement with mana whenua (beyond the employees of the Applicant and

[432] Council, Submissions, 21 August 2024, at [8.14]
[433] John David Keepa Kupa Whānau Trust, Submissions, 26 July 2024, at [4.12]
[434] Mr Lanning, John David Keepa/Kupa Whānau Trust, oral submissions, 8 August 2024

Taharoa C) has been inadequate to recognise and provide for relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga. We consider this inadequacy to be a significant adverse effect, particularly in light of the interwoven, uninterrupted and close relationship of the mine, the site and the mana whenua as acknowledged by all parties.

500. We further agree that funding is necessary to ensure that consultation may take place and is effective. We accept the submitters position, supported by Council, that significant resources will be required by Mana Whenua to engage in consultation meaningfully, which they do not have. However we consider the law and caselaw as submitted by the Applicant to be correct. We have not identified nor has any party submitted a policy or rule in the plan that provides for such funding or the determination of such funding. We therefore consider the Applicant must agree to the condition being imposed, that is it is a voluntary condition.

501. The Applicant has however clearly stated although it supports ongoing consultation it does not volunteer any condition that would impose funding such consultation. We consider in this scenario the Applicant must demonstrate how s6(e) matters will be addressed in the face of this position. As in *Port of Tauranga Limited v Bay of Plenty Regional Council,* where funding was volunteered but the detail of consultation was absent, given our findings in respect of the inadequacies of consultation, that the present proposed condition (without funding) is inadequate to address s6(e) matters and to mitigate the significant adverse effects arising from the activity with respect to exercise of kaitiakitanga. We have imposed conditions that we consider will enable the consented activity to be consistent however given the nature and degree of engagement required by mana whenua as a result of the scale and location of the activity and Site we find there is uncertainty as to the effectiveness of even the imposed conditions. This uncertainty is reflected in our term of consent.

12.6 Condition: Bond

Applicant

502. The Applicant opposes the imposition of a bond. There is a bond imposed in respect of the expired consents sought to be replaced. The Applicant submits a bond must be for a resource management purpose, fairly and reasonably related to the activity and be reasonable and proportionate in the circumstances. Further the value and terms of a bond must not be such that the condition would effectively frustrate the consent.[435]

503. The Applicant considers the mine is subject to special circumstances which indicate a bond is not appropriate (as compared to other mines and industrial activities in the region)[436]:

a) The Applicant is commercially astute and well-funded as are the shareholders of the applicant and the site owner. Further the Applicant has operated the mine successfully for 7 years and *invested significantly in ensuring its mining activities and practices are efficient and achieve compliance with all conditions of consent*. Accordingly a bond would achieve nothing that was not already done by the Applicant.

b) The funds could be put to better use and would require either a significant take on capital or reduce the ability to debt fund. Whereas those funds could be put to ongoing rehabilitation, upgrades to machinery or fencing.

c) The use of the funds to implement upgrades etc would result in economic benefits for the community.

d) The imposition of a bond suggests that Taharoa C who are kaitiaki for the site as well as owners will not own their kaitiaki duties to the land. They consider it an affront to rangatiratanga of tangata whenua to impose a bond.

[435] Applicant, Submissions, 26 July 2024, at [188] and [189]
[436] Applicants legal submissions July 2024, para 190

e) The contractual mining lease between the Applicant and Taharoa C requires the land to be left in good state.

f) WRC could also take enforcement action if the rehabilitation and site closure conditions were not complied with.

504. Mr Barclay-Kerr in his oral evidence when asked if Taharoa C had made provision for rehabilitation in the event the Applicant did not carry out rehabilitation at the end of the mine's life confirmed he, on behalf of Taharoa C, had *put a few million dollars away in an investment account that's stuck in there for the next 20 years*. Mr Barclay-Kerr was clear this was not set aside for remediation but that it may be used for that if necessary and if not used for other purposes. He also stated *I believe Mr Coffey when he tells me that he will make sure that the rehabilitation of our land will take place. And so, you know, I don't want him to be offended by thinking that, oh, that he's put some money away just in case he doesn't keep his word. That's not the, it actually isn't the case'.*

Council

505. Council supports the imposition of a bond and noted that all of the experts, with the exception of Mr Eccles for the Applicant agreed with the recommendation for a bond. Council refers us to Sections 108(2)(b) and s108A of the RMA that provides a bond may be given for the performance of any one or more conditions and may continue after the expiry of the consent to secure ongoing performance of conditions relating to long term effects including the removal of structures, remediation/restoration/maintenance work and long term effects monitoring.[437]

506. Council considers a bond is necessary because[438]:

a) The activity is large scale mining where rehabilitation may be lengthy, complex and expensive.

[437] Council, Submissions, 21 August 2024, at [7.1] to [7.3]
[438] Council, Submissions, 21 August 2024, at [7.4] to [7.8]

b) The term of 35 years may result in a change of ownership and structure that is very different at the end of the consent period.

c) The landowner is not the Applicant. The majority shareholder of the Applicant is Melrose Private Capital Limited (55.88%) and Taharoa Mining Investments Limited holds the balance of the shares. With respect to Taharoa Mining Investments Limited, Melrose Capital hold 40% of the shares and the land owner (Taharoa C Block Incorporated) own 60%.

Submitters

507. The Keepa Trust, the Wetini Trust and Te Kooraha Marae supported the imposition of a bond for the following reasons[439]:

a) The history of non-compliance of rehabilitation by the Applicant.

b) To ensure the Conceptual Site Closure Plan is developed appropriate and implemented when the site is set to close, and that tangata whenua are resourced to be involved in the post-closure management of the mine.

c) Due to the long term effects on the environment of the activity on top of the existing effects from mining to date.

508. As a result of their whanaungatanga relationship with the whenua and wai, tangata whenua will remain permanently once the mining has ceased and the Applicant has left. The bond therefore recognises and provides for the relationship of tangata whenua with the site and surrounding land as kaitiaki.

Panel Assessment

509. We have considered the submissions and evidence of the parties. All parties agree with the statutory test for imposition of a bond. We agree with the reasons put forward by the Council and the John David Keepa/Kupa Whānau Trust.

510. We acknowledge the reasons set out by the Applicant however we consider the

[439] John David Keepa Kupa Whānau Trust, Submissions, 26 July 2024, at [4.38]

duration of consent may well change the ownership structure and therefore limited weight can be given to the assurances of the presence mine operators.

511. We also consider the matter to which they consider the bond funds could be put are standard operational matters which should be met regardless and should not rely on the freedom of the bond funds to achieve.

512. Further we recognize the status of the landowners as kaitiaki however we also recognize that the wider mana whenua have a kaitiaki role as well. We do not consider it appropriate to rely on the landowners as a backstop to any future failure to rehabilitate (for whatever reason) given they are minority shareholders and have not made a specific provision for rehabilitation.

12.7 Condition: Technical Certification Dispute Resolution

Applicant

513. The Applicant proposes a suite of conditions that enabled the operation of mining to continue during a transitional period whilst the Environmental Management Plan is prepared and certified. It also included dispute resolution condition in the event the event the plans were not certified.[440]

514. The Applicant proposed these conditions because it would give certainty to all parties that a robust process was in place to ensure a timely and effective resolution of certification issues, particularly given the importance of the management plans in the implementation of the new consents.[441] Mr Eccles also gave oral evidence at the hearing that the condition was similar to that used in the Southern Links Project, nationally significant infrastructure project given the extent of the project and number of parties.

[440] Proposed Conditions 28 to 30.
[441] Further Rebuttal Statement of Evidence, G Eccles, 12 July 2024, at [27] and [29]

Council

515. Council opposes the inclusion of a dispute resolution conditions on the basis[442]:

a) Consent conditions are to bind the consent holder not the consent authority.

b) Management Plans are flexible to enable a variety of methods to achieve the objectives which are set by the consent. This functionality and flexibility will be fettered by the imposition of these conditions.

c) The proposed condition is unduly restrictive on the consent authority and fetters the ability of WRC as regulator.

d) Conditions like these are not commonly imposed and the evidence to suggest it is required in this instance is absent.

Submitters

516. The proposed dispute resolution conditions were opposed by some submitters.[443]

Panel Assessment

517. We accept the dispute resolution conditions have been volunteered by the Applicant which provides some leeway to their inclusion in the consent however we consider for the reasons given by Council it is not appropriate to include these conditions.

12.8 Condition: Pine Plantation

518. We refer to our findings in Section 7 with respect to bats. In summary there an area of commercial pine plantation adjacent to the mining site that will be removed at some point in the future prior to the expiry of these consents if granted. This area is not owned or controlled by the Applicant. The pine planation offers potential roosts as the trees grow and foraging grounds for bats off site. With respect to roosting the pine trees are *not as important as other areas at present* as there are

[442] Submissions, Council, 21 August 2024, at [5.1] to [5.4]
[443] Closing Submissions, Applicant, 4 October 2024, Appendix G: Conditions Review Table

more mature trees which are preferable to bats for example along Mitiwai Stream.[370]

Panel Assessment

519. We cannot impose a condition of consent upon a third party. As such we recognize that there is no certainty that the pine plantation will be maintained or remain for the duration of the consents if granted. We find that this together with Ms Muller's evidence that the pine plantation provides value for foraging but low value for roosting due to the immaturity of the trees means we have placed little value on the presence of the pine plantation as a means of mitigating the effects of mining upon the bat population.

12.9 Condition: Stock Exclusion

520. The presence of horses and livestock on the Site is recognized by the Applicant and Council as impacting progression of rehabilitation, reduction of air discharge, protection of waahi tapu sites and maintenance wetlands. The Applicant and Council planners agreed at expert witness conferencing that the Stock Exclusion Regulations 2020 do not apply to the Applicant on the basis that they do not own or control the stock.[444]

Applicant

521. The Applicant gave evidence that[445]:

a) The stock and horses are owned by locals.

b) Waahi tapu sites are fenced.

c) Regular stock musters are undertaken with rehoming or provision of the animals to the works.

522. The Applicant submits that it is not reasonable to fully fence the mine and further

[444] Planning Joint witness Statement, at [20] and section 42A Addendum at [4.1]
[445] Primary Statement of Evidence, G Martin, 23 January 2024 at [82]

that the presence of stock and horses is not directly connect to an adverse effect of the Application. They submit[446]:

a) The animals are trespassing and the Applicant could have a claim against the owners in trespass or nuisance.

b) The Waikato District Council Keeping of Animals Bylaw 2024 reinforces an obligation to comply with the Resource Management (Stock Exclusions) Regulations 2022 which apply strictly to the person that owns or controls stock.

c) The Applicant is not seeking consent for the stock and horses to remain on site.

d) Pest management associated with rehabilitation is commonly required in consent conditions, however, this is in the context of wild fauna and flora affecting rehabilitation, not in respect of those trespassing.

e) The amount of fencing required to fence the entire Southern and Central blocks would be too difficult.

f) The Applicants responsibility is only to inform the District Council to remove the stock and horses.

523. Following the hearing the Applicant volunteered a modified condition on the basis that it does not accept that management of third party livestock and horses trespassing with the Site is its responsibility, However, it agreed that these animals inhibit rehabilitation efforts. The condition and advice note proposed are[447]:

Condition: If stray livestock and/or horses gain access to the Consent Area, the Consent Holder shall use best endeavours to return them to their owners or otherwise dispose of them appropriately.

Advice note: Under the Waitomo District Council Public Health and Safety Bylaw 2023, it is the

[446] Applicant, Submissions, 26 July 2024, at [202] and [203]
[447] Proposed condition 10, A UTH142035.01.01, submitted by Applicant with closing submissions.

responsibility of any person keeping stock in an urban area (as defined in the Bylaw) to ensure that premises where stock is kept are secure. It is the responsibility of Waitomo District Council to enforce the Bylaw. It is also the responsibility of any person keeping stock to comply with the Resource Management (Stock Exclusion) Regulations 2020, which is enforced by the Waikato Regional Council. The Consent Holder has agreed for this condition to be imposed, to assist with the management of stray stock originating from neighbouring properties trespassing on the site, where that is possible.

524. There are no conditions imposing fencing with respect to the Site however the Applicant has proposed a condition that a Pest Management chapter within the Environmental Management Plan. This chapter is to undertake pest flora and fauna eradication and control for the purposes of ecological enhancement. The chapter shall include:

(c). Practices and procedures to address the potential adverse effects of horses and stock on rehabilitation areas, wetlands and setbacks within the site boundary[448]*.*

525. Various setbacks are proposed in respect of the site boundary and wetlands. There is no setback proposed with respect to urupa or waahi tapu sites but rather a condition[449]:

The location of urupa and other waahi tapu sites known to the Consent Holder at commencement of this consent [shall be demonstrated on a map prepared by the Applicant].

No mining operations nor any of the activities listed in condition 5(a)-(b) above can be undertaken within any of the urupa or waahi tapu sites shown on the certified map (or maps) required by Condition 2 of this consent.[450]

Council

526. Council says[451]:

a) *The Joint Witness Statement in relation to Terrestrial Ecology and Planning dated*

[448] Proposed condition 21, Schedule 1 General Conditions submitted by Applicant with Closing Submissions
[449] Proposed Condition 2 of AUTH142035.01.01, submitted by Applicant with Closing Submissions
[450] Condition 6 AUTH142035.01.01, track change conditions submitted with Applicant's Closing submissions.
[451] s42A Addendum at [4.1]

27 June 2024 records the views of Mr Keenan and Dr Dutton that the presence of cows and horses may frustrate the mitigation outcomes sought from the 100 m exclusion buffer from Mean High Water Springs. The same is true in relation to other parts of the Consent Area that are the subject of exclusions or setbacks (e.g. wetlands and riparian margins).

b) *The Joint Witness Statement on Hydrology and Wetland Ecology records agreement of the experts that the "maintenance of the quality of wetlands will be achieved through an agreed Natural Wetland Management Plan" and that the latter "should require exclusion of livestock".*

c) *Any heavy-handed approach (e.g. stock ending up in the freezer) is likely to inflame already difficult unneighborly relationships however the more light-handed approach proposed by TIL (notify the Waitomo District Council) is unlikely to result in a timely or effective outcome.*

527. Council proposes conditions requiring fencing and exclusion of livestock and horses from wetlands, riparian margins, urupa and waahi tapu sites and also initially a condition that livestock and horses are removed within 48 hours of being found on site.[452]

Submitters

528. The John David Keepa/Kupa Whānau Trust supported appropriate fencing as recorded in the Joint Witness Statements referred to above, to which their experts attended.

Panel Assessment

529. We made a number of observations during our site visit:

a) There were many horses (more than a a dozen and several cattle) present.

b) There was a stockyard containing three animals.

c) There was traditional number 8 wire fencing around some areas, principally

[452] s42A report, Appendix 2, AUTH142035.01.01, condition 6

waahi tapu sites. We note we did not visit all waahi tapu sites or urupa.

d) The movement of the sand had reduced the height of some fences at certain points as it built up against the base.

530. We find that:

a) The presence of livestock and cattle adversely effect remediation efforts the absence of failure of which increases the adverse effects of dust and prolongs the ecological effects on flora and fauna where that flora and fauna has been removed to enable mining.

b) The numbers of stock and horses are significant trespassing on the Applicant's land are quite noticeable.

c) The capture and exclusion of these animals is challenging for the reasons set out by the Applicant as is fencing the entirety of the Site.

d) The effects of stock and horses entering waahi tapu and urupa are not effects arising as a result of mining activity. These places have not been mined and these animals are not owned by the Applicant.

e) The effects of stock and horses upon progress of remediation and the flow on effects in respect of ecology and air discharge are connected to the activity of mining. The activity of mining removes vegetation. It is the absence of vegetation which results in the ecological and air discharge effects. The animals graze on the remediation plantings prolonging the absence of remediation. We consider the wandering stock are a feature of the environment that must be managed in some form or other by the Applicant in order for them to address the effects arising from the activity of mining.

f) We consider the conditions proposed by the Applicant insufficient to mitigate the effects upon remediation caused by wandering stock and horses. We consider fencing in newly planted setback areas, stabilisation and rehabilitation areas to ensure successful implementation.

g) With respect to fencing of waahi tapu areas and urupa, we do not consider we can lawfully impose a condition to prevent stock and horses entering these areas on the basis that the entry of the stock into those areas is not a result of mining activity.

12.10 Condition: Biosecurity in Coastal Marine Area

Applicant

531. Mr Eccles gave oral evidence on behalf of the Applicant confirming that conditions did not need to be imposed with respect to potential biosecurity matters arising from the Applicants transport ships at the mooring buoy on the basis that these matters were already *taken care of* via biosecurity and maritime regulations.

Council

532. Council submits that potential biosecurity matters arising from the Applicants transport ships at the mooring buoy is beyond the jurisdiction of Council and therefore the Panel. Essentially these matters are already subject to a regulatory regime administered by Maritime New Zealand and/or the Ministry for Primary Industries and to impose an additional or alternative regime by way of consenting would be an encroachment on the ambit of this separate statutory regulator.[453]

533. In support of its position Council notes[454]:

a) All commercial vessels operating in New Zealand's territorial waters are subject to a licensed regime operated by Maritime New Zealand.

b) Biosecurity matters are regulated by the Ministry of Primary Industries (MPI). MPI operates a Craft Risk Management Standard: Vessels. This specifies the requirements needed to manage the biosecurity risks associated with vessels entering New Zealand territorial waters.

c) MPI is the relevant regulator with jurisdiction to enforce the Craft Risk

[453] Council, Submissions, 21 August 2024, at [6.3] to [6.4]
[454] Council, Submissions, 21 August 2024, at [6.2]

Management Standard and the Biosecurity Act 1993.

d) Sections 19 and 33, section 52 and Sections 154 to 182 of the Biosecurity Act 1993 address inspection, offences under the act and authorises communication and release of any pest unwanted organism and the

Submitters

534. The John David Keepa Kupa Whānau Trust sought a condition to address discharges from the Applicants vessels. The proposed condition would require survey of the mooring buoy and associated structures for unwanted marine organisms and a plan for addressing these if found. Their concerns around biosecurity were also echoed by other submitters.

Panel Assessment

535. The Panel agrees with the submissions made by the Council and Applicant and considers it does not have the power to impose a condition as sought by the submitter(s).

12.11 Condition: Village at expiry of Consent

Applicant

536. Mr Eccles gave evidence that despite the *symbiotic relationship* of the village with the mine, the activity of the village itself was out of scope of the Application. Accordingly, the Concept Site Closure Plan would not include plans for the village post closure of the mine or address removal of village infrastructure which is presently provided by the Applicant to the mine. Mr Eccles considered Waitomo District Council would likely need to volunteer responsibility for the Village infrastructure at mine closure.[455]

Council

537. It was put to Mr Chrisp, s42A writer for Council, the position that the adverse effects on the village should be considered in addition to the positive effects of provision

[455] Oral Evidence at hearing, Mr Eccles, 7 August 2024.

of infrastructure and other services to the village, including employment. Mr Chrisp's position was[456]

a) The Panel should not place much weight on the provision of village services, and infrastructure.

b) The positive benefit of employment is present for the duration of the mining operation, irrespective of the village. The existence of the village simply makes it easier for people to commute to work.

c) The existing of the village also provides a benefit to tangata whenua who are employed by the Applicant as they can live in their rohe whilst employed. However once the employment ends so does the benefit of the village.

d) The benefit of employment and the benefit of the village (enabling shorter commute and residing in the rohe) are temporary benefits while the mine operates.

e) It is beyond the scope of the Application and irrelevant to the assessment of effects of the activity beyond noting that it is a *tangential beneficial outcome*.

Panel Assessment

538. We agree with Council and adopt its assessment of effects and the weight to be applied, as set out in the paragraph above. We also accept that we do not have the power to impose a condition with respect to planning for the closure of the village.

12.12 Term of Consent

Applicant

539. The Applicant seeks a maximum term of 35 years for each resource consent applied for. It submitted such a term was necessary to provided commercial certainty to the Applicant and the owners of the site for investment (for example replacement ships being $120 million each), to enable expansion of the mine via future resource

[456] Oral Evidence of Mr Chrisp, 9 August 2024

consent applications given the resource remaining, provide flexibility in respect of production rates in light of changing technology and variability in the market, provide longer term financial support to the landowners who receive royalties (and share dividends) and the local community (being employed by the mine and residing in the village), the actual and potential effects of the activity have been *thoroughly considered and can be managed by appropriate conditions* and the term would be consistent with other large scale industrial activity consents granted by Council.[457]

540. The Applicant does not consider the enforcement matters referred to in the s42A report show a pattern of blatant compliance issues. The Applicant therefore considers it should be treated as if it will comply with the conditions and the term should not be reduced. [458]

541. The Applicant further submits that any residual effects that have not been managed by conditions or any compliance concerns may be addressed by Council via its review powers.[459]

542. The Applicant submitted caselaw has established that the appropriate term of consent could be governed by reference to the statutory purpose of the RMA and an applicant should be entitled to as much security of term as is consistent with sustainable management. Further, the Policy 6 of the WRP provides *when determining consent duration, there will be a presumption for the duration applied unless an analysis of the case indicates that a different duration is more appropriate having had regard to case law, good practice guidelines, the potential environmental risks and any uncertainty in granting the consent.*[460]

Council

543. Mr Chrisp gave oral evidence on behalf of Council with respect to the term of consent. He supported a term of 20 to 35 years. Mr Chrisp considered to... *the*

[457] Applicant, Submissions, 26 July 2024, at [183] and [185]
[458] Applicant, Submissions, 26 July 2024, at [186]
[459] Applicant Legal Submissions July 2024, para 187
[460] Applicant, Submissions, 26 July 2024, at [184]

extent that [the Applicant] *can proffer information and commitments to address the issues* [Mr Chrisp] *had raised, that would help justify a longer term of consent (potentially up to 35 years if the lifespan of the mine is expected to be that long including time associated with final rehabilitation once mining ceases).*[461]

544. Mr Chrisp stressed the importance of the imposition of the recommended conditions with respect to term of consent. He went so far as to say that in the event any proposed condition was ultra vires, that the Applicant should volunteer the condition to adequately mitigate the effects of the activity.[462]

545. The Council set out in its s42A report matters which would be considered in determining duration of consent:

a) The recent non-compliance with the existing (expired) resource consents;

b) The current enforcement action before the courts;

c) The concerns raised by submitters including the lack of information about activities occurring at the site;

d) The unresolved flooding issues and the need to determine an appropriate lake level operating regime including a maximum lake level;

e) The need to demonstrate that stock are able to be kept out of the site, particularly in wetlands and riparian margins;

f) Demonstration of appropriate progressive rehabilitation occurring at the site;

g) Lack of management plans as part of the application sufficient to address the expected/anticipated effects

h) Requests by submitters for a shorter term; and

i) Lack of information to determine the life of the mining activities within the Central and Southern Blocks (i.e. there is no need for a long-term consent if

[461] Section 42A Addendum Report, section 4.8
[462] Mr Chrisp, oral evidence hearing 9 August 2024

the mine has a much shorter lifespan).

546. In the s42A addendum report Mr Chrisp recommended a term of 35 years subject to the imposition of conditions recommended by Council to address the matters above. Mr Chrisp considered the term proposed appropriate because[463]:

a) It is consistent with relevant policy in the WRP.

b) It is consistent with the approach that has been taken by WRC and other Councils in relation to other large-scale capital-intensive activities.

c) Mr Coffey has confirmed that the mine is expected to have a life well beyond 35 years.

d) The mine involves a very high and continuing level of capital investment (noting that the greatest possible certainty is required to make such investments.

e) Review conditions can address any unexpected outcomes if they arise during the term of the consent.

f) Any past lack of environmental performance / number of complaints are compliance issues (it is my understanding that a shorter consent term cannot be imposed as some sort of punitive measure).

547. Mr Chrisp also recommended an addition to the review condition (condition 41, Schedule 1, General Conditions) which was supported by the John David Keepa Kupa Whānau Trust). The amendment provided for review for the purpose of recognising and providing for the relationship that tangata whenua have with their ancestral water, sites and waahi tapu and other taonga and to have particular regard to Kaitiakitanga. The Applicant opposed the inclusion of this amendment on the basis that it was broad and as worded did not achieve the requirement for a review condition to address an effect. Further as is result it was impossible to understand what might trigger a review under this clause. The Applicant considered the

[463] Addendum s42A, at [4.8]

condition it proposed seeks to promote the outcomes of Part 2 without the amendment.[464]

Submitters

548. The Keepa Trust submitted 7 years.[465] In support they refer to policy 6 in section 1.2.4 of the WRPs which provides there will be a presumption for the duration applied unless an analysis of the case indicates that a different duration is more appropriate having regard to case law, good practice guidelines, the potential environmental risks and any uncertainty in granting the consent.

549. The Trust submits that without the development of the Site Rehabilitation Pland and the CSCP, the history of non-compliance and the lack of evidence and information in relation to certain potential adverse effects and in the absence of robust conditions, leads to a shorter term being required.[466]

550. The Wetini Trust proposed 14 years.

Panel Assessment

551. In *Ngati Rangi Trust v Genesis Power Ltd* [2009] NZCA 222 the Supreme Court considered an appeal where the term of consent was reduced to enable a meeting of minds on long term mitigation solutions with respect to iwi and the Consent Holder in respect of s6(e). The Court considered the 'meeting of minds test' was to fill an evidential gap. It considered the onus of proof which lay with the iwi trust and was not met, the iwi trust's lack of engagement, together with a volunteered review condition by the Consent Holder to address s6(e) matters were relevant factors. The Court concluded the inclusion of a review condition in such circumstances was preferable and would be in accordance with sustainable management and enable mitigation to be effective (or reviewed to be effective during the consent) rather than allowing the parties to keep working on what the

[464] Applicant, Closing Submissions, Appendix G Conditions Review Table
[465] John David Keepa Kupa Whānau Trust, Submissions, 26 July 2024, at [4.40]
[466] John David Keepa Kupa Whānau Trust, Submissions, 26 July 2024 at [4.45]

mitigation should be during a shorter duration consent to include thereafter in a replacement consent. [467]

552. We consider the submitters in this matter have engaged vigorously and provided sufficient evidence to demonstrate what is required to mitigate the cultural effects and ensure the consented activity is consistent with Part 2 and the planning documents.

553. We also consider the Applicant has been fixed in its position with respect to how and when Mana Whenua may be consulted and enabled to exercise their Kaitiaki role. We have addressed this in our findings in section 7 of this report.

554. We also note the Applicant has rejected a review condition that enables the effectiveness of this mitigation measure to be reviewed. We accept its position that the crafting of a review condition is difficulty with respect to reviewing this mitigation matter. However we also note a review condition to address this was recommended by Council to mitigate one of the matters which it considered supported a duration of less than 35 years, if not 20 years.

555. We have included updated consultation conditions to address s6(e) and 7(a) RMA matters however we accept the lack of funding may frustrate these mitigation measures. The issue of funding and the impact of this has been considered by all parties throughout the hearing. We also refer to our findings in respect of section 12 of this report in that regard.

556. We have also considered the current investment of the Applicant, the positive benefit for the community and the Applicant's need for economic certainty.

557. We consider therefore there is a lack of certainty that despite the imposed conditions Mana Whenua will be unable to express their kaitiaki role. We consider following the guidance by the Supreme Court in *Ngati Rangi Trust* and Council, that a term of 20 years strikes an appropriate balance to address this uncertainty in the

[467] *Ngati* at [44] to [47]

absence of a review decision whilst also recognising the possible lifespan of the mine and the need for economic certainty to enable continued investment and operation of the mine.

13 Decision

558. In exercising our delegation under section s 34 and 34A of the RMA and having regard to the foregoing matters, sections 104 and 104B and Part 2 of the RMA, we determine that the Application by Taharoa Ironsands Limited to authorise continued operation of existing iron sands mining activity and associated ship loading activities at Tahaaroa Road, Tahaaroa and location NZTM 1745860mE, 5773436mN is granted for the reasons set out below and subject to the conditions attached as Annexure A to this decision.

559. The consents grated are:

a) AUTH142035.01.01: Undertake dry iron sand mining operations and associated land disturbance activities including construction of dredge ponds, access roads, iron sand stockpiles and ancillary buildings.

b) AUTH142035.02.01: Dam and divert the Wainui Stream for the purpose of creating a water supply reservoir for iron sand mining operations.

c) AUTH142035.03.01: Occupy the bed of the Wainui Stream via a rock weir and the associated diversion of water through a fish pass channel located adjacent to the Wainui Stream.

d) Amalgamated AUTH142035.04.01 and AUTH142035.05.01: Take up to 102,200m^3 (being an amalgamated 27,200m^3 of water per day as a 28 day rolling average from a water supply reservoir created by the damming of the Wainui Stream, for the purpose of iron sand mining operations and 75,000m3 of water per day from a water supply reservoir created by the damming of the Wainui Stream, for the purpose of loading iron sand onto ships).

e) AUTH142035.06.01: Discharge up to 2,100m^3 of settled stormwater and

washdown water per day into the Wainui Stream from the area containing the administration building, stores compound and workshops.

f) AUTH142035.07.01: Discharge process water into the ground (settling ponds/soakage areas) as a result of iron sand mining operations.

g) AUTH142035.08.01: Discharge mine overburden onto land for the purpose of rehabilitating mined areas.

h) Amalgamated AUTH142035.09.01 (operate, maintain and replace existing pipeline in the CMA for the purpose of ship loading), AUTH142035.10.01 (to replace/reconstruct, maintain and use existing pipeline No 2 in the CMA at Tahaaroa, including associated occupation, disturbance and vehicle use and AUTH142035.16.1 (the use and occupation of the CMA at Tahaaroa by existing pipeline No 1).

i) AUTH142035.11.01: To place and use a mooring buoy and associated structures in the CMA at Tahaaroa, including future reconstruction/replacement and associated occupation and disturbance.

j) AUTH142035.12.01: To discharge up to 75,000 m^3 per day of ship loading water, including freshwater and fine sediment to water in the CMA at Tahaaroa during ship loading operations.

k) AUTH142035.13.01: To discharge up to 32,600 m^3 per day of stormwater and process wastewater to water in the CMA at Tahaaroa.

13.1 Reasons for the Decision

560. Section 113(1) of the RMA requires that we state the reasons for the decision. Although it will be clear from the assessment carried out above, for the avoidance of doubt we confirm that the principal reasons for granting consent and imposing

the term of consent and conditions we have imposed are:

Wet Mining

a) These consents are granted for dry mining only. We do not consider the Applicant applied for wet mining based on the lack of reference to the consents required (diversion of groundwater, take and use of surface water from ponds, discharge of surface water and process water to groundwater, relevant sections and rules).

b) We do not consider we can amend the Application to provide for wet mining as suggested by the Applicant as we do not consider we are impowered to do so for the reasons set out by Council.

c) If we are wrong about (a) or (b) above we do not consider we would be able to grant an application (or amended application) for wet mining in any event because of the lack of evidence to determine effects and the effectiveness of any mitigation proposed to address those effects. We would accordingly decline the application pursuant to s104(6) of the RMA.

d) We also consider we are not able to grant consent for mining (dry or wet) within 100m of a natural inland wetland because of regulation 45D of the NES for Freshwater. We consider this regulation requires us to have evidence to determine effects prior to the granting of consent which we do not have.

e) Accordingly, the consents granted are for dry mining only and apply a setback.

Assessment

a) In terms of s104(1)(a), the actual and potential effects from the proposal, as amended by the conditions set out below, will be of an acceptable nature and scale and enable positive effects from sand extraction to be achieved while not exacerbating, and appropriately mitigating potential adverse effects in terms of marine, terrestrial and freshwater ecology, amenity values, cultural

effects and freshwater effects.

b) In terms of s104(1)(b), we conclude, subject to the changes to the conditions and operating parameters that we have specified, that the proposal will be consistent with the relevant statutory documents.

c) We have had regard to other matters under s104(1)(c), including the requirements of Iwi Management Plans, compliance with existing permits, current investment by the Applicant and benefits to the community.

d) The proposed discharges arising from the activity are considered to be in accordance with sections 105 and 107.

e) In accordance with sections 108 and 108AA, suitable conditions have been imposed to ensure that any adverse effects of the proposal are able to be avoided, remedied or mitigated, and the conditions we have imposed are within the scope of the relevant rules engaged by the Application.

f) In the context of this discretionary activity Application, where the objectives and policies of the relevant statutory documents were prepared having regard to Part 2 of the RMA, they capture all relevant planning considerations and contain a coherent set of policies designed to achieve clear environmental outcomes. They also provide a clear framework for assessing all relevant potential effects. However, given the centrality of effects on Mana Whenua to this Application and given the age of the plans and their current early review status, we considered an assessment of Part 2 was of assistance. We considered the proposal was not consistent with Part 2 in respect of Mana Whenua's kaitiaki role. However, we consider the conditions we have imposed enable the consented activity to be so.

Term of Consent

a) The proposed activities provide positive effects to Mana Whenua and the local community, subject to consistent engagement with Mana Whenua to exercise their kaitiaki role and continuation of the mining activity.

b) There is a history of ineffective engagement processes which impact on s6(e) matters and which are acknowledged by all parties despite the reasons given by each being varied. We note there is common agreement however the role of Mana Whenua is of particular importance in the management of effects and rehabilitation of the site, not least because it is Māori land within a Māori community, with predominantly Māori shareholders and employees.

c) We consider the policy framework which applies is directive with respect to the role of kaitiaki and we have reflected this in the conditions imposed. We are however uncertain as to the ability of Mana Whenua to express their kaitiakitanga in light of the difference of opinion between the Applicant and Council/submitters as to how this may be achieved and the impact of financial resourcing (which we accept cannot be imposed), including the imposition of a review condition.

d) We have also considered the current investment of the Applicant, the positive benefit for the community and the Applicant's need for economic certainty.

e) Having considered all these factors, we consider the duration of consent should be 20 years.

Bond

a) We also consider the imposition of bond is necessary for the reasons we have set out in our report Section 12 given the scale of the activity, the importance of site closure and rehabilitation (particularly in terms of ecological, amenity and cultural effects).

Hearing Commissioners

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Barbara Mead (Chairperson)

Independent Commissioner

_____

Dr Ngaire Phillips

Independent Commissioner

_____

Juliane Chetham

Independent Commissioner