GQ
THE LAWYERS

Memorandum

Matter: Oparure Quarry South Western Pit - FTAA Application

Prepared by: Lauren Wallace and Bayley Sprott (Govett Quilliam)

Re: Legal advice to Expert Panel on matters relating to Wildlife Act authority, water take, OIO conditions and NPS-FM

Date: 16 November 2026

Status: Legally privileged and confidential

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1. Introduction

1.1 Lauren Wallace and Bayley Sprott have been instructed as independent legal advisers to the Expert Panel (Stephen Daysh (Chair), Dr Ngaire Phillips and Nicholas Manukau) (**Panel**) appointed to determine Graymont (NZ) Limited's (**Graymont / Applicant**) application under the Fast-track Approvals Act 2024 (**FTAA**) for the Oparure Quarry South-Western Pit (FTAA-2606-1251) (**Application**).

1.2 The Panel has sought legal advice on four issues in relation to the Application, as follows:

a) **Wildlife Act Authority and Lizard Management Plan:** Graymont holds a Wildlife Act Authority (118705-FAU) which appears to cover only part of the site and it has not sought a wildlife approval under the FTAA. Do the Authority and the Lizard Management Plan cover the full South-Western Pit footprint and the duration of the quarrying activities for which fast-track approvals are sought? If not, does this affect the Panel's ability to grant the FTAA approvals, and what mechanisms are available to address any gaps?

b) **Water take not sought:** the Application indicates that a water take permit is not sought, although quarry operations will require water. Can the Panel properly assess the effects of the proposal when no water take is applied for, and what must the Panel be satisfied of when considering the lawful supply of water needed for the duration of the project?

c) **Overseas Investment Office (OIO) consent conditions:** the Application site is subject to OIO consent conditions requiring, inter alia, a QEII covenant over a 6.5ha SNA, site remediation and betterment, pre-2027 commencement of quarrying activities and a bond. Is the Panel required to have regard to the OIO conditions, including the covenant relied on as mitigation, and how should it address OIO consent conditions which may overlap or be inconsistent with the proposed consent conditions?

d) **National Policy Statement for Freshwater Management 2020 (NPS-FM):** the proposal affects karst groundwater, the Camelot Stream/Pōtea Spring system and the Mangawhitikau Stream. While Graymont has indicated the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F) are not engaged by the Application, does the National Policy

Statement for Freshwater Management 2020 (**NPS-FM**) apply to the Application, and if so, is an assessment required?

1.3 This advice is based on the substantive Application and appendices (in particular Appendices T1, T2, U1 and U12), the Applicant's Memorandum of Counsel in response to Minute 2,[1] the FTAA and the Overseas Investment Act 2005 (**OIA**). We have not seen the OIO consent itself (LINZ case 201810058, granted 20 June 2019). Our comments on its conditions are therefore based only on the OIO consent extracts reproduced in Appendix U12, and may need to be revisited if the full consent becomes available.

2. Executive summary

2.1 A summary of our advice is set out below.

Wildlife Act

2.2 The Wildlife Act Authority (118705-FAU) and Lizard Management Plan (**LMP**) apply to the 26 ha Phase 1 footprint and the Authority's term ends on 8 June 2035. Graymont's FTAA Application seeks consents for the South-Western Pit, which covers 59.6 ha and indicates the expected quarry life will extend to about 2080. No wildlife approval is sought under the FTAA, so the Panel cannot grant one. That does not in and of itself affect the Panel's ability to grant the resource consents sought. However, the Panel is still required to assess the effects on lizards and their habitat under the Resource Management Act 1991 (**RMA**). While RMA conditions cannot authorise the take or killing of lizards, they can control when, where and how works proceed.

2.3 If the Panel considers that effects on lizards and their habitat need to be managed, any gap in the Authority's coverage could be addressed through conditions, such as a condition precedent that no vegetation clearance or earthworks occur outside the Phase 1 footprint, or after the Authority expires, until the consent holder holds a wildlife authority covering that area. An advice note could also record that the resource consents do not authorise anything prohibited by the Wildlife Act 1953.

Water take

2.4 Water suppression is the primary mitigation measure proposed by the Applicant to manage adverse dust effects[2], however no new water take is sought as part of the Application. The Applicant's Air Quality Assessment (Appendix L) concludes that the water available on site is adequate to control dust from both the existing pit and the South-Western Pit. Accordingly, the Applicant relies on its existing water take consents,[3] but seeks consent for an additional use of that water.[4] Notably, the existing water take consents expire in 2039 (for stormwater) and in 2058 (for the bore take), within the proposed 35-year term. However, the Applicant has indicated it intends to apply to renew the take consents before they expire.[5]

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[1] Memorandum of Counsel on behalf of the Applicant – Response to Minute 2, 16 October 2026 (Russell McVeagh, A A Arthur-Young and K J C O'Connor) (**Applicant's Memorandum**).
[2] Appendix L, Oparure Quarry South-Western Pit - Air Quality Assessment (Pattle Delamore Partners Ltd), at page 33
[3] Ibid, and Applicant's Memorandum, at para 6 (Graymont holds existing consents to take up to 200 m³/day from the on-site stormwater pond and 100 m³/day from an on-site bore, of which about 58 m³/day is on average available for dust suppression, giving a combined 258 m³/day).
[4] Refer to Condition 1(a) of the Waikato Regional Council proposed condition set
[5] Applicant's Memorandum, at para 10.

2.5 Good practice is for all necessary resource consents to be sought at the same time so the Project can be considered in an integrated way, but this is not always practicable, and the FTAA allows its processes to be used for only some of the approvals required. The Panel can decide only the approvals sought, and s 91 of the RMA is not available to it.

2.6 A key issue for the Panel therefore is whether the water needed for dust suppression can be lawfully supplied for the duration of the activity. Although the Applicant intends to apply to renew the takes, the Panel cannot assume that renewal will be granted. One option is to align the duration of the use consent with the existing takes. Alternatively, the Panel could impose conditions requiring that dust suppression is maintained to the required standard whatever the water source, and that water is used only from lawfully authorised takes. The approach adopted should reflect the need to give the greatest weight to the purpose of the FTAA, and the requirement in s 83 FTAA that conditions be no more onerous than necessary.

OIO Consent

2.7 The OIA is not a 'specified Act' under the FTAA, so the Panel has no jurisdiction over the OIO consent. However, the OIO conditions are relevant information that the Panel may take into account under s 81(2)(a) FTAA. In our view, they are particularly relevant to the Panel's assessment in three respects:

a) Mitigation: to the extent the Panel relies on the 6.5 ha QEII covenant (including the Guildford cave entrance and the lizard release site), it may wish to consider how that mitigation is secured, given the Panel cannot enforce the OIO consent and the draft conditions do not specifically refer to the covenant.

b) Duplication: some conditions appear to duplicate OIO requirements, such as the rehabilitation bond and the site remediation and betterment conditions. Consistent with s 83 FTAA, the Panel may wish to avoid imposing duplicate obligations, for example by recording in an advice note that one bond may satisfy both regimes.

c) Inconsistency: any tension with the OIO conditions, such as the pre-2027 commencement requirement or the reduced betterment package, is primarily a matter for Graymont and the OIO rather than the Panel, although the Panel may find it helpful to seek the Applicant's comment on these points and a copy of the OIO consent.

NPS-FM

2.8 Clause 17(1)(b) of Schedule 5 of the FTAA requires the Panel to take into account certain provisions of the RMA that direct decision making. These include s 104(b)(ii) of the RMA which provides that a consent authority must have regard to any relevant provisions of a national policy statement when considering an application for a resource consent. This requires the "*genuine attention and thought*"[6] be given to the NPS-FM, but any weighting is a matter for the decision-maker taking factors such as the timing of the national instrument relative to any district or regional plan.[7]

[6] *Foodstuffs (South Island) Ltd v Christchurch CC* [1999] NZRMA 481 (HC).
[7] *RJ Davidson Family Trust v Marlborough District Council* [2016] NZEnvC 81; *Infinity Investment Group Holdings Ltd v Canterbury Regional Council* [2017] NZEnvC 36, *Bunnings Limited v Queenstown Lakes District Council* [2019] NZEnvC 59 at [191].

2.9 Whether any provisions of the NPS-FM are relevant requires assessment of the Application against the NPS-FM. On its face, a number of NPS-FM policies appear to be relevant to the water permits and use (e.g. Policy 2: Tangata whenua are actively involved in freshwater management (including decision-making processes), and Māori freshwater values are identified and provided for, Policy 3: Freshwater is managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis, including the effects on receiving environments). Further assessment of the NPS-FM, including in respect of the proposed betterment works near Pōtea Spring, appears appropriate to ensure the Panel has sufficient information for the purposes of taking into account s 104(1)(b) RMA.

3. Statutory framework

3.1 A substantive application may seek one or more of the approvals listed in s 42(4) FTAA, including resource consents (s 42(4)(a)) and a wildlife approval (s 42(4)(h)). For each approval sought, the Panel must decide whether to grant it with conditions or decline it (s 81(1)). The Panel cannot grant an approval that has not been sought.

3.2 For resource consents, the Panel must take into account the purpose of the FTAA, giving it the greatest weight. It must also take into account the decision-making provisions of Parts 2, 3, 6 and 8 to 10 of the RMA (excluding s 104D), and any other legislation that directs RMA decision-making (Sch 5 cl 17(1)). When taking the FTAA's purpose into account, the Panel must consider the extent of the project's regional or national benefits (s 81(4)). The Panel may decline only in accordance with s 85 FTAA. Under s 85(3), the adverse impacts must be sufficiently significant to be out of proportion to those benefits, and an inconsistency with a planning document is not enough on its own (s 85(4)).

3.3 Conditions are set under Parts 6, 9 and 10 of the RMA (Sch 5 cl 18) and must be no more onerous than necessary (s 83 FTAA). Conditions must also satisfy the orthodox validity tests. A condition must be for a resource management purpose, fairly and reasonably relate to the development authorised, and not be so unreasonable that no reasonable decision-maker would impose it: *Newbury District* Council *v Secretary of State for the Environment* [1981] AC 578 (HL), adopted in *Housing New Zealand Ltd v Waitakere City Council* [2001] NZRMA 202 (CA). The conditions must also operate within the Panel's own jurisdiction: *Waitakere City Council v Estate Homes Ltd* [2006] NZSC 112, [2007] 2 NZLR 149. An approval granted has effect as if it had been granted under the relevant specified Act (s 96 FTAA).

4. Question 1: Wildlife Act Authority and Lizard Management Plan (LMP)

4.1 The Director-General of Conservation granted Authority 118705-FAU under s 53 of the Wildlife Act 1953 on 9 June 2025, for a term ending on 8 June 2035. It authorises the capture, release and incidental killing of up to 150 copper skinks and 10 ornate skinks. Its scope is the 'Land' shown in Schedule 5, but the map of the Land has been redacted. The map's description notes: the 26 ha Phase 1 LMP site, of which about 24 ha is virgin ground. The LMP records that phases of the western pit beyond Phase 1 'will be the subject of future LMPs'. The Application seeks consent for a 59.6 ha South-Western Pit over a life to about 2080. No wildlife approval is sought under s 42(4)(h) FTAA.

Analysis

4.2 All indigenous lizards are absolutely protected. Catching, holding or killing them is lawful only under an authority, and acting outside an authority's terms is an offence (Wildlife Act 1953, ss 53, 63 and 67A). The Authority is limited to its Land, term, species and quantities. It does not authorise salvage or incidental killing across the balance of the pit or after 8 June 2035.

4.3 Because no wildlife approval is sought, the Panel has no jurisdiction to grant one (s 81(1)). Adding a wildlife approval at this stage would likely be a change in the scope of the Application. It would also require further information under Sch 7 cl 2 FTAA and a report from the Director-General under s 51(2)(c) and Sch 7 cl 3, which is unlikely to be obtainable within the timeframe for the Panel's decision.

4.4 The absence of a wildlife approval does not, in and of itself, prevent the Panel from granting the resource consents sought, as the Wildlife Act is a separate regime. However, the Panel must still assess the effects on lizards and their habitat under the RMA. That includes s 6(c) RMA (significant habitats of indigenous fauna) and the NPS for Indigenous Biodiversity, and the Application itself records that ornate skink habitat on the site is likely significant. While RMA conditions cannot authorise the take or killing of lizards, they can control when, where and how works proceed.

Recommendation

4.5 If the Panel wishes to ensure the effects on lizards and their habitat are appropriately addressed, one option may be to impose a condition precedent, for example that no vegetation clearance or earthworks occur outside the Phase 1 footprint, or after the Authority expires, until the consent holder has given the Council a copy of a wildlife authority covering that area, together with an updated Lizard Management Plan. A condition of this kind depends on a third-party approval but does not require the third party to act, so in our view it is likely to fairly and reasonably relate to the activity and satisfy the *Newbury* test. The Panel may also find it helpful to ask the Applicant (under s 67 FTAA) to confirm its staging and its strategy for obtaining further authorities.

5. Question 2: Water take and use

5.1 The Application identifies water suppression as a critical part of managing dust effects from the proposed activity. However, no new water take is sought as part of the Application, and no change to the existing take consents is proposed.[8] Instead, Graymont seeks a water permit under Waikato Regional Plan rule 3.4.5.5 (restricted discretionary) to use water already taken under its existing water permits for dust suppression within the South-Western Pit and along the haul road. As we understand it, the existing water permits authorise the take of:

5.1.1 stormwater from the sediment and stormwater pond for dust suppression, under AUTH140823 (up to 200 m³/day), due to expire 31 October 2039; and

5.1.2 groundwater from an on-site bore, under AUTH142709 (up to 100 m³/day), due to expire 18 July 2058, of which on average about 58 m³/day remains available after potable and processing-plant use.

[8] Applicant's Memorandum, at para 6 and 8

5.2 As to adequacy, the Applicant's Air Quality Assessment (Appendix L) acknowledges that, while the South-Western Pit is being developed and before the Oparure Pit is fully backfilled and remediated, the combined exposed area of the two pits could be slightly larger than that of the current Oparure Pit, which may increase water demand. However, the Applicant considers that demand is unlikely to increase materially because production rates will remain similar and progressive quarrying and backfilling will limit the exposed area. On that basis, the Applicant's air expert concludes that the water available on site is adequate to control dust from both pits.

5.3 If the Panel is satisfied with that evidence, a key outstanding issue is duration. The stormwater take expires on 31 October 2039 and the bore take on 18 July 2058, both within the proposed 35-year term of the new water use permit. Graymont will therefore need to replace those takes, or find other means of achieving dust suppression, for the balance of that term. The Applicant has indicated that it intends to apply to renew the takes before they expire. However, the Panel cannot assume those renewals will be granted, which raises two questions: (i) whether the water needed for dust suppression can be lawfully supplied for the duration of the activity and (ii) if not, whether it is possible to address this issue through conditions.

Analysis

5.4 Good practice is for all resource consents required for a proposal to be sought together, so that its effects can be assessed in an integrated way.[9] However, that is not always practicable,[10] and the FTAA enables, but does not require, an applicant to seek all approvals at the same time or under the FTAA. The Panel can decide only the approvals sought (s 81(1)),[11] and it has no power equivalent to s 91 of the RMA to defer determination pending other consents.

5.5 In this case, the application does not include a water take permit. Instead, the Panel is being asked to grant a new water use permit that relies on water taken under separate consents that are not before it.

5.6 Consents that have been granted and are being exercised form part of the existing environment against which effects are assessed under s 104(1)(a) RMA. Permits AUTH140823 and AUTH142709 therefore form part of that environment and can be relied on, provided they authorise taking water for dust suppression in the volumes required. However, they are limited by their current terms. The existing environment does not include any replacement takes after those permits expire. The Panel must therefore consider the dust effects that would arise if water were not available for dust suppression for the remainder of the proposed consent term. If the Panel is not satisfied that adequate water will be available, that is relevant to its assessment of adverse impacts under s 85(3) FTAA.

5.7 The water use consent is proposed for 35 years and quarrying is expected to continue until about 2080. While a use consent that outlasts the takes it relies on is not unlawful, the Panel cannot be satisfied that sufficient water will be available after the expiry of the water take permits, or that replacement takes will be granted.

[9] *Affco NZ Limited v Far North District Council*; *Zwart v Gisborne District Council* [2014] NZEnvC 96.
[10] *Kett v Auckland Regional Council* EnvC A086/00.
[11] *Kaiuma Farm Ltd v Marlborough District Council* [2024] NZEnvC 150.

5.8 The need for integrated management could potentially support review conditions triggered by the expiry of the water take consents, or a duration for the reliant activities aligned with those consents. However, under Sch 5 cl 17 the relevant RMA provisions are matters to be taken into account, with the greatest weight given to the purpose of the FTAA, and s 83 FTAA requires conditions to be no more onerous than necessary. It may therefore be appropriate to consider conditions that require dust suppression to be maintained to the required standard whatever the water source, leaving it to the Applicant to determine how they are lawfully met.

5.9 We note that some other FTAA expert panels have taken a similar approach. The Maitahi Village Expert Panel (FTAA-2502-1009) accepted that Wildlife Act approvals would be obtained separately and recorded this in an advice note, and the Taranaki VTM Expert Panel's draft decision observed that nothing in the FTAA requires all approvals to be sought at the same time.

Recommendation

5.10 The Panel may find it helpful to ask the Applicant: (i) to provide permits AUTH140823 and AUTH142709 to gain a more fulsome understand of what is authorised by those permits; and (ii) to explain how dust suppression will be supplied after 31 October 2039 if those permits are not able to be replaced. The Panel may also wish to consider the suitability of conditions that: all water used under the consents comes only from lawfully authorised takes; and dust suppression to the required standard is maintained whatever the source, so that the effects assessment does not depend on any particular take continuing. An advice note recording that the consents do not authorise any take under s 14 of the RMA may also be appropriate.

6. Question 3: OIO consent conditions

6.1 The OIO consent was required because Graymont, an overseas person, acquired 197.48 ha of sensitive land at Oparure Road (ss 10 and 12, OIA). The OIA is not a 'specified Act' under s 4 of the FTAA, an OIO consent is not an approval under s 42(4), and ss 40 and 96 FTAA operate only in relation to specified Acts. The Panel therefore has no power to grant, vary or override the OIO consent. The OIO regime and conditions bind Graymont independently. They include the automatic condition to comply with the plans and representations relied on (s 25B, OIA). They can be varied only by the Ministers with Graymont's agreement (s 27, OIA), and breach exposes Graymont to fines, civil penalties, compliance orders and court-ordered disposal of the land (ss 45, 47, 48 and 51 OIA).

6.2 The OIO conditions are nevertheless relevant information under s 81(2)(a) FTAA, and of particular relevance are the following three aspects:

(a) Mitigation relied on: OIO condition 1.3 requires fencing, possum control and a QEII covenant over about 6.5 ha of forest and the Guildford cave entrance. The LMP relies on that area as the lizard release site. The 2024 proffered WRC conditions secured it 'in perpetuity', but neither WDC draft condition 24 nor WRC draft condition 37 (betterment initiatives) contains a covenant requirement, and clause (d) of each has been left blank. To the extent the Panel relies on the covenant as mitigation, it may wish to consider securing its registration by its own condition, given the Panel cannot enforce the OIO consent and the OIO consent can be varied.

(b) Duplication (s 83): WRC draft conditions 91 to 102 (rehabilitation bond in favour of WRC) appear to satisfy OIO condition 4.2, and the Ecological Betterment Plan conditions appear to satisfy OIO condition 4.1. An advice note recording that one bond satisfies both may assist in avoiding duplication.

(c) Deliverability: The OIO consent requires quarrying of the LMP site to begin before 2027. It would be useful to seek the Applicant's confirmation of (i) how the timing requirement is being met, (ii) the scope of the OIO consent, and (iii) whether the current package is consistent with the representations the OIO relied on.

6.3 The Panel may wish to ask the Applicant for a copy of the OIO consent and its conditions, together with any variations.

7. Question 4: NPS-FM

7.1 The Application says there are no natural inland wetlands within the Project footprint and as such, the NES-F is not engaged by the Application. However, whether consent is required under the NES-F is a different question from whether the NPS-FM is relevant. Sch 5 cl 17(1)(b) FTAA imports s 104(1)(b)(iii) of the RMA, so the Panel must have regard to any relevant provisions of a national policy statement. The NPS-FM applies to all freshwater, including groundwater, and to receiving environments. The karst system affected by the Application includes the Camelot Stream, which flows underground and resurges at Pōtea and Pumphouse Springs, and feeds the Mangawhitikau Stream. The betterment works also include planting within 20 m of Pōtea Spring and fencing and earthworks in gullies.

7.2 Under s 104 RMA the obligation is to 'have regard to' the NPS-FM, not to 'give effect' to it, which is a plan-making standard: *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd* [2014] NZSC 38, [2014] 1 NZLR 593. A consent decision-maker should usually begin with the relevant planning instruments, but it may refer to Part 2 where needed: *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316, [2018] 3 NZLR 283. Under the FTAA, these considerations are weighed against the FTAA's purpose, which carries the greatest weight. Any inconsistency with the NPS-FM is not, on its own, a ground to decline (s 85(4)). The Panel must nonetheless show in its reasons that it has turned its mind to the relevant objectives and policies.

7.3 The NPS-FM's central objective (Te Mana o te Wai, cl 2.1) and policies on wetlands and ecosystem health (including Policies 6 and 9) may be relevant considerations. The Resource Management (Freshwater and Other Matters) Amendment Act 2024 requires consent decision-makers to disregard the hierarchy of obligations in the NPS-FM, but that does not remove the duty to have regard to the NPS-FM as a whole.

Recommendation

7.4 Whether any provisions of the NPS-FM are relevant requires assessment of the Application against the NPS-FM. In order to ensure the Panel has sufficient information to make its decision, the Panel may wish to consider requesting from the Applicant a short NPS-FM assessment addressing Te Mana o te Wai and the relevant policies for the karst groundwater, springs and receiving waters and confirmation of whether any NES-F consent is required for any of the proposed betterment works.