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Reasons for Decision

Issued pursuant to paragraphs 22(2)(a) and 40(2)(c) of the Mackenzie Valley Land Use Regulations (MVLUR) and section 72.25 of the *Mackenzie Valley Resource Management Act* (MVRMA) and subsection 26(1) of the *Waters Act.*

Water Licence and Land Use Permit Applications	
File Number	W2025L2-0005 and W2026D0001
Company	Fortune Minerals Limited (Fortune)
Project	NICO Mine
Location	Hislop Lake, NT
Activity	Mining and Milling
Date of Decision	July 21, 2026

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On July 21, 2026, the Wek’èezhìı Land and Water Board (WLWB or Board) met and considered the Applications made by Fortune Minerals Ltd. (the Applicant) to the Board on November 20, 2025, for Water Licence (Licence) W2025L2-0005 and on March 9, 2026, for Land Use Permit (Permit) W2026D0001 for the use of water and the deposit of waste for the NICO Mine (the Project) in the Hislop Lake area, Northwest Territories. After reviewing the Applications and the evidence gathered during the regulatory proceeding, the Board has made the following decisions:

1) To issue Water Licence W2025L2-0005 for a term of 15 years;
2) To not approve Version 3.0 of the Engagement Plan and require Fortune to submit Version 3.1 of the Plan within 60 days of the effective date of the Licence, to include Revisions #1-7;
3) To require Fortune to update the Terms of Reference for the Co-Disposal Facility (CDF) and the Constructed Wetland Treatment System (CWTS) to include Revision #1. The Revised Terms of Reference should be submitted to the Board, for conformity, prior to establishment of the Expert Panels;
4) To require Fortune to engage parties on on-site disposal of waste, other than tailings and waste rock;
5) To not approve Version 3.0 of the Waste Management Plan, and to require that the Applicant submit Version 3.1 of the Plan with Revisions #1-5, a minimum of 90 days prior to commencement of construction;
6) To not approve Version 3.0 of the Water and Wastewater Management Plan, and to require that the Applicant submit Version 3.1 a minimum of 90 days prior to commencement of construction, with Revisions #1-4;
7) To require Fortune to include in the Geochemical Characterization and Management Plan, Version 1.0, requirements previously under Part F, Condition 8, 9 and 15, and Part H, Conditions 26 and 27 of the previous Licence, including a response framework that addresses the requirement for a Response Plan;
8) To not approve Version 1.0 of the Explosives Management Plan and to require Fortune to revise the Plan and submit Version 1.1, a minimum of 90 days prior to construction, to include Revisions #1 and #2;
9) To not approve Version 1.0 of the Dust Management Plan and Version 2.0 of the Erosion, Sedimentation, and Management Plan, as submitted with the Application;
10) To require Fortune to submit Version 2.1 of the Dust, Erosion, and Sedimentation Management Plan, a minimum of 90 days prior to the commencement of construction, to include Revisions #1 and #2;
11) To require an Aquatic Effects Monitoring Program (AEMP) workshop to be held 90 days post-issuance of the Licence;
12) To direct Fortune to talk with Board staff no later than October 26, 2026, to set a date and develop an agenda for the AEMP Workshop;
13) To require Version 2.0 of the AEMP Design Plan to incorporate feedback gathered through the AEMP workshop along with Revisions #1 and #2. Version 2.0 is to be submitted for Board approval six months prior to commencement of construction;

14) To require Fortune to include implementation of the AEMP (i.e., timing and scope) during the construction phase as a topic for discussion at the AEMP workshop;
15) To require Fortune to engage with the Tłı̨chǫ Government to determine where the downstream water quality monitoring station will be established and under what community-based monitoring program the monitoring will occur. This information is to be provided to the Board in writing and will be made available on the public registry;
16) To require revisions to Version 3.0 of the Spill Contingency Plan, which Fortune must submit as Version 3.1, a minimum of 60 days prior to the commencement of construction for a conformity confirmation;
17) To require Fortune to hold a workshop to discuss closure objectives and criteria a minimum of six (6) months before submission of Interim Closure and Reclamation Plan (CRP). Fortune is to contact and work with Board staff a minimum of three (3) months in advance in the expected workshop timing to determine the exact timing and location of the workshop;
18) At least two weeks before the workshop, Fortune is to provide proposed closure objectives, and closure criteria which may be required for informing design of the CDF, and any other components that may have designs that are influence by the closure objectives and closure criteria; and
19) To issue Land Use Permit W2026D0001 for a term of 5 years.

These Reasons for Decision set out the Board's regulatory process for the Applications and rationale for decisions regarding the Licence and Permit. A summary of the Applications and the main issues identified during the proceeding is provided in sections 2.0 and 3.0 below, followed by an outline of the regulatory process for the Applications in section 4.0. Section 5.0 describes how the applicable legislative requirements have been met. The Board's decisions and supporting rationale are set out in section 6.0 for the Licence and section 7.0 for the Permit.

1.0 List of Defined Terms and Acronyms

Applicant/Licensee/ Permittee	Fortune Minerals Limited
Applications	The complete application package submitted by the Applicant for Water Licence W2025L2-0005 and Land Use Permit W2026D0001.
AANDC	Aboriginal Affairs and Northern Development Canada
AEMP	Aquatic Effects Monitoring Program
ANFO	Ammonium Nitrate – Fuel Oil
CDF	Co-Disposal Facility
CRP	Closure and Reclamation Plan
COPC	Constituents of Potential Concern[1]
CWTS	Constructed Wetland Treatment System
DESMP	Dust Erosion and Sedimentation Management Plan
DFO	Fisheries and Oceans Canada
DMP	Dust Management Plan
Distribution List	The list of individuals and organizations to whom materials from the regulatory proceeding were circulated.[2]
EA	Environmental Assessment (EA0809-004)
ECCC	Environment and Climate Change Canada
EP	Engagement Plan
ESMP	Erosion and Sedimentation Management Plan
GCMP	Geochemical Characterization and Management Plan
GNWT	Government of Northwest Territories
GNWT-ECC	Government of Northwest Territories – Environment and Climate Change
IR	Information Request
Inspector	An Inspector designated under subsection 65(1) of the *Waters Act*
Intervener	As per the LWB *Rules of Procedure*, any person or organization that has submitted an intervention in the public hearing phase of the regulatory proceeding, as outlined in the Rules.
Licence	Water Licence W2025L2-0005
LWBs	Land and Water Boards of the Mackenzie Valley
MVLUR	Mackenzie Valley Land Use Regulations
MLWB or Board	Mackenzie Valley Land and Water Board
MVRMA	*Mackenzie Valley Resource Management Act*
Minister	Minister of the Government of Northwest Territories – Environment and Climate Change

[1] The Board notes that Fortune has used the term COPC throughout the Application, but notes POPC has become the more standard terms and used that throughout this RFD.
[2] To access the Distribution List, see the LWBs' Online Review System for Fortune – NICO Mine Type A Water Licence Renewal Application – Nov 27_26.

ORS	Online Review System (https://new.onlinereviewsystem.ca/reviews)
Party	As per the LWB *Rules of Procedure*, an applicant, a person, or an organization participating in this regulatory process.
Permit	Land Use Permit W2026D0001
POPC	Parameter of Potential Concern
Project	NICO Mine, the undertaking as described in Part A of the Licence and Part A of the Permit.
Review Board	Mackenzie Valley Environmental Impact Review Board
SCP	Spill Contingency Plan
SNP	Surveillance Network Program
Standard Licence Conditions	LWB *Standard Water Licence Conditions Template*
Standard Permit Conditions	LWB *Standard Land Use Permit Conditions Template*
TG	Tłįchǫ Government
WLWB or Board	Wek'èezhìı Land and Water Board
WMP	Waste Management Plan
WWMP	Water and Wastewater Management Plan

2.0 Summary of Applications

On November 20, 2025, the Applicant submitted an application for a renewal of its Licence (W2025L2-0005). On March 9, 2026, the Applicant submitted an application for a renewal of its Permit (W2026D0001) (the Applications). The Applications are to obtain water and dispose of waste for the construction, operation, and closure of the NICO Mine, a cobalt-gold-bismuth-copper mine located approximately 50 km northeast of Whatì, NT (the Project). These activities are located outside of federal areas within the Wek'èezhìı Management Area.

In making its decision and preparing these Reasons for Decision, the Board has reviewed and considered:

1) The complete Applications as submitted by the Applicant for the Project:
    - Cover Letter and Water Licence Application Form; [3]
    - Maps;[4]
    - Draft Water Licence;[5]
    - Land Use Permit Application Form; [6]
    - Engagement Record;[7]

[3] See WLWB Online Registry for NICO Mine - WL Renewal - Cover Letter and Application Form - Nov 20_25.pdf
[4] See WLWB Online Registry for NICO Mine – WL Renewal Application – Maps – Nov 20_25
[5] See WLWB Online Registry for NICO Mine - WL Renewal Application -Draft Water Licence - Nov 20_25.pdf
[6] See WLWB Online Registry for NICO Mine - Land Use Permit Application - Mar 9_26.pdf
[7] See WLWB Online Registry for NICO Mine - WL Renewal Application - Engagement Record - Version 3.0 - Nov 20_25.pdf

- Engagement Plan;[8]
- Waste Management Plan (WMP);[9]
- Spill Contingency Plan (SCP);[10]
- Dust Management Plan (DMP);[11]
- Erosion and Sedimentation Management Plan (ESMP);[12]
- Explosives Management Plan;[13]
- Water and Wastewater Management Plan (WWMP);[14]
- Conceptual AEMP Design Plan;[15]
- Conceptual Closure and Reclamation Plan;[16]
- Closure Cost Estimate and supporting documents;[17]

2) The Environmental Assessment (EA), and the measures and suggestions within it;
3) The evidence and submissions received by the Board from the Applicant in relation to the Licence and Permit; and
4) The comments and recommendations, evidence, and submissions received by the Board from Parties during the regulatory proceeding.

3.0 Main Issues Raised During the Regulatory Proceeding

These Reasons for Decision focus primarily on the following key issues raised during the regulatory proceeding:

1) Concerns raised by NSMA and YKDFN regarding adequate consultation and engagement, and Section 35 Rights;
2) Inclusion of Cultural Use Criteria;
3) The interpretation and application of paragraph 26(5)(d) of the *Waters Act* pertaining to financial responsibility;
4) Fortune's request for a 25-year Licence term;
5) Concerns over the volumes of Water required for the Project from Kweaį tìtì (Lou Lake) and from the Detò tı Deh (Marian River) in order to satisfy the requirements of the Tłįchǫ Agreement and EA Measures 1 and 2;

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[8] See WLWB Online Registry for NICO Mine - WL Renewal Application - Engagement Plan - Version 3.0 - Nov 20_25.pdf.
[9] See WLWB Online Registry for NICO Mine - WL Renewal Application - Waste Management Plan - Version 3.0 - Nov 20_25.pdf.
[10] See WLWB Online Registry for NICO Mine - WL Renewal Application - Spill Contingency Plan - Version 3.0 - Nov 20_25.pdf.
[11] See WLWB Online Registry for NICO Mine - WL Renewal Application - Dust Management Plan - Version 1.0 - Nov 20_25.pdf
[12] See WLWB Online Registry for NICO Mine - WL Renewal Application - Erosion and Sedimentation Management Plan - Version 2.0 - Nov 20_25.pdf
[13] See WLWB Online Registry for NICO Mine - WL Renewal Application - Explosive Management Plan - Version 1.0 - Nov 20_25.pdf
[14] See WLWB Online Registry for NICO Mine - WL Renewal Application - Water and Wastewater Management Plan - Version 3.0 - Nov 20_25.pdf
[15] See WLWB Online Registry for NICO Mine - Aquatic Effects Monitoring Program - Version 1.0 - Nov 20_25.pdf
[16] See WLWB Online Registry for NICO Mine - WL Renewal Application - Conceptual Closure and Reclamation Plan - Version 2.0 - Nov 20_25.pdf.
[17] See WLWB Online Registry for NICO Mine - WL Renewal Application - RECLAIM Security Estimate Update - Nov 20_25; NICO Mine - WL Renewal Application - RECLAIM Estimate - Nov 20_25.xlsm; NICO Mine - WL Renewal Application - RECLAIM Estimate NVP - Nov 20_25.xlsm.

6) The concept of substantially unaltered as required under the Tłı̨chǫ Agreement and EA Measures 2;
7) Concerns related to the Constructed Wetland Treatment System (CWTS) including reporting requirements, Board oversight, and timing for construction
8) Outstanding requirements related to baseline data, and other reporting requirements and its implications on Effluent Quality Criteria; and
9) Timing and sequencing of submissions given the uncertainties around the Project schedule.

Issues that were resolved by Parties to the Board's satisfaction during the proceeding are not addressed in detail in these Reasons.

4.0 Regulatory Process

On November 20, 2025, the Applicant submitted the Water Licence Application.[18] Board staff communicated with the Applicant that additional information was required to complete the Application. On November 27, 2025, the Application was circulated to the Distribution List for public review on the Online Review System (ORS).[19] As part of the public review, Board staff requested comments and recommendations to assist with the Board's preliminary screening determination.

On November 27, 2025, Board staff distributed a draft work plan for public review.[20] This included scheduling a Public Hearing as per paragraph 41(2)(a) of the *Waters Act*. Comments on the draft work plan were received by December 4, 2025, from: the Tłı̨chǫ Government.[21] Based on comments received, the review period was extended to January 28, 2026, and the work plan was updated (Version 1.0).[22]

On January 6, 2025, the Work Plan was updated in response to a request from Fortune to revise the dates for the Technical Session. Subsequently, the Work Plan was updated (Version 2.0).[23]

Public notices of the Application and the Public Hearing were published in *News North* during the week of November 28, 2025, and the week of March 23, 2026, respectively, to fulfill paragraphs 43(1)(a) and 43(2)(a) of the *Waters Act*.[24]

By January 28, 2026, the Board received comments and recommendations regarding the Application from the following Parties: Tłı̨chǫ Government, North Slave Métis Alliance (NSMA), Government of Northwest Territories-Environment and Climate Change (GNWT-ECC), GNWT Inspectors, Fisheries and Oceans Canada (DFO), Environment and Climate Change Canada (ECCC). Board staff also submitted comments

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[18] See WLWB Online Registry for NICO Mine - WL Renewal - Cover Letter and Application Form - Nov 20_25.pdf.
[19] See WLWB Online Review System for Fortune – NICO Mine Type A Water Licence Renewal Application – Nov 27_26.
[20] See WLWB Online Registry for NICO Mine - WL Renewal Application -Draft Work Plan - Nov 27_25.pdf .
[21] See WLWB Online Registry for NICO Mine - WL Renewal Application -Draft Work Plan - Extension Request - Dec 4_25.
[22] See WLWB Online Registry for NICO Mine - WL Renewal Application - Work Plan - Version 1.0 - Dec 9_25.
[23] See WLWB Online Registry for NICO Mine - WL Renewal Application - Work Plan - Version 2.0 - Jan 6_26.pdf
[24] See WLWB Online Registry for NICO Mine - Type A WL Application - Notice of Application – Dec 8_25 and NICO Mine - Type A WL Application - Notice of Public Hearing - Mar 23_26.pdf.

and questions for the purposes of clarification. On February 5, 2026, the Applicant responded to the Parties' comments and recommendations.[25]

On February 21, 2026, Version 2.0 of the Work Plan was revised to Version 3.0, to update Information Requests distribution dates.[26]

On March 3, 2026, the Board met and made its preliminary screening determination for the Project.[27]

The Applicant's Technical Session presentation was submitted on February 24, 2026.[28] A Technical Session was held on February 25 and 26, 2026, in Yellowknife, NT at the Explorer Hotel to discuss and seek clarity on issues raised by Parties and Board staff, and to provide an opportunity to discuss the Application in advance of Parties submitting interventions to the Board. The Technical Session was facilitated by Board staff and was transcribed.[29] Participants included: the Applicant, Tłı̨chǫ Government, GNWT-ECC, GNWT-ECC Inspectors, ECCC, NSMA, and the Mackenzie Valley Renewable Resources Board (MVRB). There were 25 Information Requests (IRs) generated from the session, which were recorded and circulated to the Distribution List On February 27, 2026.[30] IRs 1 to 11, 13 to 16, 18, and 22 to 25 were directed to Fortune; IR 12 was directed to all organizations on the NICO Project Distribution List; IR 17 was directed to the Tłı̨chǫ Government and Fortune Minerals; IR 19 and 21 were directed to GNWT-ECC; and IR 20 was directed to GNWT-ECC and Fortune. The Tłı̨chǫ Government submitted responses to IR12 on March 6, 2026.[31] GNWT-ECC, ECCC, Fortune, and the Tłı̨chǫ Government responded on March 9, 2026.[32] As part of the response to an Information Request (IR11), Fortune submitted an Application for a new Land Use Permit for the Project.[33]

Fortune responded to IR 18 on March 13, 2026,[34] and to IR 26 on April 17, 2026.[35]

The pre-hearing conference was held virtually on March 19, 2026, to discuss logistical, procedural, and potential legal issues or matters of clarification, as well as briefly outline the Land and Water Boards (LWBs) *Rules of Procedures*.[36] The pre-hearing conference also provided an opportunity for Parties to

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[25] See WLWB Online Review System for Fortune – NICO Mine Type A Water Licence Renewal Application – Nov 27_26
[26] See WLWB Online Registry for NICO Mine - WL Renewal Application - Work Plan - Version 3.0 - Feb 18_26.pdf
[27] See WLWB Online Registry for NICO Project - Preliminary Screening Determination and Reasons for Decision - Mar 3_26.pdf
[28] See WLWB Online Registry for NICO - Type A WL Renewal - Fortune Presentation - Apr 17_26.pdf.
[29] See WLWB Online Registry for Fortune - NICO Mine - Technical Session - Transcripts Day 1; Transcripts Day 2 - Mar 2_26.pdf.
[30] See WLWB Online Registry for Fortune - NICO Mine - Technical Session - Information Requests - Feb 27_26.pdf.
[31] See WLWB Online Registry for NICO Mine - WL Renewal - Technical Session - IR response 12 - TG - Mar 6_26.pdf.
[32] See WLWB Online Registry for NICO Mine - WL Renewal - Technical Session - IR response - GNWT - Mar 9_26.pdf; NICO Mine - WL Renewal - Technical Session - IR response - ECCC - Mar 9_26.pdf; NICO Mine - WL Renewal - Technical Session - IR response - Fortune - Mar 9_26.pdf; NICO Mine - WL Renewal - Technical Session - IR response 17 - TG and Fortune - Mar 9_26.pdf.
[33] See WLWB Online Registry for NICO Mine - Land Use Permit Application - Mar 9_26
[34] See WLWB Online Registry for NICO Mine - WL Renewal - Technical Session - IR response 18 - Fortune - Mar 13_26.pdf; NICO Mine - WL Renewal - Technical Session - IR response 18 - Fortune Phased RECLAIM Estimate - Mar 13_26.xlsm; NICO Mine - WL Renewal - Technical Session - IR response 18 - Fortune RECLAIM Estimate - Mar 13_26.xlsm.
[35] See WLWB Online Registry for NICO Mine - WL Renewal - Technical Session - IR response 26 - Fortune - Apr 17_26.pdf
[36] See WLWB Online Registry for NICO Mine - WL Renewal - Pre-Hearing Conference Agenda - Mar 10_26.pdf

indicate their intent to submit written interventions and presentations and give notice of intent to appear at the hearing. Representatives from the Applicant, the Tłı̨chǫ Government, GNWT-ECC, ECCC, NSMA, and the Yellowknife Dene First Nation (YKDFN) participated in the pre-hearing conference.

On March 31, 2026, the Board decided to apply paragraph 22(2)(b) of the MVLUR.[37]

On April 8, 2026, written interventions were received from GNWT-ECC, the Tłı̨chǫ Government, DFO, ECCC, YKDFN, and NSMA;[38] and Supporting Documents were received from GNWT-ECC on April 9, 2026.[39] The Applicant responded to written interventions on April 15, 2026.[40]

On April 9, 2026, Board staff circulated the Public Hearing agenda.[41]

On April 16, 2026, Public Hearing presentations were received from the Tłı̨chǫ Government, NSMA, YKDFN, GNWT-ECC, DFO, and ECCC.[42] The Applicant submitted a Public Hearing presentation on April 17, 2026.[43]

The Public Hearing was held on April 21 and 22, 2026, in Whatì, NT, at the Johnny Nitsiza Culture Centre. Translation services were provided, and the hearing was recorded and transcribed.[44] Participants included: the Applicant, the Tłı̨chǫ Government, DFO, ECCC, YKDFN, NSMA, GNWT-ECC, and GNWT-ECC Inspectors, and members of the public. Undertakings generated from the hearing were recorded and circulated to the Distribution List on April 23, 2026.[45] There were 20 undertakings: #1 to 11, 15 to 18, and 20 were directed to the Applicant, Undertaking 12 and 19 were directed to GNWT-ECC, Undertaking 13 was directed to the Tłı̨chǫ Government, and Undertaking 14 was directed to the NSMA. The Applicant and Parties responded to the undertakings on April 30, 2026.[46]

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[37] See WLWB Online Registry for NICO Mine - LUP Application - Notice of Timeline Pause - Mar 31_26.

[38] See WLWB Online Registry for NICO - Type A WL Renewal - GNWT Intervention - Apr 8_26.pdf; NICO - Type A WL Renewal - TG Intervention - Apr 8_26.pdf; NICO - Type A WL Renewal - DFO Intervention - Apr 8_26.pdf; NICO - Type A WL Renewal - ECCC Intervention - Apr 8_26.pdf; NICO - Type A WL Renewal - YKDFN Intervention - Apr 8_26.pdf; NICO - Type A WL Renewal - NSMA Intervention - Apr 8_26.pdf.

[39] See WLWB Online Registry for NICO - WL Renewal - GNWT Intervention - Supporting Documents - Phase 1 - Apr 9_26.xlsm; NICO - WL Renewal - GNWT Intervention - Supporting Documents - Phase 2 - Apr 9_26.xlsm; NICO - WL Renewal - GNWT Intervention - Supporting Documents - Phase 3 - Apr 9_26.xlsm.

[40] See WLWB Online Registry for NICO - Type A WL Renewal - Fortune Response to Interventions - Apr 15_26.pdf

[41] See WLWB Online Registry for NICO Mine - WL Renewal - Public Hearing Agenda - Apr 9_26.pdf.

[42] See WLWB Online Registry for NICO - Type A WL Renewal - TG Presentation - Apr 16_26.pdf; NICO - Type A WL Renewal - NSMA Presentation - Apr 16_26.pdf; NICO - Type A WL Renewal - YKDFN Presentation - Apr 16_26.pdf; NICO - Type A WL Renewal - GNWT Presentation - Apr 16_26.pdf; NICO - Type A WL Renewal - DFO Presentation - Apr 16_26.pdf; NICO - Type A WL Renewal - ECCC Presentation - Apr 16_26.pdf

[43] See WLWB Online Registry for NICO - Type A WL Renewal - Fortune Presentation - Apr 17_26.pdf.

[44] See WLWB Online Registry for NICO - Type A WL Renewal - Public Hearing - Day 1 Transcript - Apr 27_26.pdf.

[45] See WLWB Online Registry for NICO - Type A WL Renewal - Undertakings - Apr 23_26.pdf.

[46] See WLWB Online Registry for NICO - WL Renewal - Public Hearing - Fortune Response to Undertakings - Apr 30_26.pdf; NICO - WL Renewal - Public Hearing - TG Response to Undertaking - Apr 30_26.pdf; NICO - WL Renewal - Public Hearing - GNWT Response to Undertaking - Apr 30_26.pdf; NICO - WL Renewal - Public Hearing - NSMA Response to Undertakings - Apr 30_26.pdf.

On May 8, 2026, the work plan was again updated because the draft Licence distribution date was revised.[47]

In its response to Undertaking 14, Fortune did not provide the financial information requested in the Undertaking. The Board withdrew Undertaking 14 and issued IR28 to Fortune on May 1, 2026.[48] An extension was granted on May 4, 2026,[49] and Fortune provided its response to IR28 on May 11, 2026.[50]

On May 13, 2026, Board staff circulated a draft Licence and Permit for review to allow all Parties the opportunity to comment on the specific wording of the draft conditions and consider the draft conditions in preparing their closing arguments in order to assist the Board in making its decision on the Licence and Permit.[51] The following Parties responded by May 25, 2026: Tłı̨chǫ Government, GNWT-ECC, NSMA, YKDFN, DFO, and ECCC. The Applicant responded to all the Parties' comments and provided comments of their own on June 1, 2026. [52]

On June 10, the Work Plan was again updated because the deadline for Closing Arguments fell on a statutory holiday.[53]

On June 23, 2026, Tłı̨chǫ Government, NSMA, GNWT-ECC, ECCC, and DFO submitted written closing arguments to the Board. [54] YKDFN submitted written closing arguments to the Board on June 24, 2026. The Applicant submitted closing arguments on July 2, 2026.[55] Parties and the Applicant had an opportunity, in their closing arguments, to update their position on issues raised during the regulatory proceeding, and to summarize their final recommendations to the Board.

On June 30, 2026, Fortune requested an extension to the closing argument deadline. The Work Plan was updated again to reflect this change.[56] Fortune submitted its closing arguments on July 2, 2026.

On July 23, 2026, the Board met to make decisions regarding the Application. These decisions and related reasons are described in sections 5.0, 6.0, and 7.0 below.

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47 See WLWB Online Registry for NICO Mine - WL Renewal Application - Work Plan - Version 4.0 - May 8_26.
48 See WLWB Online Registry for NICO - Type A WL Renewal - Information Request 28 to Fortune - May 1_26.pdf
49 See WLWB Online Registry for NICO - Type A WL Renewal - Information Request 28 to Fortune - May 1_26.pdf; NICO - Type A WL Renewal - Information Request 28 to Fortune - Extension Request Email String - May 4_26.pdf
50 See WLWB Online Registry for NICO Mine - WL Renewal Application - Information Request 28 - Fortune Response - May 11_26.pdf.
51 See WLWB Online Review System for NICO - Draft Type A Water Licence and Draft Type A Land Use Permit – May 13, 2026.
52 See WLWB Online Review System for NICO - Draft Type A Water Licence and Draft Type A Land Use Permit – May 13, 2026.
53 See WLWB Online Registry for NICO Mine - WL Renewal Application - Work Plan - Version 5.0 - June 10_26
54 See WLWB Online Registry for NICO Mine - WL Renewal Application - TG Closing Arguments - Jun 23_26.pdf; NICO Mine - WL Renewal Application - NSMA Closing Arguments - Jun 23_26.pdf; NICO Mine - WL Renewal Application - GNWT Closing Arguments - Jun 23_26.pdf; NICO Mine - WL Renewal Application - DFO Closing Arguments - Jun 23_26.pdf; NICO Mine - WL Renewal Application - ECCC Closing Arguments - Jun 23_26.pdf.
55 See WLWB Online Registry for NICO Mine - WL Renewal Application - YKDFN Closing Arguments - Jun 24_26.pdf.
56 See WLWB Online Registry for NICO Mine - WL Renewal Application - Work Plan - Version 6.0 - June 30_26.

5.0 Legislative Requirements Related to Licence and Permit Issuance

This Project is subject to the MVRMA, the *Waters Act*, and the Waters Regulations with respect to licensing, because it is located outside of federal areas. With respect to permitting, the MVRMA and the MVLUR apply.

As per the Waters Regulations and the MVLUR, the proposed use of land and water, and the deposit of waste for this Project require a licence and a permit. The required authorizations are within the Board's jurisdiction as per subsections 60(1.1) and 102(2) of the MVRMA and subsections 59(1) and 102(2) of the MVRMA.

In conducting its regulatory process for the Applications (as described in sections 3.0 and 4.0 above), the Board has ensured that section 62 of the MVRMA and all applicable legislative requirements have been satisfied as outlined in the subsections below. The Board has considered the people and users of the land and water in the Mackenzie Valley, and any Traditional Knowledge and scientific information that was made available to the Board during the regulatory proceeding, as per section 60.1 of the MVRMA. The consideration of information provided to the Board is discussed in detail below and in sections 6.0 and 7.0.

5.1 Consultation, Engagement, and Public Notice

As per section 35 of the *Constitution Act*, 1982 and paragraph 60.1(a) of the MVRMA, in exercising its authority, the Board must consider the importance of conservation to the well-being and way of life of Indigenous peoples of Canada, specifically those who use an affected area of the Mackenzie Valley. Accordingly, the Board works with applicants, affected Parties (including Indigenous governments and organizations), and other Parties (such as other boards and regulators) to ensure that potential impacts of proposed projects, including impacts on rights under section 35, are understood and carefully considered before decisions are made with respect to the issuance of permits and licences.

The Board recognizes that the constitutional duty to consult and, where appropriate, accommodate rests with the Crown. In exercising its authority under the MVRMA, the Board's role is to consider the evidence and submissions before it, including potential impacts on rights protected by section 35 of the Constitution Act, 1982, and to make decisions within its statutory jurisdiction. Accordingly, these Reasons are directed to the matters within the Board's jurisdiction and do not determine whether the Crown has fulfilled its constitutional obligations in relation to the Project.

Consistent with this role, the Board's requirements for engagement are set out in the LWB *Engagement and Consultation Policy* and *Engagement Guidelines for Applicants and Holders of Water Licences and Land Use Permits*.[57] The Policy and Guidelines were developed to support that the Board's obligations with respect to meaningful engagement and consultation (as set out by land claims and applicable legislation)

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[57] See WLWB Policies and Guidelines webpage to access the LWB *Engagement and Consultation Policy* and *Engagement Guidelines for Applicants and Holders of Water Licences and Land Use Permits*.

with all affected Parties, including Indigenous groups in the Mackenzie Valley, and to ensure that the results of engagement and consultation are clearly articulated. In accordance with the Policy and Guidelines, the Applicant's engagement efforts and proposed procedures are detailed in the Engagement Record (Version 3) and Engagement Plan (Version 3), respectively,[58] submitted with the Applications. The Engagement Record indicates that the Applicant engaged with affected Parties from mid-August 2024 to early December 2024. The Board has not approved the Applicant's Engagement Plan (Version 3), and the Board's reasons for this decision are described below in section 6.3. Following issuance, the Licensee must continue engagement efforts as required in the Licence and Permit. The timing and approaches to engagement with each affected party throughout the life of the project will be detailed in the Engagement Plan, once approved.

The Applications were posted to the Board's Public Registry and distributed through the ORS. As the Project is located in the Wek'èezhìı Management Area, the appropriate organizations, governments, First Nations, and Indigenous organizations were included in the Distribution List.[59] The Distribution List was used throughout this proceeding to circulate submissions, information, and updates relevant to the proceeding; the List was updated if needed, and (if requested) individuals with specific interests in the Project were added. More information about the proceeding for the Applications is provided above in section 4.0.

During the proceeding, GNWT-ECC made Board staff aware on June 4, 2026, that the Project falls within the Thebatthi Dënesųłıné Nation's asserted territory. Thebatthi Dënesųłıné Nation was not initially included on the Distribution List but was added on June 5, 2026. Board staff subsequently contacted Thebatthi Dënesųłıné Nation by email to advise them of the proceeding and ask whether they wished to receive the Application materials and further distribution emails regarding the Project. At the time of these Reasons for Decision, the Board had not received a response.

In addition to the standard process, the Board issued an Information Request to Fortune requesting a Permit renewal Application so that Parties could fully discuss and consider both the Land Use Permit and Water Licence Applications as part of this proceeding.[60] All organizations on the NICO Project Distribution List were asked to indicate whether there were any concerns with not having the typical public review step for the Land Use Permit Application, and no concerns were raised regarding this approach.

In accordance with the *Northwest Territory Métis Nation Interim Measures Agreement*,[61] the Northwest Territory Métis Nation (NWTMN) was notified of the Applications through the ORS distribution. The Board

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[58] See WLWB Online Registry for NICO Mine – WL Renewal Application – Engagement Record V3 – Nov 20_25 and NICO Mine – WL Renewal Application – Engagement Plan – Engagement Plan V# – Nov 20_25.

[59] To access the Distribution List, see the LWBs' Online Review System for Fortune – NICO Mine Type A Water Licence Renewal Application – Nov 27_25.

[60] See WLWB Online Registry for Fortune - NICO Mine - Technical Session - Information Requests - Feb 27_26.pdf IR#11 and IR#12

[61] See WLWB Land Claims, IMAs, and Land Use Plans webpage to access the *Northwest Territory Métis Nation Interim Measures Agreement.*

did not receive submissions from the NWTMN throughout this renewal proceeding. However, in review of the 60-day renewal application for water Licence W2008L2-0004 set to expiry on July 21, 2026, the NWTMN expressed its interest in establishing "meaningful and ongoing engagement with Fortune" regarding the Project, noting that it is situated in a region that may have direct or cumulative impacts on watershed systems connected to the NWTMN Interim Measures Agreement (IMA) area (NWTMN comment 1). NWTMN further noted that "it is both timely and necessary to initiate direct dialogue to ensure our Nation's rights, interests, and environmental concerns are appropriately considered." The Board notes that although the comment was submitted after the review period was closed, Fortune provided a response, and the Board considered this information. In its response, Fortune indicated that the NICO Project is not within the NWTMN's IMA area and was not included in the approved Engagement Plan for the previous Licence (W20008L2-0004). Fortune committed to reviewing the NWTMN position relative to the Engagement Guidelines[22] and to further discuss the recommendations with NWTMN during upcoming engagement meetings. Given Fortune committed to engaging with NWTMN in the future, the Board requires that the next version of the Engagement Plan be updated to reflect this commitment as outlined in section 6.3 below.

In accordance with sections 63 and 64 of the MVRMA, the Board is satisfied that notice of and access to copies of the Applications was provided, and that a reasonable amount of time was given to communities, First Nations, and the public to participate in this proceeding and make submissions to the Board.

5.1.1 Concerns raised by NSMA

In review of the Application, NSMA noted that its Traditional Land Use, Occupancy and Knowledge Report developed in the context of the NICO Project's Environmental Assessment in September 2012, was not referenced in the Application form within the section that lists the studies conducted to date, nor was it referenced in the section on Heritage and Archaeology Assessments of the CRP (NSMA comments 1 and 2). NSMA recommended that Fortune addresses this omission and discusses how NSMA's Traditional Knowledge has been reviewed and incorporated into the Project. NSMA further noted that "meaningful engagement with NSMA should be undertaken to ensure that NSMA's affirmed rights and interests within the Project area are adequately considered throughout the licensing process." In response to review comments, Fortune acknowledged NSMA's Traditional Knowledge Report and indicated that it will continue to gather Traditional Knowledge to inform the construction, operation, and closure of the NICO Mine as required by Licence conditions and EA Measure 8. At the Technical Session, NSMA further asked when and how Fortune plans to engage with NSMA to incorporate Traditional Knowledge into the AEMP design. Fortune was not able to provide a specific date at the time but committed to working with NSMA to agree on a timeline prior to submission of the Plan. The Board notes that per Part B, Condition 4 of the Licence, the Licensee is required to identify all recommendations based on Traditional Knowledge received, describe how the recommendations were incorporated into the submission, and provide justification for any recommendation not adopted.

In their Intervention, NSMA identified several deficiencies in the Engagement Record and Engagement Plan submitted with the Applications.[62] NSMA noted that the Engagement Record "is not separated by party" and does not include an Engagement Summary that summarizes the outcome of engagement or NSMA's unresolved concerns. NSMA further noted that the Engagement Log lacks details on the issues raised and the recommendations made by NSMA, Fortune's response, whether the issues were resolved, and/or changes made to the project as a result of engagement. NSMA recommended that Fortune submits an Engagement Record with an Engagement Summary and an Engagement Log that meet the specifications established in the LWB's Engagement Policy and Guidelines. In response, Fortune stated that the Engagement Record is comprehensive and provides evidence of all prior engagement with each affected party. Fortune also noted that NSMA had not raised concerns about engagement prior to submission of the Application, during the public review and Technical Session, or in meetings with Fortune. Fortune believes that "adequate consultation has been achieved or will be achieved through a combination of continued direct conversations between NSMA and Fortune Minerals, and through the WLWB review process."

NSMA also indicated in their Intervention, that Fortune has "failed to appropriately engage with and consult NSMA", has repeatedly breached its commitments and has not responded to NSMA's concerns in good faith, nor worked with NSMA to resolve them. NSMA noted that there had been discussions around an Impact Benefit Agreement to mitigate the impact of the NICO Mine on NSMA's constitutionally protected rights, and Fortune's "pattern of reneging on its commitments" "does not meet the Board's standard for good faith negotiation or building positive and reciprocal relationships". NSMA indicated that the renewal of the Licence and subsequent creation of the mine would have significant impacts on NSMA's ability to exercise its Aboriginal rights and stated that the Crown's duty to consult should be enhanced before renewing the Licence. NSMA recommended that Fortune "be required to engage in good faith with NSMA to develop an Engagement Record that is acceptable to the Board." Fortune responded that NSMA's Intervention is not reflective of the conversations that were had prior to and during this proceeding and referred to a meeting held in March 2026 at the request of NSMA where they discussed topics such as employment, timing of participation agreement negotiations and closure concerns.

NSMA further noted in their Intervention that "the Engagement Plan does not meet the Board's minimum engagement planning standards" and there's no established process in the Plan for NSMA to raise concerns or issues, which hinders their ability to ensure that their constitutionally protected rights are respected throughout the duration of the Project. NSMA also indicated that Fortune did not ask for their input on the development of the Engagement Plan, and the Plan does not mention NSMA's concerns or interest in entering into an IBA. NSMA recommended that Fortune be required to resubmit an Engagement Plan drafted in collaboration with NSMA, specifying NSMA's concerns, how these concerns will be addressed, and a mechanism for affected Parties to raise them. Fortune responded that it had engaged with NSMA and requested their input on the Application prior to submission. Fortune also noted that the trigger for further engagement at "any other time as required by the Parties" provides NSMA

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[62] See WLWB Online Registry for NICO Mine – WL Renewal – NSMA Intervention – Apr 8_26.

with a process within the Engagement Plan to raise concerns or issues. At the Public Hearing, Fortune indicated that it had discussed the negotiation of a participation agreement and other issues over a phone call with members of the NSMA, on March 24, 2026, and Fortune committed to continuing its engagement efforts to address any concerns that NSMA may have.[63] NSMA reiterated the issues with Fortune's Engagement Plan and Engagement Record in review of the draft water Licence (NSMA comments 1, 2, 5, and 6) and recommended that the Licence includes a new condition that requires Fortune to submit a revised Engagement Record to the Board for approval, and that construction shall not commence prior to approval of the revised Engagement Record.

In reviewing the Application package, the Board assessed whether Fortune conducted early engagement with affected Parties; this evidence is provided in the Engagement Record as per the LWB's *Engagement and Consultation Policy and Guidelines*. The Engagement Record indicates that Fortune engaged with NSMA via email, phone calls, and face-to-face meetings at different times prior to submission of the Application and discussions included the negotiation of a participation agreement, economic ties between NSMA and Fortune, and preparation of the renewal Application. As detailed in the Engagement Record, it is the Board's understanding that NSMA had the opportunity to provide input regarding the contents of the application prior to submission and to provide input and make submissions to the Board during the regulatory proceeding. During the public review of the Application, Board staff noted that in the Reasons for Decision on Version 2.0 of the Engagement Plan, decision #5 required Fortune to contact affected Parties to receive feedback on Version 3.0 of the Engagement Plan, and to incorporate the outcomes of this engagement in the next submission to the Board (i.e., Version 3.0). Board staff could not locate this information and asked Fortune to clarify how the Board's decision on Version 2.0 had been addressed and how/where feedback from affected Parties had been incorporated into Version 3.0 of the Engagement Plan (Board staff comment 107). Fortune responded that while it had discussed the Engagement Plan with affected Parties as per Board's direction, no feedback was received during the video calls or the in-person meetings. Following NSMA's Intervention and presentation at the Public Hearing, Board staff asked NSMA in Undertaking #14 whether there were any outstanding concerns that had not been reflected in the Intervention. NSMA responded that the following concerns have not been addressed:

1) The Project will remove valuable resources that will no longer be available to NSMA members for use. Unless NSMA is compensated for that removal, this will cause permanent negative socio-economic impacts on our members. This concern remains outstanding as Fortune has yet to initiate negotiations with NSMA to determine appropriate compensation.
2) The Project had been developed without assessment of potential impacts to Métis heritage, historic, cultural and archaeological resource impacts. As Fortune's Application and Conceptual Closure and Reclamation Plan make no reference to NSMA's Traditional Knowledge and Use Report, this concern remains outstanding.
3) The Project will interfere with NSMA members' traditional use of lands in the vicinity of the Project. This interference is unavoidable and, therefore, can only be mitigated

[63] See WLWB Online Registry for NICO Mine – WL Renewal – Public Hearing – Day 2 Transcript – Apr 27_26, p. 126.

by appropriate compensation measures. This concern remains outstanding as Fortune still has yet to initiate negotiations with NSMA to determine appropriate compensation.

4) The Project will adversely affect fish, bird, and wildlife, which will in turn adverse affect NSMA members' ability to exercise our Métis rights and maintain our Métis way of life. While NSMA appreciates that efforts have been made to minimize these adverse effects, it is implausible to think that a mine as large as the Project will have no adverse impact on Métis rights. As some adverse impacts are unavoidable, they can only be mitigated by appropriate compensation measures. This concern remains outstanding as Fortune still has yet to initiate negotiations with NSMA to determine appropriate compensation.
5) The Project will impact the aesthetics of the mine site, including smell, taste, and feel of the land, vegetation, and waters. NSMA is concerned that it may not be possible to restore the site completely. This concern remains outstanding as, for the reasons set out in the Yellowknives Dene First Nation's intervention, the Conceptual Closure and Reclamation Plan requires substantial additional work.

In their closing argument, NSMA indicated that it would consent to the issuance of the water Licence for a short term of up to four years, if Licence conditions reflect NSMA's recommendations on the draft Licence circulated for review. A short-term Licence, NSMA noted, would allow Fortune to continue operations while working to address NSMA's concerns. NSMA further noted that:

> "Any decision of the Crown or a regulatory body that adversely affects Aboriginal rights made based on inadequate consultation offends the honour of the Crown and is subject to judicial review. Unfortunately, in this case, adequate consultation with NSMA has not yet occurred. NSMA's proposed conditions and term for the draft Water Licence create space for this failure to be remedied after issuance of a water licence without requiring judicial intervention."[64]

In consideration of all the evidence gathered throughout the proceeding, the Board decided to require Fortune to revise the Engagement Plan and submit Version 3.1 to the Board, for approval. The revised version should incorporate feedback from NSMA among other updates (see section 6.3). In addressing NSMA recommendations regarding the Engagement Record, the Board notes that, as per the LWB's Engagement and Consultation Policy, the Engagement Record is "a summary and log which details the engagement processes and outcomes between an applicant and an affected party", and "it must demonstrate that early engagement was done in good faith." The Engagement Record serves as an evidentiary record documenting engagement undertaken prior to the Application and is not itself for Board approval. The Board's satisfaction of ongoing engagement throughout the life of the Project is instead achieved through the Engagement Plan and Licence conditions.

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[64] See WLWB Online Registry for NICO Mine - WL Renewal Application - NSMA Closing Arguments - Jun 23_26.

The Board also notes that Fortune did not request approval of the AEMP Design Plan, and the Conceptual CRP submitted with the Application, and these Plans are not being considered by the Board at this time. At the Public Hearing, in response to Board staff, Fortune committed to conducting an AEMP and a CRP workshop prior to submission of the Plans (see Sections 6.8 and 6.10). It's been the experience of the Board that a workshop can be a useful approach that allows for discussion among all Parties on outstanding topics or issues and while it does not replace engagement with individual Parties, the discussion generally provides a forum for all Parties to gain a better understanding and to collectively discuss concerns related to these Plans. Therefore, the Board is of the view that there are a variety of mechanisms including the Engagement Plan, the AEMP and CRP workshops, and the public review and approval process for submissions made to the Board through which NSMA can continue to provide input and participate in Project evaluation and oversight throughout the life of the Project. Collectively, these mechanisms provide ongoing opportunities for NSMA's concerns to be raised, considered, and addressed. The Board appreciates Fortune's commitment to continue to engage in good faith with NSMA to address any concerns they may have, including the timing of participation agreement negotiations, as indicated by Fortune.[65]

The Board has carefully considered NSMA's concerns before making its decision with respect to the renewal of the licence for the NICO Mine and believes that many of NSMA's concerns have been addressed. While NSMA maintains that certain concerns remain outstanding, it is the Board's view that those outstanding matters do not preclude the issuance of the Licence and are appropriately addressed through ongoing engagement during the life of the Project. Following issuance, Permit and Licence conditions developed by the Board ensure that engagement with affected Parties continues to occur throughout the life of the Project, as required by the LWB's *Engagement and Consultation Policy and Guidelines*. As such, the Board is satisfied that its procedural requirements applicable to this proceeding have been met and that the process has afforded NSMA a meaningful opportunity to participate throughout the Board's consideration of this Application.

5.1.2 Concerns and issues raised by YKDFN

The Board did not receive comments or recommendations from YKDFN during the public review of the Application or at the Technical Session. However, YKDFN participated in the pre-hearing conference and submitted an Intervention to the Board. The Board has carefully considered YKDFN's concerns before making its decision with respect to the renewal of the licence for the NICO Mine.

In its Intervention, YKDFN raised concerns regarding Fortune's "overall lack of engagement and consultation with YKDFN". YKDFN noted that any adverse effects on the Bathurst Caribou herd may extend beyond the immediate project area into the traditional lands of the Yellowknives Dene, as they overlap with the Bathurst Caribou range. YKDFN also raised concerns regarding potential effects from the Mine downstream of the Marian River and into the North Arm of Great Slave Lake. YKDFN stated that while

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[65] See WLWB Online Registry for NICO - Type A WL Renewal - Public Hearing - Day 2 Transcript - Apr 27_26.pdf p. 126

Fortune made efforts to contact them, no evidence suggests that YKDFN has been meaningfully consulted with respect to Traditional Knowledge and no information has been provided regarding measures to mitigate impacts on Chief Drygeese Territory and YKDFN rights. YKDFN did not make specific recommendations on these issues but provided a number of recommendations related to Plans submitted with the Applications (i.e., DMP, WWMP, AEMP Design Plan, ESMP, and Conceptual CRP).

In its response, Fortune did not address YKDFN's comments regarding the lack of engagement and consultation on Traditional Knowledge, Caribou, or downstream effects of the mine. However, Fortune indicated it will review and consider YKDFN's recommendations and seek opportunities for discussion. Following YKDFN's presentation at the Public Hearing, Fortune indicated that while a participation agreement may not be achievable, Fortune has obligations to YKDFN through a socioeconomic agreement signed with the GNWT, which covers some of the aspects that would be considered under a participation agreement. Fortune committed to meeting with YKDFN in the future and welcomed their input on the various Plans.

In YKDFN's closing arguments, YKDFN asked that the Board consider recommendations detailed in YKDFN's intervention prior to final plan approvals.[66] As discussed throughout this Reasons for Decision, in consideration of the evidence gathered throughout this proceeding, submissions made to the Board with the renewal Application are either not being considered at this time or are not being approved and require revisions. The Board appreciates Fortune's commitment to reviewing YKDFN's recommendations, and notes that Parties will have additional opportunities to provide input through the Board's standard public review process. In addition, Fortune has committed to hosting a workshop prior to submission of the AEMP Design Plan and one prior to submission of the CRP, which will allow discussion among all Parties on outstanding concerns or issues related to these Plans.

The Board also notes that per Part B, Condition 3, in conducting its activities under this Licence, Fortune is required to make every reasonable effort to consider and incorporate any Traditional Knowledge that is made available to the Licensee, and through on-going engagement and consultation YKDFN will have opportunities to provide Traditional Knowledge. Regarding YKDFN's concerns related to potential impacts on caribou and impacts to water downstream of the NICO Mine, the Board notes that these issues were thoroughly discussed during the Environmental Assessment for the NICO Project. There are EA Measures in place to reduce or prevent significant adverse impacts on caribou and caribou habitat (i.e., EA Measures 8, 9, and 10) and to ensure that water quality objectives are met in any area downstream from Peanut Lake, so that water quality, quantity, and rate of flow in the Marian River remains substantially unaltered (EA Measure 2). The Board has considered EA Measures in developing Licence and Permit conditions and believes that there are robust mechanisms in place to protect the land and waters from Project related effects. In addition, EA Measure 8 requires the establishment of a working group to inform a strategy and provide direction for Fortune to manage cumulative effects on caribou. Participants in this working group should include YKDFN. The Board notes that while the MVLUR includes provisions related to the

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[66] See WLWB Online Registry for [NICO Mine - WL Renewal Application - YKDFN Closing Arguments - Jun 24_26.]

protection of wildlife habitat, requirements related to wildlife are under the jurisdiction of the GNWT through the *Wildlife Act*. GNWT-ECC determined that, as per Section 95(1) of the *Wildlife Act*, a Wildlife Management and Monitoring Plan (WMMP) is required for approval by the GNWT, and the Board has included a Permit Condition that requires Fortune to have an approved WMMP prior to commencement of construction. As the Project is located in the Wek'èezhìı Management Area, YKDFN will have opportunities to provide input on the Plan through the Wek'èezhìı Renewable Resource Board public review process. As such, the Board is of the view that YKDFN's concerns have been addressed and is satisfied that the Crown's duty to consult has been met.

5.1.3 Cultural Use Criteria

The development of cultural use criteria and its inclusion in the Licence was a main topic of discussion throughout the proceeding. In review of the Application, the Tłı̨chǫ Government recommended that Fortune discusses its views on the inclusion of requirements for cultural use criteria in the Licence (TG comment 7). At the Technical Session, the Tłı̨chǫ Government reiterated its recommendation that the water Licence includes requirements to develop cultural use criteria to inform whether Measures 1 and 2 of the Environmental Assessment are met. Measures 1 and 2 are defined in the EA as follows:

> The NICO Project will be designed and operated by Fortune Minerals throughout all Project stages (Construction, operation, active closure, post closure), so that the Tłı̨chǫ people's traditional water uses, now and into the future, are not adversely affected by mining activities. These uses include use of traditional drinking water sources and use of traditional areas for fishing.
>
> The NICO Project will be designed and operated by Fortune Minerals throughout all Project stages (Construction, operation, active closure, post closure), so that the following water quality objectives are met in any area downstream from Peanut Lake, including all of Burke Lake (Datoti): water quality changes due to mining activities will not substantially alter benthic invertebrate and plankton abundance, taxonomic richness or diversity; water quality changes due to mining activities will not substantially alter fish health, abundance or diversity or impact the ability of traditional users to harvest or consume fish; water changes due to mining activities will allow for safe use of water by wildlife and waterfowl; and water quality, quantity and rate of flow in the Marian River is to remain substantially unaltered.

In response to an Information Request (IR15) on this matter,[67] Fortune agreed to including a condition for the development of cultural use criteria for closure but did not agree with a requirement that would apply during construction and operations. Fortune noted that this is consistent with the approach in Diavik Diamond Mine's water Licence. In its Intervention, the Tłı̨chǫ Government noted that the inclusion of cultural use criteria in a licence is an emerging best practice and a way to know whether the Project is being conducted in a way that satisfies requirements in the Tłı̨chǫ Agreement and EA Measures 1 and 2.

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[67] See WLWB Online Registry for Fortune - NICO Mine - Technical Session - Information Requests - Feb 27_26.pdf IR#15

The Tłı̨chǫ Government emphasized that EA Measures apply to all Project stages, and recommended that cultural use criteria: be proposed, for Board approval, before discharging effluent to Peanut Lake; be met during operations, closure, and post-closure; and, be based on engagement with the Tłı̨chǫ Government. In response, Fortune reiterated its position and explained that the type of cultural use criteria (e.g., taste, smell, etc.) has not yet been defined, which creates uncertainty and risk around potential investments. Fortune also noted that the necessary engagement with the various affected Parties to reach consensus on cultural use criteria would be significant and can be incorporated into closure planning.

During the Public Hearing, Fortune proposed that cultural use criteria work in tandem with the science-based action levels and be included in the AEMP response framework. Fortune also proposed the inclusion of cultural use criteria into the CRP.[68] The Tłı̨chǫ Government noted during the hearing that it supports cultural use criteria that incorporates both, western science and Traditional Knowledge, and while they agree with Fortune that both approaches should work together, science should not weaken cultural use criteria.[69] In response to a question from Board staff during the Public Hearing, Fortune agreed to a Licence condition that requires the development of cultural use criteria, for Board approval, as part of the AEMP and the CRP.[70] The draft Licence circulated for review included Part G, Condition 5 (CULTURAL USE CRITERIA), and Part I, Condition 2 (CULTURAL USE CRITERIA – CLOSURE AND RECLAMATION PLAN) which require Fortune to include cultural use criteria in the AEMP Design Plan, and the CRP, developed as per the approved Engagement Plan. In its review, the Tłı̨chǫ Government supported these conditions and noted that a requirement to meet these criteria, as in Diavik's water Licence (i.e., W2025L2-0001, Part G, Condition 12), would make the Licence stronger (TG comments 14 and 15). Alternatively, the Tłı̨chǫ Government recommended that specific requirements for cultural use criteria be included in the Schedule for the AEMP Design Plan and AEMP Annual Report (i.e., Schedule 6). Fortune agreed to including cultural use criteria requirements in Schedule 6. In its review of the draft Licence, YKDFN expressed no concerns with these conditions and noted that, as the Project is located on Tłı̨chǫ land, the Tłı̨chǫ Government would be better equipped to develop these criteria (YKDFN comment 57).

In consideration of all the evidence gathered through the proceeding, the Board has decided to include Part G, Condition 5, and Part I, Condition 2, which require including cultural use criteria in the AEMP Design Plan and CRP, respectively. These criteria are expected to be included in the next iterations of these Plans. The Board notes that an AEMP workshop (see section 6.8.3) and a CRP workshop (see section 6.10) will be required, where discussions on cultural use criteria can continue. Further discussion through the AEMP workshop and on-going engagement may result in revisions to the next version of the AEMP Design Plan; therefore, the Board is not defining the specific requirements for cultural use criteria at this time but instead has identified cultural use criteria as a main area where revisions are expected to be made.

[68] See WLWB Online Registry for NICO – Type A WL Renewal – Public Hearing – Day 1 Transcript – April 27_26, p. 44–46.
[69] See WLWB Online Registry for NICO – Type A WL Renewal – Public Hearing – Day 2 Transcript – April 27_26, p. 62.
[70] See WLWB Online Registry for NICO – Type A WL Renewal – Public Hearing – Day 1 Transcript – April 27_26, p. 166–167.

The Board also notes that in the Licence, the title for Part G, Condition 5 (CULTURAL USE CRITERIA) of the draft Licence has been changed to "CULTURAL USE CRITERIA – AQUATIC EFFECTS DESIGN PLAN" to align with and differentiate from, Part I, Condition 2 (CULTURAL USE CRITERIA – CLOSURE AND RECLAMATION PLAN).

5.2 Major Mining Project in Mǫwhì Gogha Dè Nı̨ı̨tłèè

As defined in Chapter 23 of the Tłı̨chǫ Land Claims and Self-Government Agreement,[71] the Project is a major mining project wholly or partly in Mǫwhì Gogha Dè Nı̨ı̨tłèè. As required by the policy direction to the Land and Water Boards of the Mackenzie Valley (LWBs) from the Minister of Indian Affairs and Northern Development regarding Chapter 23.4,[72] on November 28, 2025, the Board sent the Applicant and the Tłı̨chǫ Government a letter notifying them of the additional evidence required before the Minister could approve a Type A licence for this type of project.[73] Neither Party disputed the Board's determination by the December 5, 2025 deadline,[74] and the Tłı̨chǫ Government and Fortune subsequently confirmed their agreement that the Project is a major mining project to which section 23.4.1 applies.[75]

The Board initially requested that the Tłı̨chǫ Government and Fortune submit evidence by January 22, 2026,[76] demonstrating that one of the following three requirements identified in the policy direction had been met:

1) Fortune and TG had entered into an agreement for the Project as contemplated under 23.4.1 of the Tłı̨chǫ Agreement;
2) pursuant to 23.4.2 of the Tłı̨chǫ Agreement, Fortune and the Tłı̨chǫ Government have agreed that negotiation of an agreement is not required, or, if required, it will be negotiated after the Minister's approval of the Licence; or
3) best efforts were made in good faith to conclude a negotiated agreement as contemplated under 23.4.1 of the Tłı̨chǫ Agreement, as well as any evidence of why an agreement was not concluded.

The Board received confirmation on May 25 and 26, 2026 from the Tłı̨chǫ Government and the Applicant, respectively, that engagement between the parties was ongoing. In a letter to the Board, TG indicated the following:

> "TG and Fortune intend to advance the negotiation of an agreement contemplated under section 23.4.1, but to do so meaningfully requires the completion of Fortune's updated feasibility study for the NICO Project, which we understand will not be completed until later this summer."[77]

[71] See Chapter 23 of the Tłı̨chǫ Land Claims and Self-Government Agreement.
[72] See the Policy Direction from Minister webpage on the WLWB website (www.wlwb.ca/) to access the Policy Direction to the MVLWB on s.23.4 of the Tłı̨chǫ Agreement.
[73] See WLWB Online Registry for NICO Mine - WL Renewal - Notification - Major Mining Project - Nov 28_25
[74] See WLWB Online Registry for NICO Mine - WL Renewal - Notification - Major Mining Project - Nov 28_25
[75] See WLWB Online Registry for NICO Mine - WL Renewal - TG and Fortune Respond to IR - Major Mining Project - Jul 7_26.pdf
[76] See WLWB Online Registry for NICO Mine - WL Renewal - Notification - Major Mining Project - Nov 28_25
[77] See WLWB Online Registry for NICO Mine - WL Renewal - Notification - Major Mining Project - TG and Fortune - May 25_26

The Tłı̨chǫ Government also stated that "the requirements of section 23.4.1 must still be met before construction of the NICO Project can proceed" and recommended that the Board "include, as a condition of any renewed Licence, that the negotiations contemplated under section 23.4.1 have concluded before any construction of the NICO Project can take place." Fortune stated in its response that it agrees with the Tłı̨chǫ Government's recommendation and stated it "will continue to work with the Tłı̨chǫ Government to complete a participation agreement once all necessary information is available."

On June 23, 2026, the Board issued a further Information Request requiring the Tłı̨chǫ Government and Fortune to identify which requirement had been satisfied and provide supporting evidence by July 7, 2026.[78]

On July 7, 2026, the Tłı̨chǫ Government and the Applicant jointly advised the Board that the first and third options were inapplicable and that they intended to proceed under the second option. Tłı̨chǫ Government and Fortune confirmed that negotiations under section 23.4.1 remain required but will occur after the Minister's approval of the Licence, once Fortune's updated feasibility study is completed.[79] Tłı̨chǫ Government and Fortune proposed that the Licence contain a condition prohibiting construction until those negotiations have concluded and they have provided written confirmation of that fact to the Board.[80]

The Board is satisfied that the joint letter from TG and Fortune provides the evidence required under the second option. The Board also agrees with TG and Fortune that the proposed condition appropriately addresses the timing of the section 23.4.1 negotiations. The condition allows the Licence to be issued before those negotiations are completed, while ensuring that construction cannot commence until the Tłı̨chǫ Government and Fortune have concluded the negotiations and provided written confirmation to the Board. The Board has, therefore, included the following condition in the Licence:

> Notwithstanding anything to the contrary contained in this Licence, no commencement of construction on the NICO Mine Project shall occur unless and until the Tłı̨chǫ Government and Fortune provide the Board with written confirmation that they have concluded the negotiations contemplated under section 23.4.1 of the Tłı̨chǫ Agreement.

The Board notes that it has forwarded along the information submitted in relation to Chapter 23.4 to the Minister for consideration.

5.3 Eligibility for Land Use Permit

As per section 18 of the MVLUR, eligibility must be determined before the Board can issue a permit. The Applicant indicated that it holds active Mineral Leases within the Project area to demonstrate eligibility under 18(a)(i) of the MVLUR. No issues were raised regarding eligibility during this proceeding. Based on

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78 See WLWB Online Registry for NICO Mine - WL Renewal - IR to TG and Fortune - Major Mining Project - Jun 23_26.pdf
79 See WLWB Online Registry for NICO Mine - WL Renewal - TG and Fortune Respond to IR - Major Mining Project - Jul 7_26.pdf
80 See WLWB Online Registry for NICO Mine - WL Renewal - TG and Fortune Respond to IR - Major Mining Project - Jul 7_26.pdf

the supporting information provided, the Board concludes that the eligibility requirements under section 18 of the MVLUR have been satisfied.

5.4 Land Use Plan Conformity

As per section 61 of the MVRMA, where an approved Land Use Plan applies, the Board must confirm conformity with the Land Use Plan before issuing a permit or licence.

No approved Land Use Plans apply in the Project area.

5.5 Land Use Fees

The Project is located wholly outside of federal areas, so no land-use fees apply.

5.6 Water Use Fees

The Applicant applied to use up to 400,000 m^3/year of water from Lou Lake and 4,650,000 m^3/year of Water from the Marian River for the purpose of filling the open pit. The Board has authorized the maximum water use volume as follows: up to 235,000 m^3/year of water from Lou Lake; up to 400,000 m^3/year of water from Lou Lake with additional requirements (see section 6.5); and 4,650,000 m^3/year of Water from the Marian River with additional requirements (see section 6.5). As per subsection 8(1) of the Waters Regulations, annual water use fees must be paid in advance of each year's water use. The Board considered the LWB *Water Use Fee Policy*[81] and used the Water Use Fee Calculator[82] to determine the annual amount of water use fees for the Licence. The Board used the volume of 235,000 m^3 as the maximum water use volume and calculated that the water use fee is $2,350.00 for this year.

The Applicant included $2,350.00 for water use fees with the Licence Application.[83] The Board is satisfied that the Applicant has submitted sufficient fees for the first year of water use. Additional water use fees are required for the additional volume of water authorized by the Board; these are required to be submitted prior to any use of water.

For the duration of the Licence, annual water use fees must be paid each year on or before the date specified in the Licence conditions.

5.7 Existing Licences

During the time period established in the Notice of Applications, no licensees or applicants contacted the Board to identify potential effects from the Project on other projects, and there are no other applicants with precedence. Accordingly, with respect to paragraph 26(5)(a) of the *Waters Act* , the Board is satisfied

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[81] See WLWB Policies and Guidelines webpage to access the LWB *Water Use Fee Policy.*
[82] See WLWB Apply for Permit/Licence webpage to access the Water Use Fee Calculator.
[83] See WLWB Online Registry for NICO Mine - WL Application - Application Fees Receipt Report - July 6_26 .

that issuing the Licence to the Applicant will not adversely affect, in any significant way, any existing licensee or any other applicant, provided the Applicant complies with the conditions of the Licence.

5.8 Compensation to Existing Water Users

Paragraph 26(5)(b) of the *Waters Act* prohibits the issuance of the Licence unless the Board is satisfied that appropriate compensation has been or will be paid by the Applicant to persons who would be adversely affected by the use of waters or deposit of waste proposed by the Applicant, at the time when the Applicant filed the Licence Application with the Board.

The Board received no claims for compensation either during the time period established in the Notice of Applications, or during the remainder of the regulatory proceeding. Provided the Applicant complies with the Licence conditions, the Board is satisfied there are no water users or persons listed in paragraph 26(5)(b) of the *Waters Act* who will be adversely affected by the proposed use of waters or the deposit of waste.

5.9 Water Quality Standards

With regards to subparagraph 26(5)(c)(i) of the *Waters Act*, no water quality standards have been prescribed in the Waters Regulations; however, the LWB *Waste and Wastewater Management Policy* applies to the Licence and Permit, and the primary objective of the Policy is "protection of water quality in the Receiving Environment.''[84] This objective is directly reflected in the Licence condition OBJECTIVE – WASTE AND WATER MANAGEMENT, and in accordance with the Policy and this objective, the Board has established site-specific water quality objectives for the Project as described in section 6.7 and has set out conditions in the Licence regarding effluent quality criteria (EQC), waste and wastewater management, and management plan requirements. Further, the Board has established conditions in the Permit regarding waste management and management plan requirements. The Board is satisfied that the conditions set out in the Licence and Permit are consistent with the Policy and compliance with these conditions will ensure that waste will be managed and disposed of in a manner that will be protective of water quality in the Receiving Environment. These conditions and detailed rationale are described in section 6.7 (Licence) and section 7.4 (Permit).

5.10 Effluent Quality Standards

With regards to subparagraph 26(5)(c)(ii) of the *Waters Act*, no effluent quality standards have been prescribed in the Waters Regulations; however, as noted in section 5.9 above, the LWB *Waste and Wastewater Management Policy* applies to the Licence. In the absence of prescribed standards, the Policy sets out when and how the Board will include EQC in a licence to protect water quality in the receiving environment, and the LWB *Standard Process for Setting Effluent Quality Criteria* describes the general principles and standard process the LWBs will apply in setting EQC for a project.[85] The Board established

[84] See WLWB Policies and Guidelines webpage to access the LWB *Waste and Wastewater Management Policy*, p. 8.
[85] See WLWB Policies and Guidelines webpage to access the LWB *Standard Process for Setting Effluent Quality Criteria*.

the EQC for the Project based on both the evidence gathered during the proceeding and in accordance with the Policy and the principles and processes described in the Standard Process. Accordingly, the Board is satisfied that compliance with these criteria and associated conditions will ensure that effluent from the Project is disposed of in a manner that will be protective of water quality in the Receiving Environment. These conditions and criteria, and detailed rationale, are further discussed below in section 6.7.

5.11 Financial Responsibility

Under paragraph 26(5)(d) of the *Waters Act*, before the Board can issue the Licence, it must be satisfied that the Applicant's financial responsibility is adequate to complete the Project, including any required mitigation measures, and the closure and reclamation of the site. The evidence gathered through this proceeding and the Board's detailed analysis has been summarised in Appendix A of these Reasons.

As a result, and for the reasons set out in Appendix A, the Board is satisfied that the legislated requirement to establish the financial responsibility of the Applicant for the Project has been met.

5.12 Minimization of Adverse Effects

With regards to subsection 27(2) of the *Waters Act*, the Board must ensure that the Licence conditions minimize potential adverse effects on other water and land users from the proposed use of water and deposit of waste. As discussed above in section 5.1, the Applicant conducted pre-application engagement, and the Board also provided opportunities for potentially affected Parties to make submissions to the Board during the regulatory proceeding. The Board did not receive notice of potentially adverse effects on other users of the water and lands in the Project area.

Regardless, as noted above in section 5.9 and section 5.10, and as detailed in section 6.0, the Board has set conditions in the Licence to regulate waste management for the purpose of protecting the Receiving Environment. Additionally, as described in section 6.5, based on the evidence, the Board has set conditions regarding the use of water for the Project, including limitations on the sources and volumes of water the Licensee can use. It is the opinion of the Board that compliance with the Licence conditions that have been set to protect the water sources and the Receiving Environment will also minimize any potential adverse effects on other water and land users in the Project area.

5.13 Time Limit

As required under subsection 47(1) of the *Waters Act*, the Board made its decision on the Licence within nine months after receiving the complete Licence Application.

As per section 22 of the MVLUR, the Board is required to make its decision on a permit within 42 days of receiving a complete application. On March 31, 2026, the Board met and decided to apply paragraph

22(2)(b) of the MVLUR in order to develop Permit and Licence conditions that will effectively mitigate impacts of the proposed Project.[86]

5.14 Environmental Review (Part 5 of the MVRMA)

5.14.1 Preliminary Screening

On February 24, 2026, the Board met and considered the Application Packages from the Applicant.[87] In accordance with section 125 of the MVRMA, the Board notified the Review Board of its preliminary screening determination,[88] and in the ten days following the Board's preliminary screening determination notification to the Review Board, the Board did not receive notice of referral to EA. Subsequently, the Board continued with the regulatory proceeding.

The Board is satisfied that the requirements of Part 5 of the MVRMA have been met for the Project.

5.14.2 Environmental Assessment

The Project has been the subject of an EA conducted by the Review Board: EA0809-004.[89] Section 62 and subsection 130(5) of the MVRMA require that measures within the jurisdiction of the Board must be incorporated in conditions set out in any licence and permit or authorization issued by the Board.

The Board carefully reviewed the approved measures, and each suggestion and commitment from the EA. The Board noted that EA measures are sometimes written in broad terms that are not appropriate for direct inclusion in a regulatory instrument. In addition, some measures are not within the Board's jurisdiction. In developing the Licence and Permit, the Board included conditions that implement the measures within the Boards' jurisdiction and ensure that that the management of Project-related effects on the environment will be consistent with the responsible ministers'[90] decisions. Furthermore, although the reflection of suggestions and commitments in a licence or permit is not mandatory, the Board also considered the suggestions and commitments to ensure the closest possible conformity with the EA decision made by the responsible ministers. Appendix D attached to these Reasons for Decision contains a table summarizing how the Board incorporated the measures into Licence and Permit conditions; further details regarding the Board's decisions and reasons for specific conditions are provided below in sections 6.0 and 7.0.

Accordingly, the Board is satisfied that it has met the requirements of section 62 of the MVRMA in developing the Licence and Permit, and that the requirements of subsection 130(5) will be met through compliance with the Licence and Permit conditions.

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[86] See WLWB Online Registry for NICO Mine - LUP Application - Notice of Timeline Pause - Mar 31_26.pdf.
[87] See WLWB Online Registry for NICO Project - Preliminary Screening Determination and Reasons for Decision - Mar 3_26.
[88] See WLWB Online Registry for NICO Project - Preliminary Screening Determination and Reasons for Decision - Mar 3_26.
[89] See the Review Board Online Registry for EA0809-004.
[90] In relation to Part 5 of the MVRMA, "responsible minister" is defined in subsection 111(1) as: in relation to a proposal for a development, means any minister of the Crown in right of Canada or of the territorial government having jurisdiction in relation to the development under federal or territorial law.

6.0 Decision – Water Licence W2025L2-0005

In making its decision, the Board recognizes the importance of this area:

> When the Project starts, I hope they try not to alter the land and the water – we know it will change but the people talk about the importance of gathering in that area and if anything were to happen, that is the place where [people] can go to survive (Jocelyn Zoe, WLWB Board member).

Having due regard to the facts, circumstances, and the merits of the submissions made to it, and to the purpose, and provisions of the MVRMA and the *Waters Act*, the Board has determined that Licence W2025L2-0005 should be issued, subject to the scope, defined terms, conditions, and term contained therein. The Board's determinations and reasons for this decision are set out below.

The Licence has been developed to address the Board's statutory responsibilities; to protect the Receiving Environment and minimize potential adverse effects on other water users; and to address issues within the Board's jurisdiction that were identified and investigated during the regulatory proceeding.

In developing the Licence, the Board considered the LWB *Standard Water Licence Conditions Template* (Standard Licence Conditions)[91] and included a number of these standard conditions that are relevant to the Project. As noted in section 4.0, Board staff circulated a draft Licence for review to allow Parties to provide specific input to the Board on possible conditions, and the Board considered these review comments and recommendations in making its determination on the Licence conditions.

The Standard Licence Conditions have been established by the LWBs based on information from LWB policies and guidelines, other applicable guidelines and best practices, meetings with Inspectors, input from LWB staff, and feedback from a public review. Each standard condition has been evaluated against the following characteristics of an ideal condition:

- Clearly part of LWBs' authority;
- Has a clear purpose and rationale;
- Is practical and enforceable; and
- Does not conflict with existing legislation (i.e., is not less stringent).

The Standard Licence Conditions include general rationale for each standard condition, and as such, the language of any standard condition included in the Licence is only discussed in detail in the following sections of these Reasons for Decision when it specifically relates to concerns or recommendations raised during the regulatory proceeding. The Board's reasons for developing and including Project-specific conditions, including discussion of any concerns and recommendations raised regarding these conditions, are detailed in the relevant sections below.

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[91] See WLWB Policies and Guidelines webpage to access the LWB *Standard Water Licence Conditions Template.*

6.1 Term of Licence

In the Application, Fortune requested a term of 25 years for the Licence "to account for potential delays to the commencement of construction or other phases of the Project." Subsection 26(2) of the *Waters Act* allows for a licence term of the duration of the undertaking (type A).

During the review of the Application, GNWT-ECC (comment 52) noted that Fortune requested a 22-year licence term when it applied for the previous Licence. However, the Board issued a licence with a 12-year term based on feedback during that proceeding which included inadequate baseline information, the need for more work in developing EQCs, the uncertainty related to the CDF and the CWTS, and the need to bring parties together to evaluate the Project regularly. GNWT-ECC further noted that these concerns and uncertainties remain, particularly surrounding the CDF and the CWTS. GNWT-ECC recommended that Fortune provide additional information regarding project timelines and supporting rationale for the requested 25-year licence term. The Tłı̨chǫ Government also discussed this topic, and asked Fortune for comments on how a Water Licence with a 25-year term can adapt to improvements in regulatory best practices and reflect changes at the site over the years (TG review comment 3). In response, Fortune referred to the expert panels, noting they will be established to deal with uncertainties surrounding the CDF and CWTS, and to conditions in the Licence that address future uncertainties including the construction and operation of these structures. Fortune also indicated that the Licence: allows for adaptive management and regulatory improvement through updates to the SNP and other schedules in general; requires that new and more stringent regulations apply to the Project; and can be amended by the Board on its own motion. Fortune further noted that Licences are broad regulatory tools, and do not in themselves authorize the project to proceed.

At the Technical Session, in response to a question from Board staff, Fortune reiterated that uncertainty around the Project should not affect the Licence term, given that there are mechanisms embedded in the Licence to deal with uncertainty.[92] Fortune noted the advantage of not having to renew the Licence unless deemed necessary, and the certainty that a life-of-mine Licence term offers with respect to operating under known conditions. The Tłı̨chǫ Government indicated that it was not opposed to a long licence term recognising the number of resources that go into a proceeding but noted that a long-term Licence can fall behind regulatory best practices, and lessons learned from ongoing operations. The Tłı̨chǫ Government stated that if there were conditions in the Licence to address these concerns, they would be more supportive of this request. Based on this recommendation from the Tłı̨chǫ Government, Fortune proposed requirements for a Water Licence Performance Report.[93]

In its Intervention, the Tłı̨chǫ Government proposed conditions that, if adopted, would assist them in supporting a longer Licence term. However, the Tłı̨chǫ Government clarified that it was making the following recommendations regardless of the licence term: [94]

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[92] See WLWB Online Registry for Fortune - NICO Mine - Technical Session - Transcripts Day 2 - Mar 2_26.pdf pp.146 - 148
[93] See WLWB Online Registry for Fortune - NICO Mine - Technical Session - Information Requests - Feb 27_26.pdf IR#24
[94] See WLWB Online Registry for NICO - Type A WL Renewal - TG Intervention - Apr 8_26.pdf

a. A climate change report every 10 years. This would ensure there is a deliberate look at how climate change might affect designs, management plans, operations, monitoring, and closure.
b. A report with a review of the Water Licence conditions. This would give all parties an opportunity to look at whether the Water Licence conditions are doing their job to protect the environment. It would give the Board information to start a Licence amendment if one is needed. In addition to Fortune's recommendations in response to IR24, the report should include a summary of the results of AEMP monitoring and Fortune's opinion on whether the narrative water quality objectives for the site have been met. It should also discuss new standard Water Licence conditions and relevant EA Measures.
c. Regular EQC Re-evaluation Reports. This will make sure the EQC reflect any changes to federal or territorial guidelines, monitoring data, or changes to the mine's operations. These could be required every 5 or more years.
d. The Licence should have closure-related conditions that address emerging best practices, such as the requirement for cultural use criteria as closure criteria and a Tłįchǫ Traditional Knowledge Monitoring Framework for closure and post-closure.

In response, Fortune noted that an EQC Re-evaluation Report will be submitted prior to construction and agreed to providing a "Water Licence Performance Report every 10 years to evaluate the overall efficacy of the Water Licence."[95] Fortune also committed to assessing, as part of this review, whether climate-driven changes warranted a Licence amendment.

At the Public Hearing, Board staff asked all parties whether they believed that a requirement for a water licence performance report would support a longer-term Licence.[96] YKDFN and NSMA were supportive of such a requirement, but all parties indicated that they did not have a position yet on the term of the Licence and may comment on this in closing arguments.

The draft Licence for review included Part B, Condition 21 (WATER LICENCE PERFORMANCE REPORT) and schedule requirements based on input from Fortune (IR24) and the Tłįchǫ Government (Recommendation 7 in their Intervention). In its review of the draft Licence, GNWT-ECC (comment 2) did not support the inclusion of a Water Licence Performance Report (see Section 6.3) and recommended that "the WLWB issue the licence for a term it considers appropriate, having regard to the effectiveness of licence conditions over time and the need for Parties to review the licence in its entirety through a public licence renewal process." YKDFN indicated it had no concerns with the proposed Condition and recommended that the Board ties the term of the Licence to uncertainty and risk (YKDFN comment 1 on the draft Licence). No other parties commented on the term of the licence in their review of the draft Licence.

[95] See WLWB Online Registry for NICO - Type A WL Renewal - Fortune Response to Interventions - Apr 15_26.pdf
[96] See WLWB Online Registry for NICO - Type A WL Renewal - Public Hearing - Day 2 Transcript - Apr 27_26.pdf pp. 171 - 174

In closing arguments, the Tłı̨chǫ Government recommended a Licence term of 12 to 18 years "depending on whether the Board adopts our recommended Licence Conditions for adaptive management of the Water Licence (and depending on the Board's comfort with amending the Water Licence on its own initiative)".[97] The Tłı̨chǫ Government stated that "better demonstrations of financial responsibility are a necessary part of the Tłı̨chǫ Government's support for a longer Licence term and we urge the Board to exercise its authority to make additional checkpoints a requirement." However, the Tłı̨chǫ Government made it clear that it did not support the requested term of 25 years, given that the mechanisms that would replace the oversight that a Licence renewal process provides have not been tested over an extended period. In its closing arguments, NSMA' indicated that it would support a licence term of two to four years to allow Fortune to continue operations while working to address NSMA's concerns, provided their recommendations on the draft Licence were adopted.[98] No other parties commented on the term of the Licence. In its closing arguments Fortune agreed that a Licence term of 18 years would be appropriate as providing confidence to investors that there are known operating conditions for the mine.[99] Fortune further noted that Construction is not expected to commence until 2029 at the earliest.

In making its decision on the term of the Licence, the Board acknowledges that the physical environment is changing faster than ever before because of climate change. Tłı̨chǫ Elders spoke about some of these changes at the Public Hearing:

> The water levels are fluctuating with us nowadays due to climate change, and since the water level is fluctuating, goes up and down, the water level comes so high and low, and maybe one way or another, the fish has to have some impact on how they live under the water (Joseph Judas, Tłı̨chǫ Elder).[100]
>
> Fortunes here. Hislop Lake's here. That's where we paddled right through and I had a chance to get very close to them because of Rayrock, while were cleaning up Rayrock. And I took six boats, six people in each boat. So, we paddled up that river and then we noticed that the water's getting lower and lower. Where we used to go fishing, all that is going to change. I don't know where the fish are going to go. All the way up the river. And I went to a meeting with all the former chiefs from Inuvik to Fort Smith. We're talking about climate change all the river, downriver, down Mackenzie River, all the way on this side of Inuvik (Joe Rabesca, Tłı̨chǫ Elder). [101]

The Board notes that other Licences have included requirements to ensure that Licence conditions are still effective at mitigating impacts to the environment from projects over time. For instance:

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[97] See WLWB Online Registry for NICO Mine - WL Renewal Application - TG Closing Arguments - Jun 23_26.pdf
[98] See WLWB Online Registry for NICO Mine - WL Renewal Application - NSMA Closing Arguments - Jun 23_26.pdf
[99] See WLWB Online Registry for NICO Mine - WL Renewal Application - Fortune Closing Arguments - Jul 2_26.pdf
[100] See WLWB Online Registry for NICO - Type A WL Renewal - Public Hearing - Day 2 Transcript - Apr 27_26.pdf p. 50
[101] See WLWB Online Registry for NICO - Type A WL Renewal - Public Hearing - Day 2 Transcript - Apr 27_26.pdf pp. 76-78

- In the Snare Hydro Licence, the Board has required a Climate Change Report be submitted every ten years to describe how climate change has and is predicted to affect environmental impacts of the Snare Hydroelectric Facility; and whether any changes to the Licence should be considered. The Snare Hydro Licence has a term of 39 years.
- The Licence for the Tłı̨chǫ Highway contains a condition for a Water Licence Performance Report be submitted every seven years in order to assess whether the conditions of the Licence are still efficient at mitigating potential impacts to the environment from the Project, including whether changes to the Licence may be needed due to impacts from climate change. The Tłı̨chǫ Highway Licence has a term of 42 years.

The Water Licence Performance Report will assess whether the conditions of the Licence remain effective at mitigating potential impacts from the Project to the environment and be submitted every five years to align with every second submission of the AEMP Re-evaluation Report. To reflect Fortune's commitments during the proceeding and as recommended by the Tłı̨chǫ Government, the Water Licence Performance Report requires climate change reporting to ensure that climate-driven changes that may affect the Project are being assessed. This enables adaptive management and provides concrete evidence for the Board to consider whether a Licence amendment is necessary, with the benefit of feedback from reviewers. The Licence also requires a risk assessment at predefined Project milestones, and an EQC Re-evaluation Report prior to Construction, which both look at evaluating potential impacts to the environment from changes with the Project and reduce uncertainties. It is the Board's view that these conditions, together with the Water Licence Performance Report, provide further confidence that the disadvantages of a longer Licence term can be mitigated by these requirements.

The Board has also taken into consideration the following when deciding on the term of the NICO Licence:

- Previous Licences issued for longer terms (i.e., 39-year licence term issued to NTPC for the Snare Hydro Project[102] and the 42-year licence term to the GNWT-Infrastructure for the Tłı̨chǫ Highway[103]) were for projects that are relatively lower environmental risk in comparison to a mine, and consist of permanent, long-term public infrastructure;
- Parties were not supportive of Fortune's request for a Licence term of 25 years;
- NSMA recommended a two-to-four-year term; however, given all the work and resources that go into a Licence proceeding, and in consideration of all of the evidence and rationale put forward in regard to the Licence term, a term of this length will create a significant administrative burden on all Parties;
- The Tłı̨chǫ Government proposed a Licence term of 12 to 18 years. Fortune agreed to a term of 18 years noting that it would provide Fortune and its investors with known operating conditions for the mine;

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[102] See WLWB Online Registry for Snare Hydro - WL Renewal Application - Recommendation to Minister and Reasons for Decision - Apr 9_24.pdf

[103] See WLWB Online Registry for Tłı̨chǫ Highway - WL Renewal - RFD and Recommendation to the Minister - May 26_26.pdf

- In closing arguments, Fortune indicated that Construction of the NICO Mine is not expected to commence until 2029 at the earliest; therefore, a longer Licence term offers flexibility given the uncertain Construction and operations timeline;
- As discussed throughout these reasons, the need for additional baseline data collection was a topic of discussion and Fortune has committed to providing additional baseline data and conducting an EQC Re-evaluation prior to Construction. The Board believes that these requirements reduce some of the uncertainty associated with the Project;
- As discussed above in section 5.11 and in Appendix A, the Board has added a condition requiring the submission of updated information related to the Feasibility Study prior to Construction which the Board believes addresses the Tłı̨chǫ Government's recommendation in its closing arguments for the Board to include "additional checkpoints [as] a requirement".

The Board recognizes that uncertainties that were discussed during the previous proceeding when the Board decided on a Licence term of 12 years, remain, and a significant amount of information is still needed to address these uncertainties. However, the Board acknowledges that Fortune has committed to addressing the issues related to baseline data and to re-evaluating EQC for the Project, prior to Construction; these commitments favor a longer Licence term. Fortune has also committed to assessing whether the Licence remains effective at protecting the Receiving Environment through the submission of a Water Licence Performance Report.

After reviewing the submissions made during this regulatory process, the Board has determined an appropriate term for the Licence is 15 years. The Board notes this will result in two submissions of the Water Licence Performance Report in advance of Fortune applying for a Licence Renewal a year prior to Licence expiry, and that this Licence Renewal process will provide the opportunity for a comprehensive review of the Licence. The Board is of the view that an additional three-years compared to the previous Licence term of 12 years addresses the potential delays in Construction that Fortune has identified in its Application and offers greater confidence to the Licensee and its investors.

- ***Decision #1: The Board has decided to issue Water Licence W2025L2-0005 for a term of 15 years.***

6.2 Part A: Scope and Defined Terms

Part A of the Licence contains the scope and the defined terms used throughout the Licence.

6.2.1 Scope

The scope of the Licence is written to ensure the Licensee is entitled to conduct activities which have been applied for and have been subject to Part 5 of the MVRMA. In setting out the scope of the Licence, the Board endeavoured to provide enough detail to identify and describe the authorized activities, without being unduly restrictive or prescriptive, and to allow for Project flexibility, as contemplated in the Application, throughout the term of the Licence.

Based on the activities described in the Licence Application and on the scope outlined in the Standard Licence Conditions, Board staff included a draft scope in the draft Licence that was circulated for public review. DFO recommended that "construction, operation, and maintenance of the Diffuser system in Peanut Lake and the Intake structures in Lou Lake and the Marian River" be included within the scope of the licence (comment 1). Fortune responded that the "Intake systems are included in the scope of the Water Licence through Part A Condition 1b". The Board notes that 1b) includes "Withdrawal of Water from Lou Lake for the camp, mine, dust control, and post-closure filling of open pit; and Withdrawal of Water from the Marian River for the purpose of filling of the open pit". Fortune also responded that "Specific details will be provided in the relevant Design and Construction Plan, as required by Part E Condition 9".

The Board agrees with Fortune that the details on the diffuser will be required to be included in the Design and Construction Plans for the effluent treatment system and, therefore, believe that DFO's concerns have been addressed.

Fortune provided additional comments on the scope and agreed with the changes proposed in the scope from the previous licence. Therefore, the Board accepted the scope in the draft Licence as the scope of the Licence.

The other conditions in Part A are consistent with the Standard Licence Conditions. These conditions ensure that the scope of the authorization includes all water uses and deposits of waste associated with the Project and also clarify that the Licensee must comply with applicable legislation, including any changes to legislation that are deemed to automatically amend the Licence.

6.2.2 Defined Terms

The Board defined certain terms in the Licence to ensure a common understanding of the conditions, to avoid future differences in interpretation of the Licence, to reflect Project-specific evidence, and to support consistency across licences and permits issued by the LWBs. For the most part, the Board selected applicable definitions relevant to the Project from the Standard Licence Conditions. Where appropriate, the Board revised previous Licence definitions, removed previous Licence definitions, or used Project-specific definitions to reflect the evidence. The following definitions were included in the draft Licence and given no Parties provided comments, the Board had added these to the Licence:

- Effluent Treatment Facility was included because it is a specific facility related to this Project;
- Hydrocarbon-Contaminated Soil Treatment Facilities was included to reflect Standard Conditions and align with new LWB Guidelines for these facilities;
- Risk Assessment was included to ensure a common understanding of the document referenced in Part B, Condition 30 (RISK ASSESSMENT). In addressing DFO's comment 2 on the draft Licence, the Board has included reference to section 17, Accidents and Malfunctions, of the Developer's Assessment Report (DAR).
- Sewage Treatment Plant was included because it is a specific facility related to this Project and to differentiate from the Effluent Treatment Facility.

The Board included a definition for Temporary Closure after the Licence went out for public review, since a new Standard Condition requiring the submission of a Temporary Closure Plan was added to the Licence.

Constructed Wetland Treatment System (CWTS) Pilot Studies

The previous Licence defined "Small-scale CWTS Pilot Studies" as "indoor or outdoor tests (which Fortune has previously commissioned in Saskatchewan) conducted to support Constructed Wetlands Treatment System design." At the Public Hearing, Board staff asked Fortune whether the definition for "small-Scale CWTS Pilot Studies" should be updated to more clearly reflect the phases and sequencing of the CWTS. In response to Undertaking 8,[104] Fortune indicated that the lab-based pilot study has finished but that on-site pilot studies will be required. Fortune proposed the definition be revised to "on-site outdoor pilot tests conducted to support CWTS design." Board staff included this definition in the draft Licence that was circulated for review.

In its review, the Tłįchǫ Government (comment 1) raised concerns about removing the laboratory studies from the definition given that it is unclear whether more laboratory studies will be needed to inform the on-site pilot studies. Tłįchǫ Government recommended that the Licence allow flexibility for the Board to require additional laboratory studies if needed. Fortune noted that the laboratory study was completed in 2014 at Contango strategies Ltd. and the results "demonstrated that CWTS technology is a feasible approach for passive treatment of water at the NICO mine at closure." Fortune further explained that the next step will be a pilot study at site, and that the lab study results will be made available to the CWTS Expert Panel so that these findings can be considered for the on-site pilot studies. In deciding on the wording for this definition, the Board considered the following:

- There are no current plans to do another lab study;
- Should the Board deem it necessary (e.g., based on results from the reassessment of source term concentrations per Part E, Condition 26), the Board has the authority to direct Fortune to conduct additional laboratory tests;
- The CWTS Expert Panel will be provided with the data from the lab study (Fortune response to TG comment 1 on the draft Licence) and the data will be considered for the on-site pilot study. The Board will consider any recommendations from the Expert Panel for additional lab studies or whether it the on-site pilot study phase can proceed.

Therefore, based on the above, the Board is of the view that there are mechanisms in place, through the Licence or through the Board's authority, to address the concern raised by the Tłįchǫ Government. The Board has retained the definition as included in the draft Licence.

Water Management Ponds

In the Water Licence Application, Fortune requested that the Emergency Spill Containment Pond be

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[104] See WLWB Online Registry for NICO - WL Renewal - Public Hearing - Fortune Response to Undertakings - Apr 30_26.pdf

removed as it will be merged with the Surge Pond. Therefore, in the draft Licence Board staff removed Emergency Spill Containment Pond from the definition of Water Management Ponds to reflect changes to the Project proposed by Fortune. Board staff also asked Parties for input on whether the definition of Water Management Ponds was necessary given the overlap with the definition of CDF.

In its review of the Licence, the Tłı̨chǫ Government (comment 3) recommended that when reorganizing definitions and conditions related to the Water Management Ponds, the Board ensures that it maintains a high level of oversight, noting that issues related to these structures have not yet been discussed and will be addressed when Fortune submits design and Construction plans. YKDFN (comment 12) indicated in its review of the Licence that it had no concerns with this approach provided that the CDF definition explicitly includes seepage collection ponds and the surge pond, for clarity. Fortune noted that the definition for the CDF includes "water management structures" and the Water Management Ponds include multiple structures associated with the CDF (e.g., Surge Pond, seepage collection ponds). As such, Fortune recommended that the definition of Water Management Ponds be removed from the list of defined terms and retain the CDF definition as worded.

After reviewing Parties' submissions through the review of the Licence, the Board has decided to retain the definition of Water Management Ponds, for the following reasons:

- Several revisions to the WWMP are required, and the final configuration of the water management structures is still unclear. For instance, the WWMP refers to the Emergency Spill Containment Pond and the Surge Pond as two separate structures and no alternative configuration has been proposed.
- The definition of Engineered Structures and Part D, Condition 8, both refer to Water Management Ponds and the Board does not want to inadvertently remove requirements related to the Water Management Ponds that Parties have not had an opportunity to comment on.

The Board notes that while the Emergency Spill Containment Pond has been removed from the definition of Water Management Ponds as requested by Fortune in its renewal Application. However, the list of structures is not exhaustive as the definition indicates (i.e., "including but not limited to") given that the design and Construction plans for the CDF and associated water management structures still needs to be provided.

6.3 Part B: General Conditions and Schedule 1

Part B of the Licence primarily contains general administrative conditions regarding implementation of the Licence, and compliance with the Licence conditions, Board directives, and LWB policies and procedures. This section also details compliance requirements and review and revision procedures for submissions required under the Licence. These conditions are consistent with the Standard Licence Conditions and are applicable to all licences.

PART B: COMPLY WITH SURVEILLANCE NETWORK PROGRAM and Schedule 1

A Surveillance Network Program (SNP) is set out in Schedule 8 of the Licence. The SNP details the sampling and monitoring requirements related to compliance with several conditions in the Licence. Requirements for measuring flows, volumes, and meteorological data are based on standard licence conditions as are the reporting requirements. The Board can update the SNP in accordance with Condition 16 (UPDATES TO SCHEDULES AND COMPLIANCE DATE[S]).

In response to an Undertaking (U#1) Fortune provided an updated SNP map showing the location of each SNP sampling station.[105]

Part B: UPDATES TO SCHEDULES AND COMPLIANCE DATES

Compliance dates are included in the Licence conditions for various submissions and other requirements, and Schedules are appended to the Licence to set out the detailed requirements associated with specific conditions in the main body of the Licence. The purpose of the Schedules is to provide greater clarity and to aid in interpretation of Licence conditions.

This standard Condition is included in the Licence to clarify that the Board may, at its discretion, update compliance dates and the Schedules, and that such updates are not considered amendments to the Licence, unless otherwise directed by the Board. Such updates may be requested by the Licensee in writing at least 90 days in advance or may be initiated by the Board based on the information available to it and will undergo the Board's public review process before being considered by the Board.

Part B: ANNUAL WATER LICENCE REPORT and Schedule 1

The requirements for the Annual Water Licence Report are outlined in Condition 20 (ANNUAL WATER LICENCE REPORT), and Schedule 1, Condition 1. The purpose of the Annual Water Licence Report is to provide the Board and all interested Parties the opportunity to be annually updated on Project components and activities and compliance with Licence conditions, and to provide a platform for interested Parties to submit comments, observations, feedback, and questions as necessary. The Report is also an important tool for evaluating the effectiveness of the Licence conditions.

In establishing the Annual Report requirements in the Licence, the Board primarily included requirements from the Standard Licence Conditions that are applicable to the Project and reflect the Licence conditions. The Board also included Project-specific requirements for groundwater monitoring data (as detailed in Section 6.7.1), for the combined Dust, Erosion and Sedimentation Management Plan, and for the Emergency Management Plan. All of these requirements are intended to provide clarity and summarize information already captured through existing submissions; they are not meant to be onerous. The Board organized these requirements to coincide with the layout of the Licence and to be consistent with the Standard Licence Conditions.

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[105] See WLWB Online Registry for NICO - WL Renewal - Public Hearing - Fortune Response to Undertakings - Apr 30_26.pdf p.3

For clarity, Annual Water Licence Reports are required each year, regardless of whether the Licensee has conducted any activity during the reporting year.

Part B: GOOD GOVERNANCE

Throughout the proceeding, the Tłı̨chǫ Government maintained its recommendation that Fortune provides evidence that it follows good governance practices through participation in recognized industry governance standards (e.g., TG comment 4 during the public review of the Application). At the Technical Session the Tłı̨chǫ Government expressed that participation in industry associations such as the Mining Association of Canada or the International Council on Mining and Metals offers a high level of assurance to Parties, and asked Fortune for its view on a water licence condition that would require evidence of this endeavour.[106] Fortune expressed it was amenable to having further discussions on this matter with the Tłı̨chǫ Government, but it did not agree that a Licence Condition was necessary. In its Intervention, the Tłı̨chǫ Government further developed its case that good governance is required to ensure responsible mining that leaves a positive legacy, and recommended that "the Licence require Fortune to submit, for approval, evidence that it maintains good governance practices, including membership in any industry associations and/or following relevant industry guidelines."[107] In response, Fortune agreed that it could be a "useful addition" but proposed to include it under the Water Licence Annual Report. However, Fortune believes that "regulatory bodies should not claim jurisdiction over the governance practices of applicants" and Fortune "doesn't agree that this list should be subject to approval".[108]

In their review of the draft Licence the Tłı̨chǫ Government noted that the draft Licence did not include conditions related to governance practices and reinforced its recommendation that evidence of this should be required (TG comment 23). In addressing Fortune's point regarding jurisdiction, the Tłı̨chǫ Government clarified that it was not proposing that the Board dictates the specific industry guidelines or associations it must be a member of but rather requires Fortune to provide evidence of the governance practices it has decided to follow. Fortune maintained its view that "a requirement for Board approval of the list of industry associations and guidelines is akin to a dictation of which industry associations and guidelines Fortune should join or follow and does not support Board approval of this list." The Tłı̨chǫ Government emphasised their recommendation in their closing arguments, and provided the following rationale:[109]

> The TG disagrees with Fortune Minerals' characterization of the good governance requirement as necessarily permitting the Board to dictate which industry associations and guidelines Fortune should join or follow. We reiterate our previous recommendation. The emphasis is not on the specific content of a good governance list, but whether the applicant can produce such a list to demonstrate governance initiatives at all. TG does not

[106] See WLWB Online Registry for NICO Mine - Technical Session - Transcripts Day 2 - Mar 2_26.pdf pp. 161-162.
[107] See WLWB Online Registry for NICO - Type A WL Renewal - TG Intervention - Apr 8_26.pdf Recommendation 2.
[108] See WLWB Online Registry for NICO - Type A WL Renewal - Fortune Response to Interventions - Apr 15_26.
[109] See WLWB Online Registry for NICO Mine - WL Renewal Application - TG Closing Arguments - Jun 23_26.pdf

> consider this a stringent or onerous requirement. It is an opportunity for an applicant to demonstrate their commitment to good corporate citizenship, showing appreciation for the complexity and seriousness of its endeavours, whether that pertains to community relations standards or guidelines for the handling of dangerous materials or managing project infrastructure. In this way, the Board can have confidence that licensees value responsible activity that fosters positive social or environmental outcomes. In TG's view, the Board would view the list generally. The specific initiatives are subject to the applicant's own priorities.

No other Parties commented on this topic.

The Board carefully considered the rationale and supporting information made available through this proceeding to support whether the Licence should include such a condition. In its Intervention, the Tłı̨chǫ Government spoke of the importance of responsible mining, the harmful legacy of historical contaminated sites, but also about the more recent socioeconomic benefits and connections Tłı̨chǫ communities have with the mining industry. The Tłı̨chǫ Government also spoke of the Project area known as ase ede t'seda dil, "the place we go where we can survive", a core cultural corridor in the heart of Tłı̨chǫ lands, and expressed that "mining in this area must have the very highest standards for protecting the land, water, fish, animals, harvesting, and Tłı̨chǫ culture." The Board upholds these values and is of the view that the Tłı̨chǫ Government's recommendation aligns with the principles that guide the Board's decisions. A requirement that shows the commitment of the Licensee to following good governance practices supports the Board's statutory responsibilities and provides assurance to the users of the Land and residents of the Mackenzie Valley, that Fortune follows best industry practices and is committed to responsible mining. The Board agrees with Fortune that the industry standards Fortune decides to follow should be at its own discretion and not mandated or approved by the Board. The Board understands this requirement to be an evidentiary proof of this commitment, that provides transparency and accountability, regardless of the specific industry association or guidelines Fortune chooses to abide by. The Board notes that the Licence already requires Fortune to follow applicable Guidelines, and to participate in professional associations through conditions that apply to dams and other engineered structures. For these reasons, the Board has decided to include a requirement that Fortune submit evidence that it maintains good governance practices as part of its Annual Report. This could include participation in relevant industry associations and/or incorporation of relevant industry guidelines. Lessons learned on this emerging best practice can be further considered during future licensing processes.

Part B: WATER LICENCE PERFORMANCE REPORT

As discussed in Section 6.1, the Water Licence Performance Report was proposed as a result of discussions related to Fortune's request for a Licence term of 25 years. During the Technical Session the Tłı̨chǫ Government indicated that it would support a longer Licence term if there were requirements to ensure that the Licence remains effective at mitigating potential environmental impacts over time.[110] In response

[110] See WLWB Online Registry for Fortune - NICO Mine - Technical Session - Transcripts Day 2 - Mar 2_26.pdf pp. 147 to 149

to Information Request 24 (IR24) Fortune proposed a schedule for a Water Licence Performance Report.[111] In its Intervention, the Tłı̨chǫ Government proposed additional requirements and clarified that these recommendations applied regardless of the Licence term.[112] These were discussed in Section 6.1 (Term of Licence).

The draft Licence for review included Condition 21 (WATER LICENCE PERFORMANCE REPORT) and schedule requirements based on the input from Fortune (IR24) and the Tłı̨chǫ Government (Recommendation 7 in their Intervention). In their review of the draft Licence, GNWT-ECC (comment 2) did not support the inclusion of a Water Licence Performance Report, noting that it was unclear how it differed from a Water Licence Annual Report, "as it cannot compel the Licensee to apply for an amendment or renewal of the water licence." GNWT-ECC identified "two significant legal concerns":

> Schedule 2, 1(b) requires an assessment of any advances in treatment technologies or water quality guidelines that would warrant an update to the treatment processes or effluent quality criteria. GNWT-ECC noted that any amendment to treatment processes or EQC in a water licence would require formal licence amendment rather than a licence update. As the licence amendment would relate to water quality, it would require a call for a hearing under s. 41(2)(b) of the Waters Act and ministerial approval under s. 72.13 of the Mackenzie Valley Resource Management Act (MVRMA).
>
> Schedule 2, 1(g) requires rationale for whether any changes to the Licence should be considered through an amendment or an administrative update in consideration of the above. GNWT-ECC indicated that unless the licensee is willing to amend the licence, the only means of amending the licence would be for the land and water board to do so in the public interest under s. 36(1)(b)(iii) of the Waters Act, which isn't an approach that should become routine for active operating licences. Additionally, the extent to which a land and water board can make changes without a licence amendment process is limited to what is provided for in general clause(s) in the licence. Those changes shouldn't be described as being "an administrative update". The extent to which changes are provided for without a licence amendment process in general clause(s) must be consistent with all provisions of the MVRMA and Waters Act, including s. 41(2)(b) of the Waters Act and s 72.13 of the MVRMA.

GNWT-ECC concluded that the proposed Water Licence Performance Report is legally untenable, recommended that the Board issue a licence for a term it considers appropriate, "having regard to the effectiveness of licence conditions over time and the need for Parties to review the licence in its entirety through a public licence renewal process" and did not support the inclusion of Condition 21 and Schedule 2. Fortune deferred its response until the closing arguments. However, no further comments on this issue were provided by any party in closing arguments, and no other Parties raised concerns regarding Condition 21.

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[111] See WLWB Online Registry for NICO Mine - WL Renewal - Technical Session - IR response - Fortune - Mar 9_26.pdf IR#24
[112] See WLWB Online Registry for NICO - Type A WL Renewal - TG Intervention - Apr 8_26.pdf

The Board acknowledges GNWT-ECC's point regarding the use of the terms "update" or "administrative update" in this context and has revised Schedule 2, Condition 1 (b) to "an assessment of any advances in water treatment technologies" and Condition 1 (a) to "a review and assessment of changes to federal or territorial guidelines applicable to the Effluent Quality Criteria for the NICO Mine" and Schedule 2, Condition 1(g) to "discussion with rationale on whether the results of the Water Licence Performance Report suggest that a Licence amendment may be needed." The Board agrees with the GNWT-ECC that a Licence amendment should not become routine for operating licences and notes that this is not the intent of this Condition, but rather a potential outcome based on the evidence presented in the Report and the recommendations from the public review of the Report. The Board highlights that any decision to amend the Licence on the Board's own motion will be made with due regard and careful consideration of the evidence made available to the Board.

In their review of the draft Licence, the Tłįchǫ Government (comment 20) recommended the following additions to the Water Licence Performance Report' Schedule:

- Any emerging territorial, national, or international guidelines or standards that may modernize Water Licence Conditions, as issued by governments, associations, or other industry organizations;
- A requirement that Fortune hosts a workshop about the Water Licence Performance Report; and
- Potentially, reporting related to the demonstration of ongoing financial responsibility consistent with section 26(5)(d) of the Waters Act.

In response, Fortune noted that per the Engagement Plan "parties may request meetings as required" and expressed that the need for a workshop should be at the discretion of the reviewers and in consideration of issues raised in the Report. It is Fortune's view that the information proposed by the Tłįchǫ Government is already embedded in Schedule 2, Condition 1. The Board is of the view that engagement on the first iteration prior to submission to the Board will allow Parties to provide input on how the information can be best presented and ask questions related to the report. The Board notes that per the LWB's Engagement and Consultation Policy (2023)[113] while some submissions may not require engagement, the Licensee should conduct engagement for submissions in accordance with the approved Engagement Plan. Given the purpose and significance of the Water Licence Performance Report, the Board requires that the Engagement Plan be updated to include a trigger for engagement on this submission. The Board has not added a requirement for a Water Licence Performance Report workshop at this time.

Regarding the Tłįchǫ Government's recommendation to include emerging guidelines or standards that may modernize and improve the Licence, the Board notes that the LWBs Water Licence Conditions Team evaluates and reviews information from applicable guidelines and best practices and welcomes feedback from applicants and reviewers regarding specific conditions and rationale at any time.[114] The Board is of

[113] See WLWB Webpage for LWB Engagement and Consultation Policy (2023)
[114] See WLWB Webpage for LWB Standard Water Licence Conditions and Schedules - Version 2.3

the view that Schedule 2, Condition 1(d) (i.e., an assessment of the efficacy of Licence conditions and a review of new standard Water Licence condition that would apply to the Project) addresses this recommendation.

In its review of the draft Licence, Fortune noted the lack of clarity regarding the requested "assessment of the efficacy of Licence conditions" per Schedule 2, Condition 1(d), and proposed instead "an assessment of water Licence compliance and review of new standard Water Licence conditions that would apply to the Project". The Board understands that an "assessment of the efficacy of Licence conditions" is not precise wording. As an emerging approach to reporting in support of a longer-term Licence, the intent behind this requirement is to evaluate whether the Licence remains effective at protecting the Receiving Environment over time, particularly in a context of climate-driven changes. The Board is of the view that the requirement as written offers flexibility for Fortune to decide how best to assess this, noting that the recently issued Licence for the Tłı̨chǫ Highway includes a Water Licence Performance Report for the same purpose and with similar requirements.[115] The Board notes that Fortune can submit a request to update schedules at any time. The Board also recognizes that Schedule 2, Condition 1, can be revised based on recommendations from Parties and lessons learned through an initial submission.

In its review of the draft Licence, Fortune also proposed that the submission date for the report be revised to "every six years" instead of five, to align with the 3-year AEMP re-evaluation cycle. This, Fortune believed, would provide a more accurate summary of AEMP results and analysis of whether cultural use criteria for the site have been met. The Board agrees that the Water Licence Performance Report could benefit from the information gathered through the AEMP re-evaluation; however, the suggested timeline does not necessarily align with the discussion and resulting direction on the AEMP re-evaluation that typically takes place months following submission and its exact timing is dependent on the commencement of Construction. The draft Licence for review proposed that the Water Licence Performance Report be submitted every five years following issuance of the Water Licence, as proposed by Fortune (IR24).[116] No Parties other than Fortune commented on this proposed five-year timeline. The Board recognizes that Fortune suggested a six-year submission timeline given the requirement for a summary of results of AEMP monitoring as part of the Water Licence Performance Report (Schedule 1, Condition 1(e)). The Board also recognizes that this requirement is duplicative of the information that would be submitted as part of the AEMP Annual Report while the intent of the Water Licence Performance Report is a broader and all-encompassing analysis of the effectiveness of Licence conditions. Therefore, the Board has revised Schedule 1, Condition 1(e) to "consideration of AEMP monitoring results" and has decided to retain the five-year submission cycle for the Water Licence Performance Report.

Part B: ENGAGEMENT PLAN – REVISED

The Board assesses engagement adequacy through the LWB *Engagement and Consultation Policy* and *Engagement Guidelines for Applicants and Holders of Water Licences and Land Use Permits*. In accordance

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[115] See WLWB Online Registry for Tłı̨chǫ Highway – WL Renewal - Issuance Letter and Water Licence – May 29_26.pdf
[116] See WLWB Online Registry for NICO Mine - WL Renewal - Technical Session - IR response - Fortune - Mar 9_26.pdf IR#24

with the Policy and Guidelines, the Applicant included an Engagement Record and Plan in the Applications,[117] and these documents were distributed for public review with the Applications.

As discussed in section above on the Water Licence Performance Report, the Board has required a trigger to be included in the Engagement Plan related to this Report.

- ***Engagement Plan Revision #1: the Board requires Fortune to add a trigger for engagement prior to submission of the first Water Licence Performance Report (WLPR), to engage Parties on the information to be included in the Report and other related materials as appropriate.***

As discussed in detail in Section 5.1, the Board has decided to not approve the Engagement Plan as submitted with the Application and requires that Fortune revise the Plan to include, among other revisions, concerns raised by Indigenous groups regarding effective engagement and how these concerns will be addressed by Fortune. These include NSMA's outstanding concerns, and YKDFN concerns related to engagement on Traditional Knowledge, and commitments made by Fortune in response.

- ***Engagement Plan Revision #2: Fortune to revise the Plan to include concerns raised by Indigenous groups regarding effective engagement and how these concerns will be addressed by Fortune. These include NSMA's outstanding concerns, and YKDFN concerns related to engagement on Traditional Knowledge.***

In addition, in review of the 60-day renewal application the NWTMN also expressed their interest in initiating dialogue and "establishing a meaningful and ongoing engagement relationship with Fortune" (NWTMN comment 1). NWTMN noted it is seeking to engage with Fortune on the following:

- Establishment of a formal and structured engagement process between NWTMN and Fortune Minerals Ltd.;
- Provision of capacity funding or participation support to enable effective and informed engagement;
- Assessment and ongoing monitoring of potential impacts to watershed systems within our IMA area, including cumulative effects;
- Inclusion of Indigenous knowledge and community perspectives in environmental assessment, monitoring programs, and adaptive management strategies;
- Identification of employment, training, and contracting opportunities for NWTMN citizens and businesses; and
- Exploration of potential agreements that support long-term benefits, collaboration, and shared stewardship responsibilities.

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[117] See WLWB Online Registry for NICO Mine - WL Renewal Application - Engagement Plan - Version 3.0 - Nov 20_25.pdf.

In response, Fortune committed to engaging with NWTMN in the future to further discuss these recommendations. The Board, therefore, requires that this commitment be reflected as a trigger for engagement in the Engagement Plan.

- ***Engagement Plan Revision #3: Fortune to include a trigger for engagement based on its response to NWTMN recommendations.***

During the public review of the Application, Board staff noted that the Reasons for Decision on Version 2.0 of the Engagement Plan required Fortune to gather feedback from affected Parties on Version 3.0 of the Plan, and to incorporate any feedback received with a summary of its engagement activities and results prior to its submission to the Board (Board staff comment 107). Although the conformity table in Appendix A of the Engagement Plan directed reviewers to the Engagement Record, Board staff were unable to identify whether this requirement had been addressed and requested clarification from Fortune. In response, Fortune confirmed that it had discussed the Engagement Plan with affected Parties as required by the Board but advised that no feedback was received during those meetings.

Board staff also noted that in Section 1.6 of the AEMP (i.e., Engagement and Traditional and Local Knowledge) Fortune commits to working collaboratively with the Tłı̨chǫ Government throughout the development and implementation of the AEMP to: integrate Traditional Knowledge into the design and implementation of the Program; consult Traditional Knowledge holders on field sampling and study design; and, involve Tłı̨chǫ representatives in field studies (Board staff comment 108). Board staff noted that the commitments made in the AEMP related to engagement do not appear to have been included in Version 3.0 of the Engagement Plan. Board staff further noted that EA Measures 3, 9, and 10 requirements related to the collaborative development of a Dust Mitigation and Monitoring Plan, a Wildlife and Wildlife Habitat Protection Plan, and a Wildlife Effects Monitoring Program were similarly not reflected in Version 3.0 and requested Fortune to provide rationale for these omissions. In response, Fortune committed to including these engagement triggers in the next submission of the Engagement Plan. However, as requirements related to Wildlife are under the jurisdiction of the GNWT through the *Wildlife Act*, and GNWT-ECC determined that a Wildlife Management and Monitoring Plan (WMMP) is required for approval by the GNWT, the Board recognizes that engagement triggers only apply to the Dust Management Plan, required by the Licence.

At the Technical Session, as part of its presentation on the AEMP, Fortune reiterated that engagement on Traditional Knowledge will resume prior to Construction and will continue over the life of the AEMP with any outcomes incorporated into the Plan.[118] Fortune also reiterated its commitment to updating the Engagement Plan with additional engagement triggers, including the collaborative development of the Dust Management Plan, and to update contact information, as requested by the Tłı̨chǫ Government through the public review (TG comment 37). As such, the Board requires Fortune to revise the Engagement Plan to incorporate these commitments.

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[118] See WLWB Online Registry for NICO Mine – WL Renewal – Technical Session – Day 1 Transcript – Mar 2_26, p. 172

- ***Engagement Plan Revision #4: Fortune to include triggers for engagement based on commitments made in the AEMP, as agreed by Fortune in response to Board staff comment 108.***

- ***Engagement Plan Revision #5: Fortune to include the collaborative development of the Dust, Erosion, and Sedimentation Management Plan as a trigger for engagement, per EA Measure 3.***

- ***Engagement Plan Revision #6: Fortune to include updated contact information, as per TG's comment 37.***

As discussed in detail in Section 6.8.3, the Board requires Fortune to engage with the Tłįchǫ Government to determine where the downstream water quality monitoring station will be established and under what community-based monitoring program the monitoring will occur, and to revise the Engagement Plan to include this requirement.

- ***Engagement Plan Revision #7: Fortune to include a trigger for engagement with the Tłįchǫ Government to determine where the downstream water quality monitoring station will be established and under what community-based monitoring program the monitoring will occur.***

The Board appreciates Fortune's commitments and acknowledges that Fortune has requested that the Engagement Plan be approved at issuance of the Licence. However, considering the evidence gathered through the proceeding, particularly concerns raised by Indigenous groups regarding engagement, the Board is of the view that substantial revisions to the Engagement Plan are required prior to approval. The Board is also not satisfied that the Plan adequately reflects project activities or the requirements as set out in the Guidelines. For these reasons, the Board has not approved Version 3.0 of the Engagement Plan, as submitted with the Applications. The Licensee must submit Version 3.1 of the Plan within 60 days of the effective date of the Licence. The revised Plan must include Revisions 1 through 7, discussed in this Reasons for Decision, and any other feedback received by affected Parties through the collaborative development of Version 3.1 of the Engagement Plan.

- ***Decision #2: the Board has not approved Version 3.0 of the Engagement Plan and requires Fortune to submit Version 3.1 of the Plan within 60 days of the effective date of the Licence. The revised Plan must include Revisions #1-7.***

Once submitted, the revised Engagement Plan will undergo the Board's standard public review process before being considered by the Board. The Licensee may not commence Project activities until the Plan has been approved. The Permit also includes conditions regarding the Engagement Plan, and the Board mirrored these Licence and Permit conditions as much as possible to ensure one submission will satisfy the requirements of both authorizations.

Part B: UPDATED PROJECT INFORMATION

Paragraph 27(1) of the *Waters Act*

The Board has considered the Parties' submissions respecting the scope of its authority under paragraph 27(1) of the Waters Act to include licence conditions requiring the submission of information before specified Project activities may proceed.

> Subject to this Act and the regulations, the Board may include in a licence any conditions that it considers appropriate, including, but not limited to,
>
> > (a) conditions relating to the manner of use of waters permitted to be used under the licence;
> >
> > (b) conditions relating to the quantity, concentration and types of waste that may be deposited in any waters by the licensee;
> >
> > (c) conditions under which that waste may be deposited;
> >
> > (d) conditions relating to studies to be undertaken, works to be constructed, plans to be submitted, and monitoring programs to be undertaken; and
> >
> > (e) conditions relating to any future closing or abandonment of the appurtenant undertaking.

For the reasons set out in Appendix A, the Board has already determined that Fortune has satisfied the requirements of paragraph 26(5)(d). Thus, nothing in any Licence condition alters, qualifies, postpones, or requires any further determination under paragraph 26(5)(d). The Board's assessment of Fortune's financial responsibility is complete upon issuance of the Licence.

Analysis and Application

The issue before the Board is whether paragraph 27(1) authorizes the condition included in the Licence. It is not whether paragraph 27(1) authorizes a second determination under paragraph 26(5)(d).

The Tłı̨chǫ Government submitted that paragraph 27(1) confers broad discretion to include in a licence "any conditions that it considers appropriate," including conditions respecting future studies, plans, and monitoring programs. The Tłı̨chǫ Government further submitted that the phrase "including, but not limited to" demonstrates that the categories listed under paragraphs 27(1)(a) through (e) are not exhaustive.[119]

The Board also considered Fortune's submission that: "the clear purpose of the *Waters Act* in relation to undertakings requiring a licence is to regulate use of water and deposit of waste. It is not a statute intended to regulate a licensee's financial responsibility or capacity over the course of a licenced undertaking."[120] GNWT-ECC also submitted that: "[t]he non-exhaustive list of the subject matters that

[119] See WLWB Online Registry for Comment-01-TG Letter Re Financial Responsibility, p. 7-8.
[120] See WLWB Online Registry for Comment-01-Fortune-Minerals-Financial-Responsibility-Response, p. 13.

conditions may address under s. 27(1) only including subject matters that relate to use of water and deposit of waste is also consistent with the foregoing. If the Northwest Territories Legislative Assembly had intended to allow a licensee's financial responsibility or capacity to be regulated over the course of a licenced undertaking, a reference to that would have been expected in the non-exhaustive list of subject matters set out in s. 27(1)."[121]

The Board accepts the Tłı̨chǫ Government's submission that the phrase "including, but not limited to" demonstrates that the categories listed in paragraphs 27(1)(a) through (e) are not exhaustive. The Board, therefore, does not interpret paragraph 27(1) as limiting licence conditions to the specific subject matters identified in paragraphs 27(1)(a) through (e), as submitted by Fortune and GNWT-ECC. Rather, paragraph 27(1) confers broad discretion to impose conditions that are appropriate, provided they remain within the Board's statutory jurisdiction.

The scheme and object of the *Waters Act* support this interpretation. The *Waters Act* is implemented by the Board, whose objectives are set out in section 58.1 of the *MVRMA*, which provides "[t]he Wek'èezhìı Land and Water Board shall regulate the use of land and waters and the deposit of waste so as to provide for the conservation, development and utilization of land and water resources in a manner that will provide the optimum benefit generally for all Canadians and in particular for residents of its management area The *Waters Act* gives effect to these objectives through a comprehensive licensing regime. Section 10 prohibits the use of waters without a licence, and paragraph 11 prohibits the deposit of waste without a licence. The Board may then include conditions under paragraph 27(1) to govern ongoing obligations and may require security under paragraph 35 to address closure and reclamation costs.

The Board has also considered the submissions of Fortune, GNWT-ECC, the NWT & Nunavut Chamber of Mines, the Tłı̨chǫ Government's and YKDFN respecting future demonstrations of financial responsibility. GNWT-ECC submitted that a licence condition requiring proof of financial responsibility at some future point would be inconsistent with paragraph 26(5)(d), because the Board must determine that issue as part of its decision to issue or renew the Licence.[122] Fortune similarly submitted that paragraph 26(5) and paragraph 27 serve distinct purposes under the *Waters Act*. In Fortune's view, paragraph 26(5) requires the Board to determine, before issuing, renewing, or amending a licence, whether the applicant has satisfied the statutory requirements, including paragraph 26(5)(d). By contrast, paragraph 27 governs the ongoing obligations of a licensee after the licence has been issued. Fortune, therefore, submitted that a licence condition requiring a further demonstration of financial responsibility before construction, or at another stage of the Project, would effectively create a second approval process that is inconsistent with the text and purpose of paragraph 26(5)(d) and beyond the Board's jurisdiction.[123] The Tłı̨chǫ Government submitted that it is appropriate to tailor the requirements for demonstrating adequate financial

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[121] See WLWB Online Registry for Comment-01-The-Government-of-the-Northwest-Territories'-response-to-request-for-legal-interpretation-of-financial-responsibility-for-Type-A-Water-Licence-Renewal-W2025L2-0005, p 4.
[122] See WLWB Online Registry for Comment-01-The-Government-of-the-Northwest-Territories'-response-to-request-for-legal-interpretation-of-financial-responsibility-for-Type-A-Water-Licence-Renewal-W2025L2-0005, p 3.
[123] See WLWB Online Registry for Comment-01-Fortune-Minerals-Financial-Responsibility-Response, p. 23-24.

responsibility to various stages of a project. Tłı̨chǫ Government further submitted that LWBs may include Licence conditions requiring updated demonstrations of financial responsibility at defined stages over the life of the project, including before construction.[124]

The Board agrees with GNWT-ECC, Fortune, and the NWT & Nunavut Chamber of Mines that paragraph 27(1) does not authorize a licence condition that would defer, reopen, or require a second determination under paragraph 26(5)(d) after the Licence has been issued. The Board, therefore, respectfully does not accept the Tłı̨chǫ Government's submission to the extent it would require Fortune to demonstrate financial responsibility again during the term of the Licence. The Board's determination under paragraph 26(5)(d) has been made in these Reasons and is complete upon issuance of the Licence.

The distinction between paragraphs 26(5)(d) and 27(1) is fundamental. Paragraph 26(5)(d) requires the Board to determine, before issuing the Licence, whether the Applicant has satisfied the statutory test respecting financial responsibility. Paragraph 27(1), by contrast, authorizes the Board to impose conditions governing the implementation and administration of the Licence after it has been issued. Accordingly, paragraph 27(1) cannot be used to defer, supplement, qualify, or indirectly revisit the Board's determination under paragraph 26(5)(d).

However, the Board does not interpret subparagraph 27(1) as preventing the inclusion of licence conditions requiring the submission of updated information before specified Project activities may proceed. Conditions of this nature are a common feature of the regulatory framework established under the *Waters Act*. They require proponents to submit updated plans, studies, monitoring information, and other materials as a project advances. The Board also recognizes YKDFN's submission that Project liabilities and a proponent's circumstances may evolve over the life of a Project, and that updated information at defined Project milestones may provide an additional safeguard.[125] The Board considers that submission to be consistent with the inclusion of conditions requiring updated information at appropriate stages of Project implementation.

Any condition included in this Licence does not require Fortune to demonstrate its financial responsibility a second time, nor does it defer, supplement, qualify, or otherwise affect the Board's determination under paragraph 26(5)(d). That determination has already been made based on the evidentiary record before the Board and is reflected in these Reasons. Rather, the condition requires Fortune to submit specified information before construction may proceed as part of the staged implementation of the Project under the Licence. It operates in the same manner as numerous other Licence conditions requiring updated plans, studies, designs, monitoring information, and other Project information before particular Project activities may occur.

[124] See WLWB Online Registry for Comment-01-TG Letter Re Financial Responsibility, p. 7.
[125] See WLWB Online Registry for Comment-01-Yellowknives Dene First Nation.

The Board considers a condition appropriate because the evidentiary record demonstrates that important Project information will continue to develop following completion of the updated Feasibility Study and receipt of the necessary regulatory approvals before construction commences. Requiring the submission of updated information before construction, therefore, reflects the anticipated progression of the Project and is consistent with the staged implementation of numerous other Licence requirements. Any condition does not alter or supplement the statutory test under paragraph 26(5)(d). Instead, it operates as a condition governing implementation of the Licence pursuant to subparagraph 27(1).

Accordingly, the Board concludes that a condition is properly imposed pursuant to subparagraph 27(1) of the *Waters Act* as a condition governing implementation of the Licence. The Board has included Condition 29 under Part B, which the Board is of the opinion addresses the Tłı̨chǫ Government's recommendation and the reality of evolving Project information. The Board also notes that this Condition is applicable to initial construction and not for over the life of the Project.

> At least 90 days prior to commencing Construction of the Project, the Licensee shall submit the following documents to the Board:
>
> a) the updated Feasibility Study;
>
> b) any material updates to the Project execution schedule or other information relevant to Project implementation that are not included in the updated Feasibility Study; and
>
> c) any public disclosure documents filed by the Licensee as a reporting issuer that contain material information respecting the Project and that have not previously been provided to the Board.
>
> The Licensee shall not commence Construction until the Board has confirmed, in writing, that the requirements of this Condition have been fulfilled.

Although formal approval of the submitted documents is not required under the Licence, the Board must be satisfied that the Licensee has met the requirements of the Condition. Similar to an Annual Water Licence Report, the submitted documents would be circulated to Parties via email and if Parties raise concerns or issues, the Board could request additional information or initiate a public review of the documents. This could result in additional direction to Fortune in relation to the submission.

<u>Part B: RISK ASSESSMENT</u>

During the review of the Applications, the Tłı̨chǫ Government noted the following:

> A Failure Modes and Effects Analysis (FMEA) is a structured way to identify what could go wrong during both operations and closure, as well as the causes, consequences, and prevention of failures. It helps ensure important risks are not missed, and that mitigation and monitoring are tied to specific failure scenarios. A requirement for an FMEA or similar risk assessment is not uncommon at modern mines and may be especially relevant considering the uncertain nature of the CDF stability and chemical performance, and whether the CWTS will perform.

Fortune noted in response that the process and analysis of the potential for accidents and malfunctions are presented in the DAR [126] and this analysis is similar to a FMEA. The topic was further discussed at the Technical Session,[127] along with a request to provide a timeline for submissions, including how risk assessments for all major mine components would be sequenced with submissions (IR 10). Fortune responded that re-evaluation of risks is anticipated at project milestones (e.g., approval of management plans, commencement of construction, start-up of plant operations, active closure), implementation of monitoring required by action plans (e.g., AEMP Design Plan) and upon triggering of action levels (e.g., AEMP Response Plan).[128] In its Intervention, the Tłı̨chǫ Government recommended that the Water Licence require Fortune to submit an updated risk assessment at all major project milestones or changes, from design to post-closure,[129] and Fortune proposed in response that the risk assessment be included into the Emergency Response Plan (see Section 6.7.1). However, following discussions at the Public Hearing, the Tłı̨chǫ Government proposed two options for the Board to define the frequency of risk assessment updates in response to Undertaking 13: [130]

> The Water Licence requirement would be to update the risk assessment at the following milestones, unless otherwise approved by the Board: Prior to approval of the Co-Disposal Facility Final Design Report and the Co-Disposal Facility (CDF) Management Plan; At least once in development of the interim Closure and Reclamation Plan (CRP), when there is sufficient monitoring data from the CDF and/or Constructed Wetlands Treatment System (CWTS); Prior to approval of the Final CRP; After active closure, to demonstrate closure objectives are met; and, whenever there is a material change in risk level for the project, during Construction, Operations, or Closure, including: Any material changes to the design, construction, or operation of the CDF, mine life extension, a temporary suspension of operations, after any incident, failure, near miss, or abnormal event, any time quantitative performance objectives are not met.
>
> A second option is to require a risk assessment annually. This approach is consistent with the requirements in the Yukon Government's Guidelines for Mine Waste Management Facilities (February 2023) for Class II and Class III facilities. The Yukon Guidelines set out requirements for waste management facilities like the CDF, based on the facility's risk level.

To reflect the Tłı̨chǫ Government's recommendations, the draft Licence for review included Condition 30 (RISK ASSESSMENT), with the two options proposed by the Tłı̨chǫ Government (i.e., options 1 and 2) and a third option proposed by Board staff (i.e., Option 3).[131] Options 1 and 3 proposed to update the risk assessment at predefine milestones included in the condition. Option 2 proposed to require a risk

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[126] See Fortune Mineral's Development Assessment Report – Chapter 17- Accidents and Malfunctions.
[127] See WLWB Online Registry for NICO Mine – WL Renewal – Technical Session – Day 1 Transcript – Mar 2_26, pp. 230 - 234
[128] See WLWB Online Registry for NICO Mine - WL Renewal - Technical Session - IR response - Fortune - Mar 9_26.pdf
[129] See WLWB Online Registry for NICO - Type A WL Renewal - TG Intervention - Apr 8_26.pdf
[130] See WLWB Online Registry for NICO - WL Renewal - Public Hearing - Fortune Response to Undertakings - Apr 30_26.pdf
[131] See WLWB Online Registry for NICO - WL Renewal - Draft Water Licence - May 13_26.pdf Part B, Condition 30, Options 1-3.

assessment annually. Board staff requested input from Parties on these options or other ways the need for an updated Risk Assessment could be included in the Licence. In their review of the Licence the Tłı̨chǫ Government indicated that all three options would address their concern and recommended that "the risk assessment be conducted by a suitably experienced multi-disciplinary team of professionals using best practices, with involvement of the Engineer of Record, the CDF Expert Panel, and the Tłı̨chǫ Government" (TG comment 4). YKDFN (comment 18) indicated that it preferred Option 1 noting that it explicitly provides more concrete submission milestones, while DFO (comment 2) expressed that Option 3 provides the most comprehensive approach to updating the Risk Assessment. YKDFN (comment 16) also asked clarity on the meaning of "material changes" and the Board is of the view that Fortune's response adequately addressed this comment. Fortune agreed that an updated risk assessment should be linked to project milestones and proposed keeping Option 1, as this option provides clarity on when the Risk Assessment should be submitted. The Board considered these recommendations and believed that option 3 provides concrete timelines, and clarity on when the Risk Assessment should be submitted, similarly to option 1. However, the Board is of the view that option 3 offers more flexibility and adaptability as it includes the risk assessment requirements related to the submission of the CDF Design and construction Plan and Management Plan, and the CRP within each respective schedule, rather than within the condition itself.

In addition, the Board notes that, in its Intervention the Tłı̨chǫ Government proposed that the risk assessment be updated "after active closure, to demonstrate closure objectives are met." Board staff included this milestone in Condition 30 of the draft Licence for review (options 1 and 3) and asked for Parties' opinion on this. In its review of the draft Licence, the Tłı̨chǫ Government offered the following rationale:

> The proposed milestone assumes that any risks at the site must be reduced to an acceptable level in order for closure objectives to be met. This could be verified with a risk assessment. Although this issue could be addressed as a closure criteria in the Closure and Reclamation Plan (CRP), it would provide more certainty as part of the Water Licence Condition for risk assessments.

Fortune commented that closure objectives and criteria will be defined in the CRP and that the Risk Assessment is not the most appropriate document to demonstrate that closure objectives are met. Fortune proposed that this milestone be reworded to "After active closure." The Board notes that a Performance Assessment Report is the instrument that the Board uses to demonstrate that closure objectives are met. The Board is of the view that including a requirement for an additional assessment that closure objectives have been met through the risk assessment would be duplicative and create unnecessary burden on reviewers. Given a closure workshop is required, further details on how to incorporate risk assessment into the closure criteria can be discussed at that time. Therefore, the Board has retained the third option without reference to after active closure, and included in Part B, Condition 30 of the Licence the following:

> The Licensee shall submit to the Board for approval an updated Risk Assessment in accordance with Schedule 4, Condition 3 (Co-Disposal Facility Design and construction Plan), Schedule 5, Condition 5 (Co-Disposal Facility (CDF) Management Plan); Schedule 7,

Condition 1 (Closure and Reclamation Plan), and at the following times, or as otherwise approved by the Board:

a) Whenever there is a material change in risk level for the project, during construction, Operations, or Closure, including a life mine extension, temporary suspension of operations, after any incident, failure, near miss, or abnormal event, any time quantitative performance objectives are not met; and
b) Any other time as recommended by the Expert Panels, the Engineer of Record, or as required by the Board.

6.4 Part C: Conditions Applying to Security Requirements and Schedule

Under subsection 35(1) of the *Waters Act*, the Board is authorized to require the Licensee to provide security to the Minister. Subsection 35(2) of the *Waters Act* specifies how the security may be applied. As per Indigenous and Northern Affairs Canada (INAC)'s *Mine Site Reclamation Policy for the Northwest Territories*: "Adequate security should be provided to ensure the cost of reclamation, including shutdown, closure and post-closure, is born by the operator of the mine rather than the Crown."[132]

Part C of the Licence, by reference to Schedule 3, sets the amount of security to be maintained by the Licensee and sets out requirements related to posting and adjusting security. The conditions in this Section are consistent with the Standard Licence Conditions.

Based on the evidence regarding closure cost estimates for the Project, the Board has determined that the total security deposit amount shall be $110,438,827.

Consistent with recent Board practice, the Board has placed the land-related liability amounts under the Land Use Permit and the water-related liability amounts under the Water Licence: $21,797,804 is required under the Permit, as described in section 7.4 of these Reasons, and $88,641,023 is required under the Licence.

The Licence conditions require an initial deposit prior to commencing Project activities, with additional deposits phased to match the increasing liability as the Project progresses. In this way, the liability at the site is matched by security deposits as the Project proceeds through each phase of construction, operation, and closure. This approach is consistent with INAC's *Mine Site Reclamation Policy for the Northwest Territorie*s.[133] The phased requirements are summarized in Table 1 below and further discussed in section 6.4.1 below.

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[132] See WLWB Policies and Guidelines webpage to access the LWB/GNWT/CIRNAC *Guidelines for Closure and Reclamation Cost Estimates for Mines*.
[133] See WLWB Policies and Guidelines webpage to access the LWB/GNWT/CIRNAC *Guidelines for Closure and Reclamation Cost Estimates for Mines*.

Table 1: Security Deposit Requirements

	Total	Land	Water
Total	$110,438,827	$21,797,804	$88,641,023
Phase:			
Prior to Construction (as defined in the Water Licence Part A)	$51,508,332	$41,071,755	$10,436,577
Prior to Open Pit Mining (as defined in the Water Licence Part A, Condition 2), or extraction/mining of the underground mine, and/or placement of tailings, and/or CDF Construction	$94,432,841 (increase of $42,924,509)	$23,182,818 (decrease of $17,888,937)	$71,250,023 (increase of $60,813,446)
Prior to CDF expansion above the first lift of tailings and mine rock, or beyond a total footprint of 582,340 m^2 for the perimeter dykes and top surface, whichever occurs first	$110,438,827 (increase of $16,005,986)	$21,797,804 (decrease of $1,385,014)	$88,641,023 (increase of $17,391,000)

A detailed explanation of how the Board determined the security deposits for these two instruments is provided in Appendix A: Detailed Reasons for Decisions for Project Security Determination

Like other licences, the Licence includes standard conditions that allow the Board to request an updated Closure Cost Estimate from the Licensee at any time, and to adjust the security amount at any time, based on available information. The Board expects the Licensee to work with the landowner during the development of any closure cost estimate revisions, to ensure their concerns and recommendations are addressed.

6.4.1 Phasing

In the draft Licence provided with the Application, Fortune maintained the same security phasing used in the previous Licence. In review of the Application, Tłı̨chǫ Government and Board staff asked Fortune about changes to the proposed phasing (TG comment 28; Board staff comment 47). Fortune identified it was open to considering additional phasing. As part of the Technical Session, Board staff asked if Parties had any thoughts around what phasing could look like.[134] GNWT-ECC suggested that there should be clear construction items that trigger for when phasing starts. Tłı̨chǫ Government proposed there be a construction and CDF payment, and an additional milestone that Fortune could propose. An Information Request was taken by Fortune to propose phasing in an updated RECLAIM estimate.[135] Fortune proposed three phases of 1) initial construction, 2) the start of mining and CDF construction, and 3) CDF expansion.[136]

In its Intervention, GNWT-ECC identified that it had discussed the phase proposed by Fortune further, and refined them to the following[137]:

- Phase 1 – Prior to Construction (as defined in the Water Licence Part A, Condition 2).
- Phase 2 – Prior to Open Pit Mining (as defined in the Water Licence Part A, Condition 2 or extraction/mining of the underground mine, and/or placement of tailings, and/or CDF Construction.
- Phase 3 – Prior to CDF expansion above the first lift of tailings and mine rock, or beyond a total footprint of 582,340 m^2 for the perimeter dykes and top surface, whichever occurs first.

Fortune agreed with the proposed phasing. During the Hearing, Tłı̨chǫ Government indicated that it supported the phasing milestones proposed by GNWT-ECC.[138]

Board staff included the proposed phasing milestones in the draft Licence. No Party disagreed with the proposed phasing milestones in review of the draft Licence or in Closing Arguments. As such, the Board has maintained those phasing milestones in the Licence.

6.4.2 Updates to Closure Cost Estimate

<u>Regular Updates</u>

The timing of submission of an updated Closure Cost Estimate was discussed during the Proceeding. In its initial review of the Licence, Tłı̨chǫ Government identified that projects can be under-secured during periods when a Closure Cost Estimate is not being updated regularly, and suggested an option could be to require Fortune to update the Closure Cost Estimate, including all aspects of the estimate, on a regular schedule, amongst other options (TG comment 30). In its Intervention, Tłı̨chǫ Government also recommended that Fortune update the security deposit before construction of the mine. Fortune suggested that it anticipated regular re-submission of the CRP would address these concerns (Fortune's Response to the Interventions).

[134] See WLWB Online Registry for NICO Mine - Technical Session - Transcripts Day 2 - Mar 2_26.pdf; p. 32
[135] See WLWB Online Registry for NICO Mine – Technical Session – Information Requests – Feb 27_26
[136] See WLWB Online Registry for NICO Mine – Technical Session – IR Response 18 – Fortune – Mar 13_26
[137] See WLWB Online Registry for NICO Mine – Type A WL Renewal – GNWT Intervention – Apr 8_26
[138] See WLWB Online Registry for NICO Mine – WL Renewal – Public Hearing – Day 2 Transcript – Apr 27_26; p. 87

Undertaking 4 required Fortune to suggest the best timing for submitting security updates; Fortune responded with proposed timing which was included in the draft Licence as follows[139]:

a) 60 days prior to commencement of Construction;

b) Six months prior to Construction of the CDF;

c) 24 months prior to the end of commercial operations;

d) 90 days prior to active closure; and

e) Upon request of the Board.

In review of the draft Licence, YKDFN and Tłı̨chǫ Government both proposed that the security update to be resubmitted prior to commencement of construction should include more time for review and approval, with 90 days prior and 120 days prior recommended respectively (YKDFN draft Licence comment 19 and TG draft Licence comment 29). Tłı̨chǫ Government noted that Fortune responded to each reviewer that more than 60 days should not be required as Fortune expected the closure cost estimate to be approved upon issuance of the Licence. The Board notes that the standard review timeline for most submissions is at least 90 days to allow for review and approval. The Board is of the view that 90 days is an appropriate time frame for resubmission given the work during proceeding to adjust the security estimate. As such, the Board has determined that 90 days prior to commencement of construction is an appropriate time frame and has adjusted the draft Licence appropriately.

In review of the draft Licence, GNWT-ECC noted that there could be up to a 19-year gap without a closure cost estimate update between CDF construction and end of commercial operations which could result in security devalued by inflation and changes to project (GNWT-ECC comment 4). GNWT-ECC suggested aligning submission of CRP (i.e. every 3 years) with an updated closure cost estimate. Fortune responded that "updating without a related major operational milestone is an administrative exercise with potential diminishing returns as duration between updates decreases". Fortune noted a timeline for meaningful updates during operation would be 5 or more years. GNWT-ECC maintained its recommendation that regular security updates occur at least every three to five years, and at the additional previously mentioned milestones.

The Board notes that standard practice and guidelines for interim CRP submission already requires "updated closure and reclamation liability costs and financial security estimates to a level of detail reflective of the available information."[140] However, to ensure this gap is covered and address concerns regarding inflation updates discussed further in the section below, the Board has decided it is appropriate to add the following trigger to the UPDATE CLOSURE COST ESTIMATE Condition: With any CRP submission as per Part I, Condition 3 (CLOSURE AND RECLAMATION PLAN – REVISED). As such, an updated closure cost estimate will be submitted at least every three years.

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[139] See WLWB Online Registry for NICO Mine – WL Renewal – Public Hearing – Fortune Response to Undertakings – Apr 30_26

[140] See WLWB Policies and Guidelines webpage to access the LWB/AANDC *Guidelines for the Closure and Reclamation of Advanced Mineral Exploration and Mine Sites in the Northwest Territories*.

Inflation Updates

In its review of the Application and in its Intervention, Tłı̨chǫ Government recommended that the security deposit be increased regularly to reflect inflation (TG comment 30). Fortune responded that regular updates expected through the regular re-submission of the CRP should address these concerns. During the Technical Session, the issue of regular inflation adjustments was also discussed. GNWT-ECC identified that annual updates to security could be "onerous and administrative" and so consideration if annual was appropriate should be considered.[141] Fortune suggested that updates to security could be where inflation could be accounted for more reasonably. Tłı̨chǫ Government noted it agreed annual updates could be onerous, but an assumed inflation rate could be used with annual payments going to GNWT. Fortune noted there is not an existing mechanism for projecting inflation rates. GNWT-ECC took an Information Request to identify if it could receive annual payments to address inflation in a closure cost estimate (IR19); in its response, GNWT-ECC noted a number of factors that would make this process difficult to implement, including that inflation is not known for future years and the amount of security to be posted needs to be reflected in the Licence. GNWT-ECC suggested that once mine construction is completed and no new major liability items are expected, a more frequent update for inflation may be appropriate, but should be in relation to site-wide security reviews.[142] In its Intervention, Tłı̨chǫ Government maintained its recommendation that the security deposit be increased regularly to reflect inflation.[143] The Tłı̨chǫ Government did not propose a specific mechanism as to how and when inflation could be reflected in the security updates. Fortune responded that it expected the Licence would include the standard conditions requiring regular re-submissions of the CRP, which should address the Tłı̨chǫ Government's concern.

During the Hearing, Board staff asked Tłı̨chǫ Government given the Board has standard conditions pertaining to security updates, if Tłı̨chǫ Government was of the view that additional requirements or mechanisms were necessary for inflation updates, and if so, what that those additional requirements might be. Tłı̨chǫ Government responded that the standard conditions give the Board some opportunities to increase security for inflation, but suggested that if a number of years had gone by without an update, the security deposit could be updated for inflation based on the Consumer Price Index (CPI) for the previous year. Tłı̨chǫ Government suggested this inflation adjustment, if a streamlined method could be developed, could be every year.[144]

The draft Licence included the proposed closure cost estimate timelines from Fortune, which also included "upon request of the Board." In review of the Licence, Tłı̨chǫ Government suggested that the security deposit be increased for inflation based on the CPI for the previous year, and to update security for inflation any time more than one year has passed since the previous security update. Tłı̨chǫ Government identified that the Board could select a fixed time of the year and apply the finalized annual CPI for the previous calendar year, and if a security review was in progress, the Board could either proceed with the

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[141] See WLWB Online Registry for NICO Mine – WL Renewal – Technical Session – Day 1 Transcript – Mar 2_26; p. 39
[142] See WLWB Online Registry for NICO Mine – WL Renewal – Technical Session – IR Response – GNWT – Mar 9_26
[143] See WLWB Online Registry for NICO - Type A WL Renewal - TG Intervention - Apr 8_26.pdf
[144] See WLWB Online Registry for NICO Mine – WL Renewal – Public Hearing – Day 2 Transcript – Apr 27_26; p.85

inflation update or postpone it (TG draft Licence comment 28). Fortune responded that it agreed with the recommendation for using the CPI annual average and linked its response to GNWT-ECC's recommendation for security updates on a set interval (see above). The Tłı̨chǫ Government did not discuss inflation further in its Closing Arguments.

The Board notes that given the addition of the trigger to the UPDATE CLOSURE COST ESTIMATE condition, for submission of an updated Closure cost estimate with any CRP submission under Part I requirements, an update to the Closure cost estimate would occur at least every three years. Fortune had suggested in response to GNWT-ECC comment 4 that a timeline for more meaningful security updates during operations would be every five years. As such, the Board is of the view that the requirement for a Closure cost estimate every three years balances the administrative burden of security updates and reviews and potential inflation changes with ensuring the cost estimate remains relatively up to date. The Board expects that regular cost estimate reviews would take a holistic approach and assess the security estimate as a whole, not just according to individual changes. Further, there is the option for the Board to request an updated Closure cost estimate at any time. Accordingly, the Board has not added an inflation-specific security deposit requirement to the Licence.

Revised RECLAIM estimate

The Board is satisfied that the security requirements it has imposed ensure that sufficient financial resources will be in place in advance of any liabilities that will be incurred.

Within two weeks of the effective date of the Licence, the Licensee must submit a revised RECLAIM estimate that reflects the Board's decisions on the estimate as set out in Appendix B, to align with the estimate provided by GNWT-ECC in its Intervention.[145] Once Board staff confirm conformity of the revised estimate, it will be posted to the Board's public registry to be used as the basis for the next update to the closure cost estimate.

6.5 Part D: Conditions Applying to Water Use

Part D of the Licence contains conditions related to water use for the Project. The subsections below summarize the evidence for project-specific conditions that were developed by the Board to address the requirements of EA Measure 2 and the Tłı̨chǫ Agreement regarding substantial alteration and water withdrawal limits.

6.5.1 Increased Water Use from Lou Lake

In its renewal Applications, Fortune proposed an increase to the annual maximum water withdrawn from Lou Lake, from 235,000 m^3/year to 400,000 m^3/year for use in the camp, mine, dust control, and post-closure filling of the open pit. Fortune indicated in the Application and at the Technical Session that this

[145] See WLWB Online Registry for NICO – WL Renewal – GNWT Intervention – Supporting Documents – Phase 1 – Apr 9_26; NICO – WL Renewal – GNWT Intervention – Supporting Documents – Phase 2 – Apr 9_26; NICO – WL Renewal – GNWT Intervention – Supporting Documents – Phase 3 – Apr 9_26

was a precautionary estimate not expected to occur from year-to-year, and that actual water withdrawal will be minimized through water recycling within the process plant.[146] Fortune also indicated that water from Lou Lake could help speed up the flooding of the open pit given the seasonal restriction on water use from the Marian River.[147] In their review of the Application, the Tłı̨chǫ Government (TG comment 9) noted the following:

> We note that the Board already granted a 20 percent increase in 2014 compared to what was requested in Fortune's Application in 2013 (193,000 m^3), which is slightly more than what was assessed by the Review Board (179 000 m^3/year, Developer's Assessment Report, page 11-26). Fortune identified some mitigations in its recent application, such as ensuring that withdrawals remain below a certain seasonally percentage of Lou Lake. Fortune did not propose to include these restrictions in the Licence. Fortune previously provided a memo on potential impacts of the currently authorized amount (Effects of Freshwater Extraction on Lou Lake, May 2011). It is unclear if and how Fortune's proposed change to water withdrawals and mitigations are supported by that analysis.
>
> Further, Fortune must demonstrate that water withdrawal amounts are consistent with the Tłı̨chǫ right to "have waters which are on or flow through or are adjacent to Tłı̨chǫ lands remain substantially unaltered as to quality, quantity and rate of flow when such waters are on or flow through or are adjacent to Tłı̨chǫ lands." This right is articulated in the Tłı̨chǫ Agreement (21.2.3) and EA Measure 2.

The concept of "substantially unaltered" per the Tłı̨chǫ Agreement, and as required under EA Measure 2, was discussed in the Reasons for Decision for the previous Licence. At the time, the Board determined that more work was still needed to establish a precise numerical measure of substantial alteration. Based on Fortune's assessment of the Effects of Freshwater Extraction on Lou Lake,[148] the Board authorized water withdrawal of 235,000 m^3 from Lou Lake noting this was "a reasonable request that will allow operational flexibility for the company and potentially avoid an unnecessary request for a Licence amendment."[149] Discussions related to the concept of "substantially unaltered" in the context of the request for increased use of water from Lou Lake took place through the current proceeding. During the Technical Session, Board staff noted that while Fortune agreed that water quality and flow should remain substantially unaltered and expressed its confidence that the proposed water withdrawal is both protective of the environment and of Tłı̨chǫ rights (response to TG comment 9), Fortune did not address whether the proposed increased is supported by its analysis of the Effects of Freshwater Extraction on Lou Lake, dated May 2011. Fortune agreed to updating this memo to demonstrate that the proposed increase in water use from Lou Lake remains protective.[150] In its Intervention, the Tłı̨chǫ Government

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[146] See WLWB Online Registry for Fortune - NICO Mine - Technical Session - Transcripts Day 1 - Mar 2 26.pdf, PDF p. 47
[147] See WLWB Online Registry for Fortune - NICO Mine - Technical Session - Transcripts Day 1 - Mar 2 26.pdf, PDF p. 127
[148] See DAR - Appendix 11.II Effects of freshwater extraction
[149] See WLWB Online Registry for NICO Mine - Water Licence and Land Use Permit - Reasons for Decision - Jun 17 14.
[150] See WLWB Online Registry for NICO Mine - Technical Session - Transcripts Day 1 - Mar 2 26.pdf, PDF p. 142

recommended that Fortune provide better evidence to demonstrate it will not substantially alter water quantity in Lou Lake and water quantity or rate of flow in the Marian River.[151]

DFO also commented on the increased water withdrawal from Lou Lake.[152] DFO recommended that Fortune provide supporting information demonstrating that the proposed higher withdrawal rate will not reduce under-ice dissolved oxygen, negatively affect the outflow conditions at the Lou Lake outlet, or result in a significant loss of littoral habitat. DFO also recommended that Fortune implement monitoring of water withdrawal activities at the Lou Lake shoreline and outlet to confirm that withdrawal does not result in unintended disturbances to littoral habitat or outflow conditions, indicating that monitoring should focus on fish stranding observations, water levels, shoreline exposure, and outlet depth/velocity during periods of active withdrawal, and be used to verify that modelled predictions accurately reflect site conditions.

In addition, DFO also recommended that Fortune establish contingency measures (e.g., reducing withdrawal rates) if monitoring indicates that non-predicted adverse effects to fish or fish habitat are occurring when pumping. Fortune indicated that water withdrawal from Lou Lake was the subject of a Request for Review to DFO, and Fortune was awaiting its response. Regarding the Water withdrawal from Marian River, Fortune proposed to maintain this activity in the Conceptual CRP given this use is for back-flooding the pits at closure and undertake the studies requested in DFO's Intervention at the appropriate time, but understanding that the issue must be resolved before the Final CRP can be approved.[153] However, it was Fortune's expectation that the requested volume of water from Lou Lake be authorized in time for issuance, or as soon as possible thereafter (Fortune's response to Undertaking 16).[154]

In the draft Licence circulated for review, Board staff proposed to include Part D, Condition 3 (WATER WITHDRAWAL – LOU LAKE – SUBSTANTIALLY UNALTERED), which allows Fortune to withdraw up to 400,000 m^3/year of water from Lou Lake in a way that it ensures Lou Lake remains substantially unaltered, as defined in the approved AEMP. The Board recognizes that the exact meaning of the term "substantially unaltered" is not yet defined, and more work is needed to establish the metrics to determine substantial alteration, before Fortune can increase withdrawal from Lou Lake beyond the currently authorized 235,000 m^3/year. The draft Licence Condition proposed such work to be undertaken through the collaborative development of the AEMP. As discussed in Section 6.8.3, reaching an agreement on a formal definition or approach as to how this will be assessed should be a primary focus for the AEMP workshop. In their review of the draft Licence, the Tłı̨chǫ Government agreed with this approach and indicated it addresses their recommendation that "Fortune provide better evidence that the increased water withdrawal from Lou Lake will not substantially alter water quantity in Lou Lake and water quantity or

151 See WLWB Online Registry for NICO - Type A WL Renewal - TG Intervention - Apr 8_26.pdf, Recommendation 11.
152 See WLWB Online Registry for NICO - Type A WL Renewal - DFO Intervention - Apr 8_26.pdf
153 See WLWB Online Registry for NICO - Type A WL Renewal - Fortune Response to Interventions - Apr 15_26
154 See WLWB Online Registry for NICO - WL Renewal - Public Hearing - Fortune Response to Undertakings - Apr 30_26, Undertaking 16.

rate of flow in Marian River." The Tłı̨chǫ Government also indicated that the proposed approach aligns with the Tłı̨chǫ Agreement as it relates to this issue (TG comment 6).

DFO reiterated that water withdrawal from Lou Lake shall not result in reductions of under-ice dissolved oxygen, loss of overwintering and littoral habitat, outflow and downstream changes, and fish stranding, and recommended that this be included in Condition 3(DFO comment 4). However, the Board notes that further work is needed through the development of the AEMP Design Plan to ensure that water withdrawal from Lou Lake does not substantially alter water quality and quantity in Lou Lake, which has direct implications on fish habitat.

The Board also notes that there are Licence conditions that incorporate aspects of DFO's recommendations, such as that the maximum allowed water withdrawal of 4% of the available Water volume of Lou Lake (i.e., Condition 6), which are intended to prevent oxygen depletion and loss of over-wintering habitat per DFO's *Protocol for Winter Water Withdrawal from Ice-covered Waterbodies in the Northwest Territories and Nunavut.* [155] The Board acknowledges that DFO indicated in its Intervention that under-ice withdrawal guidance does not provide information on potential effects to littoral and downstream habitat or seasonal habitat availability during open water periods. However, Fortune has committed to an AEMP workshop to help inform the next version of the AEMP Design Plan prior to its submission (see Section 6.8.3). The Board believes that the AEMP workshop will provide an opportunity to further discuss these concerns, including outflow and downstream changes as well as monitoring of the littoral habitat.

The Board notes that, as indicated in DFO's intervention, Fortune submitted a Request-for-Review, a parallel process to the Board's process, and additional measures may be required through DFO's regulatory process. If DFO's review results in more stringent requirements (e.g., the maximum allowable water withdrawal in any single ice-covered season is lower than 4% of the available water volume for Lou Lake) the expectation is that the Licensee will follow the more stringent requirement.

6.5.2 Water Use from the Marian River for Closure

In the Reasons for Decision on Licence W2008L2-0004 the Board determined the following:

> Subject to the terms and conditions of the Licence, the Board is satisfied that water quality in the Marian River is not likely to be substantially altered by the deposit of waste from the NICO Mine and, therefore, that the requirements of Chapter 21 of the Agreement and EA Measure 2 will be fulfilled. More work is needed to establish a precise numerical measure of substantial alteration so that: (1) the Marian River can be adequately monitored to provide early warning in case water quality begins to approach substantial alteration and (2) NICO operations can be modified and the Water Licence conditions

[155] See DFO's *Protocol for Winter Water Withdrawal from Ice-covered Waterbodies in the Northwest Territories and Nunavut.*

revised as necessary to ensure substantial alteration is avoided. The Licence conditions require such work to be undertaken.

The conditions in the previous Licence referenced above (i.e., Part J, Item 2(a); Item 3(b) and (c), and Schedule 7, Item 1(j), included requirements for a Supplemental Baseline Monitoring Plan and a Baseline Summary Report that would define the baseline condition of the Receiving Environment for the purposes of ensuring that EA Measures 1 and 2 are being adhered to during all Project stages, and a description of an AEMP Response Framework that will link the results of the AEMP to those actions necessary to ensure that Project-related effects on the Receiving Environment remain within the range defined in Measures 1 and 2. These requirements have not been met and Fortune committed to continuing this work as further discussed in Section 6.8.

In the Conceptual CRP, Version 2.0, submitted with the renewal Applications, Fortune indicated that inflows from the Marian River are limited to 5% of the mean monthly flows, with a maximum pumping rate of 200 litres per second (L/s), and proposed an average total annual inflow to the Open Pit from of about 4,650,000 m^3 which would allow filling of the pit in approximately 12 years.[156] However, as discussed throughout this proceeding, Fortune has not yet demonstrated that the proposed water withdrawal ensures that the Marian River remains substantially unaltered, and more work is needed to define this term. As such, the draft Licence circulated for review included Part D, Condition 4 (WATER WITHDRAWAL – MARIAN RIVER), which requires that the CRP be approved prior to using Water from the Marian River for the purpose of pit filling. In addition, Condition 5 (WATER WITHDRAWAL – MARIAN RIVER – SUBSTANTIALLY UNALTERED), allows Fortune to withdraw up to 4,650,000 m^3/year of Water from the Marian River for the purpose of filling the open pit, in a way that the quantity and rate of flow in Marian River remains substantially unaltered. The Licence also requires this to be defined in the CRP. The Tłı̨chǫ Government agreed with this approach as it addresses their recommendation and the Tłı̨chǫ Agreement requirements related to this issue (TG comment 6). Fortune also agreed with the proposed approach. YKDFN recommended that the Licence limits water withdrawal to the Marian River only (YKDFN comment 23). As addressed by Fortune in its response, the Board notes that Withdrawal of water from Lou Lake for pit filling is within the scope of the Licence; however, as discussed, the Licence does not authorize Fortune to withdraw more than 235,000 m^3/year until it provides evidence that it will not substantially alter water quantity in Lou Lake, in the approved AEMP Design Plan. As no other Parties raised concerns, the Board included Part D, Conditions 4 and 5 in the new Licence.

The Board notes that under the Nico Project Access Road (NPAR) water Licence, per Part D, Condition 2, the Board included a requirement for Fortune to submit to the Board for approval, a Marian River Water Use Plan prior to using Water from the Marian River.[157] Therefore the Board notes that the definition of substantially unaltered for the Marian River could be approved under the NPAR Licence and then reflected in the CRP under the NICO Mine Project.

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[156] See WLWB Online Registry for NICO Mine - WL Renewal Application - Conceptual Closure and Reclamation Plan - Version 2.0 - Nov 20_25, Section 5.2.2.3.1.
[157] See WLWB Online Registry for NPAR - Water Licence and Land Use Permit - Reasons for Decision - May 11_26.pdf

In review of the draft Licence, DFO (comment 6) recommended that Part D, Condition 7, requires that water withdrawal from the Marian River shall not result in loss of fish habitat, formation of barriers to fish movement, or fish stranding. Fortune did not agree with this addition, noting that a Request for Review is pending and that "should it be determined that the water withdrawal does cause a loss of fish habitat, a Fisheries Act Authorization is the proper regulatory mechanism." Fortune further noted that water withdrawal is well below the DFO guideline, and that inclusion of this condition would require a water licence amendment under this scenario. In its closing arguments, DFO agreed with Fortune's response and indicated that should harmful residual impacts to fish or fish habitat be identified, they would be managed through DFO's regulatory review process. In addition, as previously discussed regarding water withdrawal from Lou Lake, the Board is of the view that these concerns can be further considered through future discussions on the definition and application of "substantially unaltered", prior to submission of the CRP; Part D, Conditions 4 and 5, require such work to be undertaken.

6.6 Part E: Conditions Applying to Construction and Schedule 4

Part E and Schedule 4 of the Licence contain conditions applying to construction activities for the Project. Conditions from the previous Licence (i.e., W2008L2-0004) that were either replaced by or revised to align with Standard Conditions and Definitions, and for which no concerns were raised, are not specifically discussed in this Reasons for Decision. The discussions in subsections below focus on conditions for which concerns were raised as part of this proceeding and outline the Board's decision with respect to the Licence. These include requirements related to whether to keep the definition of geochemical criteria for construction materials in the body of the Licence or within the appropriate management plan; and requirements related to the timing for construction of the CWTS, reporting mechanisms, and conditions that apply to Expert Panels.

The CDF is the area and associated Engineered Structures designated to contain Tailings and Waste Rock. The CWTS includes the wetlands and associated infrastructure built to passively treat CDF Seepage or open pit overflow. It is the passive treatment approach proposed by Fortune in order to support a "walk-away" closure scenario.

Part E: CONSTRUCTION MATERIAL – GEOCHEMICAL CRITERIA

The previous Licence (W2008L2-0004) required that all Waste Rock or overburden used in the construction of Earthworks (i.e., a subcategory of Engineered Structures that are made of natural materials obtained from the site), excluding the CDF, must be Type 1a material. Type 1a material is defined in Part F, Condition 9 of the previous Licence as material with less than 0.05% total sulphur, less than 100 ppm arsenic, and less than 50 ppm bismuth. Since the Water Licence for the NICO Project was issued in 2014, the LWBs developed Standard Conditions that allow flexibility for the geochemical criteria to be set out directly in a condition in the body of the Licence or in a relevant management plan. In response to an Information Request (IR1) Fortune provided a draft Licence based on the LWB Standard Water Licence Conditions Template and proposed in the draft that geochemical criteria be specified in the approved management plan. In reviewing the Application Board staff asked Fortune to clarify whether it was proposing that geochemical criteria be defined in the Geochemical Characterization and Management Plan rather than in the Licence (Board staff comment 110). In response Fortune reverted to the approach in the previous licence and proposed that the new Licence includes a condition that defines Type 1a material. During the Public Hearing, Board staff noted that defining the geochemical criteria for construction materials in a management plan allows for adaptation and flexibility based on best practices, and Fortune raised no concerns with this approach.[158]

In the draft Licence circulated for review, Board staff proposed including Part E, Condition 5 (CONSTRUCTION MATERIAL – GEOCHEMICAL CRITERIA) which requires the Licensee to ensure that all material used in construction meets the geochemical criteria specified in the approved Geochemical Characterization and Management Plan. Board staff noted that this Standard Condition would replace Conditions 8 and 9 in Part F of the previous Licence and asked Parties for feedback on the proposed update. The Board notes that Part F, Condition 15, of the previous Licence (i.e., all Waste Rock used in the construction of the perimeter dyke of the CDF is Type 1 or Type 1a Waste Rock, as defined in the approved Geochemical Characterization and Management Plan) was also proposed to be replaced by standard conditions, but this clarification was missing in the draft Licence. In its review of the draft Licence, the Tłı̨chǫ Government indicated that as long as the Board is confident that the same degree of inspection and enforcement will be maintained, they support the proposed draft Licence Condition. In response to this comment and in their review of the draft Licence, Fortune requested that criteria for defining Type 1a material (i.e., Condition 9 of Licence W2008L2-0004) be included in the new Licence. Fortune explained that the defined criteria has been used for a significant amount of mine design and seepage modelling, and that Fortune is currently using the designation of Waste Rock Type 1a, 1 ,2 and 3 in its modelling of mine waste rock generation and scheduling of CDF construction. The Board notes that moving the definition of Type 1a material from the Licence into the Geochemical Characterization and Management Plan does not imply that criteria for the Project defined in the previous Licence need to be updated; the same requirements apply, the only change is the regulatory instrument being used. In accordance with the LWB's Waste and Wastewater Management Policy,[159] the Board can regulate waste through management plans, and any proposed changes to geochemical criteria, would undergo the typical public review process before being considered by the Board. The Board also notes that Condition 9 of the previous Licence contemplated that alternative criteria may be proposed and allowed for the Board to approve these criteria through the Geochemistry Characterization and Management Plan, provided that certain conditions were met. While Type 1a material has already been defined, in the Reasons for Decision for the initial Licence, the Board indicated the following:

> Although the criteria for Type 1a material have already been defined in the Licence, it should be included in the Plan for completeness (as required by Schedule 6, Item 3b). The Board also expects Fortune to propose criteria for Type 1, 2, and 3 Waste Rock in the Plan, which will become effective once the Board approves the Plan. Prior to approval, these criteria will be assessed in more detail during a public review and with input from the

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[158] See WLWB Online Registry for NICO - Type A WL Renewal - Public Hearing - Day 1 Transcript – Apr 17_26. PDF p. 185.
[159] See the WLWB for LWB's Waste and Wastewater Management Policy

> Expert Panel. Since there has already been a fair amount of discussion about what those criteria should be, the Plan should include an explanation for any differences between the newly proposed criteria for Type 1, 2, and 3 Waste Rock, and the criteria proposed in Table 6 of Undertaking #1 from the Public Hearing (March 5, 2014).[160]

Fortune did not submit a Geochemical Characterization and Management Plan under the previous licence nor with the Application and, therefore, Type 1, 2 and 3 Waste Rock still need to be established and approved by the Board. Submission requirements for the Plan are discussed in Section 6.7.1 (i.e., Management and Monitoring Plans).

To address the Tłı̨chǫ Government's concerns related to maintaining the same degree of inspection and enforcement, the Board notes that Schedule 5, Condition 4 requires that the Geochemical Characterization and Management Plan include details on the characterization of overburden that will be used in construction or for reclamation, details on geochemical inspections and supplemental monitoring, information regarding contingencies, and responses to monitoring results, among other reporting requirements; Part F, Condition 15 (EARTHWORKS - WEEKLY INSPECTION) of the Licence requires weekly inspections of all Earthworks with results provided for review upon request of an Inspector. In addition to the typical requirements for Engineered Structures, the Licence includes in Part E, Condition 21, and Schedule 4, Condition 3, additional requirements for a CDF Design and construction Plan, and a condition to ensure geochemical records of construction materials are available where necessary (Part E, conditions 6 and 7). The Board is of the view that consolidating all the information related to what type of materials are allowed for use in construction within the Geochemical Characterization and Management Plan provides clarity and certainty, while allowing for flexibility for Fortune to propose changes to the types of materials based on new evidence and best practices. The Board believes that the Licence conditions and the associated regulatory instruments discussed above work together to provide strong oversight over construction of Engineered Structures and has confidence in the Inspectors' ability to enforce plans approved under the Licence. Therefore, the Board has included Part E, Condition 5 (CONSTRUCTION MATERIAL – GEOCHEMICAL CRITERIA) as was proposed in the draft Licence.

<u>Part E: DESIGN AND CONSTRUCTION PLAN</u>

A requirement for Design and construction Plans for Engineered Structures was proposed in the draft Licence to replace Part F, Condition 6 of the previous Licence which required submission of Final Design Reports including construction drawings and specifications and a Quality Control Plan Stamped by a Professional Engineer. The Standard Condition proposed by Board staff includes requirements for construction drawings and a Quality Control Plan Stamped by a Professional Engineer under Schedule 4. No Parties raised concerns with the proposed change to align with Standard Conditions (TG comment 8; YKDFN comment 26) and the Board retained Condition 6 (DESIGN AND CONSTRUCTION PLANS) in the Licence.

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[160] See the WLWB for [NICO Mine - Water Licence and Land Use Permit - Reasons for Decision - Jun 17_14.pdf]

In the draft Licence, under Schedule 4, Condition 2(a)(viii), Board staff included a requirement for "a description of how the design ensures that there will be an aesthetically pleasing final landscape and acknowledgement that Tłı̨chǫ Citizens are the intended audience who will need to judge whether this commitment is satisfied." This Schedule requirement stemmed from the Tłı̨chǫ Government's Intervention (recommendation 15)[161] where the Tłı̨chǫ Government noted that per EA Commitment 9.6,[162] Fortune committed to a design objective to "create, to the extent practicable, an aesthetically pleasing final landscape." The Tłı̨chǫ Government recognized this would be addressed through the CRP but noted that design plans "will also have an irreversible impact on the final landscape" and would be finalized prior to approval of the CRP. In response, Fortune noted that it made a commitment during the EA to designing the Project such that there will be no physical or visual impacts to the Hislop Lake or the Idaa Trail as a result of the NICO Project, with the exception of the bridge across the Marian River. [163] Fortune further noted that the LWB's Guidelines for the Closure and Reclamation include the principle of future use, which may include consideration of aesthetics. Lastly, Fortune expressed that "while 'aesthetically pleasing' is a subjective criterion and likely impossible to achieve in the context of a closed mine, engagement with Tłı̨chǫ Citizens and other interested Parties will provide an opportunity to discuss future use of the site, and the associated closure criteria."

Fortune reiterated its position in its review of the draft Licence. Fortune indicated that it agrees that designs for the landscape at closure should be determined in collaboration with the Tłı̨chǫ Government when developing the CRP and cultural use criteria throughout the project; however, Fortune reiterated that the term aesthetically pleasing is highly subjective. Therefore, Fortune did not agree with this requirement and proposed that it be revised to "A description of how the design was developed in collaboration with Tłı̨chǫ Citizens." The Board recognizes that this EA commitment will be addressed through the development of closure objectives and closure criteria in collaboration with affected Parties, and in consideration of the core principle of Future Use (including aesthetics and values). The Board agrees that the design and construction of structures should incorporate closure principles and believes that the wording proposed by Fortune addresses this concern raised by the Tłı̨chǫ Government. Therefore, the Board revised Schedule 4, Condition 2(a)(viii), to include a requirement for A description of how the design was developed in collaboration with Tłı̨chǫ Citizens with consideration of Future Use (including aesthetics and values).

Part E: CO-DISPOSAL FACILITY DESIGN AND CONSTRUCTION PLAN

In the draft Licence for review, Board staff proposed to change "CDF Final Design Report" to "CDF Design and Construction Plan" in Condition 21 (CO-DISPOSAL FACILITY DESIGN AND CONSTRUCTION PLAN) to align with Standard Conditions for Engineered Structures. Parties agreed with the proposed change and the Board included this condition in the new Licence. In addition, Fortune indicated that at its full extent,

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[161] See NICO - Type A WL Renewal - TG Intervention - Apr 8_26.pdf
[162] See Review Board's Report of Environmental Assessment and Reasons for Decision, Commitment 9.6
[163] See Fortune Minerals. 2012. Final Written Submission for the NICO Project – EA0809-004 Developer's Assessment Report; [accessed April 2026]. Available at: https://new.reviewboard.ca/sites/default/files/project_document/EA0809-004_Fortune_Minerals_Closing_Comments.PDF.

the CDF will not be visible from the Îdaà Trail or Hislop Lake.[164] Therefore, as this commitment relates to the design of the CDF, the Board included a requirement within the CDF Design and Construction Plan Schedule (i.e., Schedule 4, Condition 3), that Fortune provide details on how the design ensures that the CDF is not seen from the Îdaà Trail or Hislop Lake, unless agreed to otherwise by the Tłı̨chǫ Government.

6.6.1 Co-Disposal Facility and Constructed Wetlands Expert Panels

Part E of the previous Licence (W2008L2-0004) detailed the requirements for the CDF and CWTS Expert Panels to ensure that Measures 4 and 6 of the Environmental Assessment are met. The purpose of the CDF Expert Panel is to review and advise on the design, operation, performance, and closure plan for the CDF. The purpose of the CWTS Expert Panel is to review and advise on the design, testing, operation, performance, and closure plan for the CWTS. In the Reasons for Decision for the previous Licence the Board determined that the CWTS and the CDF expert panels must be established within six and 12 months of the effective date of the Licence, respectively; the previous Licence required that the CDF Expert Panel be established prior to October 22, 2015, and that the CWTS Expert Panel be established prior to February 22, 2015. The Board notes that the CDF Expert Panel was established on November 23, 2015,[165] and members of the CWTS Expert Panel were appointed in 2015.[166] However, in the approved Terms of Reference (TOR) for each Panel, the Board indicated that as construction was delayed, with no known start date, it was unlikely the Panels would be expected to perform any duties, and the Board would be notify the Panels once Fortune provided a construction schedule.[167]

During the Technical Session, the GNWT asked when the panels would be established and whether the timeline aligned with the submissions they must review.[168] An Information Request (IR10) was issued to Fortune to propose when and how the Expert Panels' reviews would be sequenced with submissions. Fortune noted that the CDF Expert Panel's duties include review of the Geochemical Characterization and Management Plan, therefore, it will be initiated prior to submission of the Plan; the CWTS Expert Panel is anticipated to be initiated six months prior to open-pit mining to provide input on the assessment of source term concentrations and demonstration-scale CWTS design.[169] Fortune did not address in its response how the Expert Panels' reviews would be sequenced with submissions. Following discussions at the Public Hearing, an Undertaking (U4) reiterated the request.[170] [171]

As noted by Fortune, the CDF Expert Panel must be established prior to the submission of the Geochemical Characterization and Management Plan, and the CWTS Expert Panel must be established prior to open-pit mining to provide input on the assessment of source term concentrations and demonstration-scale

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164 See NICO Report of Environmental Assessment and Reasons for Decision, p. 60.
165 See WLWB Online Registry for NICO Mine - CDF Expert Panel - Establishment - Board Directive and Reasons for Decision - Nov 27_15.pdf
166 See WLWB Online Registry for NICO Mine - CWTS Expert Panel - ToR and Board Appointee - Feb 12_15.pdf
167 See WLWB Online Registry for Terms of Reference CDF Expert Panel and Terms of Reference CWTS Expert Panel.
168 See WLWB Online Registry for Fortune - NICO Mine - Technical Session - Transcripts Day 1 - Mar 2_26.pdf, pp. 262–263.
169 See WLWB Online Registry for NICO Mine - WL Renewal - Technical Session - IR response - Fortune - Mar 9_26.pdf
170 See WLWB Online Registry for NICO – Type A WL Renewal – Public Hearing – Undertakings – Apr 23_26.
171 See WLWB Online Registry for NICO – Type A WL Renewal – Public Hearing – Response to Undertaking 4 – Apr 30_26.

CWTS design. In the draft Licence for review, Board staff proposed Condition 19 (CO-DISPOSAL FACILITY – EXPERT PANEL), and Condition 23 (CONSTRUCTED WETLANDS TREATMENT SYSTEM – EXPERT PANEL) but didn't include a timeline for the establishment of the Expert Panels, noting that the submissions they are required to review are already tied to timelines. YKDFN (comment 33) indicated it had no concerns with the proposed approach and Fortune agreed with the updates.[172] Given that it is clear when the Panels will be required for review of submissions, and no Parties raised concerns with this approach, Condition 19 (CO-DISPOSAL FACILITY – EXPERT PANEL), and Condition 23 (CONSTRUCTED WETLANDS TREATMENT SYSTEM – EXPERT PANEL) were included in the Licence as proposed in the draft Licence.

Board staff also proposed to not include the requirements set out in Schedule 4 of the previous Licence (i.e., duties of the expert panels) to avoid duplication given that the duties are set out in each of the Terms of Reference approved by the Board.[173] Instead, standard conditions were proposed for Fortune to comply with the approved Terms of Reference (i.e., Condition 20 (CO-DISPOSAL FACILITY – EXPERT PANEL – TERMS OF REFERENCE), Condition 24 (CWTS EXPERT PANEL – TERMS OF REFERENCE)). Only YKDFN (comment 34) and Fortune commented on these conditions and indicated respectively that they had no concerns and agreed with the addition of these conditions.[174] Given Terms of Reference exist for the Expert Panels, and no Parties objected to the changes proposed under Part E, the Board has included conditions for the Terms of References for the Expert Panels as proposed in the draft Licence.

The Board notes that, as indicated in the draft Licence, the Terms of Reference[175] were developed in collaboration with the Tłı̨chǫ Government and Fortune, and were approved by the Board in 2015. Given that the Terms of Reference contain outdated information related to the conditions in the previous Licence that are no longer applicable, the Board requires Fortune to update the Terms of Reference to include correct references to conditions in the new Licence (W2025L2-0005) and submit the updated Terms of Reference to the Board for conformity. A public review will typically not be required to confirm conformity; however, if the revised Terms of Reference include additional information beyond what has been requested above, a public review may be required before it can be considered by the Board.

- ***Terms of Reference Revision #1: update the Terms of Reference to remove references to conditions in the previous Licence that are no longer applicable and include information linked to the new Licence.***

- ***Decision #3: Fortune to update the Terms of Reference for the CDF and the CWTS to include Revision #1. The Revised Terms of Reference should be submitted to the Board, for conformity, prior to establishment of the Expert Panels.***

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[172] See WLWB Online Review System for NICO Draft Type A Water Licence and draft Land Use Permit
[173] See WLWB Online Registry for Terms of Reference CDF Expert Panel and Terms of Reference CWTS Expert Panel.
[174] See WLWB Online Review System for NICO Draft Type A Water Licence and draft Land Use Permit
[175] See WLWB Online Registry for NICO – CWTS Terms of Reference – Nov 27_15.

6.6.2 Constructed Wetland Treatment System Pilot Studies

Part A of the previous Licence (W2008L2-0004) defined "Small-Scale CWTS Pilot Studies" as indoor tests (which Fortune previously commissioned in Saskatchewan) or outdoor tests, conducted to support the CWTS design. Undertaking 8 required Fortune to update the definition of "Small-Scale CWTS Pilot Studies" and to revise Licence conditions to reflect that the lab-based pilot study has finished but that on-site pilot studies will be required. The Undertaking was intended to assist Board staff in drafting conditions that reflect the most up to date information, and to provide clarity on the initial phase of the CWTS studies. Fortune proposed to revise wording throughout the Licence to replace "indoor" and "small scale" by on-site CWTS pilot studies. The revisions proposed by Fortune were included in Part A, Defined Terms, and in Part E, Conditions 25 (CWTS ON-SITE PILOT STUDIES), 26 (SOURCE TERM CONCENTRATIONS REASSESSMENT), and 27 (ON-SITE CWTS PILOT STUDIES PHASE TWO) of the draft Licence.[176]

In their review of the draft Licence, the Tłı̨chǫ Government noted that it is unclear whether more laboratory studies may be needed, and that the Board should be confident of that before revising the definition for "Small-Scale CWTS Pilot Studies" (TG comment 1). Fortune clarified that the laboratory CWTS study was completed in 2014 and the study "demonstrated that CWTS technology is a feasible approach for passive treatment of water at the NICO mine at closure." Fortune indicated that the results of the study will be provided to the CWTS Expert Panel so that moving forward these findings can be considered as part of the on-site CWTS pilot studies. The Board notes that the Terms of Reference requires that the CWTS Expert Panel reviews the results of the assessment of source term concentrations referred to in Part E, Condition 26, and provides recommendations to the Licensee and, upon request, to the Tłı̨chǫ Government and the Board. If the evidence or the Panel indicates that additional laboratory tests are needed, the Board has the authority to require these additional studies. The Tłı̨chǫ Government also recommended including the requirement in Condition 26 (SOURCE TERM CONCENTRATIONS - REASSESSMENT) for Fortune to submit a recommendation to the Board regarding how the results of the source term reassessment can be used in the CWTS pilot study (TG comment 9). The condition in the previous Licence required Fortune to provide recommendations on how the assessment of source term concentrations would be used in the Small-Scale CWTS Pilot Studies, which Fortune indicated has been completed. The Tłı̨chǫ Government did not support removing this requirement, as proposed by Fortune, given that Fortune has not provided any evidence for why the source term reassessment should not be used in the pilot study. Fortune noted that Part E, Condition 27 (ON-SITE CWTS PILOT STUDIES PHASE TWO) links the approved source term concentrations with the new phase of the On-Site Pilot Studies. The Board agrees with Fortune that Part E, Condition 27 appears to address the Tłı̨chǫ Government's concern, as it requires that the Licensee conducts the next phase of the On-Site Pilot Studies using simulated effluent based on the approved source term concentrations. The Board also notes that there appears to be an error in the reference to Part E, Condition 28, in Condition 26 of the draft Licence for review; the correct reference should be to small-scale pilot studies, per Part F, Item 16 of the previous Licence, which Fortune has indicated have been completed.

[176] See WLWB Online Registry for NICO - WL Renewal - Public Hearing - Fortune Response to Undertakings - Apr 30_26.pdf

For the reasons discussed above, the Board has accepted Fortune's proposed updates to conditions related to the CWTS Pilot Studies. The updates included replacing "indoor" and "small scale" by On-Site CWTS Pilot Studies, and revisions to the requirements under Condition 26. The Board does acknowledge, however, that no evidence has been provided to show that the laboratory CWTS study completed in 2014 "demonstrated that CWTS technology is a feasible approach for passive treatment of water at the NICO mine at closure." To address this gap, the Board included a requirement to provide these results with any recommendations from the CWTS Expert Panel, under Schedule 4, Condition 5(b) (i.e., Study results).

As these Plans are for Board approval, they will be disturbed for public review.

6.6.3 Constructed Wetland Treatment System Studies Reports

The previous licence (W2008L2-0004) required that Fortune report on the CWTS through a CWTS Investigation Report submitted as part of the Annual Water Licence Report (i.e., Schedule 1, Condition 1). The Terms of Reference for the Expert Panel include that the CWTS Expert Panel will review the CWTS Investigation Report and notify the Board if the Panel identifies any significant findings. However, as noted in the Tłı̨chǫ Government's Intervention, the Annual Water Licence Report is not for Board approval and, therefore, a public review where Parties would be provided an opportunity to make recommendations to the Board would generally not be initiated.

To address this issue, Board staff proposed Part E, Conditions 28 (ON-SITE CWTS PILOT STUDIES REPORT) and 31 (DEMONSTRATION SCALE CWTS – STUDIES REPORT) in the draft Licence requiring that the reports be for Board approval. Board staff requested input from Parties on whether they would prefer a report for Board approval or if the CWTS Investigation Report should remain within the Annual Water Licence Report. In its review of the draft Licence, the Tłı̨chǫ Government supported the inclusion of draft Licence conditions 28 and 31 (i.e., submission of a CWTS pilot study report and a demonstration-scale study report, for Board approval). This approach was also supported by YKDFN in their review of the draft Licence (YKDFN comments 38 and 40).

In its review of the draft Licence, Fortune proposed that the conditions for CWTS Studies Reports be updated to clarify that studies reports will be submitted until each respective phase is completed. The Board agrees with Fortune that the intent is that the report would be submitted annually until the next phase of the CWTS is progressed but notes that the Board could require additional reports as it sees fit, therefore, the Condition includes the phrase "or as otherwise directed by the Board".

Fortune also stated its opinion that approval of the investigation report by the Board would be unnecessary given the reports are reviewed by the Panel and recommended that the CWTS study report be included within the Annual Report as previously required. The Board notes that it is not unusual for Licences to include requirements to approve documents that have been reviewed by Panels. For instance, Daivik Diamond Mine (DDMI)'s Licence requires that DDMI submit the PKMW Modelling Plan for Board approval after it has been reviewed by the Independent Review Panel, a group of experts established to review water quality modelling related to placing processed kimberlite into pits. The Board also notes that the Terms of Reference requires that the Panel notify the Board if there are any concerns with the reports, which could be appended to the reports as part of the public review. This would allow Fortune to respond to the Panel's recommendations in one complete document. Including the CWTS Reports for Board approval would provide Parties an opportunity to provide recommendations on the reports and the Panel's review, which allows for a transparent process. No other Parties commented on these conditions. Therefore, the Board has decided that the Pilot study and the demonstration-scale CWTS study reports are to be submitted to the Board for approval and has included Part E, Conditions 28 (ON-SITE CWTS PILOT STUDIES REPORT), and 31 (DEMONSTRATION SCALE CWTS – STUDIES REPORT) in the Licence.

The Tłįchǫ Government also recommended that a similar requirement to report on the full-scale CWTS be included in the Licence (TG comment 11), noting that the CWTS Investigation Report in the previous Licence covers conditions related to all three phases of the CWTS. Fortune noted that Part E, Condition 32, of the draft Licence requires the submission of the Full-Scale CWTS Design and construction Plan for Board approval. Following construction of the full-scale CWTS, EQC and an SNP will be in place, alongside on-site inspections and reporting by the CWTS Expert Panel. Given these requirements, Fortune stated it does not believe that further CWTS study reports on the full-scale wetlands should be required at this time.

The Board understands that Fortune's view is that the Full-Scale CWTS will be constructed once the demonstration-scale wetland (CWTS No.1) works as predicted. Schedule 4 requires that the Design and construction Plans for the demonstration scale and full-scale CWTS include, among other requirements, study results, analysis, and interpretation of the data. In addition, Part F, Condition 34 (FULL-SCALE CWTS CONSTRUCT AS DESIGNED) requires Fortune to build the CWTS in accordance with the Full-Scale CWTS Design and Construction Plan approved by the Board, and Part F, Condition 35 (FULL-SCALE CWTS DESIGN AND CONSTRUCTION PLAN REVISED) requires a revised Design and Construction Plan, for Board approval, upon request of the Board. The Board also notes that per Condition 23, the Panel will be in place during closure until the Board is satisfied that the Panel is no longer required and will continue to review and provide recommendations on all submissions related to the CWTS. Therefore, the Board is of the view that once the Full-scale CWTS is built and operating, there will be mechanisms in place to ensure regular reporting, and a CWTS study report for the Full-scale CWTS is not necessary.

In the Conceptual CRP submitted with the Applications, Fortune indicated that CWTS No.4 is part of the contingencies and would be constructed in the event that water quality in the filling pit lake indicates that water from the open pit at initial discharge requires additional treatment.[177] During the Public Hearing, in response to a question from Board staff, Fortune agreed that the CWTS reports would be a more appropriate location for a trigger for the construction of CWTS No.4, rather than the CRP.[178]

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[177] See WLWB Online Registry for NICO Mine - WL Renewal Application - Conceptual Closure and Reclamation Plan - Version 2.0 - Nov 20_25.pdf P.91

[178] See WLWB Online Registry for NICO - Type A WL Renewal - Public Hearing - Day 1 Transcript - Apr 27_26.pdf P. 180

The Board recognizes that there will be opportunities to further discuss the circumstances for when CWTS No. 4 would not be required at closure during the CRP workshop but that the decision to not build CWTS No. 4 would require analysis of the water quality data overtime during the demonstration and full-scale phases. The Board has, therefore, decided to include a requirement under the CWTS Studies Report Schedule (i.e., Schedule 4, Condition 5) for Fortune to include rationale, including evidence, that CWTS No. 4 will not be required.

6.6.4 Constructed Wetland Treatment System Construction Timeline

In the Report of Environmental Assessment for the NICO Project, the Review Board noted that "a long-term closure scenario for the NICO Project is likely to cause significant impacts to the environment and be a cause for significant public concern" and that "...the NICO Project should only be allowed to proceed if it is a walk away project".[179] Successful performance of the CWTS supports a passive care, low maintenance solution that allows for a walk-away scenario, rather than the type of long-term active care. The Review Board further noted that "the ability of the constructed wetlands to work as planned for mitigating the effects of contaminants in seepage from the co-disposal facility must be clearly demonstrated before the developer can walk away from the site."

EA Measure 7 requires that Fortune:

- Demonstrate, using a pilot study, that the wetland will work as predicted;
- construct wetlands early during operations and test them during the first half of mine life to determine effectiveness in treating seepage from the co-disposal facility; and
- demonstrate the ability of wetlands to work for both the co-disposal facility and the pit overflow to the satisfaction of regulators before the developer is released from its mine closure and reclamation requirements.

The previous Licence did not specify when the CWTS must be constructed. In the Board's Reasons for Decision for the previous Licence the Board discussed the timing for construction of the full-scale CWTS:

> The draft Licence that was distributed for review following the public hearing contained a condition requiring construction of the full-scale CWTS within five years of construction. Fortune recommended that this activity should begin in Year 9 of operations. The Board is of the view that there is not enough information currently available to determine when the Licensee should construct the full-scale CWTS. The timing will be based on when the Licensee constructs the mine and begins operations, when the demonstration-scale studies will be complete, how long the CWTS needs to operate before closure to demonstrate success, and other factors. Therefore, the Board did not include a deadline for full-scale CWTS construction and instead added a requirement that the Report on CWTS Investigations (Schedule 1, Item 1) include a proposed timeline for when the CWTS should be constructed. Since the CWTS Panel will review this Report each year, there will

[179] See the Review Board's Report of Environmental Assessment and Reasons for Decision, Jan 25_13. PDF pp.79 – 80.

be an opportunity for them to provide input on the timing of CWTS construction. At a minimum, the Licensee will need to construct the wetlands early during operations and test them during the first half of the mine life, as required by Measure 7.[180]

In the current proceeding, Parties did not raise concerns on the first requirement of EA Measure 7 (i.e., demonstrate, using a pilot study, that the wetland will work as predicted). The Board considers the conditions for the Pilot study, and the Demonstrations-Scale study address this part of the Measure (i.e., Conditions 25 through 31). The third requirement of the EA Measure 7 (i.e., demonstrate the ability of wetlands to work for both the CDF and the pit overflow to the satisfaction of regulators before the developer is released from its mine closure and reclamation requirements) will need to be addressed through the CRP. However, the requirement to construct wetlands early during operations and test them during the first half of mine life to determine effectiveness in treating seepage from the CDF, was a main topic of discussion during the proceeding.

At the Technical Session, the Tłı̨chǫ Government asked Fortune to provide its views on how Licence conditions ensure that construction of the CWTS will occur within the first half of the mine life, as per EA Measure 7.[181] The Tłı̨chǫ Government noted that submissions related to the CWTS in the Licence are tied to milestones but it is unclear whether these will be reached within the first half of the mine life. Fortune agreed that the onsite pilot studies need to be conducted early during operations and noted that it believed the Licence required these studies be completed within the first five years of operations. In response, the Tłı̨chǫ Government clarified its understanding that EA Measure 7 applies to all three phases of the constructed wetlands studies: the pilot study, the Demonstration-Scale, and the Full-Scale CWTS. Information Request 10 was issued to Fortune, requesting a timeline of submissions and sequencing of the three phases of the CWTS, and clarification regarding when and how the Expert Panels' reviews would be sequenced with submissions.[182] Fortune did not propose CWTS submission timelines but indicated that it anticipates the Expert Panel to be initiated six months prior to open-pit mining to provide input on the assessment of source term concentrations and demonstration-scale CWTS design.[183] In its Intervention, the Tłı̨chǫ Government emphasized that the CWTS effectiveness at treating seepage from the CDF needs to be demonstrated during the first half of mine life.

The previous Licence (W2008L2-0004) required Fortune to propose a timeline for when the demonstration-scale CWTS and full-scale CWTS should be constructed in the CWTS Investigation Report per Schedule 1, condition 1; however, as construction was delayed, this information was never provided by Fortune under the previous Licence. The Tłı̨chǫ Government further noted in its Intervention that the CWTS Investigation Report is not for Board approval and recommended that the Board ensures there is good oversight over the timing of construction of all phases of the CWTS. In response, Fortune indicated that the Expert Panel's reviews and the two-stage approval process required by the previous Licence

[180] See WLWB Online Registry for NICO Mine - Water Licence and Land Use Permit - Reasons for Decision - Jun 17_14.pdf
[181] See WLWB Online Registry for Fortune - NICO Mine - Technical Session - Transcripts Day 1 - Mar 2_26.pdf, pp. 254-255
[182] See WLWB Online Registry for NICO Mine – WL Renewal – Technical Session – Information Requests – Feb 27_26.
[183] See WLWB Online Registry for NICO Mine – WL Renewal – Technical Session – IR Response – Fortune – Mar 9_26.

(W2008L2-0004) address these concerns. At the Public Hearing, Fortune clarified that the Licence requires the onsite pilot study to be developed within the first five years of operation, assuming this study would take at least two seasons, Fortune would then begin the next phase of the CWTS studies (i.e., the demonstration scale). Fortune noted that the demonstration phase would take longer than the pilot study, as it will have to demonstrate that the system works before construction of the full-scale CWTS. Therefore, Fortune further indicated that the first two phases (i.e., Pilot and Demonstration-scale) would be completed within the first 10 years of operations.[184] Fortune did not object to a timeline of up to 10 years in the Licence but said it could not guarantee it would be able to meet that timeline for Full-scale CWTS. Fortune also indicated its understanding that the full-scale CWTS would not likely happen until much closer to closure and stated that the full-scale CWTS would take up a considerable amount of space at the site. In response to Undertaking 4, Fortune proposed that the on-site CWTS pilot studies begin six months prior to construction of the CDF, at the start of open pit mining; that the demonstration-scale CWTS design report be submitted 12 months after commencement of open pit mining; and that the Full Scale CWTS Final Design Report be submitted 24 months prior to the end of commercial operations.[185]

The revisions proposed by Fortune in response to Undertaking 4 were included in Part E, Conditions 27 (ON-SITE CWTS PILOT STUDIES PHASE TWO), and 29 (DEMONSTRATION SCALE CWTS – DESIGN AND CONSTRUCTION PLAN) of the draft Licence circulated for review.[186] [187] However, Board staff did not include Fortune's recommendation that the full-scale CWTS Design and construction Plan be submitted 24 months prior to the end of operations and proposed an alternative timeline. Part E, Condition 32 (FULL-SCALE CWTS DESIGN AND CONSTRUCTION PLAN) of the draft Licence proposed that the full-scale CWTS Design and Construction Plan be submitted at the earliest of the following milestones: once five years of data on the demonstration-scale CWTS has been collected, or 48 months prior to the end of commercial operations. Part E, Condition 33 (FULL-SCALE CWTS CONSTRUCTION) of the draft Licence proposed that construction takes place within six months of the Board's approval of the Plan. Board staff requested feedback from all Parties on the proposed changes.

In its review of the draft Licence, the Tłı̨chǫ Government indicated that it did not support the timeline for the full-scale CWTS Design and Construction Plan proposed in Part E, Condition 32 (i.e., once there are five years of demonstration-scale data or 48 months prior to the end of commercial operations, whichever is earlier) (TG comment 10). The Tłı̨chǫ Government stated that the successful performance of the demonstration scale CWTS is no guarantee that the full-scale CWTS will perform as expected, and the end of the mine life does not leave enough time prior to closure should the full-scale CWTS not perform as intended. The Tłı̨chǫ Government reiterated its position that the full-scale CWTS needs to be tested in the first half of the mine life as per EA Measure 7 and recommended that the Licence requires Fortune to re-submit a timeline with input from the CWTS Expert Panel, well in advance of construction. In response, Fortune noted that conducting the CWTS demonstration and full-scale studies later in the life of mine

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[184] See WLWB Online Registry for NICO - Type A WL Renewal - Public Hearing - Day 1 Transcript – Apr 17_26. PDF pp. 63 – 65.
[185] See WLWB Online Registry for NICO – Type A WL Renewal – Public Hearing – Response to Undertaking 4 – Apr 30_26.
[186] See WLWB Online Registry for NICO – Type A WL Renewal – Public Hearing – Response to Undertaking 8 – Apr 30_26
[187] See WLWB Online Registry for NICO - WL Renewal - Draft Water Licence - May 13_26.pdf

when most waste rock and tailing will be in the CDF will provide higher confidence to reviewers of the efficacy of the CWTS. It is Fortune's view that EA Measure 7 does not preclude the use of a demonstration-scale CWTS during the first half of the mine life. Fortune stated that given the demonstration-scale CWTS is scheduled to occur no later than 12 months following commencement of open pit mining, the requirements of Measure 7 will be met, and the timeline does not require input from the CWTS Expert Panel. In addition, Fortune recommended that the timeline for construction of the demonstration scale and the full scale CWTS occur within one year of the Board's approval of the CWTS Design and Construction Plan for each, rather than within six months as proposed in Part E, Condition 30 (DEMONSTRATION SCALE CWTS CONSTRUCTION) and Condition 33 (FULL-SCALE CWTS CONSTRUCTION). Fortune's rationale for this recommendation is that construction would be during spring or summer, and it is unclear when the Design and Construction Plan would be approved.

The Board agrees with Tłįchǫ Government that testing the full-scale CWTS as soon as possible is important given its significance to closure planning and to ensuring that the CWTS will meet the water quality post-closure objectives. The Board recognizes that the demonstration-scale CWTS will be the first of the full-scale wetlands (i.e., CWTS No. 1) and that the design of the full-scale will be informed by the results of the demonstration scale. The Board does not interpret EA Measure 7 as prescribing the precise timing of every phase of the CWTS construction. Rather, the Measure requires an enforceable sequence of pilot, demonstration-scale, and full-scale testing that collectively demonstrates the effectiveness of the treatment system during operations and before closure. In the Board's view, the objective of EA Measure 7 is to ensure that sufficient information is generated early enough in the life of mine to confirm that CWTS is performing as intended and, where necessary, to allow refinements before closure.

The Board also notes that in response to the condition about the timing of the Design and Construction Plan for the full-scale, the Tłįchǫ Government indicated that "the end of the mine life does not leave enough time prior to closure should the full-scale CWTS not perform as intended". The Board assumes that the Tłįchǫ Government is referring to "48-months prior to closure". This timing was proposed by Board staff to ensure that enough data were available prior to closure should there be changes to the expected life of the mine. The Board however has decided to replace "48-month prior" with "or as approved by the Board" to allow flexibility should review of documents related to the demonstration-scale warrant a different timeline. Parties and/or the expert panel may make recommendations on the data required before submitting the Full-Scale Design and Construction Plan.

Under the Licence, Fortune is required to submit the CWTS Studies Report for the demonstration-scale on an annual basis for five years (or as approved by the Board). These reports must include analysis and interpretation of study results in the first half of mine life to demonstrate that the demonstration-scale is effective at treating seepage from the CDF. The Licence further requires the Full-Scale Design and Construction Plan to be submitted following the collection of five years of demonstration-scale data (or as otherwise approved by the Board), with construction to commence within one year of the Board's approval of that Plan. Together, these conditions establish an enforceable process whereby the effectiveness of the demonstration-scale CWTS will be assessed during the first half of mine life, informed by ongoing review from the CWTS Expert Panel and opportunities for Parties to provide comments throughout the review process. The Board notes that despite Fortune stating during the Technical Session that it did not anticipate building the full scale until closer to closure, in response to the draft Licence proposing that the full-scale CWTS be built six months after approval of the Full Scale Design and Construction Plan, Fortune did not disagree with this condition other than recommending that construction be required one year after approval of the Plan. If the Design and Construction Plan for the full-scale CWTS was approved by year seven (i.e., assuming the CDF is built by year two and five years of data have been obtained), then the full-scale would still be built in the first half of the mine life (i.e., in less than 10 years). The Board considers this staged approach to be consistent with the intent of EA Measure 7, as it provides that parties will have opportunities to weigh in on the effectiveness of the demonstration-scale CWTS based on the results in the CWTS Studies Reports; that the Panel will provide it's comments on the effectiveness of the demonstration-scale and potentially on the timing of when the full-scale should be built; and that the licence conditions require the full-scale CWTS to be built within the first half of the mine, the Board is satisfied that the requirements of EA Measure 7 have been addressed.

6.7 Part F: Conditions Applying to Waste and Water Management and Schedule 5

Part F and Schedule 5 of the Licence contain conditions applying to waste and water management activities for the Project.

Conditions included in the draft Licence for which no concerns were raised have been included in the Licence and are not discussed below, unless required for context. The discussion in subsections below focuses on conditions for which concerns were raised as part of this proceeding and outline the Board's decision with respect to the Licence.

6.7.1 Waste Minimization Report

The previous Licence required that Fortune submit a Waste Minimization Report (WMR) with options for optimizing effluent quality prior to discharge (i.e., Part H, Condition 3). As construction was delayed and discharge did not commence, the Report has not yet been submitted to the Board. During the public review (Board staff comment 112) and at the Technical Session, Board staff noted that the WMR has potential implications on EQC.[188] Board staff further discussed the issue at the Public Hearing, as Fortune had not proposed a timeline to align the submission of the WMR with the EQC Re-evaluation Report (further discussed in Section 6.7.4). Board staff noted that sequencing these submissions would allow consideration of any implications that the bench-scale testing results included in the WMR might have on EQC. In response to Undertaking 4, Fortune proposed that the WMR and the EQC Re-Evaluation Report be submitted a minimum of 12 months prior to construction.

The draft Licence for review included in Condition 3 (WASTE MINIMIZATION REPORT) the timeline proposed by Fortune. In its review of the Licence, Fortune noted that it had proposed to dispose of reverse osmosis brine into the CDF rather than recycling it through the mineral processing plant. As such, Fortune

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[188] See WLWB Online Registry for NICO Mine – WL Renewal – Technical Session – Day 1 Transcript – Mar 2_26, p. 82.

suggested to revise Condition 3 to remove item (b)(ii) (i.e., recycling of reverse osmosis brine into the mineral processing plant). The Board acknowledges that Fortune discussed this change in approach to reverse osmosis brine waste at the Technical Session;[189] however, the Board is of the view that this requirement offers potential operational flexibility and does not prevent Fortune from proposing an alternative approach to brine residue management (e.g., disposing it off into the CDF) with adequate rationale for the Board to consider. At this point there is not enough evidence that indicates this requirement is no longer needed. The Board notes that should changes to this approach be required, it has been noted that the EQC Re-evaluation may trigger an amendment and this issue can be discussed at that later stage once more evidence is made available to the Board.

6.7.2 Management Plans and Monitoring Programs

Part F: WASTE MANAGEMENT PLAN - REVISED

All applicants must submit detailed waste management information, identifying all types of waste that will be produced by the project (including quantity and quality) and describing the disposal methods that are proposed for each type of waste. For most applicants, this will be in the form of a Waste Management Plan (WMP), developed in accordance with the LWB *Guidelines for Developing a Waste Management Plan*,[190] and licences and permits will include standard conditions regarding compliance with the Plan, as approved by the Board. The Guidelines can be applied to a wide range of projects and are intended to ensure that all waste management activities are carried out in a way that is consistent with best practices and applicable guidelines to minimize waste released from a project.

Fortune included a WMP, Version 3.0, in the Applications.[191] The Board considered this Plan as part of the Application Package because Fortune indicated during the public review (response to Board staff comment 1) that it was seeking approval of this Plan.

In its Intervention, the Tłı̨chǫ Government noted that Fortune has proposed to bury inert and non-inert waste on-site and commented that this can be perceived negatively and have long-term negative impacts on cultural use.[192] The Tłı̨chǫ Government recommended that Fortune further engages on this issue, so that input from Tłı̨chǫ Elders can be considered. In their review of the draft Licence, the Tłı̨chǫ Government recommended that the Plan be revised to indicate that on-site disposal of waste, other than tailings and waste rock, is not approved until further engagement with the Tłı̨chǫ Government (TG comment 25). In response, Fortune noted that on-site waste disposal is a standard practice at other mines and can mitigate environmental impacts such as vehicle and fugitive dust emissions from driving the material off-site, road traffic, and reliance on solid waste facilities. Fortune also noted that this activity was within the scope of the Project as assessed during the Environmental Assessment and did not agree that further approval is required for the proposed waste management practices. The Board recognizes

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[189] See WLWB Online Registry for NICO Mine – WL Renewal – Technical Session – Day 1 Transcript – Mar 2_26, pp. 86, 108-112.
[190] See WLWB Policies and Guidelines webpage to access the LWB *Guidelines for Developing a Waste Management Plan*.
[191] See WLWB Online Registry for NICO Mine - WL Renewal Application - Waste Management Plan - Version 3.0 - Nov 20_25.pdf
[192] See WLWB Online Registry for NICO - Type A WL Renewal - TG Intervention - Apr 8_26.pdf Recommendation 14

that the approach proposed by Fortune is often utilized at similar project sites; however, given the Tłı̨chǫ Government has raised this as a concern, further engagement on this topic is needed to ensure that the perceived risk by the users of the land is considered and potential adverse impacts of the Project on traditional use and cultural values is minimized. As such, the Board requires that Fortune further engages on waste disposal options at the site with affected Parties on this topic, prior to the submission of the next version of the WMP. The Board requires that the next version of the WMP include an engagement log detailing how Parties' concerns and/or recommendations related to on-site disposal have been addressed in the WMP.

- ***Decision #4: Fortune to Engage Parties on on-site disposal of waste, other than tailings and waste rock.***

- ***WMP Revision #1: include an engagement log detailing how Parties' concerns and/or recommendations related to on-site disposal have been addressed in the WMP.***

During the public review of the Applications, Board staff noted that there was outstanding Board direction on the WMP, Version 1.0. In the Reasons for Decision for the care and maintenance Permit and the mineral exploration Permit, the Board required Fortune to submit Version 2.0 of the Plan for Board approval.[193] However, Fortune submitted Version 3.0 of the WMP with the Applications, and the conformity table did not summarize how Version 3.0 addressed each of the requirements in the Board's Reasons for Decision on Version 1.0 (Board staff comment 88). Fortune responded that it "made the decision to not align the mining water licence management plans with the care and maintenance land use permit management plans," as the two authorizations envision different activities.

The Tłı̨chǫ Government also noted in its review of the Applications that Fortune did not identify changes to previous management plans which would help in understanding all proposed changes to the Project (TG comment 32). Fortune responded that the previous management plans were drafts based on a conceptual mine plan and were not approved by the Board; therefore, Fortune did not see the need for drawing comparisons to the previous versions. However, the Board notes that per the LWB's Document Submission Standards[194] if the submission does not satisfy some or all of the direction on the previous Version, rationale must be provided in a conformity table. To assist reviewers in being able to track changes, and to ensure transparency and clarity, the Board requires Fortune to update the revision history table, and to provide a conformity table addressing previous Board direction per the LWB's Document Submission Standards in the next submission of the WMP.

- ***WMP Revision #2: update the WMP with an updated revision history table, and a conformity table addressing previous Board direction, per the LWB's Document Submission Standards address.***

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[193] See WLWB Online Registry for Fortune - NICO Project - Land Use Permit - Reasons for Decision - Mar 23_16.pdf
[194] See WLWB Webpage for LWB Document Submission Standards (2023)

In addition, updates to the WMP are required to harmonize the Plan with the new LWB Guideline for Design, Operation, Maintenance, and Closure of Petroleum Hydrocarbon-Contaminated Soil Treatment Facilities in the Northwest Territories,[195] to include visual monitoring of seepage from the ammonium nitrate (ANFO) Emulsion Plant (as discussed in Section 6.11.2), and to reflect updates Fortune committed to during the regulatory proceeding (i.e., GNWT Inspector comment 2; GNWT-ECC comment 25, 26, 27, 29; Board staff comments 68, 70,80, 82 through 87).

- ***WMP Revision #3: Update the document to align with the LWB Guideline for Design, Operation, Maintenance, and Closure of Petroleum Hydrocarbon-Contaminated Soil Treatment Facilities in the Northwest Territories.***

- ***WMP - Revision #4: Propose regular visual monitoring for seepage at the ANFO Emulsion Plant outside of freshet and heavy rainfall.***

- ***WMP Revision #5: Update the WMP to reflect commitments made during the regulatory proceeding (i.e., GNWT Inspector comment 2; GNWT-ECC comment 25, 26, 27, 29; Board staff comments 68, 70,80, 82 through 87).***

The Board notes that in its review of the draft Licence, the Tłı̨chǫ Government (comment 12) and YKDFN (comment 43) recommended to extend the timelines for submissions that would be required prior to construction. To ensure there is adequate time for public review and Board consideration, and to reduce burden on reviewers given the number of submissions required prior to construction, the Board has decided to extend the timeline for submission of the WMP to 60 days prior to construction timeline to a minimum of 90 days. The Board notes that Fortune can chose to space out submissions required a minimum of 90 days prior to construction, to avoid overlapping timelines.

The Board has not approved the WMP, Version 3.0 as submitted with the Applications given the Tłı̨chǫ Government asked for additional engagement which may require updates in the plan and that there was outstanding Board requirements not addressed in Version 3.0. The Licensee must revise the Plan and submit Version 3.1, a minimum of 90 days prior to construction with Revision #1-5.

- ***Decision #5: To not approve the Waste Management Plan, Version 3.0. Fortune is to revise the Plan to include Revisions #1-5. Version 3.1 should be submitted to the Board, for approval, a minimum of 90 days prior to commencement of construction.***

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[195] See WLWB Website for LWB's Guideline for Design, Operation, Maintenance, and Closure of Petroleum Hydrocarbon-Contaminated Soil Treatment Facilities in the Northwest Territories.

Once submitted, the revised Plan will undergo the Board's standard public review process before being considered by the Board. To ensure that no waste is produced before appropriate waste management practices are in place, the Licensee may not commence Project activities until the Plan has been approved.

The Permit also includes conditions regarding the WMP, and the Board mirrored these Licence and Permit conditions as much as possible to ensure one submission will satisfy the requirements of both authorizations.

Part F: WATER AND WASTEWATER MANAGEMENT PLAN

Condition 7 (WATER AND WASTEWATER MANAGEMENT PLAN) and Schedule 5, Condition 1, list the requirements for the Water and Wastewater Management Plan. This Plan is required to ensure water and wastewater are managed in accordance with the *Waters Act* and the objectives listed in Part F, Condition 1 (OBJECTIVE – WASTE AND WATER MANAGEMENT) of the Licence, from construction to operation to closure.

The Applicant submitted Version 2.0 of the WWMP with the Applications.[196] During the public review, Fortune confirmed it was not seeking approval of the WWMP at issuance (response to Board staff comment 1) and indicated that it will submit an updated WWMP 90 days prior to the commencement of construction. In response to YKDFN recommendations on the WWMP,[197] Fortune also expressed that "the modelling and processes presented within the WWMP require update prior to approval" and that it will "review YKDFN's comments on the draft WWMP and seek opportunities to discuss the WWMP prior to re-submission for approval prior to the start of construction."

The Board acknowledges that a number of comments and recommendations were provided by Parties through the Application review. Given the WWMP was not considered for Board approval during the proceeding, the Board is providing limited direction on specific comments and requires Fortune to consider all of the WWMP-related comments gathered through this proceeding to help inform the next version of the WWMP (i.e., Version 3.1).

With its renewal Applications, Fortune requested to remove the Emergency Spill Containment Pond (ESCP) (i.e., SNP 09) as it has proposed to merge this structure with the Surge Pond (i.e., SNP-12). During the review of the Applications, Board staff (comment 72) noted that the WWMP did not seem to capture this update, as the ESCP was still part of the Mine Water System in the WWMP. According to the Plan, the ESCP is designed as a contingency pond to capture spilled tailings in the event of a tailings pipeline rupture and intercept seepage and runoff from the CDF. Board staff asked Fortune to provide rationale for the proposed change, to clarify how merging the ESCP with the Surge Pond would affect water management on site, and whether this has been accounted for in the capacity of the Surge Pond. In response Fortune

[196] See WLWB Online Registry for NICO Mine - WL Renewal Application - Water and Wastewater Management Plan - Version 2.0 - Nov 20_25.
[197] See WLWB Online Registry for NICO - Type A WL Renewal - YKDFN Intervention - Apr 8_26.

stated that designs have been conceptual and that final designs will be provided in Design and Construction Plans and updated in the WWMP. ECCC recommended during the public review that all references to the ESCP be removed from the WWMP, and that the water balance and all schematic figures are updated to reflect the removal of this structure (ECCC comment 6). Fortune agreed to these revisions. In the draft Licence, Board staff proposed to remove the Emergency Spill Containment Pond, as requested by Fortune. However, in their review the Tłı̨chǫ Government (comment 2) noted that Fortune has not provided rationale as to why this structure is no longer needed and recommended that the Licence conditions and definitions maintain Board's oversight over the Emergency Spill Containment Pond, unless Fortune can demonstrate otherwise. In consideration of Fortune's responses, the Tłı̨chǫ Government indicated in its closing arguments that Fortune needs to demonstrate that the new configuration has sufficient storage capacity and design to function as both a surge pond and emergency storage for tailings. As this has not been demonstrated, the Tłı̨chǫ Government recommended that the water Licence allows flexibility for this possibility.

As discussed in section 6.11.1, the Board notes that the design for the CDF is still in development and has not been approved, and Fortune will be required to provide the detailed design for approval, with recommendations from the expert panel's review. It is the Board's opinion that removing the ESCP from the Licence allows flexibility for Fortune to provide the required evidence that the new configuration has sufficient storage capacity and adequate design, and for Parties and the Board to further consider this request through the review and approval process. At this time, the Board has determined it is practical to remove this structure from the Licence (see section 6.11.1 for further details) and requires revisions to the WWMP so that it describes the appropriate configuration of water management structures.

- ***WWMP Revision #1: Fortune to revise the Plan to include the alternative configuration of Water Management Ponds that accounts for merging the Emergency Spill Containment Pond and the Surge Pond, and demonstration that this new configuration has sufficient storage capacity and is designed to function as both a surge pond and emergency containment.***

Section 4.1 of the WWMP, indicates that monitoring of groundwater down-gradient of the CDF will occur to verify that the flow and chemical characteristics of any groundwater seepage from the facility does not impact down-gradient water quality. The Plan also states that this program will include installation and sampling of groundwater monitoring wells downstream of the CDF and will be described in future versions of the WWMP. In response to a public review question from Board staff (comment 76), Fortune clarified that the groundwater monitoring plan will be developed in a future version of the WWMP and will include locations and well identifiers, well depths, sampling frequency, and analytical parameters. Fortune further indicated that wells will be operational monitoring stations used to support interpretation of the SNP dataset for surface water, as applicable.

GNWT-ECC also commented on groundwater monitoring during the Technical Section and an Information Request (IR6) was issued to Fortune, for a description of how water withdrawals from Lou Lake and the

Marian River will affect groundwater-surface water interactions.[198] In response, Fortune referenced the groundwater flow model presented in the DAR.[199] In its intervention, the GNWT-ECC recommended that the "Groundwater Monitoring Plan assess artesian conditions within the CDF footprint, including vertical hydraulic gradients, to be incorporated in groundwater modelling accordingly." GNWT-ECC also recommended that "the updated plan also includes new downgradient monitoring wells to allow for effective detection of seepage, characterization of changes from baseline, and support for adaptive management." In Fortune's response to Interventions, Fortune responded that "A future groundwater monitoring plan will be included in an update to the WWMP".

This topic was further discussed at the Public Hearing; Undertaking 2 requested Fortune to clarify whether a loss of artesian pressure had been accounted for in the existing groundwater model for the site and whether the groundwater model will be updated as part of the WWMP to account for this and other scenarios such as varying climatic inputs/outputs and the influence of discrete fractures. Fortune indicated that the isolated occurrence of artesian pressure may indicate that the drill intercepted an area of fracturing or faulting or may be due to drill monitoring equipment.[200] Fortune further noted that the groundwater model previously included in the DAR address groundwater flow regimes, water table elevations, and the effects of mining on hydraulic gradients and discharge zones" and "considers the potential for changes in groundwater discharge to lakes and streams, including baseflow contributions and the effects of pit dewatering and CDF seepage management." Fortune stated based on this, it did not propose updating the groundwater model as part of the WWMP.

In the draft Licence Board staff proposed Part G, Condition 11 (GROUNDWATER MONITORING BASELINE DATA REPORT) for the collection of additional baseline groundwater data (see Section 6.8.2) and a requirement under the WWMP (i.e., Schedule 5, Condition 1) to monitor groundwater down-gradient of the CDF during operations to verify that the flow and chemical characteristics of any Groundwater Seepage does not impact down-gradient Water quality. In its closing arguments, the GNWT-ECC welcomed the proposed monitoring down-gradient of the CDF and recommended additional details on the Year-1 groundwater monitoring to be included in the forthcoming WWMP.[201] The GNWT-ECC also proposed a requirement for further supplemental groundwater baseline data should Year-1 data indicate that additional data collection is needed, which is further discussed in Section 6.8.2. GNWT-ECC reiterated in its closing arguments its recommendation that Fortune updates the groundwater model to include consideration of climate factors and the influence of discrete fractures and provides this update with the next submission of the WWMP. In response to closing arguments, Fortune reiterated that the groundwater model presented in the DAR is adequate for the purposes of developing the monitoring and response thresholds within the WWMP. Fortune further noted the following:

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198 See WLWB Online Registry for Fortune - NICO Mine - Technical Session - Information Requests - Feb 27_26.pdf
199 See Fortune Minerals (2011) Developer's Assessment Report APPENDIX 11.I Groundwater Modelling.
200 See WLWB Online Registry for NICO - WL Renewal - Public Hearing - Fortune Response to Undertakings - Apr 30_26. Response to Undertaking 2.
201 See WLWB Online Registry for NICO Mine - WL Renewal Application - GNWT Closing Arguments - Jun 23_26.pdf

> While the existing groundwater model did not specifically include estimates for precipitation, runoff or evaporation, these variables were included in the measured data (DAR Groundwater Modelling Appendix 11.I Section 11.I.5) and the modelled outputs are considered a reasonable match with measured results during model calibration. The groundwater model describes boundaries for changes to groundwater and surface water that may result from the open pit. The monitoring program to be described in the WWMP will either confirm these expectations or detect variances between the modelled and observed changes. Adaptive management to respond to any variances will be described through the response framework and will include triggers for both increased monitoring and additional mitigation to avoid environmental impacts. Updating the groundwater model will be a costly and time-consuming exercise that is unlikely to change either the conclusions or the monitoring and will not change Fortune Minerals' confidence that water licence conditions and criteria can be met.

The Board agrees that the factors not accounted for in the model and identified by GNWT-ECC, such as the potential loss of confining conditions, the influence of discrete fractures, and inputs and outputs from precipitation, runoff, and evaporation, can have a significant influence on the water balance and implications on the design of water management infrastructure. The Board notes that additional baseline data requirements have been determined (see section 6.8.1 for further details). Once additional baseline data is submitted (i.e., groundwater monitoring baseline data report and the supplemental baseline monitoring) together with results from the Waste Minimization Report, the Board expects an update to the groundwater model with consideration of these data and of the influencing factors discussed by GNWT-ECC throughout this proceeding. The Board also expects that results from the model update be used as supporting information in the EQC re-evaluation report and to inform the anticipated amendment application. The Board recognizes that the results of the model could have implications to how water is managed on site and will, therefore, require an update to the WWMP. Per part B, Condition 10 (REVISIONS) Fortune may propose changes at any time by submitting revised plans to the Board, for approval.

- ***WWMP Revision #2: Fortune to revise the WWMP to include the results of the groundwater model update.***

The Board notes that groundwater monitoring results during operations will be reported through the SNP Reports and the Water Licence Annual Report (i.e., SNP station 23). The Board acknowledges that Fortune proposed to include a groundwater monitoring plan within the WWMP; however, did not clarify where it would include characterization of changes from baseline and verification that the flow and chemical characteristics of any groundwater seepage from the facility does not impact down-gradient water quality (as it committed to in response to Interventions). The Board notes that while the plan for how monitoring is to be carried out is normally included in Management Plans, the results and analyses are not generally reported in Management Plans. The Board is of the opinion that these analyses would be best suited to be included in the Annual Report. Therefore, the Board has updated the schedule for the Annual Report to include the following requirements: A summary and interpretation of the flow and chemical characteristics of any groundwater seepage from the facility compared to down-gradient water quality; and a comparison of annual groundwater monitoring results to the baseline groundwater monitoring (Schedule 1, Condition 1).

In review of the draft Licence, DFO recommended that Fortune conduct additional modelling to ensure that proposed water withdrawal rates from Lou Lake and the Marian River will not result in adverse effects to fish habitat (DFO comment 9). Fortune responded that baseline characterization and additional monitoring will be conducted and committed to confirming "that conditions in Lou Lake and the Marian River remain substantially unaltered with no changes to fish habitat or fish strandings." The Board also notes that conditions in Part D, require that Fortune through submission of the AEMP Design Plan and the CRP ensure that water withdrawal from Lou Lake, and the Marian River do not substantially alter water quantity and rate of flow, as per EA Measure 2 and the Tłı̨chǫ Agreement. As further discussed in Sections 6.8.3 and 6.10, Fortune has committed to hosting workshops with Parties prior to the submission of the AEMP and the CRP; therefore, there will be opportunities to further discuss these recommendations to ensure that the authorized water withdrawal aligns with the requirements of EA Measure 2 and the Tłı̨chǫ Agreement. In its closing argument, DFO expressed that any determination of harmful impacts to fish and fish habitat would be addressed through the Request for Review and the potential application for authorization under the Fisheries Act.[202] The Board notes that as discussed in the Preliminary Screening, Fortune proposed mitigations that protect fish and aquatic habitat.[203] As such, the Board has not included requirements for additional modelling at this time. However, as suggested by Fortune in response to DFO (comment 5), the Board has included conditions for field monitoring and contingency requirements during water withdrawal activities under the schedule requirements for the WWMP (Schedule 5, Condition 1).

In addition, as discussed in section 6.11.2 the Board requires Fortune to revise the WWMP to provide information related to monitoring of the Sewage Treatment Plant effluent during all phases of the project and an updated Schedule 8 if changes to the SNP are warranted.

- ***WWMP Revision #3: Fortune to revise the WWMP to include information related to monitoring of the Sewage Treatment Plant effluent during all phases of the project and an updated Schedule 8 if changes to the SNP are warranted.***

The Board notes that Fortune agreed to update the WWMP in response to comments (see Appendix C) and in response to IR7. These commitments are to be addressed in the next version of the WWMP.

- ***WWMP Revision #4: Fortune to revise the WWMP to include commitments in response to comments on the Application, including GNWT-ECC comment 48; Board staff comment 63, 64, 65, 66, 67, 69, 70, 71, 75, and 77; ECCC comments 2 and comment 8; and TG comment 32; Response to Information Request #7 (IR7).***

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[202] See WLWB Online Registry for NICO Mine - WL Renewal Application - DFO Closing Arguments - Jun 23_26.pdf
[203] See NICO preliminary screening and reasons for decision

The Board has not approved the WWMP, Version 3.0, as submitted with the Applications. Based on comments from the Tłı̨chǫ Government (comment 12) and YKDF (comment 43) regarding adequate time for review, the Board has revised the submission timeline, recognizing the number of submissions that will be received prior to construction. The Licensee must revise the Plan and submit Version 3.1, a minimum of 90 days prior to commencement of construction, to include Revisions #1-4, updates as agreed to during the regulatory proceeding, to reflect the Project activities, and to meet the applicable guidelines.

- ***Decision #6: To not approve Version 3.0 of the Water and Wastewater Management Plan, and to require Fortune to submit Version 3.1 of the Plan with Revisions #1-4, a minimum of 90 days prior to commencement of construction.***

Once submitted, the revised Plan will undergo the Board's standard public review process before being considered by the Board. To ensure that no waste is produced before appropriate waste management practices are in place, the Licensee may not commence construction until the Plan has been approved.

Part F: GEOCHEMICAL CHARACTERIZATION AND MANAGEMENT PLAN

A Geochemical Characterization and Management Plan (GCMP) was required under the previous Licence and has been included in this Licence under Condition 8 (GEOCHEMICAL CHARACTERIZATION AND MANAGEMENT PLAN) and Schedule 5, Condition 4. This Plan is required to ensure construction material is managed in accordance with the *Waters Act* and the objectives listed in Part F, Condition 1 of the Licence. Fortune didn't submit a GCMP with the previous licence nor with the renewal Applications.

In the previous Licence, Part F, Condition 8, 9 and 15, indicated the type of material to be used in the construction of Earthworks and the criteria for defining Type 1a material. As further discussed in Section 6.8 (i.e., Geochemical Criteria), Board staff proposed in the draft Licence that this information be included in the GCMP rather than in conditions in the Licence.

In addition, the previous Licence included in Part H, Condition 26, which required that the Licensee sample and test tailings solids on a biweekly basis for acid base accounting and metal analyses to confirm that the tailings are not potentially acid generating; and Condition 27, which required the following:

> If results of the tailings analyses referred to in Part H, Item 25 indicate that the ratio of neutralization potential to acid potential or the ratio of total inorganic carbon to acid potential is less than 2, and total sulphur concentrations are greater than 0.1%, the Licensee shall: a) report the results to the Board and an Inspector within 30 days of sample collection; and b) submit to the Board and an Inspector plans for further sampling and testing to better understand the variability in the ARD potential. If two or more of these samples indicate that the ratio of neutralization potential to acid potential or the ratio of total inorganic carbon to acid potential is less than 2 and total sulphur concentrations are greater than 0.1% in more than 10% of the samples, then the Licensee shall prepare a Response Plan that addresses the increased potential ARD. Within 30 days after receiving

the results of such sampling, the Licensee shall submit the Response Plan to the Board for approval.

The Board requires that the Geochemical Characterization and Management Plan, be submitted in accordance with Schedule 5, Condition 4, and include the following information:

- Waste Rock or overburden used in the construction of all Earthworks, excluding the CDF, should be Type 1a material;
- The criteria for defining Type 1a material is material with less than 0.05% total sulphur, less than 100 ppm arsenic, and less than 50 ppm bismuth, unless otherwise approved by the Board;
- Requirements under Part H, Conditions 26 and 27 of the previous Licence, including a response framework that addresses the requirement for a Response Plan, per Condition 27.

As per the Reasons for Decision on the previous Licence, should Fortune wish to propose different criteria for Type 1a material, the following conditions should be met:

1. the Licensee demonstrates to the Board's satisfaction that the Type 1a criteria will result in insufficient material for use in construction;
2. the Licensee proposes the lowest practical criteria that minimize Acid Rock Drainage and Metal Leaching; and
3. the Licensee submits an update to the Geochemical Characterization and Management Plan to reflect the new criteria.

No parties commented on the proposed timing for the submission of the Plan. Therefore, per Condition 8, Fortune is required to submit Version 1.0 of the Plan a minimum of six months prior to the commencement of construction. Once submitted, Version 1.0 of the Plan will undergo the Board's standard public review process before being considered by the Board. Until the Plan is approved, the Licensee may not commence construction.

- ***Decision #7: The Board requires that the Geochemical Characterization and Management Plan, Version 1.0, include requirements previously under Part F, Condition 8, 9 and 15, and Part H, Conditions 26 and 27 of the previous Licence, including a response framework that addresses the requirement for a Response Plan.***

<u>Part F: EXPLOSIVES MANAGEMENT PLAN</u>

Fortune included an Explosives Management Plan, Version 1.0, with the Application. However, during the public review Fortune did not indicate it was seeking approval of this Plan at Issuance (response to Board staff comment 1).

The draft Licence circulated for review included a Condition to submit an Explosives Management Plan for Board approval (EXPLOSIVES MANAGEMENT PLAN). The Condition requires that a minimum of 60 days prior to the commencement of construction, Fortune is to submit an Explosives Management Plan which meets the objective of minimizing nitrogen species (i.e., ammonia, nitrate, and nitrite) loading to the

Receiving Environment, and satisfies the requirements of Schedule 5, Condition 3. The Condition included in the draft Licence also required that open pit mining is not to commence until the Board has approved the Plan. However, the Board acknowledges that, as identified by GNWT-ECC in their review of the Application (GNWT-ECC comment 6), the Plan indicates that explosives will be used to level areas for surface operations and for construction of site facilities. Therefore, in the issued Licence the Board revised the Condition to require Fortune not to commence construction, until the Plan has been approved by the Board.

YKDFN and Tłı̨chǫ Government commented that given the number of submissions coming in at once, a 60-day timeframe does not provide sufficient time for review and approval (YKDFN draft Licence comment 19 and TG draft Licence comment 12). The Board notes that the standard review timeline for most submissions is at least 90 days to allow for review and approval and recognising the amount of information that will be submitted prior to construction, the Board has adjusted the timeline in the Condition requiring that the Plan be submitted a minimum of 90 days prior to construction.

In its review of the Licence, DFO (comment 11) recommended that the condition be revised to include modelling confirming thresholds of 50 Kpa overpressure and that the particle velocity will not exceed 13 mm/s at the nearest fish-bearing waterbodies. In its response, Fortune committed to meeting these thresholds. In its closing arguments, DFO acknowledged Fortune's commitment to meet these thresholds and agreed that this information can be kept within the Explosives Management Plan, rather than in a Licence condition.

- ***Explosives Management Plan Revision #1: Fortune to revise the Explosives Management Plan, Version 1.0, to reflect updates as agreed to during the regulatory proceeding, including commitments made in response to DFO recommendations (e.g., DFO comment 11 on the draft Licence).***

- ***Explosives Management Plan Revision #2: Fortune to revise the Explosives Management Plan, Version 1.0, to include the exact location of the ANFO Emulsion Plant, as discussed in section 6.11.2, with reference to Station SNP_20 Downstream of the ANFO Emulsion Plant.***

The Board has not approved the Explosives Management Plan, Version 1.0, as submitted with the Application. Given that Fortune indicated it was not seeking approval of this document at issuance (response to Board staff comment 1), Parties may not have reviewed this document with the same level of detail as plans that were submitted for approval. The Licensee must revise the Plan and submit Version 1.1, a minimum of 90 days prior to construction, to include Explosives Management Plan Revisions 1 and 2, to reflect updates as agreed to during the regulatory proceeding (see Appendix C), and to cross-reference any related information in the WMP or any other Plan.

- ***Decision #8: To not approve Version 1.0 of the Explosives Management Plan and to require Fortune to revise the Plan to include Revisions #1 and #2, and submit Version 1.1, a minimum of 90 days prior to construction***.

Once submitted, the revised Plan will undergo the Board's standard public review process before being considered by the Board. Until the revised Plan is approved, the Licensee may not commence activities described in the Plan.

Part F: CO-DISPOSAL FACILITY MANAGEMENT PLAN

The draft Licence included Condition 10 (CO-DISPOSAL FACILITY MANAGEMENT PLAN) requiring submission of the CDF Management Plan a minimum of six months prior to construction of the CDF. The draft Licence also included requirements for the Plan under Schedule 5, Condition 5.

In its review of the Licence, the Tłı̨chǫ Government (comment 21) noted that the Licence requires that the CDF Management Plan include expected quantities and destinations for Tailings and the different types of Waste Rock that will be produced each year. The Tłı̨chǫ Government recommended that this requirement be expanded to include any other type of waste Fortune proposes to dispose in the CDF (e.g., reverse osmosis brine, etc.). In response, Fortune indicated that this reporting is already covered under the Annual Water Licence Report, in Schedule 1, Conditions 1(i) and (j). As noted by Fortune, the Annual Water Licence Report requires reporting of a summary of activities conducted in accordance with the approved CDF Management Plan, including a summary of the monthly and annual quantities, in cubic metres and tonnes, of each type of Waste Rock placed in CDF. However, the Board notes that this requirement is a summary of the information reported under the appropriate Management Plan (i.e., CDF Management Plan). The Board is of the view that it is appropriate to include this information within the CDF Management Plan and has included a requirement to report the expected quantities of each type of Waste Rock placed in CDF under Schedule 5, Conditions 5(a).

Part F: DUST, EROSION, AND SEDIMENTATION MANAGEMENT PLAN

Fortune submitted an Erosion and Sedimentation Management Plan (ESMP), Version 2.0, with the Applications.[204] Board staff had questions related to the ESMP during the review of the Applications which were addressed by Fortune (i.e., Board staff comments 94 through 97). The Board expects that these be considered in the next submission of the Plan.

- ***ESMP Revision #1: Incorporate commitments made in response to public review comments (i.e., Board staff comments 94 through 97).***

A Response Framework for erosion monitoring was included in the ESMP (Table 10) describing Total Suspended Solids (TSS) concentration thresholds, action levels, and associated response during in-water construction. The Response Framework includes a High Action Level (HAL) threshold as follows: TSS exceeds 25 mg/L above background at both the first and second downstream transects. During the public review, Board staff (comment 97) asked whether Fortune considered the potential scenario where TSS/turbidity continues to increase beyond 25 mg/L above background at station 1, and it is confirmed

[204] See WLWB Online Registry for NICO Mine - WL Renewal Application - Erosion and Sedimentation Management Plan - Version 2.0 - Nov 20 25.pdf

the TSS source is linked to the Project, but station 2 remains below the HAL trigger (i.e., 20 mg/L). Board staff further noted that it is unclear whether work would slow down or all instream activity stop should this scenario occur. As currently stated in the Response Framework, instream work will only stop if the HAL is triggered. Fortune responded the following:

> In a scenario where TSS concentrations continue to increase above 25 mg/L at the first downstream transect but remain below 20 mg/L at the second downstream transect, a Medium Action Level would be exceeded. The response actions for the Medium Action Level include slowing down the work to reverse the upward trend before exceeding a High Action Level. Responses for the High Action Level (e.g., stop work and implement additional mitigation) would only occur when TSS concentrations are above 25 mg/L at both the first and second downstream transects. The proposed action levels and responses are similar to other water licences issued in the NWT (e.g., MV2021L8-0007).

Board staff reiterated this concern at the Technical Session, and at the Public Hearing [205] and Fortune proposed updates to the Response Framework in response to Undertaking (U6).[206] In the response, Fortune proposed to update the ESMP to clarify that there will be three turbidity monitoring transects downstream from the work site, located at 50, 100 and, 200 m, and that the HAL would be exceeded when TSS concentrations are above the trigger value at both the first and second downstream transect. However, as written, the HAL requires both stations to be above the threshold to trigger a HAL response, and this raises the concern that TSS concentrations in station 1 could continue to increase while the response to stop all instream activity would not be triggered. The Board notes that a Response Framework is meant to trigger adaptive management actions prior to an exceedance of criteria in the Licence or a management/monitoring plan. Therefore, the Board requires the Response Framework to be updated accordingly.

- ***ESMP Revision #2: Fortune to update the Response Framework to reflect the principle that the High Action Level should trigger adaptive management actions prior to an exceedance of criteria in the Licence.***

EA Measure 3 requires that Fortune prepares a dust mitigation and monitoring plan. The Measure also requires that the Plan incorporates commitments for fugitive dust suppression and dust suppression techniques, and apply lessons learned about dust suppression from other Northwest Territories mine sites. The Plan must be developed in collaboration with Indigenous users of the area, and incorporated in the Water Licence issued by the Board.

The Application package included a Dust Management Plan (DMP), Version 1.0. During the public review, Fortune indicated it would submit a complete DMP 90 days prior to construction and confirmed that it was not seeking approval of the DMP at Issuance (response to Board staff comment 1 and 105). At the

[205] See WLWB Online Registry for NICO - Type A WL Renewal - Public Hearing - Day 1 Transcript - Apr 27_26.pdf, pp. 167 – 168.
[206] See WLWB Online Registry for NICO - WL Renewal - Public Hearing - Fortune Response to Undertakings - Apr 30_26.pdf

Public Hearing, Board staff asked Fortune to clarify where dust monitoring results would be reported, noting that while details regarding management and mitigations go in the appropriate management plans, it was unclear what would the reporting mechanism be for monitoring data.[207] In response to Undertaking 9 Fortune proposed to submit monitoring results in the AEMP annual report.[208] In addition, in response to Undertaking 17, Fortune proposed schedule requirements for the ESMP, and the DMP.[209] As discussed in Section 6.8, Schedule 6, Condition 4(l) was added to the draft Licence for review to include the results of dust monitoring as an item to be reported in the AEMP Annual Report as proposed by Fortune in response to Undertaking 9; Fortune indicated agreement with the proposed condition (response to Board staff comment 90 on the draft Licence).

In addition, the draft Licence, Board staff proposed removing the requirement for a ESMP per Part H, Condition 8 of the previous Licence, and combining the ESMP with the DMP per Condition 11 (DUST, EROSION, AND SEDIMENTATION MANAGEMENT PLAN) of the draft Licence. This was proposed to streamline information and avoid duplication, reduce the burden on reviewers, and to align with the approach taken under Fortune's NICO Project Access Road (NPAR) Licence.[210] No Parties raised concerns with the proposed approach or submission timeline. Therefore, the Board has included a Condition in the Licence for a Dust, Erosion, and Sedimentation Management Plan (DESMP).

Given that the DMP will be combined with the ESMP, the Board has not approved Version 1.0 of the DMP, nor Version 2.0 of the ESMP as submitted with the Applications. The Licensee must combine the DMP and the ESMP and submit Version 2.1, of a DESMP, 90 days prior to construction, to reflect updates as agreed to during the regulatory proceeding, to reflect the changes to Project activities, to meet the applicable guidelines, and to include the following:

- ***Decision #9: To not approve Version 1.0 of the Dust Management Plan and Version 2.0 of the Erosion, Sedimentation, and Management Plan, as submitted with the Application.***

- ***Decision #10: To require Fortune to submit Version 2.1 of the Dust, Erosion, and Sedimentation Management Plan, a minimum of 90 days prior to the commencement of construction, to include ESMP Revisions #1 and #2.***

Once submitted, the revised Plan will undergo the Board's standard public review process before being considered by the Board. Until the revised Plan is approved, the Licensee may not commence construction.

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[207] See WLWB Online Registry for NICO - Type A WL Renewal - Public Hearing - Day 1 Transcript - Apr 27_26.pdf, p. 186, U9
[208] See WLWB Online Registry for NICO - WL Renewal - Public Hearing - Fortune Response to Undertakings - Apr 30_26.pdf, U17
[209] See WLWB Online Registry for NICO - WL Renewal - Public Hearing - Fortune Response to Undertakings - Apr 30_26.pdf
[210] See WLWB Online Registry for NPAR - Water Licence and Land Use Permit - Reasons for Decision - May 11_26.pdf

Part F: EMERGENCY MANAGEMENT PLAN

The draft Licence included a new Condition (EMERGENCY RESPONSE PLAN) that requires Fortune to submit an Emergency Response Plan a minimum of 90 days prior to construction. The draft Licence also included requirements for this Plan under Schedule 5, Condition 6, based on recommendations from the Tłı̨chǫ Government (Intervention's Recommendation 9) and Fortune (response to Undertaking 17).

In its review of the draft Licence the Tłı̨chǫ Government recommended that schedule requirements for this Plan also include "information about roles and responsibilities, hazards and failure modes identified in the risk assessment, communication plans, and recovery plans for catastrophic failures" and that it be updated along with risk assessment updates. The Tłı̨chǫ Government noted that as the Plan will include information about prevention and protective measures, "Emergency Management Plan" would be a more appropriate title, rather than Emergency Response Plan. Fortune responded that it believes these requirements are already embedded within Schedule 5, Condition 6 and didn't comment on the suggested change to the name of the Plan. No other comments were received from Parties. As Fortune did not identify concerns with providing this information, the Board has updated the name of the Plan in Condition 12 and its requirements in Schedule 5, Condition 6, to ensure the requirements are clear. The Board notes that through the review and approval of risk assessments (Part B, Condition 30) the Board can direct Fortune to update or revise any related submissions. Therefore, the Board has not included a requirement in the Licence to update the Plan to align with risk assessment updates.

6.7.3 Operation of Structures and Facilities

Water Management Ponds

In the draft Licence Board staff noted that Conditions 14 (Water Management Ponds) and 15 (Co-Disposal Facility) in Part H of the previous Licence appeared to be duplicative. These conditions set out specifications that apply to the construction, operation, and maintenance of particular structures or facilities to ensure compliance with design specifications and/or best practices, prevent structural failure, and minimize environmental impacts. Board staff asked reviewers whether Conditions 14 and 15 should be combined given that they appeared to be duplicative. The Tłı̨chǫ Government (comment 3) did not object to reorganizing duplicative Licence conditions but recommended the Board ensures it maintains oversight over the design, construction, and operation of the water management system or determines it is no longer needed. The Tłı̨chǫ Government noted that it has not raised issues regarding the water management system in this proceeding because those issues will be addressed when Fortune submits final designs to the Board for approval. YKDFN indicated no concerns with combining Conditions 14 and 15 if the Licence is clear that the Water Management Ponds are a part of the CDF (comments 47 and 48 on the draft Licence). Fortune agreed to combining these conditions given the interconnected nature of the water management ponds and the CDF and indicated that the "CDF includes water management structures, and the Water Management Ponds include multiple structures associated with the CDF (e.g., Surge Pond, seepage collection ponds)".

Given that Fortune has confirmed that the Water Management Ponds are structures associated with the CDF and has not proposed any other Water Management Ponds beyond those connected to the CDF, the

Board has combined Conditions 14 and 15 for clarity and alignment with Standard Conditions into Part F, Condition 13.

6.7.4 Inspection of Structures and Facilities

In the draft Licence circulated for review Board staff proposed including Standard Condition 17 (ANNUAL GEOTECHNICAL INSPECTION) to replace Schedule 6, Condition 6 in the previous Licence, which included the specific items that were required to be included in the Geotechnical Inspection Report. In its review, YKDFN recommended hybridizing Schedule 6, Condition 6 in the previous licence (i.e., Geotechnical Inspection Report) and the proposed Standard Condition, and Fortune agreed with this recommendation. However, the Board is of the view that the Standard Condition is sufficient to cover the required information under Schedule 6 in the previous Licence and does not see the need for including additional requirements. Therefore, the Condition in the draft Licence was included in Part F, Condition 16 of the Licence.

6.7.5 Discharge Locations and Rates

Part F: DISCHARGE LOCATIONS

The Board had previously authorized discharges from the Sewage Treatment Plant, the Effluent Treatment Facility, and the Underground Mine Portal in Licence W2008L2-0004. Discharge from the Sewage Treatment Plant is anticipated to be short term until the Effluent Treatment Facility is commissioned, which will discharge a combined effluent of treated sewage and minewater. Discharge from the Underground Mine Portal is related to exploration activities and will cease once the Effluent Treatment Facility is operational.

No changes to these discharge locations were submitted during the proceeding. The draft Licence for review included Part F, Condition 22 (EFFLUENT DISCHARGE – SEWAGE TREATMENT PLANT), Condition 23 (DISCHARGE – UNDERGROUND MINE PORTAL), and Condition 24 (EFFLUENT DISCHARGE – EFFLUENT TREATMENT FACILITY); these discharge locations were associated with SNP stations SNP_01, SNP 5-2, and SNP_02, respectively. No concerns regarding the discharge locations were raised through the proceeding; therefore, the Board has retained the conditions as proposed in the draft Licence for review. Compliance monitoring associated with these discharge locations is discussed further in section 6.11 of this Reasons for Decision.

6.7.6 Effluent Quality Criteria

The Board's approach to managing the deposit of waste to the receiving waters through water licence conditions is described in the LWB *Waste and Wastewater Management Policy*. The Board has determined that EQC are required for the three authorized discharges and further details are provided below.

Determination for Effluent Quality Criteria for Sewage Treatment Plant Discharge

In the draft Licence included in the Application, Fortune proposed to maintain the existing approved EQC previously set by the Board in Licence W2008L2-0004, with the exception of TSS. Fortune requested an increase in the Maximum Grab Concentration for TSS from 25 to 30 mg/L, with the rationale that "30 mg/L is standard in most northern licences. It is based on the Canadian Council of Ministers of the Environment (CCME) guideline of 25 mg/L over background, and assuming a background of ~5 mg/L for northern lakes (on average)".[211] In addition, Fortune requested to change the oil and grease parameter to total petroleum hydrocarbons, which Fortune indicated was to reflect the laboratory naming convention.

No comments or discussion occurred in relation to the proposed changes to the EQC for TSS in the Sewage Treatment Plant effluent during the Application review, the Technical Session, or the Public Hearing. In the draft Licence for review, GNWT-ECC provided the following under comment 8:

> Fortune has proposed to revise the Maximum Grab Concentration for Total Suspended Solids (TSS) to align with the discharge limits specified under the Metal and Diamond Mining Effluent Regulations. As noted in the GNWT's Intervention, Effluent Quality Criteria (EQC) should be established in accordance with the Board's Standard Process for setting EQC, which states "that water quality-based EQC are to be calculated with the objective of meeting water quality objectives at the edge of the mixing zone."
>
> The original EQC for TSS was established by the Board based on, "the predicted achievable effluent quality associated with the rotary biological contactor chosen by Fortune for Sewage treatment." The Board's Standard Process further identifies that, in addition to the primary objective of protecting receiving water quality, the second and third objectives are to minimize waste generation, and the quantity of waste discharged to the receiving environment.
>
> While these objectives are linked to water quality-based EQC, technology-based EQC are intended to reflect the level of effluent quality achievable through implementing appropriate treatment technologies and waste management practices.
>
> Fortune's proposed revision to the TSS EQC, based solely on alignment with regulatory discharge limits, does not demonstrate consistency with these objectives, nor does it reflect the achievable performance of the selected treatment technology. GNWT-ECC finds that the proposed EQC does not satisfy the intent of the Board's policy. Accordingly, GNWT-ECC recommends that Fortune develop TSS EQC that are consistent with Board's policy and standard process, using either a water quality-based approach or a technology-based approach reflective of the established treatment performance.

Fortune provided the following in response:

> Fortune Minerals will consider water quality and technology-based approaches when reviewing TSS EQC through the EQC Re-evaluation Report. For the current renewal

[211] See WLWB Online Registry for NICO Mine - WL Renewal Application -Draft Water Licence - Nov 20_25.pdf, PDF p. 19.

application, Fortune proposes that EQC for TSS are set at 15 mg/L and 30 mg/L, which are thresholds that are well established across most northern Water Licences. Fortune Minerals welcomes further comment from the GNWT through regulatory review of the EQC Re-evaluation Report.

The Board notes that there appears to be an error in the topic associated with this comment, which was labelled as "Part I, Condition 12 - Performance Assessment Report". The Board acknowledges that the quoted text is associated with the EQC for the Sewage Treatment Plant in the Reasons for Decision for Licence W2008L2-0004.[212] The Board notes that Fortune has indicated wanting to implement the Sewage Treatment Plant for construction and that Board staff identified amending a Type A Licence to modify EQC can take up to a year and could result in potential delays.[213] Therefore, the Board does not see further comment through an EQC Re-evaluation as a viable approach for the Sewage Treatment Plant. The Board also agrees with GNWT-ECC regarding their interpretation of technology-based treatment. While an EQC for Maximum Grab Concentrations of 30 mg/L may be protective, the information provided by Fortune is not sufficient to conclusively determine that is the case, nor has Fortune provided evidence to demonstrate that 25 mg/L is not achievable. In addition, the Board notes that the recent Renewal for the Diavik mine included EQC for TSS of 15 and 25 mg/L for the Closure Sewage Treatment Facility.[214] Therefore, the Board has not authorized the change in the Maximum Grab Concentration for TSS and has retained the EQC of 25 mg/L.

In the review of the Application, Board staff (comment 100) noted that EQC for sewage treatment systems typically include oil and grease because the hydrocarbons present in these systems are not necessarily restricted to petroleum-based hydrocarbons (e.g., fats and oils from cooking). Additional supporting rationale for the change in parameter type was requested. In response, Fortune agreed to retain the oil and grease parameter for the reasons noted by Board staff and to maintain the existing EQC from Licence W2008L2-0004. Retraction of this proposed change in parameter was confirmed at the Technical Session.[215] No concerns were raised by other Parties on retaining oil and grease or on the proposed EQC; therefore, the Board has retained oil and grease as the regulated parameter for the Sewage Treatment Plant and included the EQC as previously authorized under Licence W2008L2-0004.

Licence W2008L2-0004 included EQC for biological oxygen demand. At the Technical Session, GNWT-ECC identified that it is now more common to look at chemical oxygen demand, and Fortune indicated they were amendable to changing the regulated parameter.[216] At the Public Hearing, Board staff noted that the recent licences issued by the MVLWB have included carbonaceous biochemical oxygen demand, which is consistent with the federal Wastewater System Effluent Regulations.[217] Board staff clarified that

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[212] See WLWB Online Registry for NICO Mine - Water Licence and Land Use Permit - Reasons for Decision - Jun 17_14.pdf, PDF p. 77.
[213] See WLWB Online Registry forNICO - Type A WL Renewal - Public Hearing - Day 1 Transcript - Apr 27_26.pdf, pp. 163–164.
[214] See WLWB Online Registry for Diavik - WL Renewal - RFD and Recommendation to the Minister - Oct 17_25.pdf.
[215] See WLWB Online Registry for Fortune - NICO Mine - Technical Session - Transcripts Day 1 - Mar 2_26.pdf, pp. 102–103.
[216] See WLWB Online Registry for Fortune - NICO Mine - Technical Session - Transcripts Day 1 - Mar 2_26.pdf, pp. 67–68.
[217] See WLWB Online Registry forNICO - Type A WL Renewal - Public Hearing - Day 1 Transcript - Apr 27_26.pdf, pp. 161–164.

although these regulations do not formally apply in the NWT, the LWBs recognize these regulations as best practice and consider them when setting EQC for sewage effluents. Board staff also noted that the current EQC values are based on biological oxygen demand and may need to be adjusted if the regulated parameter is changed to chemical oxygen demand. In response to Undertaking 5, Fortune proposed to change the regulated parameter to carbonaceous biochemical oxygen demand and provided revised Maximum Average Concentration and Maximum Grab Concentrations of 20 and 30 mg/L, respectively. These proposed revisions were included in the draft Licence for review, and no concerns were raised by any Parties; therefore, the Board has changed the regulated parameter to carbonaceous biochemical oxygen demand and included the revised EQC as proposed.

Board staff (comment 98 on the Application) noted the following:

> …nitrogen-based EQC have not been included for the STP in the Renewal Application. However, based on the objectives of the Waste and Wastewater Management Policy to protect water quality in the receiving environment and minimize the deposition of waste, and recognizing that the LWB/GNWT Guidelines for Effluent Mixing Zones and LWB Standard Process for Setting EQC were initially released in 2017, it may be necessary to reconsider whether EQC for nitrogen-based parameters should be applicable.
>
> Board staff note that although a treatment specification was provided for ammonia in the Updated Project Description, the Board did not previoulsy [*sic*]set EQC for this parameter and that the 2014 Reasons for Decision do not specify why this was excluded. Board staff also note that ammonia dissolved in water is classed as a toxic substance under Schedule 1 of the Canadian Environmental Protection Act, 1999, and that unionized ammonia may provide the best indicator of toxicity (CCME 2010).[218] Although the Wastewater System Effluent Regulations (WSER) do not apply in the NWT, Board staff note that the LWBs have issued licences that incorporate the unionized ammonia limit as EQC for projects and municipalities with secondary package plant sewage treatment systems. Further information regarding ammonia and the potential for an EQC for this parameter in the STP effluent is required.

In response to Board staff comment 98, Fortune proposed a Maximum Average Concentration EQC of 12 mg-N/L for total ammonia. At the Technical Session, Fortune confirmed that no Maximum Grab Concentration EQC was being proposed.[219] Subsequently, at the Public Hearing, Board staff noted that applying only a Maximum Average Concentration EQC lacks setting of an upper bound limit and Fortune agreed to altering this to an EQC based only on the Maximum Grab Concentration EQC.[220] These proposed revisions were included in the draft Licence for review and

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[218] CCME, 2010. Canadian Water Quality Guidelines for the Protection of Aquatic Life - Ammonia. https://ccme.ca/en/res/ammonia-en-canadian-water-quality-guidelines-for-the-protection-of-aquatic-life.pdf.
[219] See WLWB Online Registry for Fortune - NICO Mine - Technical Session - Transcripts Day 1 - Mar 2_26.pdf, pp. 95–97.
[220] See WLWB Online Registry for NICO - Type A WL Renewal - Public Hearing - Day 1 Transcript - Apr 27_26.pdf, pp. 159–160.

no concerns were raised by any Parties; therefore, the Board has included a Maximum Grab Concentration of 12 mg-N/L for total ammonia (as nitrogen).

No changes were proposed to the EQC for *Escherichia coli* and no Parties raised concerns regarding this parameter. Therefore, the Board has retained the EQC previously authorized in Licence W2008L2-0004.

A summary of the EQC for the discharge of treated sewage from the Sewage Treatment Plant as per Part F, Condition 26 (EFFLUENT QUALITY CRITERIA – SEWAGE TREATMENT PLANT) is provided in Table 2 below.

Table 2: Effluent Quality Criteria for the Sewage Treatment Plant Discharge

Parameter	Unit	Maximum Average Concentration	Maximum Grab Concentration
Total Ammonia (as Nitrogen)	mg-N/L	n/a	12
Carbonaceous Biochemical Oxygen Demand ($CBOD_5$)	mg/L	20	30
Total Suspended Solids	mg/L	15	25
Escherichia coli	cfu/100 mL	400	800
Oil and grease	mg/L	3	5

cfu/mL = colony-forming units per one hundred millilitres; mg/L = milligrams per litre; mg-N/L = milligrams as nitrogen per litre; n/a = not applicable.

Board staff (comment 101 on the Application) noted that a range of pH for the Sewage Treatment Plant effluent was not set out in the previous Licence and Fortune had not proposed adding a pH range in the draft Licence submitted with the Application. The treatment specification was not provided in the Updated Project Description, although it was noted that the influent pH range was identified to be between 6.5 to 8.5, and further information regarding the anticipated pH range for the Sewage Treatment Plant was requested. In response, Fortune stated that "a pH range in the effluent was not provided as the treatment processes are not expected to change the pH prior to discharge." This was further discussed at the Technical Session and Fortune proposed a pH range of 6.5 to 8.5 in response to Information Request 5. This pH range was included in the draft Licence for review and no concerns were raised by any Parties; therefore, the Board has included this pH range as proposed in Part F, Condition 26 (EFFLUENT QUALITY CRITERIA – SEWAGE TREATMENT PLANT).

Board staff (comment 99 on the Application) noted that no treatment specifications were included in the Update Project Description included with the Application. Although Fortune's response to Information Request 5 from the 2013 Technical Session for Licence MV2008L2-0004 included predicted concentrations in Peanut and Burke lakes, Board staff were unable to locate predicted nitrate concentrations in the sewage influent and effluent in the historical information identified to be relevant in response to Information Request 2 of the current Renewal proceeding. In response, Fortune acknowledged that the available treatment specifications did not include nitrate. At the Technical Session, Fortune further indicated that they would request this information but it was unlikely it would be available in time for the

Information Request response deadline and that this information would be provided to the Board once available.[221] At this time, the Board has not set EQC for nitrate but requires confirmation of treatment specifications for the Sewage Treatment Plant prior to commencement of discharge at station SNP_01. The Board reminds Fortune that should nitrate or any other parameter be identified as a new parameter of potential concern requiring EQC, then a Licence Amendment will be required prior to discharge.

Determination for EQC for Underground Mine Portal Discharge

In the draft Licence included in the Application, Fortune proposed to adjust the EQC associated with the discharge from the Underground Mine Portal to align with the Metal and Diamond Mining Effluent Regulations (MDMER) discharge limits; no changes were proposed for cadmium, TSS, or pH. Fortune also proposed to change the oil and grease parameter to total petroleum hydrocarbons and to alter the EQC to 3 and 5 mg/L for Maximum Average Concentration and Maximum Grab Concentration, respectively.

No comments were received and no further discussion on these proposed changes occurred during this Renewal proceeding. The Board notes that the proposed changes result in lower EQC values than what was previously authorized under Licence W2008L2-0004. It is the Board's opinion that these proposed changes are aligned with the LWB *Waste and Wastewater Management Policy*. Therefore, the Board has revised the EQC associated with the Underground Mine Portal discharge as proposed by Fortune.

In addition, the Board agrees that changing the regulated parameter from oil and grease to total petroleum hydrocarbons is appropriate because the discharge from this location would not be expected to contain non-petroleum-based hydrocarbons. As such, the Board has included this revision in the Licence.

Licence W2008L2-0004 set only a Maximum Average Concentration for total ammonia. At the Public Hearing, Board staff identified that this approach lacks setting an upper bound on this parameter. Fortune agreed that setting only a Maximum Grab Concentration EQC would be appropriate.[222] It is the Board's opinion that adjusting this EQC to include only a Maximum Grab Concentration is appropriate as it sets an upper bound limit that is protective. As such, the Board has included this change in the Licence.

A summary of the EQC for the discharge from the Underground Mine Portal as per Part F, Condition 27 (EFFLUENT QUALITY CRITERIA – UNDERGROUND MINE PORTAL) is provided in Table 3 below.

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[221] See WLWB Online Registry for Fortune - NICO Mine - Technical Session - Transcripts Day 1 - Mar 2_26.pdf, pp. 97–98.
[222] See WLWB Online Registry for NICO - Type A WL Renewal - Public Hearing - Day 1 Transcript - Apr 27_26.pdf, pp. 160–161.

Table 3: Effluent Quality Criteria for the Underground Mine Portal Discharge

Parameter	**Unit**	**Maximum Average Concentration**	**Maximum Grab Concentration**
Total Ammonia	mg-N/L	n/a	12
Total Arsenic	mg/L	0.1	0.2
Total Cadmium	mg/L	0.005	0.01
Total Copper	mg/L	0.1	0.2
Total Lead	mg/L	0.08	0.16
Total Nickel	mg/L	0.2	0.5
Total Zinc	mg/L	0.4	0.8
Total Suspended Solids	mg/L	15.0	30.0
Total Petroleum Hydrocarbons	mg/L	3.0	5.0

mg/L = milligrams per litre; mg-N/L = milligrams as nitrogen per litre; n/a = not applicable.

Determination for EQC for Effluent Treatment Facility Discharge

In the draft Licence included in the Application, Fortune proposed to add EQC for copper, lead, nickel, and zinc and requested these EQC be set to align with the MDMER discharge limits. Board staff (comment 102 on the Application) noted that the EQC for copper, lead, nickel, and zinc had been proposed to be set equal to the MDMER discharge limits; however, these parameters did not screen in as parameters of potential concern based on the historical information that Fortune re-submitted in support of the Effluent Treatment Facility-related EQC, which made it unclear if EQC are even necessary for these parameters. If EQC for these parameters are required, then it was unclear whether the higher discharge limits associated with the MDMER would be necessary and how these limits meet the waste minimization objectives of the LWB *Waste and Wastewater Management Policy*. Fortune provided the following in response to Board staff comment 102:

> The list of constituents of potential concern (COPC) for the NICO project was originally provided in Section 7.0, Appendix 7.VII of the DAR. The list of COPCs and SSWQOs was then updated in 2012 to reflect the change in treatment technology to reverse osmosis (Table 1 in Golder 2012). A summary of considerations related to copper, lead nickel, and zinc is provided as follows:
>
> - Copper: Identified as a COPC in the DAR and no updates to the SSWQO in 2012 (25 mg/L for Nico Lake; 22 mg/L for Peanut Lake).
> - Lead: Identified as a COPC in the DAR and updates to the SSWQO in 2012 (revised SSWQO of 1 mg/L for Nico Lake and Peanut Lake).
> - Nickel: Not identified as a COPC for the NICO project but required under the MDMER.
> - Zinc: Identified as a COPC in the DAR but removed from the list of COPCs in 2012 because predicted concentrations were below aquatic life guidelines in all phases of the project.

> Based on the above, copper and lead should have EQC in the new Water Licence because they are identified as COPC. For nickel and zinc, Fortune Minerals acknowledges that these constituents are not COPC for the NICO project but proposes to include EQC to harmonize monitoring requirements and discharge limits between the Water Licence and MDMER.
>
> This approach aligns with the first objective of the LWB Waste and Wastewater Management Policy: "Water quality in the receiving environment is maintained at a level that allows for current and future uses." The inclusion of EQC for nickel and zinc (in addition to the COPCs, copper and lead) aims to protect water quality in the receiving environment by establishing limits for COPCs and also deleterious substances under the Fisheries Act (MDMER).

At the Technical Session, further discussion occurred regarding site-specific water quality objectives being applied to the mixing zone boundary and whether certain parameters (e.g., lead and copper) should be retained as parameters of potential concern. This discussion highlighted some confusion, which included whether copper should have been retained as a parameter requiring an EQC. Board staff noted and Fortune agreed to verify the site-specific water quality objectives being applied and confirm the validity of the EQC based on these values (Information Request 1) and to rescreen the updated model predictions to any new or updated water quality guidelines to confirm if there were any new parameters of concern (Information Request 2).

At the Public Hearing, Board staff identified a discrepancy between the response to Information Request 2, which indicated copper should be included as a parameter of potential concern, and response to Information Request 4, which stated copper was not identified as a parameter of potential concern.[223] It was further noted by Board staff that GNWT-ECC's Intervention included a recommendation to calculate a revised site-specific water quality objective based on the more recent Federal Water Quality Guideline and use this revised value to derive the EQC for copper (Recommendation 10). Fortune's response to Recommendation 10 indicated that a site-specific water quality objective had been calculated and was included in the AEMP. At the Public Hearing, Board staff acknowledged that Fortune was correct that the site-specific water quality objective had been accepted by the Board, but that the Board never set EQC for copper in Licence W2008L2-0004 because it was not retained as a parameter of potential concern and that the reasons for this were unknown. At that time, Fortune agreed there was confusion around copper and the associated site-specific water quality objective and proposed that a detailed review of copper be completed through the EQC Re-evaluation Report; should EQC be required, then these could be derived at that time and added through an amendment to the Licence.

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[223] See WLWB Online Registry for NICO - Type A WL Renewal - Public Hearing - Day 1 Transcript - Apr 27_26.pdf, pp. 153.

At the Public Hearing, Board staff noted that the same situation existed for manganese and asked if Fortune was proposing the same approach for that parameter, which Fortune confirmed.[224] Board staff also noted that EQC for sewage-related parameters (i.e., parameters related to fecal coliforms and oxygen demand) were absent from the Effluent Treatment Facility.[225] Fortune was asked if there was a preference to propose those parameters through an undertaking or through the EQC Re-evaluation Report. Fortune indicated preference of encompassing this within the EQC Re-evaluation Report.

Board staff excluded copper, lead, nickel, and zinc based on the information provided through the proceeding, which was noted in the EQC table. YKDFN (comment 53) indicated they had no concerns with the proposed Part F, Condition 29 and no other comments were received from Parties with the exception of GNWT-ECC, who provided the following:

> As GNWT-ECC noted in its Intervention, the Board's 2014 Reasons for Decision (W2008L2-0004) explicitly considered copper. At that time, the Board noted that measured concentrations in Nico, Peanut and Burke Lakes exceeded the CCME guideline for the protection of aquatic life and suggested that the guideline may be overly conservative for waters in this area. The Board therefore accepted Fortune's proposed site-specific water quality objective (SSWQO) derived using the USEPA biotic ligand model (BLM).
>
> Again, as noted by GNWT-ECC in its Intervention, since 2014 the ECCC has developed a federal water quality guideline for dissolved copper based on a Canadian BLM. While conceptually similar to the USEPA BLM, the Canadian model incorporates different toxicity datasets, normalization procedures, and parameterization, resulting in materially different guideline values. The Canadian model produces a guideline value which is an order of magnitude lower than the previously accepted SSWQO.
>
> The Board's 2014 Reasons for Decision also established that parameters predicted to exceed 25% of the SSWQO in Peanut Lake would be considered parameters of potential concern. As the SSWQO derived using the USEPA BLM was relatively high, copper concentrations were predicted to remain below 15% of the SSWQO, and the Board consequently determined that copper was not a parameter of concern. However, application of the Canadian BLM results in substantially lower guideline values, fundamentally altering this assessment framework.
>
> Fortune's modelling results, as presented in responses to IRs, predict that both total and dissolved copper concentrations will exceed the Canadian BLM-derived federal guideline in Peanut and Nico Lakes during multiple phases of the Project. These results indicate that copper has the potential to exceed effects-based benchmarks and, when considered

[224] See WLWB Online Registry for NICO - Type A WL Renewal - Public Hearing - Day 1 Transcript - Apr 27_26.pdf, pp. 155.
[225] See WLWB Online Registry for NICO - Type A WL Renewal - Public Hearing - Day 1 Transcript - Apr 27_26.pdf, pp. 164–166.

> alongside its historical occurrence at elevated concentrations, support its identification as a contaminant of potential concern.
>
> While Fortune proposed during the public hearing to undertake a detailed review of copper and manganese through an Effluent Quality Criteria Re-evaluation Report under a future licence amendment, GNWT-ECC maintains that this approach defers necessary regulatory oversight. Given the updated scientific basis provided by the Canadian BLM and the predicted exceedances of effects-based guidelines, the GNWT maintains that copper should be identified as a parameter of concern at this stage, and that the current licence should include an Effluent Quality Criterion for copper, which may be refined through the proposed re-evaluation process.
>
> In the absence of a derived water quality-based EQC, GNWT-ECC supports the application of a technology-based EQC. The proposed Effluent Treatment Facility will consist of reverse osmosis in combination with chemical and biological treatment systems, which are expected to achieve a high level of effluent quality (Golder Associates. 2013. NICO Project. Project Description. P. 134). Projected end-of-operations effluent concentrations for copper are reported as 0.003 mg/L (Project Description, Table 1.9-9). These values provide an appropriate basis for the development of a technology-based EQC and should be used to inform effluent limits in the absence of a water quality-based approach.[226]

Fortune provided the following in response to GNWT-ECC comment 8 on the draft Licence for review:

> Fortune Minerals directs GNWT-ECC to Part F Condition 30, which requires an Effluent Quality Criteria (EQC) Re-evaluation Report at least 12 months prior to the commencement of construction. This Re-evaluation Report will include a detailed review of existing EQC and any proposed updates. As Fortune Minerals cannot release effluent until EQC are defined, a Water Licence amendment process will be required to add EQC to the Water Licence, and as Fortune Minerals assumes that GNWT-ECC will participate in the amendment process, all necessary regulatory oversight is provided.

The Board acknowledges GNWT-ECC's concern regarding copper as a parameter of potential concern and agrees that an EQC will be required; however, the Board notes that GNWT-ECC's Intervention Recommendation 10 only considered updating the site-specific water quality objective based on the more current federal guideline and the concept of developing a technology-based EQC using the predicted end-of-operations concentrations was not provided until the draft Licence for Review. While the Board appreciates the GNWT-ECC identifying this issue and proposing a potential solution, providing this in a

[226] See WLWB Online Review System for NICO - Draft Type A Water Licence and Draft Type A Land Use Permit, GNWT-ECC comment 8.

comment on the draft Licence for review is not ideal as it does not offer an opportunity for further discussion among Parties.

While the Board could have issued information requests to allow Parties the necessary opportunity, as Fortune noted, the draft Licence for review included Part F, Condition 30, which defined the following requirement: "A minimum of 12 months prior to the commencement of Construction, the Licensee shall submit an Effluent Quality Criteria Re-evaluation Report that satisfies the requirements of Schedule 5, Condition 7." The Board views the requirement of an EQC Re-evaluation Report as a suitable regulatory mechanism for determining if the existing EQC are appropriate and to determine if additional EQC are required. The Board notes that it has been repeatedly identified throughout this proceeding that an amendment to this Licence would be required to alter and/or add EQC. The Board also highlights that manganese has also been identified as likely requiring EQC and additional consideration of sewage-related parameters still needs to occur given the Effluent Treatment Plant will be a combined sewage and minewater effluent. Finally, the results of the bench-scale testing and waste minimization options need to be considered once the Waste Minimization Report is available (see section 6.7.1 for further details). It is the Board's opinion that there has been much confusion arising around copper during this proceeding and the Board does not agree with setting values for EQC for copper without a full consideration of all available information, which will occur through the EQC Re-evaluation Report. It is also the Board's opinion that Schedule 5, Condition 7 contains requirements for a comprehensive screening of parameters of potential concern and specific direction to include copper and manganese is not necessary at this time. As such, the Board has not included EQC for copper or manganese but expects to reconsider this based on the results of the EQC Re-evaluation Report. To address the concern related to regulatory oversight, the Board has modified the wording of Part F, Condition 29 (EFFLUENT QUALITY CRITERIA (EQC) RE-EVALUATION REPORT) to require Board approval of the EQC Re-evaluation Report rather than just submission of this document prior to construction (see section 6.7.6 for further details).

In response to Information Request 1, Fortune identified that chloride, sulphate, antimony, silver, and thallium were not screened in as POPCs and, therefore, would not require EQC. However, at the Public Hearing, Fortune proposed to retain these parameters and maintain the existing EQC for now and address potential changes through the future EQC Re-evaluation Report and a Licence amendment.[227] No concerns have been raised by Parties in adopting this approach for these identified parameters; therefore, the Board has maintained the EQC for these parameters as previously set under Licence W2008L2-0004.

During the review of the Application, Board staff noted that a range of pH was not previously defined in Licence W2008L2-0004. Board staff (comment 103 on the Application) asked Fortune to clarify if they were proposing to set the pH range consistent with the MDMER limits of 6.0 to 9.5, which Fortune confirmed was the case in their response. At the Technical Session, Board staff confirmed there were no further changes being proposed at this time.[228] This pH range was included in the draft Licence for review,

[227] See WLWB Online Registry for NICO - Type A WL Renewal - Public Hearing - Day 1 Transcript - Apr 27_26.pdf, pp. 155–156.
[228] See WLWB Online Registry for Fortune - NICO Mine - Technical Session - Transcripts Day 1 - Mar 2_26.pdf, pp. 87–88.

and no comments were received. The Board agrees this pH range is reasonable and consistent with other mining licences issued by the LWBs. Therefore, the Board has included the pH range of 6.0 to 9.5 for the Effluent Treatment Facility in Part F, Condition 28 (EFFLUENT QUALITY CRITERIA – EFFLUENT TREATMENT FACILITY).

Board staff (comment 102 on the Application) also asked for clarification why cyanide and radium-226 were not included, as both are required parameters under the MDMER. In response, Fortune explained that these two parameters were excluded because the MDMER has specific monitoring requirements for these parameters that do not easily align with the Licence (i.e., there is an option to discontinue monitoring under the MDMER if concentrations remain below threshold values for a defined period). No further comments were received regarding EQC for cyanide and radium-226. The Board acknowledges the rationale put forward by Fortune and notes that EQC for these two parameters were not required under Licence W2008L2-0004. Based on the lack of new evidence, the Board does not see the need to establish EQC for cyanide or radium-226 at this time; however, if a change occurs that warrants revisiting these parameters, then this can be done through the EQC Re-evaluation Report or an alternate future amendment proceeding.

Board staff (comment 104 on the Application) also asked Fortune to confirm that no changes to the EQC for total ammonia were being requested. Specifically, Board staff noted that MDMER has discharge limits associated with unionized ammonia rather than total ammonia. Fortune confirmed they were not requesting changes to the existing EQC for total ammonia. No further comments were received regarding the EQC for total ammonia in the Effluent Treatment Facility discharge; therefore, the Board has decided to retain the values previously determined under Licence W2008L2-0004.

In the draft Licence submitted with the Application, Fortune proposed to add EQC for TSS to align with the MDMER (i.e., 15 and 30 mg/L for Maximum Average Concentration and Maximum Grab Concentration, respectively). No comments were received or concerns raised through the proceeding in relation to the Effluent Treatment Facility. The Board acknowledges that GNWT-ECC comment 8 on the draft Licence for review includes quoted text that links only to the previous decision related to the Sewage Treatment Plant as well as acknowledges that an EQC for TSS was not included for the Effluent Treatment Plant under Licence W2008L-0004. Although it is unclear if GNWT-ECC comment 8 on the draft Licence for review was intended to also apply to the Effluent Treatment Facility Effluent, the Board agrees with GNWT-ECC's position that EQC should not simply be set to align with other overlapping legislation. The Board is not bound by the MDMER requirements and is only limited to not set EQC less stringent than would be required by the MDMER. At this time, no compelling evidence has been provided to support the need for a Maximum Grab Concentration of 30 mg/L. The Board also notes that the recently issued Diavik Renewal Licence included a Maximum Grab Concentration EQC for TSS of 25 mg/L at all discharge locations and that this also applied during operations in the discharge from the North Inlet Water Treatment Plant. Therefore, it is the Board's opinion that the proposed Maximum Average Concentration of 15 mg/L is appropriate but has decided to limit the Maximum Grab Concentration at 25 mg/L at this time. Should Fortune determine that 25 mg/L will not be consistently achievable, then this can be revisited through the EQC Re-evaluation Report.

As noted under section 6.7.2 of this Reasons for Decision, Fortune has indicated that water will be directed from the landfarm to the ETF (response to Board staff comment 86 on the Application). At the Public Hearing, Board staff had noted that an EQC for total petroleum hydrocarbons was not included under Licence W2008L2-0004 and Board staff asked if the existing EQC for the Underground Mine Portal would be suitable. In response, Fortune indicated that these values are fairly standard in northern licences and were amenable with including the values now, with a caveat that this parameter would be reviewed during the future EQC Re-evaluation.[229] The Board agrees that the proposed EQC of 3 and 5 mg/L for Maximum Average Concentration and Maximum Grab Concentration, respectively, are relatively standard and have proven to be protective to the Receiving Environment. Therefore, the Board has decided to include these values as EQC for total petroleum hydrocarbons but recognizes updated values may be proposed by Fortune through the EQC Re-evaluation Report and can be considered further at that time.

A summary of the EQC for the discharge of treated effluent from the Effluent Treatment Facility as per Part F, Condition 28 (EFFLUENT QUALITY CRITERIA – EFFLUENT TREATMENT FACILITY) is provided in Table 4 below. Part F, Condition 30 (EFFLUENT QUALITY – TOXICITY – EFFLUENT TREATMENT FACILITY) also specifies that the Effluent must not be acutely toxic.

Table 4: Effluent Quality Criteria for the Effluent Treatment Facility Discharge

Parameter	**Unit**	**Maximum Average Concentration**	**Maximum Grab Concentration**
Chloride	mg/L	200	400
Potassium	mg/L	496	992
Sulphate	mg/L	395	790
Ammonia (as Nitrogen)	mg-N/L	1.34	2.7
Nitrate (as Nitrogen)	mg-N/L	2.6	5.2
Aluminum	mg/L	0.46	0.92
Antimony	mg/L	0.034	0.07
Arsenic	mg/L	0.1	0.2
Cobalt	mg/L	0.02	0.04
Iron	mg/L	0.46	0.92
Mercury	mg/L	0.00004	0.00008
Selenium	mg/L	0.007	0.014
Silver	mg/L	0.001	0.002

[229] See WLWB Online Registry for NICO - Type A WL Renewal - Public Hearing - Day 1 Transcript - Apr 27_26.pdf, pp. 151–153.

Thallium	mg/L	0.012	0.024
Total Suspended Solids	mg/L	15	25
Total Petroleum Hydrocarbons	mg/L	3	5

mg/L = milligrams per litre; mg-N/L = milligrams as nitrogen per litre.

Effluent Quality Criteria Re-evaluation Report

As discussed in section 6.7.4, it has been identified through this proceeding that re-screening for parameters of potential concern is necessary and additional EQC or modifications to the existing EQC may be required for the Effluent Treatment Facility. It has also been identified that sewage-related parameters will be required due to the combined nature of sewage and minewater that will comprise the effluent. The inclusion of an EQC Re-evaluation Report was discussed through this proceeding as the regulatory mechanism to complete this work, and it has been acknowledged that an amendment to the Licence will be required to make any changes or additions to the EQC. Fortune provided a proposed licence condition and associated schedule requirements in response to Information Request 3, which were included in the draft Licence for review under Part F, Condition 30 and Schedule 5, Condition 7; the timeline for submission was modified to align with information provided in response to Undertaking 4.

During the review of the Application, the Tłįchǫ Government (comment 34) asked Fortune if they thought the existing EQC should be re-evaluated to confirm validity. The Tłįchǫ Government subsequently included recommendation 5 in their Intervention, which stated that the EQC set in Licence W2008L2-0004 should be re-evaluated prior to discharge into Peanut Lake. The Tłįchǫ Government also provided the following recommendation on the draft Licence for review:

> We recommend the following improvements to the required contents of the EQC Re-Evaluation Report:
> 1. The required information should mirror the approach the Board used to set EQC for the NICO Mine. The Report contents should be based on the Table of Contents in Appendix C: Detailed Reasons for Decision for Effluent Quality Criteria (EQC) in the Board's June 7, 2014 Reasons for Decision for the NICO Mine Water Licence. This will ensure that the Board's expectations are met and make it easier for parties to review the EQC Re-Evaluation Report.
> 2. The Licence should require the EQC Re-Evaluation Report to be in accordance with the LWB Standard Process for Setting Effluent Quality Criteria and the LWB/GNWT Guidelines for Effluent Mixing Zones.
> 3. The modeled predictions in Peanut Lake should be updated using updated water balance modelling, operational monitoring data, the results of the Plume Delineation Study, updated climate data, and any other information obtained since EQC were last evaluated.

Fortune provided the following in response to comment:

> 1. Fortune does not agree with a requirement for the EQC Re-evaluation Report to mirror the Board's June 7, 2014, Reasons for Decision for the NICO Mine Water Licence. This

Reasons for Decision was based on review of the new Water Licence application, whereas the current application is for a renewal and update to the existing licence only.

2. No comment – Fortune agrees with aligning the EQC Re-evaluation Report with the LWB Standard Process for Setting Effluent Quality Criteria and the LWB/GNWT Guidelines for Effluent Mixing Zones.

3. Model predictions will be developed for the EQC Re-evaluation Report using all available data. However, Fortune notes that there will be no plume delineation information available at the time the Re-evaluation Report is submitted because the report and updated EQC are required prior to discharge into Peanut Lake.

The Board does not see the need to require Fortune to mirror Appendix C from the Board's June 17, 2014, Reasons for Decision on the initial licence issuance in the EQC Re-evaluation Report. The Board expects a full rescreening for parameters of potential concern and there is a possibility that alternate approaches to deriving EQC may be required based on consideration of results of the bench-scale testing and waste minimization optimization information provided in the Waste Minimization Report (see section 6.7 for further details). If changes occur to the previously derived EQC, Fortune will need to provide supporting rationale. In addition, the Board notes that the LWB *Standard Process for Setting Effluent Quality Criteria* and the LWB/GNWT *Guidelines for Effluent Mixing Zones* were not available during the initial licence proceeding as these documents were originally released in 2017. It is the Board's opinion that the information contained in Appendix C of the Board's June 17, 2014, Reasons for Decision should be captured by aligning with the two LWB guidance documents, which Fortune had agreed to do. The Board agrees with the Tłı̨chǫ Government that this information is required but believes it is appropriate to allow Fortune some flexibility in how it is presented within the EQC Re-evaluation Report. This report will undergo the Board's standard public review process and Parties will have an opportunity to identify potential deficiencies at that time. It is the Board's opinion that the requirements of Schedule 5, Condition 7 are comprehensive and adequate for the EQC Re-evaluation Report; therefore, the Board has included these requirements in Schedule 5, Condition 7 as proposed in the draft Licence for review.

The Board acknowledges that plume delineation information will not be available for consideration within the EQC Re-evaluation Report given it is due prior to commencement of construction. The Board does note that additional baseline data requirements have been determined (see section 6.8.1 for further details) and the baseline data will require approval prior to commencement of construction. The expectation of the Board aligns with Fortune's response regarding including all available data in the model update. The Board also acknowledges the challenge in terms of the Project schedule and the lack of clearly defined timelines. While the Board has done its best to set reasonable timelines that allow for the Board process for reviews and approvals, the onus is on Fortune to verify the timelines work and determine where efficiencies may be possible. Regardless, the Board has set multiple requirements for approval prior to commencement of construction, which the Board believes provides a reasonable level of certainty that outstanding requirements will be met before the Project proceeds. The Board does note, however, that the proposed Part F, Condition 30 included in the draft Licence for review did not specify the EQC Re-evaluation was for Board approval. Although it is anticipated that this report will trigger a Licence amendment, the Board believes the importance of the EQC Re-evaluation Report warrants it being for Board approval prior to commencement of construction. Therefore, the Board has updated Part F, Condition 29 (EFFLUENT QUALITY CRITERIA (EQC) RE-EVALUATION REPORT) to reflect this.

6.8 Part G: Conditions Applying to Aquatic Effects Monitoring Program and Schedule 6

Part G and Schedule 6 of the Licence contain conditions applying to the AEMP for the Project. These are consistent with the Standard Licence Conditions and the LWB/GNWT *Guidelines for Aquatic Effects Monitoring Programs*.[230] Additional project-specific conditions or modifications to the standard condition wording related to the AEMP have been included and are discussed in further detail below.

In the draft Licence for review, Board staff retained Schedule requirement for the AEMP Design Plan from the previous Licence, but proposed edits to the Schedule requirements to better reflect that ranges were not defined in EA Measures 1 and 2, and to allow for potentially more than one acceptable standard and decision rule to be established, if deemed appropriate. Board staff noted that other requirements included in the original Schedule 7 under the previous Licence are now encompassed with the LWB/GNWT *Guidelines for Aquatic Effects Monitoring Programs* and Part G, Condition 1 requires those guidelines to be met. In response to Board staff comments 88 and 89 on the draft Licence for review, Fortune indicated agreement with the proposed Condition and no concerns were raised by other Parties. The Board has included Schedule 6, Condition 3 as proposed.

In addition, in the draft Licence for review, Schedule 6, Condition 4(l) proposed that the results of dust monitoring as per the DESMP be reported in the AEMP Annual Report. This reflected a recommendation made by Fortune in response to Undertaking 9 where Fortune indicated agreement with the proposed Condition (response to Board staff comment 90 on the draft Licence). Further details regarding the DESMP are provided under section 6.7.2. Based on comments on the draft Licence, the Board has set the reporting of the dust monitoring as an AEMP Annual Report requirement under Schedule 6, Condition 4(l).

6.8.1 Supplemental Baseline Monitoring Plan and Baseline Summary Report

The previous Licence required submission of a Supplemental Baseline Monitoring Plan and an associated Baseline Summary Report for Board approval. The objective of these documents is to collect sufficient baseline information and verify that the baseline conditions of the Receiving Environment can be adequately defined for the purposes of ensuring that Measures 1 and 2 of the Report of Environmental Assessment are being adhered to during all Project stages. The Board has retained Part G, Condition 2 (SUPPLEMENTAL BASELINE MONITORING PLAN) and acknowledges that Version 1.4 of this plan was previously submitted by Fortune on December 16, 2016, and approved with revisions required on April 12, 2017.[231] Fortune subsequently submitted Version 1.5 of the plan to address the Board's

[230] See WLWB Policies and Guidelines webpage to access the LWB/GNWT *Guidelines for Aquatic Effects Monitoring Programs*.
[231] See WLWB Online Registry for NICO Mine - SBMP - Version 1.4 - Board Directive and Reasons for Decision - Apr 12_17.pdf.pdf.

requirements from Version 1.4 on July 24, 2017.[232] It is the Board's opinion that information gathered through this proceeding should be incorporated into to the Supplemental Baseline Monitoring Plan. It is also the Board's opinion that the nature of these revisions is of a level appropriate for confirmation of conformity by Board staff; however, the Board notes that the structure of this plan is such that the proposed revisions may not be easily incorporated into the existing text. Therefore, the Board has decided that the revisions can be submitted as a separate addendum to the plan. The details of these revisions are further discussed below.

The collection of additional baseline data was a topic raised during the review of the Application (e.g., ECCC comment 3, Board staff comments 34 and 35) and continued to be a topic of discussion throughout the proceeding. The Tłı̨chǫ Government (comment 13 on the draft Licence for review) highlighted the importance of collecting enough baseline data to confirm that the Tłı̨chǫ Agreement, EA Measures, and Licence conditions regarding substantial alteration of waters are met. The comment further stated that "the Board should ensure baseline data collection starts early enough so that the data are unimpacted by site activities." Fortune provided the following in response:

> Fortune Minerals plans to collect some additional baseline data prior to the commencement of construction when feasible. If required, supplemental baseline data collection will occur after opening of the construction camp but before release of Effluent (from the Sewage Treatment Plant or the ETF) to ensure appropriate equipment and personnel are on site to collect data.

At the Technical Session, Fortune committed to collecting additional baseline data and backing the proposed timing up by one year prior to construction (i.e., Year -1).[233] ECCC indicated support of collecting supplemental baseline data as early as possible in Recommendation 3.1 of its Intervention. The Board agrees that collecting supplemental baseline data should occur earlier and before discharge from either the Sewage Treatment Plant or Effluent Treatment Facility begins. Based on the Board's understanding of the construction schedule, the proposed timing of Year -1 should satisfy this requirement; however, the Board notes that limited construction schedule information has been provided through this proceeding and expects Fortune to adjust additional baseline sampling accordingly should that schedule advance at a faster rate. The Board requires Fortune to update the schedule information in the addendum to the Supplemental Baseline Monitoring Plan.

- ***Supplemental Baseline Monitoring Plan Revision #1: Fortune to include an updated baseline monitoring schedule in the addendum to the Supplemental Baseline Monitoring Plan.***

The GNWT-ECC included the following recommendation in their Intervention regarding analyses to assess the suitability of Year -1 supplemental baseline data:

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[232] See WLWB Online Registry for NICO Mine - SBMP - Version 1.5 - Jul 24_17.pdf.
[233] See WLWB Online Registry for Fortune - NICO Mine - Technical Session - Transcripts Day 1 - Mar 2_26.pdf, pp. 155–158.

> The GNWT recommends that Fortune conduct statistical and multivariate analyses, including trend, variability, and power analyses, to verify that Year-1 water quality results are representative of baseline conditions and aligned with biologically relevant thresholds. If findings show values outside historical ranges, directional trends, or unexplained variability, the GNWT recommends requiring at least one additional year of baseline data. These analyses should be included in the Baseline Monitoring Report and submitted six months prior to construction.

It is the Board's opinion that assessing data variability and trends and conducting power analyses as recommended by GNWT-ECC are reasonable and appropriate for the Baseline Summary Report; however, the Board does not agree that multivariate statistical analysis is necessary at this time and that such analyses would be more appropriately considered for effects assessment in the AEMP. Therefore, the Board suggests that the use of multivariate statistical analyses be further considered through the development of the AEMP Design Plan. While the Board understands the rationale for potential additional sampling, it is not the Board's practice to predefine additional sampling or reduction/discontinuation of sampling without supporting evidence. Therefore, the Board requires submission of the Baseline Summary Report with the recommended analyses will be then make a decision on the need for additional baseline data collection based on the results.

- ***Supplemental Baseline Monitoring Plan Revision #2: Fortune to include an assessment of data variability and trends and conduct power analyses of the Year -1 supplemental baseline data in the addendum to the Supplemental Baseline Monitoring Plan.***

The Board notes the following additional monitoring requirements in Lou Lake and the Marian River were proposed by DFO through comment 7 on the draft Licence for review:

a) depth, velocity, and wetted area measurements in the Marian River, including identification of potential areas where reduced flows may create barriers to fish movement;
b) littoral habitat extent, shoreline conditions, and under ice dissolved oxygen profiles in Lou Lake;
c) outlet depth/velocity at the Lou Lake outlet; and
d) documentation of fish presence and potential stranding risk indicators.

Fortune has indicated agreement with including baseline characterization of Lou Lake and the Marian River and the Board agrees the items proposed by DFO are reasonable and appropriate. Therefore, the Board requires an update to the Supplemental Baseline Monitoring Plan to be submitted to incorporate the additional information proposed by DFO. The Board has not updated the Licence condition or schedule requirements as updates to the Plan are deemed adequate to address DFO's comment.

- ***Supplemental Baseline Monitoring Plan Revision #3: Fortune to incorporate the additional requirements proposed by DFO in comment 7 on the draft Licence for review in the addendum to the Supplemental Baseline Monitoring Plan.***

The Board also notes Fortune's commitment to updating the sediment and benthic invertebrate data in Nico Lake as a single-year sampling event (response to Board staff comment 11 on the Application). At this time, the Board feels this is a reasonable approach noting that should unexpected seepage occur from the CDF, additional monitoring may be required through the AEMP. The Board feels the existing mechanisms associated with the AEMP (i.e., response framework and Aquatic Effects Re-evaluation Report) are adequate to address this based on future monitoring results. At this time, the Board requires Fortune to update the Supplemental Baseline Monitoring Plan to incorporate this additional monitoring event in Nico Lake.

- ***Supplemental Baseline Monitoring Plan Revision #4: Fortune to incorporate the additional sediment and benthic invertebrate monitoring event in Nico Lake per response to Board staff comment 11 on the Application in the addendum to the Supplemental Baseline Monitoring Plan.***

The Board requires the addendum to be submitted with Revisions #1 to 4 and with the Supplemental Baseline Monitoring Plan, Version 1.5 within 90 days of Licence issuance for Board staff conformity. It is the Board's opinion that the addendum approach should simplify the submission and that 90 days is adequate; however, the Board acknowledges that an update to this plan was not considered in the draft Licence for review condition and, therefore, Fortune may apply for an extension for the submission timeline if necessary. The addendum will be considered approved when the Licensee receives written confirmation of conformity from Board staff. A public review will typically not be required to confirm conformity; however, if the addendum includes additional information beyond what has been requested above, a public review may be required before it can be considered by the Board. It is the Board's intent for Fortune to have an approved Supplemental Baseline Monitoring Plan in place in a timely manner to allow for further baseline data collection that meets the needs of the AEMP and the Project as a whole prior to commencement of construction.

The Board has retained Part G, Condition 3 (BASELINE SUMMARY REPORT). Fortune previously submitted the Baseline Summary Report on July 18, 2018, which the Board did not approve and required Fortune to resubmit version 2.0 with further direction provided in the Board's February 18, 2019, Reason for Decision.[234] This updated report remains an outstanding requirement, which Fortune acknowledged during the Technical Session for the Licence Renewal.[235] The Board acknowledges the commitments for additional baseline data collection made by Fortune throughout the Renewal but notes Fortune's comment 63 regarding changes to the report submission timeline provided in comments on the draft Licence:

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[234] See WLWB Online Registry for NICO Mine - Baseline Summary Report - Reasons for Decision - Feb 18_19.pdf; NICO Mine Type A Water Licence Renewal Application, comment Board staff-92.
[235] See WLWB Online Registry for Fortune - NICO Mine - Technical Session - Transcripts Day 1 - Mar 2_26.pdf, pp. 158–159.

> Fortune Minerals proposes that the submission timeline for the Baseline Summary Report be revised to 90 days prior to commencement of construction to accommodate construction timelines and supplementary baseline data collection. Fortune Minerals expects that some supplemental baseline data collection will occur after opening of the construction camp but before release of Effluent (from the Sewage Treatment Plant or the ETF).

The Board notes that Fortune previously recommended the Baseline Summary Report be submitted six-months prior to construction in response to Undertaking 4. The Board also notes that the Baseline Summary Report is required in support of the AEMP Design Plan, which also included a proposed timeline of six months in advance of construction per response to Undertaking 4, and that Fortune did not propose to modify this timing. Given the interconnectedness of the Baseline Summary Report and the AEMP Design Plan, the Board does not see how the timeline of the Baseline Summary Report could be altered to 90 days prior to commencement of construction. Regardless of whether the timelines could somehow be disconnected, the Board has a concern with reducing the submission timeline because of the limited window within which baseline data can be collected. Although Fortune has indicated some supplemental baseline data may be collected after opening of the construction camp but prior to any discharge to Peanut Lake, Part G, Condition 3 (BASELINE SUMMARY REPORT) requires approval of the Baseline Summary Report prior to commencement of construction. While Fortune may choose to collect additional supplemental baseline data following approval of the report, the Board agrees with the Tłı̨chǫ Government's statement (comment 13 on the draft Licence for review) that certainty that the baseline data in hand prior to commencement of the Project is sufficient to confirm the Tłı̨chǫ Agreement, EA Measures, and Licence conditions regarding substantial alteration of waters are met. Therefore, the Board is concerned that a timeline of 90 days may not provide adequate time to address potential deficiencies if the Baseline Summary Report is not approved. As such, the Board has retained the timeline of six months prior to commencement of construction as originally proposed by Fortune and included in the draft Licence for Part G, Condition 3 (BASELINE SUMMARY REPORT).

In addition, in the draft Licence for review, Board staff proposed moving the Supplemental Baseline Monitoring Plan and Baseline Summary Report requirements that were included in Part J, Conditions 1 and 2, respectively, of Licence W2008L2-0004 under Schedule 6, Conditions 1 and 2. Incorporating these types of requirements in a schedule is consistent with the current approach the LWBs typically use for monitoring design plans and report requirements. Fortune agreed with these proposed changes and no other comments were received; therefore, the Board has updated Schedule 6, Conditions 1 and 2 accordingly.

In addition to the schedule requirements and the Board's previous direction on version 1.0, the Board also requires two administrative revisions to be completed in the next version of the Baseline Summary Report. Details of these revisions are provided in Table 5 (Appendix C). Once submitted, Version 2.0 of the Baseline Summary Report will undergo the Board's standard public review process before being considered by the Board.

- ***Supplemental Baseline Monitoring Plan Revision #5: Fortune to incorporate the administrative revisions included in Appendix C in Version 2.0 of the Baseline Summary Report.***

6.8.2 Groundwater Monitoring Baseline Data Report

In its intervention, GNWT-ECC noted that groundwater baseline data was not included in the application nor was it part of the Baseline Summary Report. GNWT-ECC recommended that Fortune provide all available groundwater baseline data, including any post-2010 results, in an updated Baseline Monitoring Report to be submitted six months prior to construction. If Year-1 groundwater data falls outside historical ranges, shows directional trends, or exhibits unexplained variability, the GNWT recommended at least one additional year of seasonally varied baseline monitoring to ensure current conditions and natural variability are effectively characterized.[236]

Fortune provided the following in its response to the GNWT's intervention:

> The conformity tables included in Appendix A of the WWMP, V. 2.0, include the anticipated requirements for groundwater monitoring details to be included in a future version of the WWMP, including, but not limited to monitoring downgradient of the Co-Disposal Facility (CDF) Seepage collection system to verify that the flow and chemical characteristics of any Groundwater Seepage that originates from the CDF does not impact downgradient water quality. Details of the planning installation and sampling of monitoring wells downstream of the CDF will therefore be described in future versions of the WWMP and not in a baseline report.[237]

Further discussion regarding groundwater monitoring occurred at the Public Hearing, where Fortune confirmed their commitment to one sampling event prior to construction and indicated the results would be provided in the Water and Wastewater Management Plan.[238] Board staff noted that groundwater characterization data are included as a requirement in the design plans for engineered structures and acknowledged GNWT-ECC's request to have the baseline data incorporated in the Baseline Summary Report; however, Board staff also clarified that this report is based on an already approved design plan and is intended to support the AEMP design, which typically does not include groundwater monitoring.[239] Ultimately, this was identified as an issue of avoiding duplication as approval of the data can only occur once and it became a question of where this would be most appropriately reported.

In the draft Licence for review, Board staff proposed Part G, Condition 11 (GROUNDWATER MONITORING BASELINE DATA REPORT) and Schedule 6, Condition 5, which included the requirements for that report. The proposed timeline for submission of the Groundwater Monitoring Baseline Data Report was six

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[236] See WLWB Online Registry for NICO - Type A WL Renewal - GNWT Intervention - Apr 8_26.pdf, PDF pp. 9–10.
[237] See WLWB Online Registry for NICO - Type A WL Renewal - Fortune Response to Interventions - Apr 15_26.pdf, PDF p. 6.
[238] See WLWB Online Registry for NICO - Type A WL Renewal - Public Hearing - Day 1 Transcript - Apr 27_26.pdf, pp. 144–145.
[239] See WLWB Online Registry for NICO - Type A WL Renewal - Public Hearing - Day 1 Transcript - Apr 27_26.pdf, pp. 145–151.

months prior to construction. Fortune agreed with the reporting requirements included under the draft Licence and no concerns were raised by other Parties. In response to Board staff comment 58 on the draft Licence for review, Fortune proposed the submission timing be revised to 90 days prior to commencement of construction to accommodate construction timelines and baseline data collection. Fortune also indicated that it expects that some baseline data collection will occur prior to release of effluent (from the Sewage Treatment Plant or the ETF). No other comments were received regarding this item.

The Board has included Part G, Condition 11 (GROUNDWATER MONITORING BASELINE DATA REPORT) and Schedule 6, Condition 5 as proposed in the draft Licence for review. It is the Board's opinion that submission timing of six months prior to commencement of construction is reasonable and aligns with submission of the Baseline Summary Report in support of the AEMP. While the Board acknowledges that groundwater monitoring is not typically associated directly with the AEMP, allowing Parties to view the baseline data comprehensively for all on-site and receiving environmental components may be helpful in avoiding potential perceived gaps or disconnects that could delay the Project. It is also the Board's expectation that groundwater data will be used to inform/support the Design and construction Plans per Part E, Condition 9 (DESIGN AND CONSTRUCTION PLAN) and Schedule 4, Condition 2, and Part E, Condition 21 (CO-DISPOSAL FACILITY DESIGN AND CONSTRUCTION PLAN), and Schedule 4, Condition 3. While the Board expects additional groundwater monitoring will occur through the SNP, it is important that adequate baseline data is approved prior to larger scale changes to the landscape regardless of the discharge of effluent. Therefore, it is the Board's opinion that there needs to be a sufficient window of time to allow for a public review and a Board decision that enables additional sampling to occur if determined to be necessary. It is the Board's opinion that the six-month timeline provides a reasonable balance to allow for the Board process and avoid potential Project delays.

6.8.3 Aquatic Effects Monitoring Program Design Plan

The Applicant submitted a conceptual AEMP Design Plan with the Applications.[240] Fortune confirmed it was not seeking approval at issuance but hoped to gather feedback through this proceeding for the next version.[241] The Board acknowledges that a number of comments and recommendations were provided by Parties through the Application review. At this time, the Board is providing limited direction on specific comments and requires Fortune to consider all of the AEMP-related comments gathered throughout this proceeding to help inform further discussions with Parties regarding the next version of the AEMP Design Plan. The Board also acknowledges Fortune's intent to harmonize the AEMP with the MDMER requirements (responses to Board staff comments 14 and -37).

At the Public Hearing, Board staff identified that a workshop format has proven to be useful format that allows for a broader group discussion among all Parties on outstanding topics or issues related to the AEMP. Board staff also noted that a workshop does not always achieve consensus, nor does it replace engagement with individual Parties, but the broader discussion generally helps all Parties get a better

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[240] See WLWB Online Registry for NICO Mine - Aquatic Effects Monitoring Program - Version 1.0 - Nov 20_25.pdf.
[241] See WLWB Online Registry for Fortune - NICO Mine - Technical Session - Transcripts Day 1 - Mar 2_26.pdf, pp. 177–179.

understanding and provides an opportunity to collectively discuss concerns. Fortune agreed this approach could be beneficial and committed to a workshop prior to submission of the next version of the AEMP Design Plan.[242] The Board agrees that a workshop would be beneficial for advancing the AEMP Design Plan, particularly in the area of Traditional Knowledge and developing the cultural use criteria to be included in the AEMP Design Plan (see section 5.1). Based on the nature of the outstanding items to be discussed, the Board has decided it would be best for the workshop to be coordinated by Board staff.

A key outstanding item that needs to be resolved is how "substantially unaltered" will be defined. This is a critical component that is necessary for determining that monitoring is designed in a manner to verify that EA Measures 1 and 2 are being met and remains an outstanding requirement from the previous licence.[243] Information regarding how this will be defined has been proposed throughout this Licence Renewal proceeding, but there has been no formal agreement on a formal definition or approach as to how this will be assessed.[244] Therefore, the Board sees this as needing to be a primary focus for the AEMP workshop. Monitoring requirements in the Marian River will then need to be determined and can be discussed at this AEMP workshop.

The Board also acknowledges that further discussion through the workshop and on-going engagement may result in further changes for the revisions to the next version of the AEMP Design Plan; therefore, the Board is not defining the specifics of the revisions at this time, but instead has identified the main areas where revisions are expected to be made and the comments and recommendations that should be considered:

- key questions[245]
- numeric guidelines or other criteria for comparison (e.g., normal range), including the site-specific water quality objective for aluminum previously required by the Board and fish tissue chemistry screening values;[246]
- cultural use criteria;[247]
- statistical analyses and endpoints defined for all components;[248]
- near-shore monitoring station in Nico Lake to assess potential seepage from the CDF (see section 6.11 for further details);[249]
- reference areas;[250]

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[242] See WLWB Online Review System for NICO - Type A WL Renewal - Public Hearing - Day 1 Transcript - Apr 27_26.pdf, pp. 140–142.
[243] See WLWB Online Registry for NICO Mine - Water Licence and Land Use Permit - Reasons for Decision - Jun 17_14.pdf.
[244] See WLWB Online Review System for NICO Mine Type A Water Licence Renewal Application, comment Board staff-55.
[245] See WLWB Online Review System for NICO Mine Type A Water Licence Renewal Application, comment ECCC-3.
[246] See WLWB Online Review System for NICO Mine Type A Water Licence Renewal Application, comments TG-35; ECCC-5, -9; Board staff-9, -29, -30, -31, -32, -35; NICO - Type A WL Renewal - ECCC Intervention - Apr 8_26.pdf, Recommendation 3.3.
[247] See WLWB Online Review System for NICO Mine Type A Water Licence Renewal Application, comment TG-7; NICO - Type A WL Renewal - TG Intervention - Apr 8_26.pdf, Recommendation 4.
[248] See WLWB Online Review System for NICO Mine Type A Water Licence Renewal Application, comment Board staff-15, -16 - 21; NICO - Type A WL Renewal - GNWT Intervention - Apr 8_26.pdf, Recommendation 1.
[249] See WLWB Online Registry for NICO - Type A WL Renewal - GNWT Intervention - Apr 8_26.pdf, Recommendation 4.
[250] See WLWB Online Review System for NICO Mine Type A Water Licence Renewal Application, comment Board staff-39.

- potential linkage to the Marian Watershed Stewardship Program;[251]
- response framework updated for all components;[252] and
- special studies.[253]

The Board also acknowledges that YKDFN provided detailed comments and recommendations for the AEMP Design Plan in Appendix A of their Intervention. These should be taken into consideration and inform further discussion at the workshop.

The Board acknowledges that Fortune has indicated detection limits for water quality analysis will be submitted for the SNP under the QA/QC Plan, which is for approval by the Analyst, and these will be applied to the AEMP as well (response to Board staff comment 13 on the Application). The Board anticipates that the SNP-related detection limits should be adequate for the AEMP and a cross-reference to the QA/QC Plan may be included; however, notes that additional detection limits for other components (e.g., sediment, fish tissue chemistry) will be required.

- ***AEMP Design Plan Revision #1: Include detection limits for analytical chemistry for all relevant components.***

In addition, the Board has identified specific administrative revisions that are necessary to correct errors and omissions identified through the review of the Application, as it is the Board's opinion that these corrections will not be influenced by the workshop or further engagement. Details of these revisions are provided in Table 5 in Appendix C of this Reasons. Once submitted, Version 2.0 of the AEMP Design Plan will undergo the Board's standard public review process before being considered by the Board.

- ***AEMP Design Plan Revision #2: Fortune to incorporate the administrative revisions included in Table 5 in Section 8.0.***

Throughout the proceeding, Fortune has explained that the Project construction schedule is not known at this time. At the Public Hearing, Board staff asked if a longer submission timeline for the AEMP Design Plan may be helpful to account for the time necessary to complete a workshop and conduct further engagement, to which Fortune agreed and indicated 12 months post-issuance may work.[254] However, in the response to Undertaking 4, Fortune altered this timeline to six months prior to construction and included the timing for the AEMP workshop at 90 days post-issuance. The Board agrees that six months prior to construction is reasonable, but in the absence of an anticipated date for the start of construction, finds it difficult to judge how far in advance to set the workshop; therefore, the Board has accepted Fortune's proposed timeline and has set a requirement for the workshop to be completed within 90 days

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[251] See WLWB Online Review System for NICO Mine Type A Water Licence Renewal Application, comment TG-34.
[252] See WLWB Online Review System for NICO Mine Type A Water Licence Renewal Application, comment ECCC-11; Board staff-15, -29, -36; NICO - Type A WL Renewal - GNWT Intervention - Apr 8_26.pdf, Recommendations 6, 7, and 9.
[253] See WLWB Online Review System for NICO - Type A WL Renewal - GNWT Intervention - Apr 8_26.pdf, Recommendation 8.
[254] See WLWB Online Registry for NICO - Type A WL Renewal - Public Hearing - Day 1 Transcript - Apr 27_26.pdf, pp. 142–144.

post-issuance of the Licence and maintained the submission date for the next version of the AEMP Design Plan at six months prior to construction. The onus is on Fortune to plan accordingly to meet the timing requirements, and the Board requires Fortune to contact Board staff no later than October 26, 2026, to begin workshop planning.

- ***Decision #11: The Board requires an AEMP workshop to be held 90 days post-issuance of the Licence.***

- ***Decision #12: The Board directs Fortune to talk with Board staff no later than October 26, 2026, to set a date and develop an agenda for the AEMP Workshop.***

- ***Decision #13: The Board requires Version 2.0 of the AEMP Design Plan to incorporate feedback gathered through the AEMP workshop along with Revisions #1 and #2. Version 2.0 is to be submitted for Board approval six months prior to commencement of construction.***

It is the Board's expectation that the AEMP will be implemented during the construction period; however, the Board recognizes that it is possible that some data collected during this window may qualify as additional baseline data. The Board also recognizes that the nature and volume of the discharges into Peanut Lake during construction (i.e., Underground Mine Portal and Sewage Treatment Plant) may not necessitate a full-scale AEMP. Therefore, the Board requires further discussion on the AEMP implementation during construction to occur at the AEMP workshop.

- ***Decision #14: Fortune to include implementation of the AEMP (i.e., timing and scope) during the construction phase as a topic for discussion at the AEMP workshop.***

In the review of the Application, Board staff (comment 91) noted that Fortune had indicated that a baseline water quality station has been established in Behchokǫ̀ to monitor conditions now and during Project operations. This station was also mentioned in section 1.6 of the AEMP Design Plan. Board staff noted that this station is located well downstream of the Project and, therefore, it is not part of the SNP and is not currently included in the AEMP and asked Fortune for clarification. Fortune provided the following in response:

> The water quality monitoring station in Behchokǫ was incorporated into Table A-3 of the AEMP Design Plan because it was a commitment from the EA.
>
> Fortune Minerals agrees that this station is located well downstream and believes it is too far removed from the AEMP study area to provide valuable information about potential effects from the NICO project. For this reason, the Behchokǫ station has not been incorporated into the AEMP. Fortune Minerals will seek input from the community as part of future engagement to determine the path forward regarding the collection and reporting of water quality data from the Behchokǫ station during construction and

operations, or as an alternative, if this commitment could be fulfilled by funding provided to an existing community-based monitoring program.

This was discussed further at the Technical Session, where Fortune stated the following:

> What we were thinking though, moving forward, was that we wanted to, as part of the sponsor, the Marian River Watershed program for them to do the sampling of the water quality, wherever they feel it's appropriate, and just provide them with funding to do so. And just let the Tłįchǫ collect the water sample themselves. Like I said, in -- in a location where they feel it's appropriate. Right. Where their biggest concern is. So that -- that was our feeling moving forward. So the station would still exist, it just wouldn't be sampled by us.[255]

Board staff noted that this station is located very far downstream, and it would not be included as an SNP and seemed outside the reach of the AEMP. Board staff noted that because it is a commitment made during the EA, it would need to be captured somewhere to verify this commitment was being met. The Board agrees that this station is located outside the physical boundary of what would typically be encompassed by either SNP or AEMP monitoring stations. The Board agrees that this station needs to be formally captured under some kind of program and agrees a community-based program is likely appropriate. The Board requires Fortune to engage further with the Tłįchǫ Government to determine where this monitoring would be best conducted and inform the Board in writing once a decision is made. This information will be posted on the public registry as information only.

- ***Decision #15: Fortune is to engage with the Tłįchǫ Government to determine where the downstream water quality monitoring station will be established and under what community-based monitoring program the monitoring will occur. This information is to be provided to the Board in writing and will be made available on the public registry.***

Part G: AEMP RE-EVALUATION REPORT

During the review of the draft Licence submitted with the Application, Board staff (comment 37) noted Fortune had indicated an initial AEMP Re-evaluation Report to be submitted four years after commencing discharge with subsequent re-evaluation reports submitted on a three year cycle, which is consistent with the Board's 2014 Reasons for Decision.[256] Board staff noted that the LWB Standard Licence Conditions specify the initial AEMP Re-evaluation Report to be submitted within "three years following implementation of the design plan" and asked Fortune to confirm if timing could be modified to align with the standard condition. In response, Fortune confirmed agreement with this change and Board staff updated this condition on the draft Licence for review. No comments were received other than Fortune reiterating their agreement with the proposed timing change for the initial submission (response to Board staff comment 57 on the draft Licence for review). Therefore, the Board has revised the wording of Part G,

[255] See WLWB Online Registry for Fortune - NICO Mine - Technical Session - Transcripts Day 1 - Mar 2_26.pdf, p. 211.
[256] See WLWB Online Registry for NICO Mine - Water Licence and Land Use Permit - Reasons for Decision - Jun 17_14.pdf.

Condition 6 (AEMP RE-EVALUATION REPORT) to reflect this change in timing for submission of the first AEMP Re-evaluation Report to three years following initial implementation and retained the timing of subsequent submissions on a three-year cycle.

6.9 Part H: Conditions Applying to Contingency Planning

Part H of the Licence contains conditions related to spill contingency planning and reporting, reclamation of spills and unauthorized discharges, and emergency response for the Project. These conditions are consistent with the Standard Licence Conditions.

Part H: SPILL CONTINGENCY PLAN - REVISED

All applicants must describe spill contingency planning. For most applicants, this will be in the form of a Spill Contingency Plan (SCP), developed in accordance with the INAC *Guidelines for Spill Contingency Planning*,[257] and licences and permits will include standard conditions regarding compliance with the Plan, as approved by the Board.

The Applicant included an SCP, Version 3.0, with the Application.[258] The Board considered this Plan as part of the Application Package.

Part H, Condition 6 of the previous Licence required Fortune to "separate hydrocarbon impacted soil from hydrocarbon impacted snow or water, employ an oil-water separator(s) to treat all hydrocarbon impacted water, and reuse treated water from the separator(s) on-site or treat it in the Effluent Treatment Facility." In the draft Licence for review, Board staff proposed to remove this requirement from the Licence Condition as it would be more appropriate to include this information in the Spill Contingency Plan. In its review of the Application, YKDFN indicated that its preference would be to keep the Licence Condition. However, to align with Standard Licence Conditions and to provide operational flexibility, the Board is of the view that these details are better managed under the Spill Contingency Plan. No other Parties commented on this and Fortune agreed with the proposed changes.

- ***Spill Contingency Plan Revision #1: Fortune to revise the Spill Contingency Plan, Version 3.0, to indicate that Fortune will separate hydrocarbon impacted soil from hydrocarbon impacted snow or water, employ an oil-water separator(s) to treat all hydrocarbon impacted water, and reuse treated water from the separator(s) on-site or treat it in the Effluent Treatment Facility.***

The Board requires that the Licensee revise the Spill Contingency Plan and submit Version 3.1, a minimum of 60 days prior to construction, to include SCP Revision 1, to reflect commitment made during the regulatory proceeding as summarized in Table 5 (see Appendix C), to reflect the Project activities, to meet the applicable guidelines.

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[257] See WLWB External Policies and Guidelines webpage to access the INAC *Guidelines for Spill Contingency Planning*.
[258] See WLWB Online Registry for NICO Mine - WL Renewal Application - Spill Contingency Plan - Version 3.0 - Nov 20_25.pdf

- ***Decision #16: Fortune to revise the Spill Contingency Plan, Version 3.0, to include Revision #1, and to submit Version 3.1 to the Board for conformity, a minimum of 60 days prior to the commencement of construction. Fortune may not commence construction until conformity is confirmed.***

The Plan will be considered approved when the Licensee receives written confirmation of conformity from Board staff. A public review will typically not be required to confirm conformity; however, if the revised Plan includes additional information beyond what has been requested above, a public review may be required before it can be considered by the Board. To ensure that no spills occur before appropriate spill response procedures and equipment are in place, the Licensee may not commence construction until conformity is confirmed.

The Permit also includes conditions regarding the SCP, and the Board mirrored these Licence and Permit conditions as much as possible to ensure one submission will satisfy the requirements of both authorizations.

6.10 Part I: Conditions Applying to Closure and Reclamation and Schedule 7

Part I and Schedule 7 of the Licence contain conditions applying to Closure and Reclamation, including Progressive Reclamation of the Project. These are consistent with the Standard Licence Conditions. Site-specific conditions were developed where necessary.

The conditions in this Section are closely related to the conditions applying to the security deposit (Part C of the Licence); the closure cost estimate and the security deposit are directly related to the activities described in the CRP, and updates to the Plan may result in updates to the closure cost estimate and the security deposit.

Part I: CLOSURE AND RECLAMATION PLAN

All applicants must describe closure and reclamation planning. For most applicants, this will be in the form of a CRP, developed in accordance with the LWB/AANDC *Guidelines for the Closure and Reclamation of Advanced Mineral Exploration and Mine Sites in the Northwest Territories* (Closure Guidelines),[259] and licences and permits will include standard conditions regarding compliance with the Plan, as approved by the Board.

The Applicant included a CRP in the Application;[260] however, the Board did not consider the Plan at this time, because the Plan is still conceptual in nature. The Licensee must submit a revised Plan a minimum

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259 See WLWB Policies and Guidelines webpage to access the LWB/AANDC *Guidelines for the Closure and Reclamation of Advanced Mineral Exploration and Mine Sites in the Northwest Territories*.
260 See WLWB Online Registry for NICO Mine – WL Renewal Application – Conceptual Closure and Reclamation Plan – Version 2.0 – Nov 20_25

of six (6) months prior to the construction of the Confined Disposal Facility (CDF), and it must include the following revisions as was recommended by Parties during the proceeding and Fortune committed to providing, or is information that was expected to be able to be provided later:

- Remove reference to a geotechnical study associated with the pit rim (i.e. Section 5.2.2.3.3 of the Conceptual Closure and Reclamation Plan) and include post-closure monitoring of the mine site which identify any circumstances that may require the adjustment of the pit rim barrier (Application review – GNWT-ECC 13)
- Provide details regarding placement of an overburden cover, details on the dimensions of the Emergency Spill Containment Pond dam, and closure details on other mine components (Application review – GNWT-ECC 19)
- Provide a clear, consolidated list of all buildings and structures (e.g., fuel tanks, power links, etc.) and their associated details (e.g. footprints, heights, lengths, material types, etc.) (Application Review – GNWT-ECC 23)
- Provide the anticipated total number of culverts (Application review – GNWT-ECC 24)
- Provide details pertaining to the landfarm (Application review – GNWT-ECC 25-26)
- Clarify that “reconfigure water management infrastructure (if necessary)” is related to contingency of CWTS 4 construction (Application review – GNWT-ECC 35)
- Details pertaining to planned and contemplated studies, including initiation and completion timelines, with rationale for proposed time of initiation; provide summary of planned and contemplated reclamation research needed to inform closure and the Final CRP (TG 10; GNWT-ECC 42 and 44; WLWB 48)
- Include a detailed summary of all existing and potentially required permits, authorizations, and agreements (Application review – GNWT-ECC 46)
- Identify potential for scenarios where the timeline to flood the open pit differs significantly from expectations, or the pit lake elevation does not reach the expected elevation; include a description of the implications for the proposed closure approaches and timelines, and contingencies to manage these possibilities (Application review – GNWT-ECC 49)
- Clarify how post-closure facilities and pumps for pit-filling will be powered (Application review – GNWT-ECC 50)
- Include details pertaining to the Materials Sorting Facility and Hazardous Waste Transfer Area (Application review – Board staff 61)
- Address clarifications and information requested by GNWT-ECC in GNWT-ECC Application review comments 14, 15, 16, 18, 20, 21, 22, 27, 30, 31, 32, 36, 37, 38, and 51

Once submitted, the revised Plan will undergo the Board’s standard public review process before being considered by the Board. The Licensee may not commence the activities described in the Plan until the Plan has been approved.

The Permit also includes conditions regarding the CRP, and the Board mirrored these Licence and Permit conditions as much as possible to ensure one submission will satisfy the requirements of both authorizations.

As set out in the Defined Terms, all CRPs for the Project must be developed in accordance with the Closure Guidelines.

All CRPs for the Project submitted following the issuance of the Licence must meet the information requirements set out in Schedule 7, Condition 1.

Timing of Closure and Reclamation Plan Submission

During the Technical Session, there was a discussion about the timing of the interim CRP submission.[261] Fortune proposed around a year prior to initiation of construction, or operations would be best in terms of providing sufficient time. The Tłı̨chǫ Government spoke to that timing being tight in terms of informing mine designs, but noted that something could happen in parallel, or require the interim CRP be submitted after Licence issuance. In the Information Requests, Fortune proposed a submission timeline of 24 months following Licence issuance.

During the Public hearing, Board staff asked Fortune about the absolute soonest that Fortune could expect operations to start post-Licence issuance, and the absolute latest relative to project milestones that Fortune would need approved closure objectives.[262] Fortune indicated with a two-year construction period, the earliest that operations could start is the beginning of 2029, and took an undertaking with respect to approved closure objectives timing. Fortune also agreed that approved closure objectives would be needed for the CDF Design Plan. Fortune suggested closure objectives would be submitted first to be approved, and then they could proceed with design of the CDF.

In response to Undertaking #4, Fortune proposed the following timelines, which Board staff included in the draft Licence:

- Closure Objective and Criteria Workshop – a minimum of six months before submission of the Interim Closure and Reclamation plan
- Interim Closure and Reclamation plan – six months prior to Construction of the CDF
- CDF Design and Construction Plan – six months prior to Construction of the CDF

In review of the draft Licence, Tłı̨chǫ Government took note of these deadlines, and agreed with the approach (TG comment 26). Tłı̨chǫ Government noted closure criteria are also needed earlier in order to inform designs and measure success of progressive reclamation. Tłı̨chǫ Government recommended the Board have a process so closure objectives and criteria (relevant to Final Design Reports) can be approved before design submission. Closing Arguments did not speak to the proposed interim CRP submission timeframe. The Board agrees that these timelines allow for necessary design plans to include consideration of closure planning; it is expected that some information from the Interim CRP and CDF Design and Construction Plan may inform each other as well. As such, the Board added the proposed

[261] See WLWB Online Registry Fortune - NICO Mine - Technical Session - Transcripts Day 2 - Mar 2_26.pdf p. 129
[262] See WLWB Online Registry NICO - Type A WL Renewal - Public Hearing - Day 2 Transcript - Apr 27_26.pdf p. 163

timelines as per the draft Licence (i.e., 6 months prior to commencement of construction of the CDF). The Closure Objective and Criteria Workshop is discussed further below.

Closure Objectives and Criteria

The process for developing and approving closure objectives and closure criteria was discussed throughout the proceeding. Cultural use criteria for closure are more specifically discussed in section 5.1.

As noted in section 6.8 regarding the AEMP, a workshop can be useful for all parties to get a better understanding of a submission and gives an opportunity for engagement and discussion of concerns. During the Public Hearing, Board staff asked Fortune for its thoughts on the benefits of holding a workshop prior to submission of the CRP, and Fortune indicated it “definitely thinks that that should happen at some time.”[263] When asked what Fortune would propose for timing of such a workshop, Fortune suggested a year after issuance.[264]

As noted above, Fortune suggested that approved closure objectives would be needed for the CDF Design Plan. In review of the draft Licence, Tłı̨chǫ Government proposed that the Board develop a process for closure objectives and criteria (at least those relevant to Final Designs) to be approved before designs are submitted and require a closure objectives and criteria workshop as part of the process for developing relevant closure objectives and criteria to be included in the Final Design Plans (TG draft Licence comment 26). Tłı̨chǫ Government noted that the “Licence does not set out Conditions that would result in approved closure criteria and objectives that would inform design plans.” Fortune noted engagement should not be through a licence condition, and a condition mandating a workshop should not be required.

As previously identified by Tłı̨chǫ Government in review of the Application, “Closure criteria are needed early to inform designs and measure the success of progressive reclamation” (TG comment 18). The Board expects that through this workshop, Fortune and Parties will have the opportunity to have: a) a clear understanding of what closure objectives and closure criteria are being considered; b) an understanding where parties agree and do not agree; and c) discussions to inform the CRP and Design Plans. It is expected that the CDF will be designed with closure in mind, as Fortune committed to during the proceeding. The Board is of the view that the timelines for submission of the initial Interim CRP and CDF Design and Construction Plan after the workshop, will allow for more advanced closure objectives and closure criteria to be developed before submission of those plans.

- ***Decision #17: Fortune is to hold a workshop to discuss closure objectives and criteria a minimum of six (6) months before submission of Interim CRP. Fortune is to contact and work with Board staff a minimum of three (3) months in advance in the expected workshop timing to determine the exact timing and location of the workshop.***

[263] See WLWB Online Registry for NICO - Type A WL Renewal - Public Hearing - Day 1 Transcript - Apr 27_26.pdf, p.177
[264] See WLWB Online Registry for NICO - Type A WL Renewal - Public Hearing - Day 2 Transcript - Apr 27_26.pdf, p.165

- ***Decision #18: At least two weeks before the workshop, Fortune is to provide proposed closure objectives, and closure criteria which may be required for informing design of the CDF, and any other components that may have designs that are influence by the closure objectives and closure criteria.***

Stockpiling Reclamation Materials

During the Technical Session, Board staff asked if Fortune had a plan with respect to separate stockpiling and use of overburden and/or till for reclamation purposes, and if Fortune saw an issue with a licence condition requiring such stockpiling and use. In review of the draft Licence, Tłįchǫ Government suggested that if the interim CRP will be approved prior to construction, the Licence should have a requirement for stockpiling of all overburden, growth media, glacial till, and other potential reclamation materials (TG comment 26). Tłįchǫ Government noted if reclamation materials are mixed or buried, they may not be recoverable which would impact the closure plan, and that the conceptual closure plan includes the plan to stockpile materials, but that this plan should be a binding requirement. Fortune responded that stockpiling of reclamation materials is standard practice at all developments requiring clearing, and that the draft Land Use Permit also included a condition requiring stockpiling of organic materials, and as such a separate water licence condition is not necessary.

As identified by Fortune, there is a standard condition requiring stockpiling of organic materials in the Land Use Permit. It is unclear to the Board whether all overburden or other "potential reclamation materials" would be suitable for reclamation uses at this time. If there are additional materials that should be saved and stockpiled, this should be addressed in reviews of the Geochemical Characterization and Management Plan, which requires a description of how the Licensee will geochemically classify and manage overburden, amongst other materials. The schedule for this Plan (Schedule 5, Condition 4) requires:

> A description of the geochemical characterization of overburden that will be used in construction or for Reclamation, including specific measures to ensure that this material meets or exceeds the geochemical cut-off criteria defined for Type 1a material.

Given the existing requirements for stockpiling organic materials, and requirements of the Geochemical Characterization and Management Plan, the Board is of the view that an additional Licence requirement may not be appropriate. Given the unknown geochemical characterization of the overburden and other potential reclamation materials, the Board decided to not include the proposed requirement in the Licence at this time.

Part I: COMPONENT-SPECIFIC CLOSURE AND RECLAMATION PLAN

Different components of the Project were identified in the Conceptual CRP submitted with the Application, along with opportunities for progressive reclamation for certain components.[265] Board staff asked for additional information to support the Application in an Information Request, asking Fortune to identify what standard definitions and conditions would apply to the Project.[266] In response, Fortune identified that the COMPONENT-SPECIFIC CLOSURE AND RECLAMATION PLAN condition was applicable to the project. Board staff included this condition in the distributed draft Licence. No Party disagreed with inclusion of this condition, and the Board is of the view that it will allow for Fortune to more readily conduct Progressive Reclamation as different components are completed as the Project proceeds. As such, the Board has kept the condition as per the draft Licence.

Part I: PROGRESSIVE RECLAMATION

The standard condition for progressive reclamation is "The Licensee shall endeavor to carry out approved Progressive Reclamation as soon as is reasonably practicable." The intent of the condition is to encourage Progressive Reclamation, and it is noted in the standard conditions that "Regarding what is 'reasonably practicable,' the Inspector will determine what is practical on a case-by-case basis, taking into consideration any timelines set out in approved overall or Component-Specific CRPs."

In review of the Application, Tłı̨chǫ Government asked Fortune if it had any suggested improvements to the Licence to tighten requirements for progressive reclamation, highlighting that the standard condition was general and subjective (TG comment 12). Fortune responded that it agreed with the standard conditions, and that there is a strong incentive to undertake progressive reclamation.

In its Intervention, Tłı̨chǫ Government recommended that Fortune be required to carry out progressive reclamation on a schedule in the approved CRP. Fortune indicated that the "maintenance of security provides significant and sufficient incentives to undertake progressive reclamation", and that this method should meet the intent of the Tłı̨chǫ Government's recommendation.[267]

Tłı̨chǫ Government maintained its recommendation during the Hearing and noted that if a company has financial difficulties there will be competing financial needs, and it may be difficult to carry out progressive reclamation. The Tłı̨chǫ Government suggested that the approved progressive reclamation schedules be narrative, which would be more realistic than predicting dates for when progressive reclamation can begin.

In the draft Licence for review, Board staff adjusted the standard condition to remove the word "endeavor". In review of the draft Licence, Tłı̨chǫ Government (TG draft Licence comment 16) suggested

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[265] See WLWB Online Registry for NICO Mine - WL Renewal Application - Conceptual Closure and Reclamation Plan - Version 2.0 - Nov 20_25.pdf; Table 7, p. 57
[266] See WLWB Online Registry for Fortune - NICO Mine - Technical Session - Information Requests - Feb 27_26.pdf
[267] See WLWB Online Registry for NICO Mine - WL Renewal Application - Information Request 1-3 - Dec 12_25.pdf IR#1

that while the condition was improved by removal of word "endeavor", the words "as soon as is reasonably practical" are still ambiguous and difficult to enforce; Tłįchǫ Government noted that the Conceptual CRP already has a schedule for progressive reclamation. Fortune responded that it supports the condition as it stands and requires flexibility for mining operations and progressive reclamation as mining conditions may change as the project proceeds. Fortune noted that additional ore could be found, and if underground mining needed to stop to start progressive reclamation because of a Licence requirement, this would affect Fortune Minerals and Tłįchǫ Government finances.

The Board notes that the Closure Guidelines require a schedule of progressive reclamation in Closure and Reclamation Plans and would be an expectation in any future CRP submissions.[268] Table 18 provided in the Conceptual CRP outlined the schedule of proposed closure and reclamation activities; the Underground Mine Workings, CDF, and Borrow sources were identified as components where progressive reclamation could be initiated through the life of the project. The next CRP is for Board approval, and the Board is of the view that concerns regarding progressive reclamation timing would be better discussed in the context of that submission. As a progressive reclamation schedule is already required per the guidelines, the Board has decided to not add any further requirements for the CRP submission.

Part I: PERFORMANCE ASSESSMENT REPORT – COMPONENT-SPECIFIC

The general purpose of the Performance Assessment Report (PAR) is to provide a detailed comparison of conditions at the site against the approved Closure Objectives and Closure Criteria. In the draft Licence, Board staff asked Parties for input on suggested timeframes for submission of the PARs, or whether the timing should be "as directed by the Board." YKDFN suggested the Board was better equipped to develop a schedule, and that "as directed by the Board" should be used (YKDFN comment 60). GNWT-ECC suggested a timeframe of five years was typical and was in the MVLWB/AANDC Guidelines (GNWT-ECC comment 6). Tłįchǫ Government recommended that the proponent have opportunity to submit a PAR on its own initiative, and that a similar approach to the Diavik Licence be used. Fortune suggested the PARs should be provided within five years of completing Closure and Reclamation of any specific component or as outlined in the approved Final CRP, similar to the condition in the Diavik Water Licence W2025L2-0001. Fortune agreed with GNWT-ECC's recommendation. Given that most Parties agree with a five-year deadline, and proposed use of a similar approach to Diavik from the Tłįchǫ Government and Fortune, the Board has decided to use the timeframe recommended by the Tłįchǫ Government and Fortune and adjusted the Licence accordingly.

Part I: TEMPORARY CLOSURE PLAN

As part of the LWBs' ongoing efforts to improve consistency and clarity regarding LWB policies and processes, the most recent administrative update to the Standard Licence Conditions included a new Condition requiring a TEMPORARY CLOSURE PLAN. Temporary Closure is defined in the Guidelines as a

[268] See WLWB Online Registry for LWB Guidelines for the Closure and Reclamation of Advanced Mineral Exploration and Mine Sites in the Northwest Territories (2013)

state of care and maintenance, with the intent of resuming Project activities in the near future.[269] Schedule requirements for the Temporary Closure Plan are summarized in the LWB *Guidelines for the Closure and Reclamation of Advanced Mineral Exploration and Mine Sites in the Northwest Territories*. Whereas the same information was previously required under the CRP, this new Condition separates the Temporary Closure Plan from the CRP to allow more operational and administrative flexibility prior to and during a period of Temporary Closure.[270] The Board acknowledges that this administrative update to the Standard Water Licence Conditions was done after the draft Licence for the NICO Mine was distributed for review; hence, this Condition was not included in the draft Licence for Parties' consideration. However, in December 2025, an Information Request was issued to Fortune, to provide a draft Water Licence that included definitions and conditions from the Standard Water Licence Conditions Template that applied to the Project and which identified which definitions and conditions were not relevant, with rationale.[271] The Board notes that Fortune didn't identify any concerns regarding Temporary Closure requirements under the schedule for the CRP, and these requirements along with the definition for Temporary Closure were included in the draft Water Licence based on the Standard Conditions Template, provided by Fortune in response to the Information Request. The Board is of the view that the flexibility this new Condition provides, by allowing the Licensee to revise the Temporary Closure Plan without resubmitting the CRP, is of benefit to all Parties as it simplifies the review and approval process. Therefore, the Board has included Condition 12 (TEMPORARY CLOSURE PLAN) and Schedule 7, Condition 5, to the Licence. The Board decided to align the initial submission deadline of this Plan to match the initial submission of the CRP (i.e., a minimum of 6 months prior to Construction of the CDF), so that both documents can be reviewed together. However, it is the Board's intent that following the initial public review and Board decision, subsequent revisions to this Plan will be addressed through the ANNUAL REVIEW and REVISIONS Conditions to allow flexibility and will likely diverge from subsequent submissions of the CRP.

6.11 Part I: Surveillance Network Program (SNP)

Fortune included a draft Licence with the Application, which proposed the following changes to the SNP:

- remove station SNP_09 (Emergency Containment Area) because the updated design of the CDF has merged this with the Surge Pond and monitoring will be captured through station SNP_12;
- incorporate additional active SNP stations carried over from Licence W2011L2-0002, which includes stations SNP 5-2 (Seepage from Underground Mine Portal) and SNP 5-5 (Water quality in Lou Lake);
- update parameter groupings and order in station tables and in footnotes to better reflect the order typically presented in recent licences;
- add acute toxicity testing requirements to station SNP_02 (point of compliance at the Effluent Treatment Facility) for consistency with other mining licences and MDMER;

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[269] See WLWB Webpage for LWB Guidelines for the Closure and Reclamation of Advanced Mineral Exploration and Mine Sites in the Northwest Territories (2013) p. 38
[270] See WLWB Webpage for LWB Guidelines for the Closure and Reclamation of Advanced Mineral Exploration and Mine Sites in the Northwest Territories (2013) p. 38
[271] See WLWB Online Registry for NICO Mine - WL Renewal Application - Response to Information Request - Dec 18_25.pdf.

- add the ECCC definition for a "week" to align with MDMER requirements (i.e., samples need to be collected once per week, which is defined as the period between Sunday and Saturday);
- add information to clarify the timing of chronic toxicity sampling to align with the MDMER;
- adjust freshet timing at stations SNP_13 to SNP_15 (Peanut Lake: Mixing Zone) to include the month of May as break up may occur at that time in warmer years;
- remove dissolved phosphorus as it is not typically required and is not used for understanding tropic status (i.e., total phosphorus is more useful);
- add dissolved organic carbon, which is a toxicity modifying factor and is required to derive some of the updated water quality guidelines; and
- update the footnotes to adjust for incorporating stations SNP 5-2 and 5-5 in the SNP.

Further discussions regarding SNP monitoring occurred throughout the Renewal proceeding and led to further refinements of the SNP Schedule, which were included in the draft Licence for review.

The Board notes that the previous licence for the Project included the SNP in an annex, but this has been changed to a schedule (i.e., Schedule 8) to reflect the LWB Standard Conditions. In addition, Board staff included a number of administrative changes (e.g., punctuation, clarification of terms, removal of redundant items) in the draft Licence for review. Additional administrative changes were made throughout Schedule 8 for consistency with the Licence. The Board has accepted these changes, which are not discussed further unless Parties or Fortune identified specific concerns or unless required for context. The discussions in subsections below focus on conditions for which concerns were raised as part of this proceeding and outline the Board's decision with respect to the Licence.

6.11.1 Station Locations

<u>Station SNP_09 Emergency Containment Area</u>

Fortune proposed removing this station from the SNP because the updated design of the CDF has merged this area with the Surge Pond; therefore, monitoring will occur at station SNP_12. No concerns were raised. During the review of the draft Licence, the Tłı̨chǫ Government (comment 2) requested further information to support removal of station SNP_09, specifically noting a concern of the Surge Pond having insufficient capacity. The Tłı̨chǫ Government indicated they were unable to locate where this change was proposed in the Application and recommended the Board retain Water Licence Conditions and supporting definitions to ensure the Board has good oversight over the Emergency Spill Containment Pond until such time as Fortune provides information to support this structure no longer being necessary. In response, Fortune provided the following:

> As described in the application cover letter, the Emergency Spill Containment Pond considered in W2008L2-0004 has been enlarged and merged with the Surge Pond. As such, Fortune Minerals also proposes to remove SNP-09 for the Emergency Spill Containment Area, replaced with the Surge Pond, SNP-12. Refer also to the project maps provided with the application.

The Tłı̨chǫ Government reiterated this concern in the Closing Arguments:

> Fortune proposes to combine the emergency spill containment pond (ESCP) with the surge pond. The surge pond's purpose is to collect all site runoff and water from the open pit and underground for recycling or treatment. The ESCP's main purpose is to capture an unexpected release of tailings from a ruptured pipeline. Fortune has not provided evidence that the surge pond can take on the role of the ESCP. For example, the Water and Wastewater Management Plan states that the surge pond is not sized to store a large storm event because of topographical constraints.10 This brings into question how much the surge pond can be expanded. When Fortune submits its designs and management plans related to water management, Fortune will need to demonstrate that the new configuration has sufficient storage capacity and design to function as both a surge pond and emergency storage for tailings. If Fortune cannot demonstrate this, then the ESCP may need to be located separately from the surge pond. The Water Licence should allow flexibility for this possibility, consistent with TG Comment #2 on the Draft Water Licence.

The Board agrees that oversight of the water management and spill control structures is necessary and should be captured in the Licence; however, the design for the CDF is still in development and has not been approved. Fortune will be required to provide the detailed design for approval, which the Board notes will also have undergone expert panel review. It is the Board's opinion that there is sufficient regulatory oversight through the required approval of the CDF design plan prior to construction to allow for determining the adequacy of the storage capacity. At this time, the Board has determined it is reasonable to remove this station from the SNP based on the information provided by Fortune through this proceeding. The Board notes that should additional SNP monitoring be determined necessary in the future (e.g., inclusion of the Emergency Spill Containment Pond and/or additional station(s) associated with the Surge Pond), this can be modified through an update of Schedule 8 for Board approval.

Station SNP_20 Downstream of the ANFO Emulsion Plant

During the review of the Application, Board staff (comment 93) noted that the Explosives Management Plan stated that SNP monitoring would be included for this facility, but this was not included in the draft Licence submitted with the Application. In response, Fortune clarified that the ANFO and Emulsion Plant was now located south of the main mine site to accommodate the change in the NPAR route on the mine lease. It was Fortune's opinion that SNP was no longer necessary because the ANFO and Emulsion Plant had been moved further from any waterbody. This was discussed further at the Technical Session and Fortune included information for a new SNP station to monitor seepage/runoff from this facility in response to Information Request 9. The Board notes that no concerns were raised and the Board has included this station in the SNP.

Station SNP_21 Nearshore area in Nico Lake (Northwest Embayment)

At the Technical Session, GNWT-ECC asked if Fortune had considered near-shore monitoring for seepage/runoff into Nico Lake. Fortune indicated it had not considered such monitoring because the minewater will be collected.[272] The issue regarding the lack of a near-shore station in Nico Lake to monitor for unanticipated runoff and seepage was further discussed at the Public Hearing.[273] Fortune was asked to propose an SNP station in Nico Lake, and the information provided in response to Undertaking 1 was used to inform a proposed station table for station SNP_20 in Schedule 8 of the draft Licence for review. No comments or concerns were received, and the Board has included station SNP_20 as proposed to assess potential seepage and runoff from the CDF. The Board notes that further discussion regarding incorporating this station in the AEMP Design Plan is anticipated during the workshop (see section 6.8.3 for further details).

Station SNP_22 Marian River

Throughout this proceeding, there has been extensive discussion regarding the Marian River and what monitoring should be included to determine EA Measures 1 and 2 are being met throughout all stages of the Project. Fortune provided information for SNP monitoring in the Marian River in response to Undertaking 9. This information was included in the draft Licence for review. No comments were received related to the station location, and the Board has included this station in the SNP Schedule 8.

Station SNP_23 Groundwater Wells

Board staff included a placeholder for future groundwater well monitoring in the draft Licence for review. No comments were received and the Board has included this in the SNP Schedule 8. The Board notes that Fortune will be required to submit an update to SNP Schedule 8 once the locations of the groundwater wells are known and prior to commencing Construction of the CDF.

Station SNP 5-2 Nearshore area in Nico Lake (Northwest Embayment)

Board staff included stations SNP 5-2 (Seepage from Underground Mine Portal) and SNP 5-5 (Water quality in Lou Lake) in the draft Licence for review, which Fortune proposed to incorporate from Licence W2011L2-0002. No concerns were raised and the Board notes that these stations are currently active SNP locations and the Board has included them in the SNP. The Board has also updated the rationale for station SNP 5-5 to remove reference to a "lagoon" as Fortune confirmed (response to Board staff comment 35 on the draft Licence SNP Schedule 9) that a sewage lagoon is not required on site.

6.11.2 Sampling Timing and Frequency

In the draft Licence for review, Board staff included a comment seeking input on the proposed changes to the rationale for station SNP_01 to reflect direct discharge of sewage to Peanut Lake at SNP_01 will only occur during Construction, but ongoing SNP monitoring will occur during the remaining phases of the Project when the Effluent Treatment Facility is operational. In response, Fortune proposed "that the sampling frequency in this table be revised to Continuously (during Construction), Weekly (during Construction and Closure) and Monthly (during Construction and Operations) to reflect the timeline for

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[272] See WLWB Online Registry for Fortune - NICO Mine - Technical Session - Transcripts Day 1 - Mar 2_26.pdf, pp. 197–199.

[273] See WLWB Online Registry for NICO - Type A WL Renewal - GNWT Intervention - Apr 8_26.pdf, Recommendation 4; NICO - Type A WL Renewal - Public Hearing - Day 1 Transcript - Apr 27_26.pdf, pp. 203–205.

ETF operation." The Board notes that this proposed approach would eliminate weekly monitoring during Operations and, therefore, key sewage-related parameters at station SNP_01 would not be monitored. While these parameters may be captured through monitoring at station SNP_02 for end-of-pipe discharge, there would be no monitoring data to verify the sewage treatment plant is working appropriately prior to mixing with the minewater effluent. It is the Board's opinion that further information regarding the management of wastewater through the combined effluent at the Effluent Treatment Facility is required in order to inform this decision. Therefore, the Board has retained the sampling frequencies as proposed in the draft Licence for review and requires Fortune to include details related to monitoring of the sewage effluent, including an update to SNP Schedule 8 if deemed warranted, in the next version of the Water and Wastewater Management Plan for further consideration (see Section 6.7.1) This updated submission of the Water and Wastewater Management Plan and Schedule 8, if included, will undergo public review prior to Board approval.

Fortune proposed including monitoring cyanide and radium-226 at stations SNP_02 in the draft Licence submitted with the Application. No comments were received regarding including this in the SNP; therefore, Board staff included these two parameters in the draft Licence for review. No comments from Parties were received but Fortune proposed "removing cyanide and radium-226 from monitoring requirements as these parameters do not have EQC and Board staff preference was not to align the Water Licence with MDMER monitoring requirements and limits." The Board notes that SNP parameters are not dictated solely by the presence of EQC but rather the SNP includes a more comprehensive set of parameters to help verify that predictions in water quality were correct and no unforeseen changes occur. The Board also notes that it is not bound by the MDMER but will align monitoring requirements in the Licence where it makes sense to do so. Even if such alignment does not occur, Fortune is still required to meet the MDMER requirements. At this time, the Board notes that cyanide is not included in the WMP as a chemical that will be used at site and the Board is comfortable with removing this parameter provided cyanide is not present at site. If that changes, an update to the WMP and Schedule 8 will be required for Board approval. The Board has also decided not to include radium-226 in the SNP noting that monitoring for this parameter will occur according to the MDMER. As such, cyanide and radium-226 have been removed from the required parameters at station SNP_02 under the SNP Schedule 8.

Monitoring at station SNP_02 included *Escherichia coli* and Board staff added fecal coliforms to the draft Licence for review with the note seeking feedback regarding this addition to reflect the combined effluent from the Effluent Treatment Facility. No comments were received from Parties, but Fortune's response was that it "does not agree with the addition of fecal coliforms as a requirement at SNP_02 because this is already being monitored at the Sewage Treatment Plant (the primary source of fecal coliforms)." The Board notes two things: (1) Fortune proposed changes to the sampling frequency that would eliminate monitoring of those parameters at the Sewage Treatment Facility (as discussed above); and (2) determination of whether EQC will be based on *Escherichia coli* or fecal coliforms is to be determined through the EQC Re-evaluation Report and amendment of the licence (see section 6.7.6 of this Reasons for Decision for further details). Given the approval required prior to commencement of discharge from the Effluent Treatment Plant, it is the Board's opinion that the monitoring requirements associated with station SNP_02 can be revisited through the EQC Re-evaluation Report with further consideration of potential updates regarding the Sewage Treatment Plant through the Water and Wastewater Management Plan. Therefore, the Board has retained the parameter information consistent with the draft Licence for Review and anticipates a request to revise SNP Schedule 8 will be submitted with further supporting information for Board approval.

The Board has also included the standard condition for acute toxicity testing under Part F, Condition 31 for the Effluent Treatment Facility. As such, monthly acute toxicity testing requirements were added to the SNP for station SNP_02 in the draft Licence for review. No concerns were raised and the Board has included those requirements in the SNP Schedule 8.

YKDFN recommended sampling at SNP_22 (Marian River) monthly under ice-covered conditions and weekly under open-water conditions, with special consideration during freshet (YKDFN comment 98 on draft Licence for Review). YKDFN suggests monthly sampling "to ensure that as much data is available as possible, while also balancing the ability to safely sample in the winter." In response, Fortune stated the following:

> Fortune Minerals disagrees with this recommendation as the Marian River will not be withdrawn from until active closure, well after approximately 20 years of Construction and operations. Fortune Minerals proposes that the sampling frequency be left as TBD until the Closure and Reclamation Plan is further developed and closer to when active pit filling is schedule do begin.

The Board agrees that the monitoring frequency for this station can be determined later once the CRP is further developed but does not agree that this needs to wait until closer to the actual pit flooding. It is the Board's opinion that this can be considered as a topic through an update to the CRP once more information is available and an update to the SNP Schedule 8 for Board approval can occur in the future. Therefore, the Board has left the monitoring frequency for station SNP_22 as to be determine (TBD) at this time. However, the Board notes that Fortune has requested an increase in the water withdrawal volume from Lou Lake, which also flows into the Marian River. Fortune needs to establish monitoring in the Marian River to verify EA Measures 1 and 2 are met through all stages of the Project and the Board assumes this will be done through the AEMP for Construction, operations, and at minimum, the early stages of closure. Therefore, the Board requires Fortune to include this in the topic for discussion at the AEMP workshop (see section 6.8.3 of this Reasons for Decision). If it is determined that an alternate SNP station needs to be established in the Marian River rather than the AEMP, then Fortune can submit an update to the SNP Schedule 8 for Board approval.

In the draft Licence provided with the Application, Fortune proposed to adjust freshet timing at stations SNP_13 to SNP_15 (Peanut Lake: Mixing Zone) to include the month of May as break up may occur at that time in warmer years. No comments were received on this proposed change, and the Board agrees that extending the potential sampling timing window makes sense. The SNP has been updated to reflect that freshet may include sampling in May or June. In addition, Board staff included a comment in the draft Licence for review seeking feedback on whether monitoring at the mixing zone stations in Peanut Lake should begin when the Sewage Treatment Plant begins discharging rather than deferring until the Effluent Treatment Facility commences discharge. In response, YKDFN (comment 96) indicated monitoring should commence with the commencement of Sewage Treatment Plant discharge. Fortune provided the following in response to YKDFN's comment:

> The mixing zone in Peanut Lake was delineated through the Developer's Assessment Report (DAR) to include the combined effluent streams from the Sewage Treatment Plant (STP) and Effluent Treatment Facility (ETF). Fortune does not propose to commence monitoring in the mixing zone until the ETF is operational. The discharge from the STP will be low volume and is not expected to result in any detectable change at the mixing zone boundary.

The Board acknowledges that the previous Board decision in the July 17, 2014, Reasons for Decision authorized the entirety of Peanut Lake as the mixing zone with water quality objectives needing to be met at the outflow of the lake.[274] The Board's previous decision was based on the following recommendation from MVEIRB's Reasons for Decision for the EA:

> Fortune Minerals commits to meeting site specific water quality objectives at the outlet of Peanut Lake. The Review Board accepts this commitment and agrees with the developer, AANDC and the Tłı̨chǫ Government that use of Peanut Lake as a mixing zone is appropriate, provided traditional uses of downstream water bodies are protected.[275]

The Board, however, set a limitation on the timing when this mixing zone would apply:

> The decision to define Peanut Lake as a mixing zone applies only to the operational phase of the mine. Discussions regarding whether there will be a mixing zone post-closure, and if so, what it will be, will take place during the closure planning process.[276]

While the Board acknowledges that the discharge volume from the Sewage Treatment Plant alone will be relatively low, it is still considered a deposit of Waste into Peanut Lake. There is also the limited but ongoing discharge from the Underground Mine Portal (SNP 5-2); therefore, it is the Board's opinion that monitoring in Peanut Lake during Construction and prior to commencement of discharge from the Effluent Treatment Plant is appropriate. The Board has set the requirement for the AEMP to commence during Construction (see Section 6.8.3 for further details), which the Board feels likely will be sufficient and additional SNP monitoring is not required at this time. However, if it is determined through the AEMP workshop that additional SNP monitoring during Construction is required, Fortune can submit an update to the SNP Schedule 8 for Board approval.

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[274] See WLWB Online Registry for NICO Mine - Water Licence and Land Use Permit - Reasons for Decision - Jun 17_14.pdf, PDF pp. 68–69.
[275] See MVEIRB Online Registry for NICO Report of EA and Reasons for Decision (corrected), PDF p. 54.
[276] See WLWB Online Registry for NICO Mine - Water Licence and Land Use Permit - Reasons for Decision - Jun 17_14.pdf, PDF p. 69.

Board staff included a comment seeking input on the sampling frequency for station SNP_20, which is located downstream of the ANFO Emulsion Plant. YKDFN (comment 97 on the draft Licence) expressed they had no concerns with the proposed monitoring frequency of weekly during freshet and daily during periods of heavy rainfall events but asked for clarification regarding “what happens outside of freshet and heavy rainfall events”. Fortune provided the following in response to YKDFN’s comment:

> Fortune Minerals proposes a sampling frequency of once during freshet and once during heavy rainfall events only, if sufficient flow volume is present, to capture periods when the highest volume of seepage is expected (worst case conditions). There is no proposed sampling outside of freshet and heavy rainfall events because seepage will be limited.

In addition, in response to Board staff comment 27 on the SNP in the draft Licence for review, Fortune proposed to revise the weekly freshet sampling to once during freshet and revise the daily during heavy rainfall events to once during heavy rainfall events. It is the Board’s opinion that Fortune’s proposed revisions are reasonable and agrees that monitoring seepage outside of these periods is unlikely to be necessary as seepage should be limited or non-existent. The Board believes that visual monitoring to verify the absence of seepage would be appropriate and is best captured under operational monitoring through the WMP. Therefore, the Board has added a requirement to revise the WMP to reflect this (see section 6.7.2, and WMP Revision #4). Should unexpected seepage be identified outside of freshet and heavy rainfall events, then additional monitoring may be warranted once the source of the seepage is determined.

YKDFN (comment 100 on the draft Licence for review) indicated agreement with including Station 5-5 as proposed but recommended altering the wording of the status to “seasonally active”. Fortune did not agree with this recommendation and indicated their preference to keep the wording as is (i.e., “Active – Camp is in use seasonally”), which the Board agrees with because it provides a thorough description. Therefore, the status was included as described in the draft Licence.

6.11.3 Sampling Parameters

In the draft Licence for review, Board staff specified weekly pH laboratory monitoring at stations SNP_01 (Sewage Treatment Plant) and SNP_03 (Effluent Treatment Plant prior to mixing with sewage effluent) because field-based pH is to be monitored on a continuous basis. No concerns were raised from Parties, but the Board notes that Fortune stated in its response that it “agrees that lab pH could be specified here since field parameters are not required.” The Board notes that specification of this parameter being analyzed by the laboratory on a weekly basis does not preclude the continuous analysis of the pH, which is captured under the field parameters, which the Board anticipates will be done using an inline system. The Board’s opinion is that weekly laboratory-based analysis of the pH is appropriate and has included this requirement in the SNP for these two stations.

At station SNP_01, the Board has updated biological oxygen demand to carbonaceous biochemical oxygen demand, which was proposed by Fortune in response to Undertaking 5. No comments were received regarding this change in parameter. At stations SNP_02, SNP_03, SNP_13 through SNP_18, SNP_21, and

SNP 5-5, the Board has updated biological oxygen demand to chemical oxygen demand to better reflect current standard practices as noted by the GNWT-ECC at the Technical Session, but acknowledges that this may be further adjusted if Fortune determines that carbonaceous biochemical oxygen demand would be the preferred monitoring parameter either through the EQC Re-evaluation Report or an update to the SNP Schedule 8.

The Board has also included analysis of fecal coliforms as station SNP_02 to reflect the combined sewage and minewater effluent. The Board acknowledges that Fortune indicated it "does not agree with the addition of fecal coliforms as a requirement at SNP_02 because this is already being monitored at the Sewage Treatment Plant (the primary source of fecal coliforms)" (response to Board staff comment 9 on the draft Licence SNP). The Board notes that Fortune is required to determine an EQC for either fecal coliforms or *Escherichia coli* for the discharge from SNP_02 to reflect the combined sewage and minewater effluent. Therefore, the Board's opinion is that monitoring for fecal coliforms is both necessary and appropriate at compliance point for station SNP_02. If Fortune determines that *Escherichia coli* is the more appropriate parameter for an EQC, then the SNP Schedule 8 can be updated to reflect this; however, the Board also notes that EQC are not the sole determiner of what parameters are monitored under the SNP and monitoring of fecal coliforms may still be required.

The Board has updated the SNP requirements at station SNP_02 to reflect acute and chronic toxicity requirement. These changes also reflect updates proposed by Fortune and no concerns were raised by Parties.

In the draft Licence for review, Board staff proposed removing *Escherichia coli* and fecal coliforms from station SNP_03, which monitors outflow of treated minewater from the Effluent Treatment Facility prior to mixing with sewage. The rationale was because these are sewage-related parameters and are not associated with minewater only. No concerns were raised by Parties and Fortune agreed with this revision. The Board agrees that removing these parameters from this SNP station is appropriate and has reflected this in the SNP Schedule 8.

Board staff included Field Parameters and Standard Parameters for stations SNP 5-2 and 5-5, noting that it is standard best practice to measure parameters such as pH and conductivity in the field and through laboratory analysis. No concerns were raised by Parties and Fortune agreed to these changes (response to Board staff comments on the draft Licence SNP for review). Therefore, the Board has updated the SNP Schedule 8 accordingly.

The Board has updated the footnote associated with the Nutrient parameter suite to remove total dissolved phosphorus because the Board agrees with the rationale provided by Fortune and that total phosphorus is used for understanding trophic status. The Board also agrees with Fortune that dissolved organic carbon should be added because it is a toxicity modifying factor and is required to derive some of the updated water quality guideline; this has been added to the Nutrient parameter suite footnote.

Board staff included turbidity as a standard field parameter and included a comment seeking input regarding this addition. NSMA (comment 4 on the draft Licence) agreed this should be included and no other comments were received from Parties. In response, Fortune indicated that it "does not feel that it is necessary to include turbidity as a standard requirement for field parameters. Turbidity can be reliably measured by the laboratory and TSS is also analyzed as a more precise measurement of suspended sediments." The Board notes this same response was provided to Board Staff comment 36 on the draft Licence SNP Schedule for review. While the Board agrees that turbidity and TSS can be reliably measured by the laboratory, the receipt of these analytical results can take weeks, which may delay identification of a sediment-related issue in the effluent. Therefore, the Board feels field measurement of turbidity is important and appropriate and has retained this as a standard field parameter.

The Board has added rubidium and tin to the footnote of required metals because these two parameters are typically included in the standard metal parameter suite. No concerns were raised by Parties on the draft Licence for review and Fortune indicated agreement with this addition.

6.11.4 Quality Assurance/Quality Control

Board staff (comment 13 on the Application) identified a potential concern with maintaining consistency in detection limits, which may aid in data interpretation, but noting that some of the historical detection limits are quite high and result in non-detects, which also limits data interpretation. Board staff requested the proposed detection limits associated with the Project be provided. In response, Fortune noted that the detection limits for water quality will be submitted through the Quality Assurance/Quality Control Plan (QA/QC Plan) to an Analyst for approval and that Fortune intends to apply these to all water quality samples collected under the SNP and AEMP. Fortune also provided the following clarification regarding the detection limits:

> The comment about maintaining consistency in detection limits was related to checking that the DLs do no drift upwards over time (unless increases are needed for sample dilution, matrix interference, etc.). Maintaining DLs as low as reasonably practical will allow for a more robust AEMP dataset and fewer non-detect values. Detection limits will also be set to be low enough for comparison of results with CCME guidelines and will meet Metal and Diamond Mining Effluent Regulations (MDMER) analytical requirements. This approach can be clarified in the AEMP Design Plan.

The Board acknowledges that the QA/QC Plan is required for submission to the Analyst for approval per Schedule 8, Part D, Condition 3. The Board notes that the QA/QC plan is for the SNP but acknowledges Fortune's commitment to applying it to the water quality monitoring under the AEMP. The Board agrees this is appropriate and no further changes are required at this time.

Board staff (comment 17 on the Application) asked for clarification regarding how quality control samples would be determined. In response, Fortune provided the following clarification:

> The previous sentence in Section 5.1.6 indicates blanks and duplicate samples will be collected concurrently with water quality samples. This was intended to indicate that

quality control samples will represent at least 10% of the total sample count for each sampling event. Further details on quality control sample requirements will be provided in the Quality Assurance/Quality Control Plan (QA/QC Plan) as required by Part D, Condition 3 of the draft Water Licence.

The Board notes that the QA/QC plan is for the SNP but acknowledges Fortune's commitment to applying it to the water quality monitoring under the AEMP. The Board agrees this approach to quality control samples is appropriate and no further changes are required at this time.

6.12 Attachment A: Concordance Table of Submissions

Attachment A to the Licence contains a table that summarizes the submissions required by the Licence conditions.

6.13 Attachment B: Revision History Table

Attachment B to the Licence contains a table which identifies updates and tracks changes made to the Licence. This table is currently blank because this is a new Licence, but it will be updated throughout the life of the Licence.

7.0 Decision – Land Use Permit W2026D0001

Having due regard to the facts, circumstances, and the merits of the submissions made to it, and to the purpose, scope, and intent of the MVRMA, the Board has determined that Permit W2026D0001 should be issued, subject to the scope, defined terms, conditions, and term contained therein. The Board's determinations and reasons for this decision are set out below.

The Permit has been developed to address the Board's statutory responsibilities, to protect the Receiving Environment, and to address issues within the Board's jurisdiction that were identified and investigated during the regulatory proceeding.

In developing the Permit, the Board considered the LWB *Standard Land Use Permit Conditions Template* (Standard Permit Conditions)[277] and included a number of these standard conditions that are relevant to the Project. As noted in section 4.0, Board staff circulated a draft Permit for review to allow Parties to provide specific input to the Board on possible conditions, and the Board considered these review comments and recommendations in making its determination on the Permit conditions.

The Standard Permit Conditions have been established by the LWBs based on information from LWB policies and guidelines, other applicable guidelines and best practices, meetings with Inspectors, input

[277] See WLWB Policies and Guidelines webpage to access the LWB *Standard Land Use Permit Conditions Template*.

from LWB staff, and feedback from a public review. Each standard condition has been evaluated against the following characteristics of an ideal condition:

- Clearly part of LWBs' authority;
- Has a clear purpose and rationale;
- Is practical and enforceable;
- Matches the scale of the project; and
- Does not conflict with existing legislation (i.e., is not less stringent).

The Standard Permit Conditions include general rationale for each standard condition, and as such, the language of any standard condition included in the Licence is only discussed in detail in the following sections of these Reasons for Decision when it specifically relates to concerns or recommendations raised during the regulatory proceeding. The Board's reasons for developing and including Project-specific conditions, including discussion of any concerns and recommendations raised regarding these conditions, are detailed in the relevant sections below.

7.1 Term of Permit

The Applicant has applied for a term of five years for the Permit. Subsection 26(5) of the MVLUR allows for a Permit term of not more than five years. In the Application, Fortune noted the Permit would allow Fortune to conduct Construction and operations activities associated with the NICO mine. In review of the draft Permit, no Party indicated concerns with the proposed term length. After reviewing the submissions made during the regulatory proceeding, the Board has determined an appropriate term for the Permit is five years.

- ***Decision #19: To issue Land Use Permit W2026D0001 for a term of 5 years.***

7.2 Part A: Scope of Permit

The scope of the Permit ensures the Permittee is entitled to conduct activities which have been applied for and which have been subject to Part 5 of the MVRMA. In setting out the scope of the Permit, the Board endeavoured to provide enough detail to identify and describe the authorized activities, without being unduly restrictive or prescriptive, and to allow for Project flexibility, as contemplated in the Application, throughout the life of the Permit.

Based on the activities described in the Permit Application and on the scope outlined in the Standard Permit Conditions, Board staff included a draft scope in the draft Permit that was circulated for public review. The Board did not receive any comments or recommendations regarding the draft scope during the proceeding, so the Board accepted it as the scope of the Permit.

7.3 Part B: Definitions

The Board defined certain terms in the Permit to ensure a common understanding of the conditions, to avoid future differences in interpretation of the Permit, to reflect Project-specific evidence, and to support consistency across licences and permits issued by the LWBs. For the most part, the Board selected applicable definitions relevant to the Project from the Standard Permit Conditions. A definition for Construction was added to reflect the different security phasing trigger requirements; the same definition as the Licence was included to ensure alignment in the conditions.

7.4 Part C: Conditions Applying to All Activities

The subheadings below correspond to the headings in the conditions section of the Permit, as outlined in subsection 26(1) of the MVLUR.

26(1)(a) Location and Area

The conditions included in this section are all consistent with the LWB Standard Permit Conditions.

26(1)(b) Time

The conditions included in this section are all consistent with the LWB Standard Permit Conditions.

26(1)(c) Type and Size of Equipment

In review of the Draft Permit, YKDFN suggested that the Permittee specify the type and quantity of fire-fighting equipment necessary to be maintained on site, and that otherwise in theory one fire extinguisher on site could fulfill the permit condition (YKDFN comment 3). Fortune responded that it was in its own interest to prevent wildfire at the NICO site, and that in addition to equipment for firefighting, the Project would have an Emergency Response Team with abundant equipment. Fortune noted the details of the equipment should be left to the discretion of the Inspector and the Safety, Health and Environment Manager. The Board agrees with Fortune that the type and quantity of firefighting equipment should not be specified in the permit to allow more flexibility and potential direction from an Inspector or the Safety, Health and Environment Manager. As such, the standard condition has been included.

The conditions included in this section are all consistent with the LWB Standard Permit Conditions.

26(1)(d) Methods and Techniques

The conditions included in this section are all consistent with the LWB Standard Permit Conditions.

26(1)(e) Type, Location, Operation of All Facilities

The conditions included in this section are all consistent with the LWB Standard Permit Conditions.

26(1)(f) Control or Prevention of Ponding of Water, Flooding, Erosion, Slides, and Subsidence of Land

In review of the Draft Permit, YKDFN noted that the REPAIR EROSION condition did not specify who, if anyone, is to be notified of any erosion or mitigation measures taken, and recommended clarification if this was necessary (YKDFN comment 4). Fortune responded that it found the standard condition adequate, and noted the Dust, Erosion, and Sedimentation Management Plan would require approval through the Licence. The Board agrees that the standard condition is adequate, and notes that if there are further concerns regarding notification of erosion and/or mitigation, this can be addressed through the appropriate plan.

The conditions included in this section are all consistent with the LWB Standard Permit Conditions.

26(1)(g) Use, Storage, Handling, and Ultimate Disposal of Any Chemical or Toxic Material

The conditions included in this section are all consistent with the LWB Standard Permit Conditions.

26(1)(h) Wildlife and Fish Habitat

The MVLUR includes provisions related to the protection of wildlife habitat; however, requirements for Wildlife Management and Monitoring Plans (WMMPs) are under the jurisdiction of the GNWT through the *Wildlife Act*. Accordingly, all applicants are directed to contact the GNWT-ECC to determine whether a WMMP, which details mitigations to reduce or eliminate impacts to applicable wildlife and wildlife habitat, is required for the project and should be submitted to the Board with a permit and/or licence application. The GNWT made a section 95(1) Determination on November 17, 2025, that the WMMP for the NICO and NPAR Project be consolidated, revised, and submitted to the GNWT for approval.[278]

The Applicant did not include a WMMP in the Applications.

Similarly to the NPAR Permit, Board staff included a proposed condition in the draft Permit for the NICO Project requiring the Permittee to not commence Construction prior to approval of a WMMP by the GNWT. Fortune agreed with the addition of the condition (Fortune Permit comment WS5). No Party identified concerns with the proposed condition.

Condition 47 (WILDLIFE MANAGEMENT AND MONITORING PLAN) requires the Permittee to not commence Construction prior to approval of a Wildlife Management and Monitoring Plan by the GNWT. The condition also requires the Permittee to comply with the Plan once approved. After the WMMP is approved by GNWT-ECC, the Board expects the Permittee to seek guidance from GNWT-ECC to determine when revisions to the WMMP should be submitted. When revisions are required, a copy of the revised WMMP should be submitted to the Board for the public registry; however, the WMMP will not require Board approval.

The Board included Condition 46 (HABITAT DAMAGE) in the Permit, which requires the Permittee to prevent damage to wildlife and fish habitat. This is a condition from the LWB Standard Permit Conditions and is intended to ensure the Permittee conducts their land-use operation in such a way as to minimize disturbance to wildlife habitat.

[278] See GNWT-ECC's **Wildlife Act Section 95(1) Determination - Requirement of a WMMP for NICO Project and Access Road.**

26(1)(i) Storage, Handling, and Disposal of Refuse or Sewage

The conditions included in this section are all consistent with the LWB Standard Permit Conditions.

WASTE MANAGEMENT PLAN

All applicants must submit detailed waste management information, identifying all types of waste that will be produced by the project (including quantity and quality) and describing the disposal methods that are proposed for each type of waste. For most applicants, this will be in the form of a WMP, developed in accordance with the LWB *Guidelines for Developing a Waste Management Plan*, and licences and permits will include standard conditions regarding compliance with the Plan, as approved by the Board. The Plan is also required under Part F of the Licence, and the Board's reasons for decision regarding the Plan are described above in section 6.7.2. The Board mirrored these Licence and Permit conditions as much as possible to ensure one submission will satisfy conditions of both the Licence and Permit.

26(1)(j) Protection of Historical, Archaeological, and Burial Sites

The conditions included in this section are all consistent with the LWB Standard Permit Conditions. In review of the draft Permit, GNWT-PWNHC expressed support for the proposed draft conditions (GNWT-PWNHC comment 1).

26(1)(k) Objects and Places of Recreational, Scenic, and Ecological Value

This section was intentionally left blank, because the Board did not require conditions in this section to satisfy its mandate and did not receive any recommendations related to this section during the review of the draft Permit.

26(1)(l) Security Deposit

The Board is authorized to require the Permittee to provide security to the Minister by subsections 71(1) of the MVRMA and 32(1) of the MVLUR. Subsection 71(3) of the MVRMA specifies how the security may be applied.

The Board has included a requirement for a total final security deposit of $21,797,804 in the Permit, with three different phases. The Board's reasons associated with this requirement are described above in section 6.4 in conjunction with its reasons for the security required in the Licence. The security deposits required by these two instruments are discussed together since the estimates deal with the same Project and are intimately linked.

The conditions included in this section are all consistent with the LWB Standard Permit Conditions.

26(1)(m) Fuel Storage

The conditions included in this section are all consistent with the LWB Standard Permit Conditions.

SPILL CONTINGENCY PLAN

All applicants must describe spill contingency planning. For most applicants, this will be in the form of a SCP, developed in accordance with the INAC *Guidelines for Spill Contingency Planning*, and licences and permits will include standard conditions regarding compliance with the Plan, as approved by the Board. The Plan is also required under Part H of the Licence, and the Board's reasons for decision regarding the Plan are described above in section 6.9. The Board mirrored these Licence and Permit conditions as much as possible to ensure one submission will satisfy conditions of both the Licence and Permit.

26(1)(n) Methods and Techniques for Debris and Brush Disposal

The conditions included in this section are all consistent with the LWB Standard Permit Conditions.

26(1)(o) Restoration of the Lands

The conditions included in this section are all consistent with the LWB Standard Permit Conditions.

CLOSURE AND RECLAMATION PLAN

All applicants must describe closure and reclamation planning. For most applicants, this will be in the form of a CRP, and licences and permits will include standard conditions regarding compliance with the Plan, as approved by the Board. The Plan is also required under Part I of the Licence, and the Board's reasons for decision regarding the Plan are described above in section 6.10. The Board mirrored these Licence and Permit conditions as much as possible to ensure one submission will satisfy conditions of both the Licence and Permit.

26(1)(p) Display of Permits and Permit Numbers

The conditions included in this section are all consistent with the LWB Standard Permit Conditions.

26(1)(q) Biological and Physical Protection of the Land

The conditions included in this section are all consistent with the LWB Standard Permit Conditions.

ENGAGEMENT PLAN

The Board assesses engagement adequacy through the LWB *Engagement and Consultation Policy* and *Engagement Guidelines for Applicants and Holders of Water Licences and Land Use Permits*. In accordance with the Policy and Guidelines, the Applicant included an Engagement Record and Plan in the Applications.[279] The Plan is also required under Part B of the Licence, and the Board's reasons for decision regarding the Plan are described above in section 6.3. NSMA commented on the draft Permit with respect to Engagement Plan requirements (NSMA comments 5 &6); these comments are also addressed in section

[279] See WLWB Online Registry for NICO Mine - WL Renewal Application - Engagement Plan - Version 3.0 - Nov 20_25.pdf and NICO Mine - WL Renewal Application - Engagement Record - Version 3.0 - Nov 20_25.pdf.

6.3. The Board mirrored these Licence and Permit conditions as much as possible to ensure one submission will satisfy conditions of both the Licence and Permit.

7.5 Attachment A: Table of Submissions

Attachment A to the Permit contains a table that summarizes the submissions required by the Permit conditions.

7.6 Attachment B: Revision History Table

Attachment B to the Permit contains a table which identifies updates and tracks changes made to the Permit. This table is currently blank because this is a new permit, but it will be updated throughout the life of the Permit.

8.0 Conclusion

Subject to the scopes, definitions, conditions, and terms set out in the Licence and Permit, and for the reasons expressed herein, the WLWB is of the opinion that the activities, land and water use, and waste disposal associated with the Project can be completed by Fortune Minerals Limited while providing for the conservation, development, and utilization of waters in a manner that will provide the optimum benefit for all Canadians and in particular for the residents of the Mackenzie Valley.

Water Licence W2025L2-0005 and Land Use Permit W2026D0001 contain provisions that the Board deems necessary to ensure and monitor compliance with the MVRMA, *Waters Act*, and the Regulations made thereunder, and to provide appropriate safeguards in respect of Fortune Minerals Limited's use of the water and land as authorized by the Licence and Permit.

SIGNATURE

August 18, 2026

Mason Mantla, Chair
Wek'èezhìı Land and Water Board

Date

Appendix A: Detailed Reasons for Decisions for Financial Responsibility

Under paragraph 26(5)(d) of the *Waters Act*, before issuing the Licence, the Board must be satisfied that the applicant's financial responsibility is adequate to complete the Project, including any required mitigation measures, and the closure and reclamation of the site.
Specifically, paragraph 26(5)(d) states:

"If an application for a licence is made, the Board shall not issue a licence unless the applicant satisfies the Board that:

> …
>
> (d) the financial responsibility of the applicant, taking into account the applicant's past performance, is adequate for
>
> > (i) the completion of the appurtenant undertaking,
> >
> > (ii) such mitigative measures as may be required, and
> >
> > (iii) the satisfactory maintenance and restoration of the site in the event of any future closing or abandonment of that undertaking."

The interpretation and application of paragraph 26(5)(d) were a central issue in this proceeding. In particular, the Parties made extensive submissions regarding the information required to demonstrate financial responsibility, the proper interpretation of paragraph 26(5)(d), and the process the Board should undertake to determine whether the statutory test had been satisfied.

Throughout the proceeding, the Board sought additional information to ensure it had a complete evidentiary record related to this issue. During the Public Hearing, the Parties identified additional evidence that would assist them in preparing closing submissions and assist the Board in determining whether the requirements of paragraph 26(5)(d) had been satisfied. The resulting undertakings were issued on April 23, 2026 ("**Undertakings**"). [280] Of particular relevance, Undertaking #15 required Fortune to provide additional information relating to its financial responsibility, [281] while Undertaking #19 requested GNWT-ECC's legal opinion on whether a water licence condition could require additional financial responsibility information after licence issuance.[282]

In response to Undertaking #15, Fortune submitted that junior mining companies are essential to mineral development in the Northwest Territories and that the Project cannot proceed to financing and construction until a Feasibility Study, Impact Benefit Agreement, Access Agreement, and required permits are completed.[283] Fortune submitted that these are necessary for seeking overall funding for the Project. Fortune further submitted that imposing onerous financial disclosure requirements through the Licence

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[280] See WLWB Online Registry for NICO Type A WL Renewal – Undertakings.
[281] See WLWB Online Registry for NICO Type A WL Renewal – Undertakings, p. 3.
[282] See WLWB Online Registry for NICO Type A WL Renewal – Undertakings, p. 6.
[283] See WLWB Online Registry for NICO Type A WL Renewal – Fortune Response to Undertakings, pp. 15-16.

would create a significant barrier to project advancement, potentially delaying or jeopardizing financing, partnerships, joint ventures, or other development opportunities.[284] Fortune also submitted that it has already worked with the GNWT to establish phased security deposits that fully cover the project's closure and reclamation liabilities, and contends that additional financial disclosure conditions are unnecessary because the phased security deposits for Phases 1 to 3 fully cover the Project's closure and reclamation liabilities.[285]

Undertaking #19 was directed to GNWT and asked GNWT to provide its legal opinion regarding the feasibility of including a condition in the Licence to require information that would satisfy the Board's requirement under paragraph 26(5)(d) of the *Waters Act*.[286] GNWT responded as follows:

> "A condition in the water licence requiring proof of Fortune's financial responsibility at some point in the future, as an alternative to or in addition to what s. 26(5)(d) of the *Waters Act* requires, is inconsistent with s. 26(5)(d) of the *Waters Act*. The WLWB must assess Fortune's financial responsibility as part of the decision on licence issuance or in this case renewal, with reasons, and cannot include any condition in the licence regarding the assessment of financial responsibility at some point in the future after issuance."[287]

Following the Public Hearing, the Board determined that further information from Fortune was necessary to assist it in assessing whether the requirements of paragraph 26(5)(d) had been met. Accordingly, on May 1, 2026, the Board issued Information Request 28, requesting detailed information respecting Fortune's financial position, funding arrangements, liquidity, financing strategy, insurance, corporate history, and other matters relevant to the Board's assessment.[288] On May 4, 2026, Fortune requested an extension to respond to IR #28, which was granted by the Board.[289] Fortune responded on May 11, 2026, providing both public and confidential information pursuant to the Board's Rule 22 confidentiality ruling,[290] including audited financial statements, directors' and officers' experience, financing information, financial models, and insurance documentation.

As further discussed below, Fortune submitted that it does not currently have the financial capacity to independently fund construction of the Project and instead intends to secure project financing following completion of the updated Feasibility Study and receipt of the necessary regulatory authorizations.[291] Fortune submitted that it expects to obtain financing through a combination of government funding programs, strategic partnerships, debt, equity, off take arrangements, royalties, and other financing

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[284] See WLWB Online Registry for NICO Type A WL Renewal – Fortune Response to Undertakings, p 16.
[285] See WLWB Online Registry for NICO Type A WL Renewal – Fortune Response to Undertakings, p 16.
[286] See WLWB Online Registry for NICO Type A WL Renewal – Undertakings.
[287] See WLWB Online Registry for NICO Type A WL Renewal – GNWT Response to Undertakings, p 2.
[288] See WLWB Online Registry for NICO Type A WL Renewal – Information Request #28 to Fortune.
[289] See WLWB Online Registry for NICO Type A WL Renewal – Fortune Request for Extension to IR #28.
[290] See WLWB Online Registry for NICO Type A WL Renewal – WLWB Decision on Request for Ruling.
[291] See WLWB Online Registry for NICO Type A WL Renewal – Information Request #28 to Fortune.

mechanisms, while acknowledging that it has not yet entered into financing agreements, obtained committed funding, or secured letters of credit, guarantees, bonding instruments, or a third party credit rating.[292] Fortune further submitted that construction would not commence until full project financing, including contingency funding, has been secured, and that updated capital costs, schedules, risk assessments, and execution plans will be provided through the updated Feasibility Study and subsequent engineering work. Fortune also submitted that it has no significant history of regulatory non-compliance, environmental liabilities, debt defaults, or covenant breaches, maintains corporate insurance, and, if project financing is not obtained, would pursue alternatives such as a joint venture, placing the Project on care and maintenance, a merger, or the sale of the Project.[293]

Given the significance of paragraph 26(5)(d) to the Board's decision, and the differing positions advanced by the Parties regarding both its interpretation and application, the Board determined that it was necessary to first establish the legal framework governing its assessment before evaluating the evidence. Accordingly, on May 8, 2026, the Board issued questions to the Parties seeking submissions on the interpretation of paragraph 26(5)(d), including:

(a) What information should the Board require to satisfy all three elements of paragraph 26(5)(d)?
(b) What process should the Board undertake to evaluate this information? And
(c) How should the Board interpret the phrase "financial responsibility" in the context of paragraph 26(5)(d)?

The Board's analysis below addresses these interpretive issues in the context of applying paragraph 26(5)(d) to the evidentiary record before it.

Analysis and Interpretation of Paragraph 26(5)(d)

Before determining whether Fortune has satisfied the requirements of paragraph 26(5)(d) of the *Waters Act*, the Board must first determine its proper interpretation. The Board considers this an important consideration because paragraph 26(5)(d) has received little judicial consideration and the phrase "financial responsibility" is not defined in the *Waters Act* or Waters Regulations. Several Parties advanced differing interpretations respecting both the meaning of "financial responsibility" and the scope of the evidentiary burden imposed by paragraph 26(5)(d). The Board has, therefore, considered the text, context, and purpose of the provision before applying it to the evidentiary record in this proceeding.

[292] See WLWB Online Registry for NICO Type A WL Renewal – Information Request #28 to Fortune.
[293] See WLWB Online Registry for NICO Type A WL Renewal – Information Request #28 to Fortune.

The Board agrees with the Tłı̨chǫ Government's and NSMA's submissions that the interpretation of paragraph 26(5)(d) of the *Waters Act* must begin with the modern principle of statutory interpretation.[294] As the Supreme Court of Canada has confirmed, statutory provisions are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of the Legislature.[295]

The Board considers the general powers of the Board under the MVRMA to provide important context for interpreting paragraph 26(5)(d). In exercising its powers under the MVRMA, the Board is to consider: (a) the importance of conservation to the well-being and way of life of the aboriginal peoples of Canada to whom paragraph 35 of the *Constitution Act, 1982* applies and who use an area of the Mackenzie Valley; and (b) any traditional knowledge and scientific information that is made available to it.[296] In addition, the objectives of the Board are set out in section 58.1 of the MVRMA: "[t]he Wek'èezhìı Land and Water Board shall regulate the use of land and waters and the deposit of waste so as to provide for the conservation, development and utilization of land and water resources in a manner that will provide the optimum benefit generally for all Canadians and in particular for residents of its management area.[297]

The Board considers paragraph 26(5)(d) to serve an important protective function within that statutory scheme, intended to reduce the risk of licensed undertakings proceeding without adequate financial capacity to complete the undertaking, implement required mitigation measures, and satisfy obligations relating to the maintenance, restoration and closure of a project. In this respect, the Board accepts the Tłı̨chǫ Government's submission that the provision contributes to minimizing environmental risks and the potential for unfunded environmental liabilities arising from licensed activities.[298]

The Board also recognizes, however, that paragraph 26(5)(d) operates as one component of a broader regime that functions with other statutory and regulatory mechanisms, including security requirements under section 35 of the *Waters Act* and potential licence conditions requiring updated information as a project advances under section 27 of the *Waters Act*. It is the Board's view that these mechanisms may reduce the risk that a project advances beyond a particular stage without sufficient financial assurances to address the liabilities that exist at that stage. Paragraph 26(5)(d) must, therefore, be interpreted in light of this broader statutory framework while recognizing that each provision continues to perform an independent function within the overall licensing scheme.

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[294] See WLWB Online Review System for NICO Legal Interpretation – Financial Responsibility, Comment-01-TG Letter Re Financial Responsibility, p. 2; Comment-01-North Slave Metis Alliance Comments On Item For Review Re Financial Responsibility (W2025L2-0005), p. 1.
[295] See WLWB Online Review System for NICO Legal Interpretation – Financial Responsibility, Comment-01-TG Letter Re Financial Responsibility, p. 2, citing *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC) at para 21.
[296] MVRMA, s. 60.1(a).
[297] *Waters Act*, s. 24.
[298] See WLWB Online Review System for NICO Legal Interpretation – Financial Responsibility, Comment-01-TG Letter Re Financial Responsibility, p. 4.

Paragraph 26(5)(d) establishes a mandatory precondition to the issuance of a licence. The Board therefore cannot issue a licence unless it is satisfied that an applicant has demonstrated adequate financial responsibility for each of the three matters identified in subparagraphs (i) to (iii). In making that determination, the Board agrees with the Tłı̨chǫ Government that it must assess the evidentiary record as a whole, determine whether the record provides a sufficient basis upon which the statutory conclusions can reasonably be reached, and explain why it has reached those conclusions.[299] The evaluation of the nature, reliability, weight, and sufficiency of the evidence forms part of the Board's statutory decision-making function in determining whether the applicant has satisfied the Board that the requirements of paragraph 26(5)(d) have been met.[300]

The Board also considers NSMA's submission that United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) provides important interpretive context in the application of the *Waters Act*.[301] The Board notes that, as a co-management board established pursuant to the Tłı̨chǫ Land Claims and Self-Government Agreement and the MVRMA, its mandate reflects many of the same principles enshrined in UNDRIP, including the meaningful participation of Indigenous peoples in resource management, the consideration of Indigenous knowledge, and the stewardship of lands and waters. In the Board's view, those principles inform the exercise of its statutory mandate but do not expand it. The Board must, therefore, interpret and apply paragraph 26(5)(d) in accordance with the legislation, while doing so in a manner that is consistent with the broader objectives of the co-management regime and the principles reflected in UNDRIP.

Similarly, the Board has considered the broader policy recommendations advanced in this proceeding, including Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC)'s submission that the Board convene further discussions with Indigenous Governments and organizations, the GNWT, industry, and other LWBs regarding the interpretation and application of paragraph 26(5)(d).[302] The Board recognizes the value of continued dialogue on these issues and appreciates the recommendation from CIRNAC that broader discussions occur. The Board notes that its role in this proceeding, however, is to interpret and apply the legislation within its statutory mandate, and any broader policy development or legislative reform arising from these issues is more appropriately addressed outside of this proceeding.

Interpretation of "satisfies"

Paragraph 26(5)(d) provides that the Board may not issue a licence until an applicant "satisfies the Board" that its financial responsibility is adequate for each of the three statutory requirements set out in subparagraphs 26(5)(d)(i) to (iii). Consistent with the modern principle of statutory interpretation, the

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[299] See WLWB Online Registry for Comment-01-TG Letter Re Financial Responsibility, p. 7.
[300] *Bastian Holdings Ltd. (Re)*, 2025 BCSC 2548, para. 62; *F.H. v. McDougall*, 2008 SCC 53, para. 46.
[301] See WLWB Online Registry for Comment-01-North Slave Metis Alliance Comments On Item For Review Re Financial Responsibility (W2025L2-0005), p. 3-4.
[302] See WLWB Online Registry for Comment 01 - CIRNAC – Natural Resources & Environment Branch.

Board begins its consideration with the text of the provision, which places the burden on the applicant to satisfy the Board that its financial responsibility is adequate.

The *Waters Act* does not prescribe a particular standard of proof to the Board's satisfaction under paragraph 26(5)(d). Absent express contrary statutory language, the Board finds it appropriate to apply the ordinary civil standard of proof.[303] Accordingly, Fortune bears the burden of satisfying the Board, on a balance of probabilities, that its financial responsibility is adequate for each of the three statutory requirements set out in paragraph 26(5)(d).

The Board also notes that paragraph 26(5)(d) also does not prescribe the evidence by which an applicant must satisfy the Board. The Board agrees with the submissions of the Tłı̨chǫ Government that its determination must be grounded in the evidence before it and supported by a rational and logical chain of reasoning.[304] The Board has thus considered the entire record of this proceeding, including Fortune's Application, the information provided in response to the Board's information requests, and the written and oral evidence and submissions of participants. As reflected throughout these Reasons, the Board has placed particular weight on the Parties' responses to the Board's specific question of legal interpretation regarding financial responsibility.[305]

The Board also does not interpret paragraph 26(5)(d) as requiring certainty.[306] The provision requires the Board to assess an applicant's financial responsibility in relation to obligations that may arise throughout the life of the Project (i.e., completion of Construction, mitigation measures as may be required, and satisfactory maintenance and restoration of the site in the event of any future closure or abandonment of the Project) before those obligations have materialized. By their nature, those future obligations cannot be established with certainty when a licence is issued by the Board. The Board, therefore, agrees with the Tłı̨chǫ Government that the assessment must be undertaken based on the information reasonably available at the time of the Board's decision.[307]

The forward-looking nature of the inquiry does not, however, permit speculation by the Board at the time of issuance. Consistent with the Tłı̨chǫ Government's and NSMA's submissions, it is the Board's view that it cannot assume statutory requirements will ultimately be met or rely upon the possibility that evidentiary deficiencies may later be addressed.[308] The relevant question is whether the record presently

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[303] *Stetler v. Agriculture, Food and Rural Affairs Appeal*, 2005 CanLII 24217 (ON CA), para 79.
[304] See WLWB Online Registry for Comment-01-TG Letter Re Financial Responsibility, p. 5, citing *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at paras 99-102.
[305] See WLWB Online Review System for NICO Legal Interpretation - Financial Responsibility
[306] ***F.H. v. McDougall***, 2008 SCC 53, para. 46.
[307] See WLWB Online Registry for Comment-01-TG Letter Re Financial Responsibility, p. 3, 6, 9.
[308] See WLWB Online Review System for NICO Legal Interpretation – Financial Responsibility,Comment-01-TG Letter Re Financial Responsibility, p. 9; Comment-01-North Slave Metis Alliance Comments On Item For Review Re Financial Responsibility (W2025L2-0005), p. 3.

before the Board is sufficient to establish that the requirements of paragraph 26(5)(d) have been met at the time of issuance.

Accordingly, the Board interprets the phrase "satisfies the Board" as requiring Fortune to demonstrate, on a balance of probabilities and on the basis of the evidentiary record before the Board, that its financial responsibility is adequate for each of the three statutory requirements set out in paragraph 26(5)(d). In making that determination, the Board must assess the nature, reliability, weight, and sufficiency of the evidence before it to determine whether Fortune has discharged its statutory burden. This interpretation gives effect to the mandatory language of the provision while recognizing that paragraph 26(5)(d) requires the Board to make a forward-looking determination based on the information reasonably available at the time of its decision.

In applying this interpretation, the Board has considered each of the three statutory requirements independently and has explained the evidentiary basis upon which it is, or is not, satisfied that Fortune has discharged its burden under each of the three branches of paragraph 26(5)(d).

Interpretation of "financial responsibility"

The Board notes that the phrase "financial responsibility" is not defined in the *Waters Act*, the *Waters Regulations*, or the MVRMA. The Board has, therefore, considered the ordinary meaning of the words, the statutory context in which they appear, and the submissions of the Parties respecting their proper interpretation.

The Board agrees with the Tłı̨chǫ Government's submission that, read in its full text and statutory context, paragraph 26(5)(d) requires more than a generalized view of an applicant's financial health or a narrow focus on reclamation security alone, but rather requires a grounded, evidence-based assessment of whether the applicant can be relied on to finance the full range of obligations its undertaking may generate across the life of the project.[309] The Board also accepts the Tłı̨chǫ Government's submission that the ordinary meaning of "responsibility" conveys both being "obliged to do something" and "able to be trusted."[310] Read together with the ordinary meaning of "financial" and the structure of paragraph 26(5)(d), the Board is satisfied that "financial responsibility" refers to an applicant's reliability to meet the financial obligations associated with each of the statutory requirements throughout the life of the Project.

The Board has also considered the YKDFN's submission that, in assessing financial responsibility under paragraph 26(5)(d), the Board should consider whether a proponent could feasibly meet its obligations based on accessible funding and security held by the GNWT, including cash, available credit, and assets with a reasonable level of liquidity. The Board also recognizes the YKDFN's submission that asset liquidity

[309] See WLWB Online Registry for Comment-01-TG Letter Re Financial Responsibility, p. 4.
[310] See WLWB Online Registry for Comment-01-TG Letter Re Financial Responsibility, p. 2.

is of particular importance because it affects a proponent's ability to meet its financial obligations in a timely manner, including obligations relating to closure and reclamation, the implementation of mitigation measures necessary to protect wildlife and water, and amounts owing to the YKDFN's or related organizations.[311]

The Board respectfully does not accept Fortune's submission that the phrase "financial responsibility" in paragraph 26(5)(d) should be interpreted as requiring an applicant to demonstrate that it can meet its duty to manage its funds, including by making prudent and ethical financial decisions, in order to ensure it can meet the obligations under paragraph 26(5)(d).[312] The Board agrees that an applicant's demonstrated history of responsibly managing its financial affairs is a relevant consideration. However, paragraph 26(5)(d) requires the Board to be satisfied that an applicant's financial responsibility is adequate for each of the three statutory requirements. In the Board's view, that inquiry extends beyond the prudent management of an applicant's finances and includes whether the applicant has demonstrated a realistic and credible ability to meet the financial obligations associated with each statutory requirement.

The Board also agrees with the Tłįchǫ Government's submission that the three heads of financial responsibility identified in paragraph 26(5)(d) are distinct and must each be given independent meaning.[313] In that regard, the Board acknowledges and agrees with Fortune's submission that phased security is an important mechanism for managing financial risk throughout the life of a project.[314] However, the Board does not accept that compliance with section 35 of the *Waters Act* alone satisfies paragraph 26(5)(d). If the Legislature had intended the posting of security alone to establish financial responsibility, there would have been no need to require separate assessment of whether an applicant's financial responsibility is adequate for the completion of the undertaking and the implementation of any required mitigation measures. The Board, therefore, agrees with the Tłįchǫ Government that paragraph 26(5)(d) requires more than a narrow assessment of reclamation security and must instead be interpreted in a manner that gives meaningful effect to each of the three statutory requirements.[315]

The Board accepts Fortune's submissions respecting the practical realities of financing the Project, including that Fortune is currently exploring a variety of financing options, is awaiting completion of its updated Feasibility Study, and will not proceed with Construction until financing has been secured and the required security has been posted.[316] The Board also accepts the submissions of the GNWT-ECC and

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[311] See WLWB Online Registry for Comment-01-Yellowknives Dene First Nation.
[312] See WLWB Online Registry for Comment-01-Fortune-Minerals-Financial-Responsibility-Response, p. 11.
[313] See WLWB Online Registry for Comment-01-TG Letter Re Financial Responsibility, p. 5.
[314] See WLWB Online Registry for Comment-01-Fortune-Minerals-Financial-Responsibility-Response, p. 7.
[315] See WLWB Online Registry for Comment-01-TG Letter Re Financial Responsibility, pp. 3, 6, 9.
[316] See WLWB Online Registry for Comment-01-Fortune-Minerals-Financial-Responsibility-Response, p. 11.

Li-FT that mining projects commonly obtain financing as they progress through development.[317] The Board also agrees with the Tłı̨chǫ Government that an applicant may not possess all desired information at the licensing stage and that "a flexible approach" is, therefore, required, with the nature and timing of the evidence reflecting the size, complexity, risk profile, and status of the project.[318] Consistent with those submissions, the Board does not interpret paragraph 26(5)(d) as requiring an applicant to possess all funds necessary to complete the undertaking at the time a licence is issued or to provide identical evidence in every case. It is the Board's view that the statutory requirements must be assessed considering the particular project and the financial obligations reasonably expected to arise under the proposed licence.

The Board agrees with NSMA that the assessment includes consideration of an applicant's plans to secure sufficient financial resources to meet its future obligations.[319] As discussed further below, the Board considers those plans to be relevant because paragraph 26(5)(d) requires a forward-looking assessment of financial responsibility. The significance of that evidence will depend on the particular circumstances of the application, including the maturity of the project and the information reasonably available at the time the Board's determination is made.

The Board has also considered Fortune's submission that interpreting paragraph 26(5)(d) to require extensive financial information would represent "a major transition of the *Waters Act* from being an environmental regulatory tool to also being a financial regulatory tool," and would exceed the Board's jurisdiction by requiring it to review and analyze a mining company's finances. The Board also considered Fortune's submission that paragraph 26(5)(d) cannot be interpreted as requiring an applicant to demonstrate financial solvency or the ability to fund the entire undertaking at the time of licence issuance. The Board respectfully disagrees that its interpretation has that effect. The Board interprets paragraph 26(5)(d) as not requiring it to undertake a free-standing assessment of an applicant's financial affairs or to regulate or supervise a proponent's finances generally. The Board's inquiry is confined to the statutory question assigned by paragraph 26(5)(d): whether the evidentiary record demonstrates that the applicant has adequate financial responsibility for each of the three statutory requirements. Any financial information considered by the Board must, therefore, be relevant and proportionate to that statutory inquiry.

Finally, the Board considers its interpretation to be reinforced by the Legislature's express wording under the *Waters Act* that the Board "tak[e] into account the applicant's past performance."[320] In the Board's view, this demonstrates that the assessment of financial responsibility is not confined to an applicant's

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[317] See WLWB Online Registry for Comment-01-The-Government-of-the-Northwest-Territories'-response-to-request-for-legal-interpretation-of-financial-responsibility-for-Type-A-Water-Licence-Renewal-W2025L2-0005, p 3; Li-FT Comment -1 Financial Responsibility Interpretation, p 2.
[318] See WLWB Online Registry for Comment-01-TG Letter Re Financial Responsibility, pp. 5, 6.
[319] See WLWB Online Registry for Comment-01-North Slave Metis Alliance Comments On Item For Review Re Financial Responsibility (W2025L2-0005), p. 3.
[320] *Waters Act*, s. 26(5)(d).

present financial circumstances. The Board agrees with the Tłı̨chǫ Government that the inclusion of past performance requires consideration of an applicant's demonstrated record of financial and operational conduct,[321] and agrees with NSMA that past performance is but one relevant consideration under paragraph 26(5)(d).[322] Read together with the forward-looking nature of the three statutory requirements, paragraph 26(5)(d) requires an assessment that is both historical and prospective.
Accordingly, the Board interprets paragraph 26(5)(d) as requiring an evidence-based assessment of whether an applicant has demonstrated, on a balance of probabilities, that it has the financial responsibility to complete the appurtenant undertaking, implement any required mitigative measures, and ensure the satisfactory maintenance and restoration of the site in the event of future closing or abandonment. Whether that burden has been met will depend on the nature, quality and sufficiency of the evidence presented in the particular proceeding.

The Board also notes that forward-looking determinations respecting financial responsibility are commonly made by regulators on the basis of the evidentiary record before them, while recognizing that ongoing licence conditions and regulatory oversight may address future changes in circumstances.[323] This is consistent with the Board's interpretation of paragraph 26(5)(d) as requiring a present determination based on current evidence, rather than certainty respecting future events.

<u>Application to Fortune</u>

Overview

Consistent with the interpretation set out above, the Board must determine whether Fortune has demonstrated, on a balance of probabilities, adequate financial responsibility for each of the three statutory requirements under paragraph 26(5)(d) of the *Waters Act*. In doing so, the Board has considered the evidentiary record as a whole, including the submissions of all Parties, Fortune's past performance, and the evidence relevant to each of the three statutory requirements. The Board's analysis of each requirement follows.

Past performance

Paragraph 26(5)(d) of the *Waters Act* requires the Board to take into account Fortune's past performance in determining whether it is satisfied that an applicant has demonstrated adequate financial responsibility for each of the three requirements under subparagraphs (i) to (iii).

The Board accepts the Tłı̨chǫ Government's submission that the express inclusion of "past performance" demonstrates an intention that the Board assess not only an applicant's current financial position, but

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[321] See WLWB Online Registry for Comment-01-TG Letter Re Financial Responsibility, p. 3.
[322] See WLWB Online Registry for Comment-01-North Slave Metis Alliance Comments On Item For Review Re Financial Responsibility (W2025L2-0005), p. 2.
[323] *Inuvialuit Energy Security Project Ltd., Re*, 2024 CarswellNat 597.

also its demonstrated history of meeting financial and operational obligations arising under previous licences, authorizations, or projects.[324] Where such a record exists, the Board agrees that it is an important indicator of whether an applicant can reasonably be relied upon to meet the financial obligations associated with the proposed undertaking. Conversely, a history of failing to finance regulatory compliance, mitigation measures, closure or reclamation obligations, or a history of insolvency, receivership or creditor protection, may weigh against a finding of adequate financial responsibility, depending on the circumstances.[325]

Consistent with its interpretation, the evidence demonstrates that Fortune's directors and senior management possess extensive experience in the mining industry, including the development, financing and operation of mineral projects in the Northwest Territories and elsewhere.[326] The Board accepts that this experience is relevant because it informs Fortune's experience in advancing and managing complex mining projects. However, the Board places limited weight on this evidence in its assessment of Fortune's past performance for the purposes of paragraph 26(5)(d). While the experience of Fortune's directors and senior management is relevant, it does not, on its own, demonstrate Fortune's financial responsibility or how Fortune has performed in meeting the types of financial obligations contemplated by paragraph 26(5)(d).

The Board notes that certain members of Fortune's management have previously been involved with projects that experienced financial or technical difficulties.[327] However, the evidence suggests that those circumstances arose from project-specific technical and market conditions rather than regulatory non-compliance or failures to satisfy environmental obligations. Thus, the Board does not consider those circumstances, standing alone, to demonstrate financial irresponsibility on the part of Fortune or its current management. The Board also notes that Fortune advised it has no outstanding environmental or reclamation liabilities in any jurisdiction and identified no history of regulatory non-compliance other than a delayed securities filing relating to its 2022 year-end financial reporting.[328] The Board does not consider that filing delay to be material to the assessment under paragraph 26(5)(d).

The Board notes that Fortune has not been subject to insolvency, restructuring, or creditor protection proceedings. While evidence was provided regarding previous insolvency or restructuring matters involving projects with which certain members of Fortune's management had been associated, [329] the

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[324] See WLWB Online Registry for Comment-01-TG Letter Re Financial Responsibility, p. 3.
[325] See WLWB Online Registry for Comment-01-TG Letter Re Financial Responsibility, p. 3.
[326] See WLWB Online Registry for NICO Mine - WL Renewal Application - Information Request 28 - Fortune Response - May 11_26, p. 12; Comment-01-Fortune-Minerals-Financial-Responsibility-Response, p. 22.
[327] See WLWB Online Registry for NICO Mine - WL Renewal Application - Information Request 28 - Fortune Response - May 11_26, pp. 12-13.
[328] See WLWB Online Registry for NICO Mine - WL Renewal Application - Information Request 28 - Fortune Response - May 11_26, p. 13.
[329] See WLWB Online Registry for NICO Mine - WL Renewal Application - Information Request 28 - Fortune Response - May 11_26, p. 12.

Board is satisfied that those matters do not alone establish a history of financial irresponsibility on the part of Fortune. Having considered those matters, the Board has also examined Fortune's own financial history and past financing practices. The Board notes Fortune's evidence that it has historically financed its activities through equity issuances, government contribution agreements and awards, loans, and other financing arrangements.[330] Fortune's audited financial statements and responses to the Board's information requests disclose its current financial position, debt obligations, and sources of working capital.[331] Although the Board has not interpreted paragraph 26(5)(d) as requiring an assessment of Fortune's general financial solvency, nothing in that evidence suggests a history of financial conduct that would weigh against a finding of adequate financial responsibility for the purposes of paragraph 26(5)(d).

The Board does not consider the fact that Fortune has not yet secured Construction financing for the Project to be a matter of past performance. As Fortune acknowledged, project financing will be pursued following completion of the updated Feasibility Study and receipt of the necessary regulatory approvals.[332] In the Board's view, those matters are more appropriately considered in assessing Fortune's prospective financial responsibility under paragraphs 26(5)(d)(i) and (ii), rather than its past performance.

Taken together, the Board finds that Fortune's past performance does not disclose a history of regulatory or financial conduct that would weigh against a finding of adequate financial responsibility. While past performance is only one of the factors the Board must consider under paragraph 26(5)(d), the Board is satisfied that Fortune's past performance supports, and does not detract from, the conclusion that Fortune can reasonably be relied upon to meet the financial obligations associated with the proposed undertaking.

Branch (i): Completion of the appurtenant undertaking

Paragraph 26(5)(d)(i) of the *Waters Act* requires the Board, before issuing a licence, to be satisfied that the financial responsibility of Fortune is adequate for the completion of the appurtenant undertaking. "Appurtenant Undertaking" is defined in the *Waters Act* to mean the work described in a licence. Accordingly, the Board interprets "completion of the appurtenant undertaking" as referring to the completion of the works authorized by the Licence, including the Construction and commissioning of the Project necessary to enable the licensed undertaking to proceed.

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[330] See WLWB Online Registry for NICO Mine - WL Renewal Application - Information Request 28 - Fortune Response - May 11_26, p. 12.
[331] See WLWB Online Registry for NICO Mine - WL Renewal Application - Information Request 28 - Fortune Response - May 11_26.
[332] See WLWB Online Registry for NICO Mine - WL Renewal Application - Information Request 28 - Fortune Response - May 11_26, p. 8.

Fortune has acknowledged that its current balance sheet is not sufficient to independently finance Construction of the Project.[333] Fortune submitted, however, that the financing of a mining project is an evolving process that occurs over time and is often contingent upon achieving key development milestones, including obtaining early stage regulatory approvals such as the issuance of the Licence.[334] Fortune explained that Construction financing will be pursued following completion of the updated Feasibility Study and receipt of the necessary regulatory approvals.[335] Fortune also submitted that it cannot proceed with Construction of the Project until it has submitted the pre-Construction information required by the Licence, posted the required security for the first phase of Construction, and secured the financing necessary to proceed, and further advised that it has agreed to stage the required security payments as the Project develops.[336] The Board also considered Fortune's submission that paragraph 26(5)(d)(i) does not require an applicant to demonstrate financial solvency or the ability to fund the entire Project at the time the Licence is issued or renewed,[337] together with Li-FT's submission that paragraph 26(5)(d) should not be interpreted as requiring proponents to demonstrate that all future project financing has already been secured.[338]

The Board accepts that those submissions reflect the practical realities of financing a mining project. They do not, however, diminish the statutory requirement imposed by paragraph 26(5)(d)(i). The question before the Board is not whether Fortune presently possesses all of the capital necessary to complete Construction of the Project, but whether the evidentiary record establishes, on a balance of probabilities, a realistic and credible basis upon which the Board can conclude that Fortune can obtain the financial resources necessary to complete the Project, notwithstanding that Construction financing has not yet been secured. [339] In making this determination, the Board has considered the Project as a whole, including its staged development, the anticipated sequencing of capital expenditures, Fortune's proposed financing strategy, the current state of Project planning, and the regulatory framework within which Construction may proceed.[340]

The Board considers the absence of an updated Feasibility Study to be a significant limitation in the evidentiary record. Fortune's evidence is that the updated Feasibility Study will establish updated capital cost estimates, Construction schedules, execution planning, and risk analysis, and that Construction

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[333] See WLWB Online Registry for NICO Mine - WL Renewal Application - Information Request 28 - Fortune Response - May 11_26, p. 8.
[334] See WLWB Online Registry for Comment-01-Fortune-Minerals-Financial-Responsibility-Response, p. 21.
[335] See WLWB Online Registry for NICO Mine - WL Renewal Application - Information Request 28 - Fortune Response - May 11_26, p. 8.
[336] See WLWB Online Registry for Comment-01-Fortune-Minerals-Financial-Responsibility-Response, p. 7.
[337] See WLWB Online Registry for Comment-01-Fortune-Minerals-Financial-Responsibility-Response, pp. 12-14, 16
[338] See WLWB Online Registry for Comment-01 EREX International Ltd., p. 2.
[339] See WLWB Online Registry for Comment-01-TG Letter Re Financial Responsibility, p. 3.
[340] See WLWB Online Registry for NICO Mine - WL Renewal Application - Information Request 28 - Fortune Response - May 11_26.

financing will be pursued following completion of that study and receipt of the necessary regulatory approvals.[341] The Board would have benefited from having access to that information on this Application. The absence of the updated Feasibility Study is not determinative of whether subparagraph 26(5)(d)(i) is met, however. The Board agrees with the Tłı̨chǫ Government that an applicant may not possess all of the information necessary to demonstrate financial responsibility at the licensing stage and that a flexible approach is, therefore, required, with the form, rigour, and timing of the evidence reflecting the maturity of the Project.[342] The Board also accepts NSMA submission that assessing Fortune's financial responsibility requires more than identifying potential sources of funding.[343] It also requires consideration of whether the applicant has demonstrated a reasonable understanding of the financial obligations it will incur and whether it has identified realistic means by which those obligations may be financed.[344] Accordingly, the Board has considered whether Fortune has demonstrated: (i) a reasonable understanding of the financial resources that will be required to complete the Project; and (ii) a realistic and commercially credible strategy for obtaining those resources as they become necessary.

The Board is satisfied that the evidentiary record addresses both considerations. Fortune advised that its current balance sheet is not likely sufficient to independently finance Construction of the Project, that financing obtained before completion of the updated Feasibility Study would likely not be on favourable terms, and that Construction financing will be pursued following completion of the updated Feasibility Study and receipt of the necessary regulatory approvals.[345] Fortune further advised that it is pursuing a range of potential financing sources, including government funding programs, strategic partnerships, debt financing, equity financing and other project financing instruments,[346] and expressed confidence that once the current water licence is renewed and the updated Feasibility Study has been completed, the Project will be able to secure the necessary financing to move the Project forward and meet all of its water licence conditions and other regulatory and engagement commitments.[347] Consistent with the Tłı̨chǫ Government's submission, the Board accepts that this evidence demonstrates more than a generalized expectation that financing will become available.[348] It demonstrates that Fortune has identified the financial requirements associated with the Project and has proposed a realistic and commercially credible strategy for obtaining the financing necessary to complete the appurtenant undertaking.

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[341] See WLWB Online Registry for NICO Mine - WL Renewal Application - Information Request 28 - Fortune Response - May 11_26, pp. 8-11.
[342] See WLWB Online Registry for Comment-01-TG Letter Re Financial Responsibility, p. 4.
[343] See WLWB Online Registry for Comment-01-North Slave Metis Alliance Comments On Item For Review Re Financial Responsibility (W2025L2-0005), p. 2.
[344] See WLWB Online Registry for Comment-01-North Slave Metis Alliance Comments On Item For Review Re Financial Responsibility (W2025L2-0005), p. 2.
[345] See WLWB Online Registry for NICO Mine - WL Renewal Application - Information Request 28 - Fortune Response - May 11_26, p. 8.
[346] See WLWB Online Registry for NICO Mine - WL Renewal Application - Information Request 28 - Fortune Response - May 11_26.pdf , p. 9-11.
[347] See WLWB Online Registry for Comment-01-Fortune-Minerals-Financial-Responsibility-Response, p. 3.
[348] See WLWB Online Registry for Comment-01-TG Letter Re Financial Responsibility, p. 4.

The Board also places significant weight on Fortune's evidence that Construction financing will not be pursued until completion of the updated Feasibility Study and receipt of the necessary regulatory approvals, and that Construction itself will not commence until financing has been secured, the required pre-Construction information has been submitted, and the required security has been posted.[349] In the Board's view, this evidence demonstrates that Fortune proposes to secure financing before Construction commences, thereby reducing the risk that the Project would proceed into Construction without adequate financial resources in place.

The Board also considered the requirement that security be posted before Construction may commence. Although security principally addresses paragraph 26(5)(d)(iii), it also provides relevant context for the present inquiry because Construction cannot proceed until specified financial obligations under the regulatory regime have first been satisfied. This provides an additional safeguard against Construction commencing before those obligations have been met.

The Board has also considered the interaction between subparagraph 26(5)(d)(i) and the broader statutory framework. As discussed above, Construction cannot proceed until the required security has been posted in accordance with the Licence and the *Waters Act*. In addition, the Board may impose conditions pursuant to section 27 of the *Waters Act*, including conditions requiring Fortune to submit updated information before Construction commences. While these statutory safeguards do not replace the Board's obligation to determine whether Fortune has demonstrated adequate financial responsibility to complete the appurtenant undertaking, they provide additional assurance that the Project cannot advance into Construction unless Fortune has both demonstrated the financial capacity to proceed and satisfied the regulatory prerequisites established under the Licence and the *Waters Act*. In the Board's view, these safeguards support, and are consistent with, its conclusion that Fortune has demonstrated adequate financial responsibility for the completion of the appurtenant undertaking.

Having considered the evidentiary record, the Board is satisfied that Fortune has demonstrated, on a balance of probabilities, a realistic and credible pathway to obtain the financial resources necessary to complete the appurtenant undertaking. In reaching this conclusion, the Board has considered the cumulative weight of the evidence respecting Fortune's proposed financing pathway, its understanding of the mitigation obligations reasonably expected to arise throughout the life of the Project, the regulatory framework established under the *Waters Act* and the Licence, and the Board's authority to require updated information, plans, and approvals as the Project progresses.

The Board remains concerned that the absence of an updated Feasibility Study reduced the amount of current financial information available during this proceeding. To ensure that the evidentiary foundation supporting the conclusion detailed above remains current as the Project advances toward construction,

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[349] See WLWB Online Registry for NICO Mine - WL Renewal Application - Information Request 28 - Fortune Response - May 11_26, pp. 8-11.

the Board considers it appropriate to include a Licence condition requiring Fortune to file the updated Feasibility Study before construction commences. In the Board's view, this Condition (Part B, Condition 29) appropriately reflects the prospective nature of paragraph 26(5)(d)(i), reinforces the Board's ongoing regulatory oversight, and provides an additional safeguard as the Project progresses from planning into Construction. Accordingly, the Board finds that the evidentiary record, viewed as a whole, satisfies the requirements of paragraph 26(5)(d)(i).

Branch (ii): Mitigation measures as may be required

Paragraph 26(5)(d)(ii) of the *Waters Act* requires the Board, before issuing a licence, to be satisfied that Fortune's financial responsibility is adequate for such mitigative measures as may be required. The Board interprets this requirement as requiring an assessment of whether the evidentiary record demonstrates that Fortune can reasonably be relied upon to finance the implementation of mitigation measures that become necessary throughout the life of the Project in order to comply with the Licence and applicable regulatory requirements.

The Board agrees with the Tłı̨chǫ Government that this inquiry is distinct from the assessment under paragraph 26(5)(d)(i). Whereas paragraph 26(5)(d)(i) concerns completion of the appurtenant undertaking, paragraph 26(5)(d)(ii) requires the Board to consider whether Fortune has satisfied the Board that has the adequate financial responsibility to implement mitigation measures that may be required during Construction, operation, closure, or in response to monitoring, adaptive management, or unforeseen Project conditions. The Board also accepts the Tłı̨chǫ Government's submission that the risk addressed by paragraph 26(5)(d)(ii) is not hypothetical, referring to the Mount Polley Mine, the Eagle Gold Mine, and the Ekati Mine to illustrate the risks associated with inadequate financing, including failures in design, Construction, operation, monitoring, mitigation, reclamation planning, and closure.[350] The Board has considered those submissions in assessing whether Fortune has demonstrated adequate financial responsibility under paragraph 26(5)(d)(ii).

The Board further accepts NSMA's submission that an applicant must have a reasonable understanding of the mitigation measures that may reasonably be required in order to assess the financial resources necessary to implement them.[351] The Board also recognizes NSMA's submission that, where mitigation measures remain insufficiently developed, the certainty with which an applicant can assess its future financial obligations may be reduced.[352] The Board has considered that concern in assessing the maturity

[350] See WLWB Online Registry for NICO - Type A WL Renewal - TG Intervention - Apr 8_26.pdf; Comment-01-TG Letter Re Financial Responsibility, p. 10.
[351] See WLWB Online Registry for Comment-01-North Slave Metis Alliance Comments On Item For Review Re Financial Responsibility (W2025L2-0005), p. 2.
[352] See WLWB Online Registry for Comment-01-North Slave Metis Alliance Comments On Item For Review Re Financial Responsibility (W2025L2-0005), p. 2.

of the Project and the evidence presently available respecting Fortune's anticipated mitigation obligations.

The Board has also considered the Yellowknives Dene First Nation's submission that it is important that all mitigative measures necessary to protect wildlife, particularly caribou, and water are implemented. The Board also notes the Yellowknives Dene First Nation's submission that, in light of those interests, an applicant's asset liquidity and ability to meet its financial obligations are of particular importance.[353] The Board has considered those submissions in assessing whether the evidentiary record demonstrates financial responsibility is adequate.

The Board has also considered the regulatory framework established under the *Waters Act* and the Licence. The Board agrees with the Tłı̨chǫ Government that section 27 of the *Waters Act* provides the Board with broad discretion to establish licence conditions that support an adaptive management approach.[354] In the Board's view, that authority permits the Board, where appropriate, to require updated technical information, management plans, monitoring programs, and demonstrations of financial responsibility before specified Project activities proceed. The Board considers those statutory powers to be relevant in assessing Fortune's financial responsibility under paragraph 26(5)(d)(ii).

The Board recognizes that the precise nature and cost of every future mitigation measure cannot presently be known. As discussed above, paragraph 26(5)(d) requires a forward-looking assessment based on the evidence reasonably available at the time of the Board's decision. The Board also agrees with the Tłı̨chǫ Government that the nature and timing of the evidence reasonably available to demonstrate financial responsibility will depend on the maturity of the Project, and that proportionality affects the form, timing, and degree of evidence reasonably available to demonstrate that the statutory standard has been met.[355] Accordingly, the Board's task is to determine whether the evidentiary record presently before it provides a sufficient basis to conclude, on a balance of probabilities, that Fortune has demonstrated a realistic and credible ability to finance mitigation measures as they become necessary throughout the life of the Project.

In applying that interpretation, the Board has considered the evidentiary record respecting Fortune's proposed approach to environmental management throughout the life of the Project.

The Board has considered Fortune's evidence respecting the financial pathway by which mitigation measures will be implemented throughout the life of the Project. Fortune's evidence is that Construction

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[353] See WLWB Online Review System for NICO – Legal Interpretation – Financial Responsibility Comment-01-Yellowknives Dene First Nation.
[354] See WLWB Online Review System for NICO – Legal Interpretation – Financial Responsibility Comment-01-TG Letter Re Financial Responsibility, p. 7.
[355] See WLWB Online Review System for NICO – Legal Interpretation – Financial Responsibility Comment-01-TG Letter Re Financial Responsibility, p. 4-5.

financing will not be pursued until completion of the updated Feasibility Study and receipt of the necessary regulatory approvals, that Construction itself cannot proceed until financing has been secured and the required security has been posted, and that the Project will continue to be supported by updated technical information and Board-approved management plans as it progresses.[356] The Board considers this evidence relevant because it demonstrates a realistic pathway by which mitigation measures may be identified, financed, and implemented as the Project advances.

The Board also places significant weight on its authority under section 27 of the *Waters Act* to establish licence conditions requiring updated information, plans, and approvals as the Project progresses. The Board considers those conditions to be an important component of the regulatory framework through which mitigation measures and the financial resources necessary to implement them may continue to be assessed throughout the life of the Project.

The Board also considered the Tłı̨chǫ Government's submission that requiring updated demonstrations of financial responsibility before particular activities proceed would operate as an adaptive management approach similar to other Licence conditions requiring updated information before specific Project activities may occur.[357] The Board also agrees that conditions requiring updated information at defined stages of the Project are consistent with that statutory framework. Such conditions do not defer, qualify, or reopen the Board's determination under paragraph 26(5)(d). Rather, they operate as regulatory safeguards that ensure the evidentiary foundation supporting the Board's determination remains current as the Project progresses toward Construction and operation.

The Board further notes Fortune's evidence that Construction will not proceed until financing is in place and the security required under the Licence has been posted.[358] The Board considers this relevant not because security satisfies paragraph 26(5)(d)(ii), but because it demonstrates that the Project cannot advance into Construction without the financial and regulatory prerequisites established under the Licence.

Having considered the evidentiary record as a whole, the Board is satisfied, on a balance of probabilities, that Fortune has demonstrated adequate financial responsibility for such mitigative measures as may be required under paragraph 26(5)(d)(ii). In reaching this conclusion, the Board has holistically considered the evidence respecting Fortune's proposed financing pathway, its understanding of the mitigation obligations reasonably expected to arise throughout the life of the Project, the regulatory framework established under the *Waters Act* and the Licence, and the Board's authority to require updated information, plans, and approvals as the Project progresses. Collectively, this evidence provides a

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[356] See WLWB Online Registry for Comment-01-Fortune-Minerals-Financial-Responsibility-Response and
[357] See WLWB Online Review System for NICO – Legal Interpretation – Financial Responsibility, Comment-01-TG Letter Re Financial Responsibility, p. 7-8.
[358] See WLWB Online Review System for NICO – Legal Interpretation – Financial Responsibility , Comment-01-Fortune-Minerals-Financial-Responsibility-Response, p. 9, 25.

sufficient basis for the Board to conclude that Fortune has demonstrated a realistic and credible ability to finance required mitigation measures as they arise throughout the life of the Project. Accordingly, the Board finds that the evidentiary record satisfies the requirements of paragraph 26(5)(d)(ii).

Branch (iii): Satisfactory maintenance and restoration of the site

Paragraph 26(5)(d)(iii) of the *Waters Act* requires the Board, before issuing a Licence, to be satisfied that Fortune's financial responsibility is adequate for the satisfactory maintenance and restoration of the site in the event of any future closing or abandonment of the undertaking. As discussed above, the Board interprets this requirement as requiring an evidence-based assessment of whether Fortune has demonstrated a realistic and credible ability to meet its future closure and reclamation obligations. The Parties did not materially disagree regarding the interpretation of this branch, although they differed as to the role that security plays in satisfying it.

The Board has considered the submissions of all Parties respecting the relationship between paragraph 26(5)(d)(iii) and the statutory security regime established under paragraph 35 of the *Waters Act*. The Board accepts Fortune's submission that reclamation security estimates are subject to regular review, public scrutiny, and periodic updates throughout the life of the Project, and that security is required in phases before activities creating additional liabilities are undertaken.[359] The Board also accepts the submissions of the GNWT-ECC and Li-FT that the amount of security must be determined in accordance with the GNWT's guidance and the *Guidelines for Closure and Reclamation Cost Estimates for Mines*, and that those estimates are subject to ongoing review as Project liabilities change.[360]

Fortune, the GNWT-ECC, and CanZinc submitted that the phased security regime provides the appropriate mechanism by which the Board satisfies itself of an applicant's financial responsibility throughout the life of a mining project. In particular, Fortune submitted that "the posting of the security demonstrates an applicant's financial responsibility to each of the three elements of paragraph 26(5)(d)," while the GNWT-ECC submitted that "[t]he test for proof of financial responsibility should be the ability to provide the required amount of security in acceptable forms in accordance with the GNWT Guidance."[361] The Board has also considered the submissions of the Tłı̨chǫ Government that paragraph 26(5)(d) requires more than "a generalized view of an applicant's financial health or a narrow focus on reclamation security alone."[362] The Board agrees with the Tłı̨chǫ Government's interpretation. While the statutory security regime established under paragraph 35 is a significant component of the Board's assessment under paragraph

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[359] See WLWB Online Registry for Comment-01-Fortune-Minerals-Financial-Responsibility-Response, p. 7.
[360] See WLWB Online Registry for The-Government-of-the-Northwest-Territories'-response-to-request-for-legal-interpretation Of Financial Responsibility for Type A Water Licence Renewal W2025L-0005, p.2.
[361] See WLWB Online Registry for Comment-01-Fortune-Minerals-Financial-Responsibility-Response, p. 7; See WLWB Online Registry for The-Government-of-the-Northwest-Territories'-response-to-request-for-legal-interpretation Of Financial Responsibility for Type A Water Licence Renewal W2025L-0005, p.3.
[362] See WLWB Online Registry for Comment-01-TG Letter Re Financial Responsibility, p. 4.

26(5)(d)(iii), the Board respectfully does not accept that the existence or posting of security, without more, evidence is sufficient to satisfy paragraph 26(5)(d). The Board must still be satisfied, on the evidentiary record as a whole, that Fortune can reasonably be relied upon to meet its future maintenance and restoration obligations.

The Board's task under paragraph 26(5)(d)(iii) is, therefore, not to determine whether the posting of security, standing alone, satisfies the statutory requirement. The relevant question before the Board is whether it is satisfied that the evidentiary record, considered as a whole, demonstrates that Fortune can reasonably be relied upon to finance its future maintenance and restoration obligations. In undertaking that assessment, the Board places significant weight on the statutory security regime established under paragraph 35 of the *Waters Act* because, unlike subparagraphs (i) and (ii), paragraph 26(5)(d)(iii) is directed specifically toward future maintenance and restoration obligations, which are the very liabilities that the statutory security regime is intended to address.

The Board has considered the evidentiary record respecting the CRP and associated reclamation security estimates,[363] together with Fortune's submissions that security will be posted before construction commences, staged as the Project develops, and remain subject to regular review and Board approval throughout the life of the Project.[364] The Board considers this evidence significant because it demonstrates that the financial resources intended to address future maintenance and restoration obligations will continue to be reviewed and adjusted as Project liabilities evolve.

The Board recognizes the Tłı̨chǫ Government's submission that financial challenges and changes in ownership at Ekati have contributed to delays in progressive reclamation, reclamation research, and closure planning, and its contrast with the Diavik Mine, where long-term ownership and financial capacity have supported progressive reclamation, reclamation research, an approved Final CRP, and a closure agreement with the Tłı̨chǫ Government.[365] The Board agrees that these examples illustrate the importance of ensuring that adequate financial resources remain available throughout the life of a project to support progressive reclamation, closure planning, and the satisfactory maintenance and restoration of the site. The Board does not, however, consider those examples to demonstrate a comparable deficiency in the evidentiary record before it. In reaching its conclusion under paragraph 26(5)(d)(iii), the Board has relied on the evidence respecting the phased security regime applicable to this Project, the requirements for future adjustments of security, and the Licence Conditions related to closure and reclamation planning.

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363 See WLWB Online Registry for Fortune Minerals Limited – W2025L2-0005
364 See WLWB Online Registry for Comment-01-Fortune-Minerals-Financial-Responsibility-Response, p. 7.
365 See WLWB Online Registry for NICO - Type A WL Renewal - Public Hearing - Day 2 Transcript - Apr 27_26.pdf

The Board has also considered the Tłı̨chǫ Government's submission that Fortune should be required to carry out progressive reclamation in accordance with a schedule established in the final CRP.[366] As discussed elsewhere in these Reasons, the Board has considered the appropriate conditions respecting the CRP. The Board has taken those conditions into account in assessing Fortune's financial responsibility under paragraph 26(5)(d)(iii) because they provide additional assurance that closure obligations, and the financial resources necessary to implement them, will continue to be addressed as the Project progresses.

Collectively, this evidence demonstrates that the financial resources intended to address future maintenance and restoration obligations will continue to be reviewed and adjusted as Project liabilities evolve. Accordingly, the Board is satisfied that the evidentiary record demonstrates adequate financial responsibility for the satisfactory maintenance and restoration of the site in the event of any future closing or abandonment of the undertaking. Accordingly, the Board finds that the evidentiary record satisfies the requirements of paragraph 26(5)(d)(iii).

Part C and Schedule 3 of the Licence and Condition 1 (POST SECURITY DEPOSIT) in the Permit set out the security requirements for the Project, which must be met before Project activities begin. Under subsection 35(2) of the *Waters Act* and subsection 71(3) of the MVRMA, the Minister can apply this security to carry out mitigations and remedial measures in the event of non-compliance with an Inspector's orders, or to carry out closure and reclamation if the site is abandoned. As detailed in section 6.4 and Appendix A of these Reasons, the Board has established the security requirements based on the closure cost estimate information provided during this proceeding, so the Board is satisfied that adequate financial resources will be in place to ensure that the Project site can be restored, as the financial resources intended to address future maintenance and restoration obligations will continue to be reviewed and adjusted as Project liabilities evolve.

Conclusion on financial responsibility under 26(5)(d)

As a result, and for the reasons set out above, the Board is satisfied that the legislated requirement to establish the financial responsibility of the Applicant for the Project has been met. The Board is satisfied, on a balance of probabilities, that Fortune has demonstrated adequate financial responsibility for each of the three statutory requirements set out in paragraph 26(5)(d) of the *Waters Act*. Further, the Board is satisfied that this interpretation gives effect to the objectives of the Board set out in section 58.1 of the *MVRMA*. In reaching this determination, the Board has interpreted and applied paragraph 26(5)(d) in accordance with its text, context, and purpose; considered the submissions of the Parties; independently assessed each of the three statutory requirements under subparagraph (i), (ii), and (iii); and explained the evidentiary basis upon which it is satisfied that Fortune has discharged its statutory burden. Accordingly,

[366] See WLWB Online Registry for NICO - Type A WL Renewal - TG Intervention - Apr 8 26.pdf ; NICO - Type A WL Renewal - Public Hearing - Day 2 Transcript - Apr 27 26.pdf;

the Board concludes that it is satisfied that Fortune demonstrated adequate financial responsibility for the three heads under paragraph 26(5)(d) of the Waters Act.

Appendix B: Detailed Reasons for Decisions for Project Security Determination

This Appendix provides a detailed explanation of how the Board determined the security requirements for the Project as discussed in the main body of the Reasons for Decision (section 6.4), set out in the Licence and Permit conditions, and presented in Table A1 below.

Table A1: Security Deposit Requirements

	Total	Land	Water
Total	$110,438,827	$21,797,804	$88,641,023
Phase:			
Prior to Construction (as defined in the Water Licence Part A)	$51,508,332	$41,071,755	$10,436,577
Prior to Open Pit Mining (as defined in the Water Licence Part A), or extraction/mining of the underground mine, and/or placement of tailings, and/or CDF Construction	$94,432,841 (increase of $42,924,509)	$23,182,818 (decrease of $17,888,937)	$71,250,023 (increase of $60,813,446)
Prior to CDF expansion above the first lift of tailings and mine rock, or beyond a total footprint of 582,340 m^2 for the perimeter dykes and top surface, whichever occurs first	$110,438,827 (increase of $16,005,986)	$21,797,804 (decrease of $1,385,014)	$88,641,023 (increase of $17,391,000)

Consistent with recent Board practice, the Board adopted the split between land and water security estimates in RECLAIM and has placed the land-related liability amounts under the Land Use Permit and the water-related liability amounts under the Water Licence.

The Licence conditions require an initial deposit prior to commencing Project activities, with additional deposits phased to match the increasing liability as the Project progresses. In this way, the liability at the site is matched by security deposits as the Project proceeds through each phase of Construction, operation, and closure. This approach is consistent with INAC's *Mine Site Reclamation Policy for the*

Northwest Territories. The total security represents the cost to reclaim the site or carry out any remaining ongoing measures if a project is abandoned at each phase of the Project. Although a decrease in security held under the Permit occurs at two milestones, the total security for the project increases over the same milestones. The Board understands that the decrease in security held under the Permit does not reflect a return of security for completed reclamation, but rather a change to better reflect the distribution of closure costs between authorizations at that stage of the Project.

1.0 Evidence Submitted to the Board

The Applicant completed a RECLAIM estimate for the Project and calculated a total closure and reclamation cost of $86,435,600. GNWT-ECC also completed a RECLAIM estimate for the Project and calculated a total closure and reclamation cost of $114,674,838. An additional RECLAIM estimate was provided by the Applicant in response to IR #18, and by GNWT-ECC in its Intervention. The Applicant also provided additional total closure cost estimates to consider in response to Interventions. Table A2 below compares these estimates.

Table A2: Closure Cost Estimates Submitted to the Board

	Applicant – with Application	GNWT-ECC – in review of Application	Applicant – IR #18 Response	GNWT-ECC Intervention	Applicant – Intervention Response
Land	$11,782,062	$21,226,715	$20,149,654	$21,797,804	$20,913,538
Water	$74,653,539	$93,448,123	$84,149,654	$88,641,023	$84,831,922
Total	**$86,435,600**	**$114,674,838**	**$104,281,441**	**$110,438,827**	**$105,745,460**

All estimates with the exception of the Applicant's Intervention Response estimates, came with a RECLAIM worksheet. As the Intervention Response did not include a RECLAIM worksheet, the Board could not consider how those estimate details compared with the other estimates.

Over the proceeding, security was generally discussed and agreed upon by Fortune, with inputs from other Parties, and additional RECLAIM estimate proposals from GNWT-ECC. Fortune proposed an initial estimate using RECLAIM Version 7.0 with its Application. In review of the Application, GNWT-ECC proposed a different estimate along with a draft memo. Components of the estimate were discussed further during the Technical Session, and Fortune provided an updated RECLAIM estimate as part of response to IR #18. GNWT-ECC's Intervention included an additional revised security estimate and RECLAIM worksheet, with the proposed phasing discussed in section 6.4.2, and with the Licence and Permit security split.[367] In response to the GNWT-ECC's estimate in its Intervention, Fortune provided adjusted security estimates for each phase and split between land and water, but did not include a revised estimate, rationale for why the estimates differed from GNWT-ECC's estimate, or identification of what

[367] See WLWB Online Registry for NICO – Type A WL Renewal – GNWT Intervention – Apr 8_26

issues Fortune had with GNWT-ECC's estimate. Given a lack of rationale or updated RECLAIM worksheet for the different estimate from Fortune, it is difficult to understand the changes proposed by Fortune in its updated closure cost estimate totals. Fortune did agree with GNWT-ECC's proposed land and water liability split being based on the capital cost proportion of land to water liability at each phase.[368]

The only main distinction identified between the GNWT-ECC and Fortune closure cost estimates through Interventions and responses was the proposed cost for the security for the CWTS expert panel. GNWT-ECC recommended it be set at $270,000 in the second phase of payments. Fortune maintained that the cost for the CWTS Panel would need to be incurred before Construction of the CWTS, and as such the liability at any point in the mine life would be limited. Fortune noted the pilot scale and demonstration CWTS must be completed before any CWTS is constructed, so the expert panel review costs are front loaded; Fortune proposed $170,000 as an appropriate cost for the CWTS as a maximum potential liability, and maintained this in the Hearing.[369] In its Closing Arguments, GNWT-ECC noted that if default happened in early or mid-mine life, partial CDF Construction and placement will have occurred, but CWTS Construction may not have begun; as such the pilot or demonstration scale testing may still be ongoing or not yet started. A number of requirements for the Expert Panel outlined in the Licence (including review of multiple reports and plans, and site inspections at different CWTS phases) would still potentially be required, and more engagement would be required; as such GNWT-ECC retained its recommendation regarding a higher estimated security (Recommendation 16).[370] Fortune maintained its position in Closing Arguments.[371] The Board accepts GNWT-ECC's rationale regarding the potential engagement necessary for the CWTS expert panel, as it is unclear that the majority of costs would necessarily be "front loaded" and potential risks with the CDF Construction being already underway. As such, the Board has determined the GNWT-ECC proposed cost for the CWTS expert panel is appropriate.

The Board is responsible for setting the security amount for a project, but as the landowner, GNWT has an important role in determining security refunds. The GNWT-ECC's Minister approves Type A Water Licences, i.e., the Licence under consideration during this proceeding, sets the form of security, holds security, and is ultimately responsible for paying for closure and reclamation if Fortune were to become insolvent. Engagement between GNWT-ECC and Fortune regarding the security estimate was identified throughout this Renewal proceeding.

As the GNWT holds security and is ultimately responsible for paying for closure and reclamation if Fortune were insolvent, the Board gives significant weight to the landowner's estimate and, therefore, has accepted GNWT-ECC's updated recommended security estimate. Fortune's most recent closure cost

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[368] See WLWB Online Registry for NICO - Type A WL Renewal - Fortune Response to Interventions - Apr 15_26
[369] See WLWB Online Registry for NICO – Type A WL Renewal – Public Hearing – Day 1 Transcript – April 27_26 ;105-107
[370] See WLWB Online Registry for NICO Mine – WL Renewal Application – GNWT Closing Arguments – Jun 23_26
[371] See WLWB Online Registry for NICO Mine – WL Renewal Application – Fortune Closing Arguments – Jul 2_26

estimate did not provide a detailed breakdown, which makes it difficult for the Board to make any detailed comparisons.

Further, as discussed in section 6.4, there will be a security estimate update and review before Construction, which will give all Parties an opportunity for further review and recommendations regarding the estimate.

1.1 Use of Net Present Value

The use of Net Present Value for security payments was previously considered during the proceeding for W2008L2-0004 Licence.[372] At the time, the Board noted that it:

> Supports the application of the net present value approach for calculating the security deposit estimate for the NICO Mine. Although the legislation and regulations provide no guidance on this topic, AANDC's Mine Site Reclamation Policy for the Northwest Territories recognizes the RECLAIM model as an appropriate model for estimating security, and as noted by AANDC (above), the net present value calculations are part of the model. […] This is the first time the WLWB has applied a net present value approach when setting a security deposit. The Board will consider any additional evidence submitted following Licence issuance regarding this matter, and, if warranted, refine the approach. In particular, the Board notes that neither Fortune nor AANDC submitted a basis for the discount rate of 3%, and the results of the net present value calculations can vary greatly depending on the rate. The Board expects that the Parties will provide additional analysis and documentation to support this rate during future security reviews.

The Board also identified that "the NPV approach is directly related to the form of the security deposit, which is to be determined by the Minister following Licence issuance."[373]

The Renewal Application for the W2025L2-0005 Licence included two security estimates, one with NPV and one without, along with a memo. The memo did not provide additional analysis and documentation regarding the NPV rate.

In review of the Application, GNWT-ECC provided a draft memo regarding the security estimate.[374] In the memo it was noted that Fortune's security estimate included an NPV discount for certain costs, but that those costs reflective of todays costs and not future costs, i.e., it did not account for inflation to the cost. It was proposed that a reasonable approach to the inflation and discount would be to assume both rates are the same or similar, and as such, have a net zero approach on the total security.

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[372] See WLWB Online Registry for Nico Mine – Water Licence and Land Use Permit – Reasons for Decision – Jun 17_14
[373] See WLWB Online Registry for Nico Mine – Water Licence and Land Use Permit – Reasons for Decision – Jun 17_14; pp. 14
[374] See WLWB Online Review System for NICO Mine Type A Water Licence Renewal Application

NPV and the effects of inflation and discount rates continued to be discussed through the proceeding. At the Technical Session, Board staff asked Fortune if it was asking for the use of NPV again with the renewal, and what additional information could be provided regarding its application and the use of inflation.[375] Fortune confirmed it was asking for NPV to be used again for post-closure monitoring and maintenance costs after 20 years, and inflation was not being used; that is, the costs having an NPV discount applied were not being considered in potential future costs from inflation. GNWT-ECC noted that if inflation is not being used, this would not be reflective of the actual future cost, and potentially result in a reduction of the held liability. An IR was issued to GNWT-ECC and Fortune to identify its current views on if use of NPV was a reasonable approach.

In the Information Request response, Fortune maintained that the use of NPV was still appropriate because "before the form of security is decided as discounting has only been applied to monitoring costs from post-closure year 21 to 100, and does not consider any time period before post-closure year 21 eligible for discounting."[376] GNWT-ECC responded that it recommended the full liability be estimated for any project and that it "doesn't believe it is the LWB's jurisdiction to determine the form of security to be posted." GNWT-ECC also highlighted that there were options for operators to use forms of security other than cash, for which NPV would not be acceptable.[377]

In Interventions and Intervention responses, GNWT-ECC and Fortune maintained their positions. GNWT-ECC identified that from discussions with Fortune it was indicated that Fortune applied a 4% discount rate based on guidance for British Columbia, but that the basis for that rate is not described. Given the uncertainties around a projected inflation and discount rate, GNWT-ECC kept its recommendation to assume the rates cancel out, and as such not use NPV in the estimate.[378] In the Tłı̨chǫ Government's Intervention, it recommended that if NPV was used again, the calculations should be based on accurate, conservative information.

During the Public Hearing, the basis for the discount rate was discussed further. GNWT-ECC asked Fortune the rationale for using the 4%. Fortune responded that the rate was from the British Columbia's Major Mine Reclamation Liability Cost Estimate Guide and was selected in the absence of GNWT specific guidance, noting that long-term inflation trends in British Columbia and the Northwest Territories are influenced by the same national economic factors.[379] Board staff asked Fortune if there was detailed analysis for how the 4% rate was reached.[380]

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[375] See WLWB Online Registry for NICO Mine - Technical Session - Transcripts Day 2 - Mar 2_26.pdf; p. 79
[376] See WLWB Online Registry for NICO Mine – Technical Session – IR Response 18 – Fortune – Mar 13_26
[377] See WLWB Online Registry for NICO Mine – Type A WL Renewal – GNWT Intervention – Apr 8_26
[378] Major Mine Reclamation Liability Cost Estimate (RLCE) Guidance. British Columbia Ministry of Energy, Mines and Low Carbon Innovation. May 2024. Version 1.0.
[379] See WLWB Online Registry for NICO – Type A WL Renewal – Public Hearing – Day 1 Transcript – April 27_26; p. 98
[380] See WLWB Online Registry for NICO – Type A WL Renewal – Public Hearing – Day 1 Transcript – April 27_26; p. 175

At the Hearing, Parties also asked GNWT-ECC about the form of security, and if discounting were allowed, if GNWT-ECC could confirm it would invest the security deposit that is discounted.[381] GNWT-ECC confirmed that it has invested security deposits before, but that the form of the security is at the discretion of the Minister, and as such could not be pre-determined.

Board staff also asked GNWT-ECC about its opinion on NPV with respect to how it can only be used with certain forms of security, and if the Board were to determine that NPV could be used for a part of the security estimate, would this be outside the Board's jurisdiction.[382] GNWT-ECC took an Undertaking to respond, and identified that "any determination made by the WLWB regarding the use of Net Present Value would be beyond the WLWB's authority."

In Closing Arguments, GNWT-ECC maintained its position, noting that the basis for the BC 4% rate was unclear, and there was no additional information from Fortune indicating how the rate was determined. GNWT-ECC recommended that for costs where an NPV is used, that current costs are first inflated to a future year, and then discounted back, rather than applying a single net discount rate; GNWT-ECC further recommended that the full liability estimated for the project, no considering NPV, be used by the Board in determining the security amount.[383] Tłı̨chǫ Government reiterated its recommendation from the Intervention that accurate, conservative information be used for any NPV calculations. Tłı̨chǫ Government suggested that the Board could use the same approach as previously used, and calculate security with and without net present value calculations, allowing flexibility for the GNWT to determine if the NPV should be used.[384]

It remains unclear to the Board that an appropriate discount rate has been selected, or the previous direction from the Board that "additional analysis and documentation to support this rate during future security reviews" was addressed. Given the Tłı̨chǫ Government's recommendation that accurate, conservative information be used for NPV calculations, and the difficulties identified in projecting future values for inflation of current costs, there remains uncertainty as to how accurate, conservative information has been applied. As such, the non-NPV closure cost estimate will be included in Schedule 3, which aligns with the previous Licence. The use of NPV hinges on the form of security; without knowing the form of security that will be used, and given that it is the Minister's decision as to the form of security, the Board will not make a determination as to the use of NPV for the NICO Mine Project.

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381 See WLWB Online Registry for NICO – Type A WL Renewal – Public Hearing – Day 1 Transcript – April 27_26; pp. 234-237 (TG), p. 239 (Board staff)
382 See WLWB Online Registry for NICO – Type A WL Renewal – Public Hearing – Day 1 Transcript – April 27_26; pp. 238-239
383 See WLWB Online Registry for NICO Mine – WL Renewal Application – GNWT Closing Arguments – Jun 23_26
384 See WLWB Online Registry for NICO Mine – WL Renewal Application – TG Closing Arguments – Jun 23_26

Appendix C: Administrative Updates

Table 5: Administrative updates to submissions to the Board

Submission	Administrative Update or Revision	Comment Reference
WMP	Revise the Waste Management Plan to clarify that disposal of ash identified as non-hazardous according to Schedule I and II under GNWT's Guideline for Hazardous Waste Management (2017) will be disposed of in the CDF. Any ash that does not meet these criteria and is considered hazardous will be managed by a registered hazardous waste management contractor.	GNWT-ECC Inspectors-2 WLWB-83
SCP	Revise Table 1 and Section 2.2.1 of the Spill Contingency Plan with the final volumes of diesel and liquified natural gas prior to Construction.	GNWT-ECC-8
CRP	Revise the next version of the Closure and Reclamation Plan (CRP) to remove reference to a geotechnical study associated with the pit rim (i.e., Section 5.2.2.3.3 of the Conceptual Closure and Reclamation Plan) and to include post-closure monitoring of the mine site, which identify any circumstances that may require the adjustment of the pit rim barrier.	GNWT-ECC-13
CRP	Provide details regarding placement of an overburden cover, details on the dimensions of the Emergency Spill Containment Pond dam, and closure details on other mine components in the next version of the Closure and Reclamation Plan.	GNWT-ECC-19
CRP	Provide a clear, consolidated list of all buildings and structures (e.g., fuel tanks, power lines) and their associated details (e.g., footprints, heights, lengths, material types) in the next version of the Closure and Reclamation Plan.	GNWT-ECC-23
CRP	Provide the anticipated total number of culverts in the next version of the CRP.	GNWT-ECC-24
CRP	Provide details regarding the landfarm in the next version of the CRP.	GNWT-ECC-25, 26
WMP	Provide location(s), estimated quantities of remediated soil requiring disposal per year and any alternative disposal arrangements that can be provided prior to commencement of construction in an updated Waste Management Plan (WMP).	GNWT-ECC-25,26

Baseline Summary Report	Include the baseline ice thickness data to the updated supplemental baseline summary report.	Board staff-20
Baseline Summary Report	Update the footnote of Table 9-1 to define the terms "WB” as whole body and "C " as carcass.	Board staff-33
AEMP DP	Revise AEMP Design Plan to update the definitions provided for Action Level, Effluent, Response Framework, and Response Plan to align with the MVLWB/GNWT Guidelines for Aquatic Effects Monitoring Programs (2019) definitions.	Board staff-4
AEMP DP	Revise the AEMP Design Plan to update the "Roles and Responsiblities" text under Section 1.3 per response provided to Board staff comment 5 on the application.	Board staff-5
AEMP DP	Revise the AEMP Design Plan to reference the current Land and Water Board Water and Wastewater Management Policy per response provided to Board staff comment 6.	Board staff-6
AEMP DP	Revise the AEMP Design Plan to remove the range in discharge volumes from the Sewage Treatment Plant per response provided to Board staff comment 7.	Board staff-7
AEMP DP	Revise the AEMP Design Plan Section 2.3.2 Anthropogenic Sources and Potential Confounding Factors for information regarding the Kwetı̨ı̨ɂaà (Rayrock) Remediation Project per the response provided to Board staff comment 8.	Board staff-8
AEMP DP	Revise the title of Figure 3 to remove reference to the Reference Lake.	Board staff-10
AEMP DP	Revise the map(s) showing locations of all SNP and AEMP stations and identifying which stations overlap between the two programs.	Board staff-12
AEMP DP	Revise Table 9 in the AEMP Design Plan to correct the reference to the non-existent footnote (a).	Board staff-19
AEMP DP	Revise the AEMP Design Plan to clarify the length of time for fishing effort.	Board staff-22
AEMP DP	Revise the AEMP Design Plan to clarify the hold time for fish per the response to comment.	Board staff-23

AEMP DP	Revise the AEMP Design Plan to update the fish tissue chemistry parameters per response provided to Board staff comment 5 on the Application.	Board staff-24
AEMP DP	Revise the AEMP Design Plan to include information for the proposed hydrometric stations in Burke Lake per response to comment.	Board staff-26
AEMP DP	Update the AEMP Design Plan to remove reference to the 2010 Draft Guidelines for Adaptive Response Framework for Aquatic Effects Monitoring.	Board staff-27
AEMP DP	Revise the AEMP Design Plan to remove text and associated discussion of the diffuser modelling.	Board staff-39
WWMP	Update the water balance and all figures and terms in the WWMP to reflect changes in the project design (e.g., merging of the Emergency Spill Containment Pond and the Surge Pond).	ECCC-6 Board staff-65
WMP	Revise the Waste Management Plan to provide information for the storage location(s) of all hazardous substances.	ECCC-15
SCP	Revise the SCP to specify secondary containment volumes and identify which option provided in the guidance outlined in section 3.9 of the Code of Practice for storage tank systems containing petroleum and allied products.	ECCC-16
WWMP	Revise the WWMP Figures to show the updated locations for the five seepage control ponds	Board staff-66
WMMP	Revise the WWMP to correct the information related to the location of the potable water intake in Lou Lake.	Board staff-67
WMMP	Revise the WWMP to provide contingency to accommodate the proposed design change of merging of the Surge Pond and the Emergency Spill Containment Pond.	Board staff-72
CRP	In ICRP clarify that "reconfigure water management infrastructure (if necessary)" is related to contingency of CWTS 4 construction	GNWT-ECC-35
CRP	In ICRP include a detailed summary of all existing and potentially required permits, authorizations, and agreements in the CCRP.	GNWT-ECC-46
CRP	In ICRP identify the potential for scenarios where the timeline to flood the open pit differs significantly from expectations, or the pit lake elevation does not reach the expected elevation; include a description of the	GNWT-ECC-49

	implications for the proposed closure approaches and timelines, and contingencies to manage these possibilities.	
CRP	In ICRP clarify how post-closure facilities and pumps for pit-filling will be powered.	GNWT-ECC-50
WWMP	Revise WWMP to clarify how CWTSs may be a part of operational water management.	Board staff-54
CRP	In ICRP include the Materials Sorting Facility and Hazardous Waste Transfer Area	Board staff-61
WWMP	Revise the definition of SPCs and the use of WWTP and STP for consistency and clarity throughout the WWMP and all other Project documents where these water management facilities are referenced.	Board staff-75
Engagement Plan	Update Table 1 of the Engagement Plan to include the contact information provided by the Tłı̨chǫ Government in TG comment 37.	TG-37
WMP	Revise the Waste Management Plan to include reference to the Transportation of Dangerous Goods Regulations in the list of regulatory requirements.	Board staff-84
WMP	Update Table 1 of the Waste Management Plan to categorize explosives emulsion in the explosives waste category and add concrete additives and cement and categorize appropriately.	Board staff-85
WMP	Update the Waste Management Plan to include emissions estimate details related to stack testing of the incinerator.	Board staff-82
WMP	Revise the Waste Management Plan to include information related to SNP monitoring at Station SNP_01 per the response to Board staff comment 77.	Board staff 77
	Revise the introductory text of Section 7 of the Water and Wastewater Management Plan to reflect the respones to Board staff comment 64.	Board staff 64
CRP	Address clarifications and information requested by GNWT-ECC in GNWT-ECC Application Review comments 30 and 31.	GNWT-ECC-30, 31, 51

Appendix D: Incorporation of Measures and Suggestions from Environmental Assessment EA0809-004 for the Project

*Table 6: Measures from Environmental Assessment EA0809-004 for the Project**

#	Topic	Measure	Where item is addressed in the Licence/Permit
1	Water Quality	The NICO Project will be designed and operated by Fortune Minerals throughout all Project stages (Construction, operation, active closure, post closure), so that the Tłı̨chǫ people's traditional water uses, now and into the future, are not adversely affected by mining activities. These uses include: • use of traditional drinking water sources; and • use of traditional areas for fishing.	Throughout the Licence. Part G, Condition 5. Part I, Condition 2.
2	Water Quality	The NICO Project will be designed and operated by Fortune Minerals throughout all Project stages (Construction, operation, active closure, post closure), so that the following water quality objectives are met in any area downstream from Peanut Lake, including all of Burke Lake (Datoti): • water quality changes due to mining activities will not substantially alter benthic invertebrate and plankton abundance, taxonomic richness or diversity; • water quality changes due to mining activities will not substantially alter fish health, abundance or diversity or impact the ability of traditional users to harvest or consume fish; • water changes due to mining activities will allow for safe use of water by wildlife and waterfowl; and • water quality, quantity and rate of flow in the Marian River is to remain substantially unaltered.	Throughout the Licence. Part D, Conditions 3 and 5; Part F, Conditions 1 - 4, and 29; and Part G, Conditions 2, 3, and 4.
3	Water Quality	In order to reduce significant adverse impacts from contaminant loading in receiving waters during Construction and mine operations, Fortune Minerals will prepare a dust mitigation and monitoring plan. This plan will incorporate Fortune Minerals' commitments for fugitive dust suppression and dust suppression techniques and apply lessons learned about dust suppression from other Northwest Territories mine sites. This plan will be developed in collaboration with aboriginal users of the area and will be incorporated in the NICO water licence issued by the Wek'eezhii Land and Water Board.	Part F, Condition 11; Schedule 5, Condition 2.
4	Closure	In order to mitigate significant adverse impacts to water quality and the environment downstream of the project site, the developer will fund an expert peer review panel for the co-disposal facility. This panel of three people is to be established under the water licence in consultation with Fortune Minerals and the Tłı̨chǫ Government and consist of one appointee from each party and the Wek'eezhii Land and Water Board. The peer review panel will be established prior to the start of mine operations and will be in place for the operational life of the mine. It will:	Part E, Condition 19 and 20.

#	Topic	Measure	Where item is addressed in the Licence/Permit
		• consist of technically qualified individuals capable of reviewing the design and performance of the co-disposal facility • assess Fortune Minerals’ Co-disposal Facility Monitoring and Management Plan; • provide recommendations intended to reduce adverse impacts and improve the operations and effectiveness of the co-disposal facility to the Wek’eezhii Land and Water Board, Fortune Minerals, and the Tłįchǫ Government; and • address questions from any of the three parties in relation to its assessments and recommendations.	
5	Closure	In order to reduce significant adverse impacts and the risk and uncertainties of a long-term post-closure timeframe, the developer will actively fill the open pit within an 8–14-year time range after mine operations. The developer will do this in a way that does not, in the view of regulators, result in adverse impacts to the Marian River or the downstream watershed.	Part D, Condition 4
6	Closure	In order to mitigate significant adverse impacts to water quality and the environment downstream of the project site, the developer will fund an expert peer review panel to review and advise on the design and Construction for the proposed constructed wetlands. This panel of three people is to be established under the water licence in consultation with Fortune Minerals and the Tłįchǫ Government and consist of one appointee from each party and the Wek’eezhii Land and Water Board. The peer review committee will be established at the start of mine operations and will be in place for the operational life of the mine. It will: • consist of technically qualified individuals capable of reviewing the design and performance of constructed wetlands; • assess Fortune Minerals’ constructed wetlands pilot and field scale wetlands trials; • provide recommendations intended to reduce adverse impacts from and improve the operation and effectiveness of the constructed wetlands to the Wek’eezhii Land and Water Board, Fortune Minerals, and the Tłįchǫ Government; • address questions from any of the three parties in relation to its assessments and recommendations.	Part E, Conditions 23 and 24.
7	Closure	In order to mitigate significant adverse impact to water quality to local receiving water bodies during the closure and post-closure phase of the NICO Project, the developer will: • demonstrate, using a pilot study, that the wetland will work as predicted; • construct wetlands early during operations and test them during the first half of mine life to determine effectiveness in treating seepage from the co-disposal facility;	Part E, Conditions 23 – 35.

#	Topic	Measure	Where item is addressed in the Licence/Permit
		• demonstrate the ability of wetlands to work for both the co-disposal facility and the pit overflow to the satisfaction of regulators before the developer is released from its mine closure and reclamation requirements.	
9	Caribou	To reduce or prevent significant adverse impacts on caribou and caribou habitat from project activities, and, to inform adaptive management through active monitoring that will further prevent significant impacts from the mine and NICO Project access road, the Board requires the timely and collaborative development of a Wildlife and Wildlife Habitat Protection Plan by the developer. At a minimum, this plan is to include: • both traditional and scientific knowledge; • an adaptive management approach designed to assess how well mitigation measures perform and support the adoption of new mitigation, if necessary; • best practices for mitigation and monitoring; • the development of clear protocols and standard operating procedures for Project employees and contractors to ensure the implementation of site-specific mitigation; and • instructions and training to mine staff to reduce the potential for interactions between people and wildlife.	Permit Condition 47 As per the Minister's Wildlife Act Section 95(1) Determination, the WMMP will be submitted for approval by the GNWT.
10	Caribou	To reduce or prevent significant adverse impacts on caribou and caribou habitat from project activities and to inform adaptive management of mitigation that will further prevent significant impacts, the Board requires the timely and collaborative development of a Wildlife Effects Monitoring Program by the developer. Before starting Construction, Fortune Minerals will collaborate with others including the Tłı̨chǫ Government, the North Slave Métis Alliance, the YKDFN, the GNWT, and the Wek'eezhii Renewable Resources Board to complete and implement a Wildlife Effects Monitoring Program. At a minimum, this program is to include: • both traditional and scientific knowledge; • an adaptive management approach designed to use monitoring to test impact predictions, assess how well mitigation measures perform, and support the adoption of new approaches, if necessary; • best practices for monitoring and mitigation; • monitoring to test effect predictions and effectiveness of mitigation related to sensory disturbances, energy costs, the estimated zone of influence, and caribou and harvester use of the road through all mine phases; • monitoring that involves people in Tłı̨chǫ communities; • monitoring that can be readily integrated into regional cumulative effects programs; and • a communications component to ensure Wildlife Effects Monitoring Program results are being reported back to community members and the Tłı̨chǫ Government on at least an annual basis.	Permit Condition 47 As per the Minister's Wildlife Act Section 95(1) Determination, the WMMP will be submitted for approval by the GNWT.

* Measures 8, 12, and 13 are not within the jurisdiction of the WLWB or are not directed at the WLWB.