

**In the Matter**

of the Fast-track Approvals Act 2024 (**FTAA**)

**And**

**In the Matter**

of an application for approvals by McCallum Bros Limited for the Te Ākau Bream Bay Sand Extraction Project located at Te Ākau Bream Bay, Northland

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**Memorandum of Counsel on behalf of McCallum Brothers Limited**

**Dated 22 January 2026**

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## Introduction

1. McCallum Brothers Limited (**MBL**) is a New Zealand owned and operated company which supplies a range of aggregates, sand and shell to the construction, infrastructure and recreational industries.
2. The provision of cost-effective and high-quality sources of sand is essential to support economic activity and development growth and to facilitate the delivery of infrastructure and development projects. Significant growth is anticipated in the North Island's construction and infrastructure sectors.
3. MBL seeks to ensure that infrastructure and development in the Auckland region is facilitated by secure and efficient sources of sand. Currently, Auckland's primary sand source is the Kaipara Harbour (consents due to expire in 2027).
4. MBL propose operating a new sand extraction activity at Te Ākau Bream Bay (**the Project**). The sand resource from Te Ākau Bream Bay is high-quality quartz feldspar sand, ideal for making high strength concrete and is immediately usable in the market (alleviating pressures on supply chain).
5. This memorandum accompanies MBL's substantive application (**Application**) for the Project and addresses:
  - a. An overview of the Project;
  - b. The relevant statutory framework to be applied to approvals sought under the FTAA;
  - c. Key potential effects; and
  - d. Concluding comments.

## Project Overview

6. The Project is a listed project in Schedule 2 of the Fast-track Consenting Act 2024 (**FTAA**).
7. MBL seeks all necessary approvals required to operate the Project under the FTAA including those which would otherwise be applied for under the:
  - a. Resource Management Act 1991 (**RMA**); and
  - b. Wildlife Act 1953 (**WA**).
8. The Project requires discretionary resource consent (coastal permit) for sand extraction and associated discharges under the RMA and WA approval for the disturbance, capture, collection and incidental killing of Scleractinian cup corals.
9. A detailed description of the Project is set out in the AEE<sup>1</sup> and supporting Application material. In summary, the Project involves:
  - a. Sand extraction from the coastal marine area (approx. 15.4 km<sup>2</sup>) using a purpose-built motorised trailing suction hopper dredge (the *William Fraser*);
  - b. Extraction volumes of:
    - i. Stage 1 - an annual sand extraction volume of up to 150,000m<sup>3</sup> for at least the first three years from the commencement of the consent; and
    - ii. Stage 2 - an annual sand extraction volume of up to 250,000m<sup>3</sup> for the remaining period of the consent.
  - c. The implementation of various management plans to avoid or reduce adverse effects on the environment; and

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<sup>1</sup> Te Ākau Bream Bay Sand Extraction Project - Resource Consent and Wildlife Approval Applications and Assessment of Effects under the Fast-track Approvals Act 2024.

- d. A 35-year consent duration.
- 10. MBL's Application demonstrates that the Project achieves the purpose of the FTAA by securing significant regional and national benefits through the provision of an efficient source of marine sand (for high strength concrete production) to support infrastructure and development projects and Auckland's growth such that the approvals sought should be granted.

## **Statutory Framework**

- 11. At the time of preparing this Memorandum nine projects have been approved under the FTAA.
- 12. Therefore, the interpretation and application of the FTAA framework have already been engaged with by a number of expert consenting panels.
- 13. A summary of that framework is set out below.

### ***Application Requirements – Listed Projects***

- 14. The FTAA sets out the relevant legal framework for obtaining approvals for a listed project.
- 15. The Project is a listed project under Schedule 2 to the FTAA. MBL is listed as the authorised person<sup>2</sup> entitled to lodge a substantive application under s 42 of the FTAA.
- 16. Section 42 of the FTAA provides that a substantive application can seek (inter alia):
  - a. A resource consent that would otherwise be applied for under the RMA;<sup>3</sup> and
  - b. A wildlife approval as defined in cl 1, Schedule 7 of the FTAA.<sup>4</sup>

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<sup>2</sup> As defined in s 4(1) of the FTAA.

<sup>3</sup> FTAA, s 42(4)(a).

<sup>4</sup> FTAA, s 42(4)(h).

17. As set out above, MBL is seeking all necessary resource consents required to operate a sand extraction activity and is seeking wildlife approval for disturbance, capture, collection and incidental killing of Scleractinian cup corals.

18. Pursuant to s 46 of the FTAA, the Environmental Protection Authority must determine that the Application is complete and within scope. I submit the Application satisfies the ‘completeness test’ as the Application:

- a. Has been prepared in accordance with ss 42, 43 and 44 of the FTAA;
- b. Relates solely to a listed project, being the “Bream Bay Sand Extraction Project” identified in Schedule 2 to the FTAA; and
- c. Does not involve an ineligible activity.

***The Decision-making Framework***

19. Under s 81 of the FTAA, the Panel must decide whether to grant the Application (and set any conditions on it) or to decline it in accordance with the process set out in clauses 17 – 20 of Schedule 5.

20. Clause 17(1) of Schedule 5 provides that when considering an application for resource consent (and setting conditions<sup>5</sup>) lodged under the FTAA, the Panel must take into account, giving the greatest weight to paragraph (a):

- a. The purpose of the FTAA; and
- b. The provisions of Parts 2, 3, 6 and 8 – 10 of the RMA that direct decision making on an application for a resource consent (but excluding section 104D); and
- c. The relevant provisions of any other legislation that directs decision making under the RMA.

21. In relation to the above considerations, I note:

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<sup>5</sup> FTAA, Schedule 5, cl 18.

- a. The direction to “take into account” requires the Panel to directly consider the identified matters and to give them genuine consideration, rather than simply listing them and setting them aside.<sup>6</sup>
- b. “Giving the greatest weight” to the purpose of the FTA requires the Panel to consider the relevant matters individually before conducting an overall weighting in accordance with the specified direction in cl 17(1).
- c. While not present in the RMA framework, the FTA’s mandatory hierarchy of considerations is similar to that contained in the (repealed) Housing Accords and Special Housing Areas Act 2013 (**HASHAA**) which provided that (relevantly) the authorised agency “must have regard to the following matters, giving weight to them (greater to lesser) in the order listed”.<sup>7</sup>
- d. In considering an application under HASHAA, the Court of Appeal concluded that the listed factors must be undertaken prior to the exercise of weighing them through an overall balancing exercise.<sup>8</sup> The Court’s decision was cited by the consenting panel in the Bledisloe North Wharf and Fergusson North Berth Extension Project Decision. In my view, the panel’s commentary is also applicable to the consideration of MBL’s Project.
- e. The Bledisloe panel concluded in the context of the FTA that:<sup>9</sup>
  - i. While the greatest weight is to be placed on the purpose of the FTA, the panel must be careful not to rely solely on

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<sup>6</sup> Refer in the RMA context to *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2024] NZSC 26 at [169] and [224] in relation to the phrase “have regard to”. In the context of the FTA, the term “take into account” was considered in the Bledisloe North Wharf and Fergusson North Berth Extension Project Decision at [119] and the very recent Waihi North Project Decision at pg. 239 paragraph [4] which interpreted the phrase consistently with the approach in *Royal Forest and Bird*.

<sup>7</sup> HASHAA, s 34(1).

<sup>8</sup> *Enterprise Miramar Peninsula Inc v Wellington City Council* [2018] NZCA 541 at [52] - [53].

<sup>9</sup> At [121].

that purpose at the expense of due consideration of the other matters listed in (b) to (c).

- ii. Clause 17 requires the panel to consider the matters listed in clause 17(1)(a)-(c) on an individual basis, prior to standing back and conducting an overall weighting in accordance with the specified direction.
- iii. The purpose of the FTAA is not logically relevant to an assessment of environmental effects. Environmental effects do not become less than minor simply because of the purpose of the FTAA. What changes is the weight to be placed on those more than minor effects; they may be outweighed by the purpose of facilitating the delivery of infrastructure and development projects with significant regional or national benefit, or they may not.

f. In taking into account the FTAA's purpose, the Panel must consider the extent of the Project's national or regional benefits.<sup>10</sup> This requires a fact-specific inquiry.

g. The FTAA does not define the term "significant national or regional benefits" in relation to a listed project. However, the panel considering the Maitahi Village Project concluded that:

- i. It would apply the ordinary meaning of "significant" to mean "sufficiently great or important to be worth of attention; noteworthy" as its working definition.<sup>11</sup>
- ii. Any factual assessment of regional or national benefits, particularly in relation to infrastructure or development projects, will be informed by related economic and social factors. The relevant regional context will therefore be important.<sup>12</sup>

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<sup>10</sup> FTAA, s 81(4).

<sup>11</sup> Maitahi Decision Report at [516]. Also adopted by other Panels, for example see Record of Decision of the Expert Consenting Panel for Tekapo Power Scheme at [339].

<sup>12</sup> At [517].

iii. The inquiry, when evaluating the extent of the project's regional or national benefits, is different. It is seeking to place a measurement on, or provide a quantification of, the benefits as found.<sup>13</sup>

iv. It would apply the dictionary definition of the term "extent":<sup>14</sup>

The dictionary definition refers variously to terms such as "assessment" or "assessed value" or degree, size, magnitude, dimensions or breadth of the thing being measured. This is the approach the Panel has taken to its evaluative task, bearing in mind that not all benefits are able to be calculated in precise financial or monetary terms. Sometimes expression of quantification or value in absolute terms may simply not be possible. The context in which any regional or national benefits occur will undoubtedly be relevant.

h. In the Waihi North Project Decision, the Panel considered what was meant by "regional" and stated:<sup>15</sup> "We do not see the word "regional" when used in relation to benefits as denoting the areas of a regional council constituted under the Local Government Act. ...we construe "regional" in a more general sense".

22. As stated in the AEE, the Project strongly achieves the purpose of the FTAA which is to facilitate the delivery of infrastructure and development projects with significant regional or national benefits.

23. I submit that:

a. The Project directly facilitates the delivery of infrastructure and development as it will provide certainty and supply of cost-effective high-quality sand resource for the use in Auckland's construction industry.

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<sup>13</sup> At [818]

<sup>14</sup> At [819].

<sup>15</sup> At [845].

- b. The Project also indirectly contributes to the FTAA's purpose as it will enable other nationally and regionally significant projects approved under the FTAA to proceed.
- c. Access to high-quality sand for concrete production is critical for the continuing development of the Auckland region (and beyond), both in the context of housing supply and wider infrastructure.

***RMA decision-making framework***

- 24. Clause 17(1)(b) imports the decision-making framework from the RMA into the FTAA with some modifications. It requires the Panel to take into account the provisions of Parts 2, 3, 6 and 8 - 10 of the RMA that "direct decision making on an application for a resource consent (but excluding section 104D of the RMA)".
- 25. Relevant to the consideration of a discretionary activity resource consent are:
  - a. Sections 104 and 104B which set out the decision-making framework for discretionary activity consent applications.
  - b. Sections 105 and 107 which relate to consent applications for discharge permits and coastal permits.
  - c. Sections 108 to 108AA which set the framework for conditions of resource consents.
  - d. The relevant elements of Part 2 of the RMA (excluding section 8).

- 26. With respect to the imposition of conditions, I note that the Panel's discretion is not unfettered. Section 83 of the FTAA provides that the Panel must not set a condition that is more onerous than necessary to address the reason for which it is set.

***WA approvals decision-making framework***

- 27. MBL seeks a wildlife approval for the disturbance, capture, collection and incidental killing of Scleractinian cup corals.

28. In accordance with s 81 and clauses 5-6 of schedule 7 (Wildlife Act approvals) to the FTAA, the Panel may grant or refuse the wildlife approval. If the Panel grants the approval, it may impose any conditions under clause 6 of schedule 7 FTAA.

29. When considering an application for a wildlife approval (including conditions), the Panel must take into account, giving the greatest weight to paragraph (a):

- a. The purpose of the FTAA;
- b. The purpose<sup>16</sup> of the WA and the effects of the project on the protected wildlife that is to be covered by the approval; and
- c. Information and requirements relating to the protected wildlife that is to be covered by the approval (including, as the case may be, in the New Zealand Threat Classification System (NZCTS) or any relevant international conservation agreement).

30. As identified above, the Project is strongly aligned with the purpose of the FTAA as it will result in significant national and regional benefits.

31. The cup corals in question (*Sphenotrochus ralpae* and *Kionotrochus suteri*) have not been assessed by the NZCTS and, therefore, are not deemed to be 'Threatened', 'Data Deficient' or 'At Risk' wildlife (as defined in the NZTCS). However they are protected under the WA.

32. The AEE records that the overall live population of the two species of cup corals within the 15.4 km<sup>2</sup> sand extraction area could be in the order of millions. While the proportion of corals that will be damaged or killed as they pass through the sand extraction process is unknown, some corals are expected to survive the disturbance. The sand extraction area is less than 0.2% and 0.1% of the identified potential suitable habitat in northern New Zealand for *Sphenotrochus ralpae* and *Kionotrochus suteri*, respectively.

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<sup>16</sup> The purpose of the WA is to protect animals classified as wildlife and manage game and bird hunting in New Zealand. Stony cup corals are identified in the WA as a protected species and therefore are subject to the provisions of that Act.

33. The AEE concludes that populations of wildlife are unlikely to be threatened or materially affected by the activities enabled by the authority. Any threat to individual wildlife is incidental, has been avoided, minimised and mitigated to the extent possible through the reasonable steps adopted by MBL, and any individual incidental act of killing viewed in isolation does not need to be consistent with the protection of wildlife.<sup>17</sup>
34. MBL has prepared a Cup Coral Management Plan which details the operational measures to be taken to minimise the risk of cup corals being retained during both monitoring and sand extraction, with plans in place to release them.
35. Conditions proposed to manage the effects of the activity on stony cup corals are consistent with the mandatory criteria in cl 6, Schedule 7.

#### **Decline Criteria**

36. The Panel's ability to decline an application for approval is limited by s 85 of the FTAA.
37. Section 85(1) and (2) set out the criteria for when a panel must decline an approval. None of those circumstances arise in the context of this Application.
38. Section 85(3) gives the Panel a discretion to decline an approval if it forms the view that:
  - a. There are 1 or more “adverse impacts” in relation to the approval sought; and
  - b. Those adverse impacts are sufficiently significant to be out of proportion to the Project’s national or regional benefits, even after taking into account any conditions in relation to those adverse impacts.

(my emphasis)

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<sup>17</sup> AEE at [1.19].

39. The FTAA does not define the term “adverse impact”.
40. In considering the Maitahi Village Project, the expert panel questioned whether the term “adverse impact” is the same as the RMA term “adverse effect”. The position taken by the Maitahi Village panel was that it would treat any adverse effects as found under the RMA as being the same as adverse impacts for the purposes of its evaluation and decision-making under the FTAA.<sup>18</sup>
41. Section 85(3) expressly requires the Panel to account for any conditions it may set in relation to the adverse impacts, and any conditions or modifications that an applicant may agree to or propose to avoid, remedy, mitigate, offset, or compensate those adverse impacts.<sup>19</sup>
42. The Panel may not form the view that an adverse impact meets the threshold of being sufficiently significant solely on the basis that the adverse impact is inconsistent with, or contrary to, a provision of the RMA or any other document the Panel is required to take into account.<sup>20</sup>
43. Section 11 of the AEE provides a useful summary table<sup>21</sup> describing the level of adverse effects arising from the Application which I say also assists with assessing “adverse impacts” in the context of s 85(3).
44. The AEE concludes that no potential adverse impacts have been identified which are sufficiently significant to be out of proportion to the Project’s regional and national benefits.<sup>22</sup>
45. I submit that the Application appropriately manages any adverse impacts of the Project such that they fall outside the scope of being “sufficiently significant” to outweigh its national and regional benefits.

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<sup>18</sup> Maitahi Village Project Decision Report at [830].

<sup>19</sup> FTAA, s 85(3)(b).

<sup>20</sup> FTAA, s 85(4).

<sup>21</sup> At [11.140].

<sup>22</sup> At [1.20].

## **Key Potential Effects**

46. The Project has been comprehensively assessed by a suite of expert consultants. In many instances, the Project's technical reports represent many years of research, data collection, analysis and assessment.
47. The expert reports have informed the assessments of environmental effects, the Project's alignment with the relevant planning documents and demonstrate satisfaction of the FTAA's purpose.
48. A full summary of the reports, the majority of which engage with quite technical detail, is not set out in this Memorandum.
49. By way of a high-level summary, based on the findings of the technical reports, the AEE concludes that the Project (including the Project location, operation, proposed conditions and management plans) will result in adverse environmental effects relating to coastal processes, landscape and amenity, water quality, acoustic, lighting, ecology (including marine mammals, reptiles, sharks and fish and avifauna), fisheries, surf breaks and recreation, cultural effects, climate change and natural hazards, navigation and cumulative effects being avoided or otherwise appropriately managed.
50. I make some additional brief commentary on key potential effects below.

### ***Coastal Processes and Extraction Methodology***

51. The proposed location of the Project has been the subject of careful technical investigation and assessment by MBL.
52. Coastal processes have been the subject of extensive analysis by MBL's expert consulting team.
53. The Project's operational area is deliberately situated off-shore at a suitable distance<sup>23</sup> and depth<sup>24</sup> to ensure that it does not impede natural coastal processes. The coastal processes assessment concludes that the activity is

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<sup>23</sup> The closest distance between the sand extraction site and the shoreline is 4.7 km.

<sup>24</sup> The average seabed depth in the extraction area is 28m (with a range between 22 m – 34 m).

not expected to directly or indirectly influence the beach and dune environment.<sup>25</sup>

54. The proposed extraction methodology utilises up-to-date technology and a bespoke sand extraction vessel, the *William Fraser*. The details of the sand extraction operation are set out in section 6 of the AEE.
55. In summary, the *William Fraser* is a purpose-built motorised trailing suction vessel which uses a draghead and pump system which fluidises the sand and delivers it into a holder hopper on the vessel via a 2mm screen.
56. Extraction of sand will be managed across the sand extraction area via the use of extraction cells and predefined lines known as ‘tracks’. A rotational methodology will be employed to ensure that extraction does not occur along the same track for at least 12 months. The extraction operation uses carefully calibrated suction, rather than physical gouging to extract the sand resource. The vessel has a crew of four, with crew on watch for marine mammals and other vessels.
57. The sand extraction methodology is secured by way of consent conditions, which includes the proposed Sand Extraction Operation Plan (**SEOP**). The SEOP sets out the detail of the sand extraction activity, including limitations on operating limits, hours, extraction methods (including the rotational methodology) and volumes, noise, and reporting requirements.

#### ***Cultural Matters***

58. MBL has undertaken extensive consultation with iwi and hapū. Details of that consultation, ongoing engagement and assessment of cultural effects are addressed in section 14 of the AEE.
59. MBL has consulted with Te Parawhau ki Tai, Patuharakeke Te Iwi Trust Board and the Ngātiwai Trust Board and commissioned three Cultural Impact Assessments (**CIA**).

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<sup>25</sup> Coastal Processes Effects Assessment (Attachment 8) at section 5.10.

60. As noted in the AEE, at the time of lodgement MBL has received a final CIA from Te Parawhau ki Tai and the Ngātiwai Trust Board and a Draft CIA from Patuharakeke Te Iwi Trust Board.

61. The comprehensive CIA provided by Te Parawhau ki Tai (prepared by Te Pouwhenua o Tiakiriri Kūkupa Trust) is supportive of the Project subject to a range of recommendations and conditions of consent. MBL has responded to that input through a range of amendments to conditions.

62. At the time of lodgement, MBL and Te Pouwhenua o Tiakiriri Kūkupa Trust have entered into a Te Hononga Relationship Agreement and are currently finalising a substantive agreement which will establish a partnership framework and provide long-term support for Te Parawhau Hapū capacity, wellbeing and environmental restoration. In broad terms, the draft substantive relationship agreement provides for funding mechanisms for Te Parawhau ki Tai to focus on its key priorities for the wider hapū including health, housing, education pathways, employment, business and economic development and environmental enhancement and remediation.

63. While currently not supportive, Patuharakeke Te Iwi Trust Board's Draft CIA could be subject to change as the result of further engagement with MBL and their response to MBL's final application and draft conditions. For completeness, I note the Draft CIA contains a document described as an economic peer review authored by Dr Meade.<sup>26</sup> As the CIA remains in draft form, MBL signals that if that economic document is formally put before the Panel (presumably in the context of comments made), then a full legal and expert response from MBL would follow.

64. The CIA prepared by the Ngātiwai Trust Board is not supportive of the Project. As addressed in the AEE, MBL welcomes continuing engagement with the Ngātiwai Trust Board and is open to forming a substantive relationship agreement to address core concerns.

65. While the FTAA does not require a unanimous position to be reached between iwi, MBL has actively sought to engage with each iwi and hapū

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<sup>26</sup> Dated 5 December 2025.

entity to understand and respond to concerns raised. In the absence of a (current) unanimous position, conclusions in relation to outstanding cultural matters become a matter for the Panel to determine on the information before it.

66. MBL's position is that (on the basis of the CIAs received to date and engagement from iwi and hapū) the draft conditions of consent and assessments of effects have responded appropriately to matters and concerns raised by each of the three hapū/iwi and that it is open to the Panel to conclude that cultural effects have been appropriately avoided or mitigated.

#### ***Ecology, Wildlife and Marine Mammals***

67. The coastal location of the Project necessitates comprehensive assessment of a full range of potential effects on that environment.

68. MBL has engaged a wide range of ecological experts to assess all aspects of the Project's potential adverse effects on wildlife. The resulting expert reports comprise:

- a. Assessment of Ecological Effects (Bioresearches);
- b. Potential Effects on Seabirds and Shorebirds (NIWA);
- c. Marine Mammals Environmental Impact Assessment (SLR);
- d. Assessment of Effects on Fish and Fisheries (R.O Boyd); and
- e. Cup Corals (NIWA).

69. The Underwater Noise Report prepared by Styles Group provides critical assessment and conclusions which inform the outcomes of the various ecological reports (particularly for sharks, fish and marine mammals). Overall, the Underwater Noise Report concludes that while the proposed sand extraction activity will expose marine mammals, fish, invertebrates, kororā/little penguins, and sea turtles to acoustic-related disturbances, no risk of auditory injury was found in the modelling, and no temporary

threshold shift beyond 0.5m from the *William Fraser* when it is actively extracting sand.<sup>27</sup>

70. The Assessment of Ecological Effects addresses effects on benthic biota, benthic fish, marine reptiles, sharks and rays. The report concludes with respect to benthic organisms that effects arising from seabed disturbance will be negligible on the overall benthic community<sup>28</sup> and that effects on biota can be appropriately managed through extraction methodologies. For completeness I note that MBL seeks a WA approval with respect to any disturbance and incidental killing of protected stony cup corals.
71. Effects on marine mammals can similarly be avoided or mitigated through extensive monitoring and management plans. The Marine Mammals Environmental Impact Assessment has concluded that with MBL's proposed mitigation, the overall level of impact on marine mammals is negligible to low and no population level effects on marine mammals are expected as a result of the proposed sand extraction activity.<sup>29</sup>
72. Effects on fish have been assessed as low to negligible if they occur at all (noting the highly mobile nature of fish).<sup>30</sup>
73. Effects on avifauna have been comprehensively assessed and concluded to be low to negligible.<sup>31</sup> I note that in the (unlikely) event of an oil spill, MBL currently holds an Oil Spill Contingency Plan for the *William Fraser*.
74. To ensure effects on wildlife are managed, MBL propose a suite of management plans which include:
  - a. Sand Extraction Operation Plan;
  - b. Marine Mammal Management Plan; and
  - c. Cup Coral Management Plan.

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<sup>27</sup> Underwater Noise Report, Chapter 6.

<sup>28</sup> Assessment of Ecological Effects at section 6.1.1.1.

<sup>29</sup> Section 6.

<sup>30</sup> Assessment of Effects on Fish and Fisheries in Te Ākau Bream Bay, Section 7.

<sup>31</sup> Potential Effects on Seabirds and Shorebirds section 4.3.

75. Overall, there is considerable expert evidence demonstrating that the Project will appropriately avoid or mitigate adverse effects on ecology, wildlife and marine mammals.

#### ***Other Matters - Management Plans***

76. The Application seeks that the Panel consider and approve identified proposed management plans which will manage the effects arising from the sand extraction activity, meaning that the finalised management plans can accompany the conditions of consent (with those conditions making provision for future amendments to management plans).

77. The approach above aligns with that adopted in the Port of Auckland Fast-track decision with respect to the Little Penguin Management Plan (LPMP). The Panel in that matter determined that the proposed amended LPMP would ensure that the adverse effects on the protected wildlife would be avoided or mitigated in an appropriate manner. As a result the Panel attached the finalised LPMP to the conditions.

78. For completeness, I note the Waihi North Project's expert panel did not accept the applicant's request for it to approve its proposed management plans. Instead, the panel preferred the "orthodox approach" of submitting the plans to the relevant council for assessment and certification.<sup>32</sup>

#### **Concluding Comments**

79. MBL's Application is the culmination of many years of intensive investigations, research and assessment into a new, cost-effective, high-quality source of marine sand procurement for Auckland and potentially surrounding regions to varying degrees.

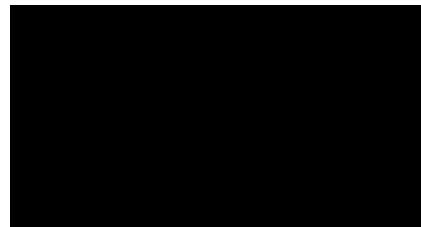
80. The purpose of the FTAA (on which the Panel must place the most weight) is readily achieved by the Project as it will directly facilitate the delivery of

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<sup>32</sup> Waihi North Project Final Decision Part E1 at [9].

infrastructure and development projects with significant regional and national benefits.

81. The Project's location, extraction methodology, and vast suite of proposed management plans ensure that the adverse effects of the Project will be appropriately managed. In that respect the Applicant says that the Application would pass the 'test' under the traditional RMA and WA processes without needing to weigh, in a proportionality sense, any adverse impacts against the significant regional benefits of the Project (i.e. the section 85 'proportionality test' is not in play).
82. In the alternative, if section 85 is engaged in the Panel's view, then the Applicant says that the adverse impacts of the Project are not sufficiently significant to be out of proportion to the Project's regional benefits.
83. On the basis of the Application before you, I submit the Project should be approved.



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**Jeremy Brabant**

Counsel for McCallum Brothers Limited

22 January 2026