

BEFORE THE EXPERT PANEL

[REDACTED]

UNDER the Fast-Track Approvals Act 2024 (**FTAA**)

IN THE MATTER In the matter of an application for approvals by Taharoa Ironsands Limited to continue existing mineral sand extraction, including land preparation works, constructing a water supply reservoir, extracting ironsand material, processing extracted material, and transporting raw and processed material on 911 hectares at Taharoa Road, Taharoa, approximately 8 kilometres south of Kawhia and 45 kilometres northwest of Te Kūiti (Central and Southern Block Mining Project)

**LEGAL SUBMISSIONS ON BEHALF OF WAIKATO REGIONAL
COUNCIL**

18 August 2026

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MAY IT PLEASE THE PANEL

1. INTRODUCTION AND SUMMARY OF LEGAL SUBMISSIONS

- 1.1. These legal submissions are provided on behalf of Waikato Regional Council (**WRC**) in response to Minute 22 of the Expert Panel (**Panel**), and the memorandum of counsel on behalf of Taharoa Ironsands Limited (**TIL**), dated 14 August 2026.

Memorandum of TIL dated 14 August 2026

- 1.2. In response to the memorandum of counsel for TIL dated 14 August 2026, WRC's position is:

- a. It takes a neutral view on the request for an extension of the suspension period and will abide by the decision of the Panel.
- b. It does not consider that the proposed alternative process by TIL for responding to aspects of the RFI is appropriate. The usual approach in both RMA and Fast-track matters is for matters of this nature to be addressed through expert conferencing, involving all relevant experts from the interested parties. That process provides a transparent and even-handed forum in which experts can identify areas of agreement and disagreement, test proposed conditions, and provide their respective views directly to the Panel.
- c. The alternative process proposed by TIL would depart from that usual approach by providing for TIL to consider the relevant matters in the first instance, formulate proposed conditions, seek feedback from the other parties, and then determine how that feedback is reflected in its response to the Panel. While WRC acknowledges that this may provide an opportunity for other parties to comment, WRC's view is that expert conferencing would better ensure that all relevant experts are able to participate on an equal footing in the development and consideration of any proposed conditions, and that the Panel receives a clear and transparent record of the areas of expert agreement and disagreement.

- d. Accordingly, WRC considers that the usual expert conferencing process is the more appropriate, efficient and procedurally fair means of addressing these aspects of the RFI.

Response to Minute 22 regarding need for Air Discharge Permit

- 1.3. Minute 22 of the Panel states:
 - a. The Panel considers that an air discharge permit is needed and requests the Applicant to draft air permit conditions utilising the air related conditions currently inserted to AUTH142035.01.01 (Conditions 8-16). The Applicant is also to consider the need for other air related conditions in the consent suite (e.g. AUTH142035.08.01 and Schedule 1) to be transferred to the air permit.
- 1.4. WRC's position is that no resource consent is required for an air discharge permit. Its reasoning is:
 - a. While not explicit in Rule 6.1.16.1(e), when read in combination with the objectives and policies of the Air Module of the Waikato Regional Plan (**WRP**), this supports an interpretation that hazardous substances should be measured at the boundary of the site. As such, provided there are no effects beyond the boundary of the site, WRC considers the activity is a permitted activity. An air discharge consent is not required.
 - b. As set out in its 14 August 2026 memorandum of counsel, TIL does not consider that an air discharge permit is needed and maintains its position that it is appropriately managing the potential for offensive and objectionable dust discharges beyond the boundary of the site. WRC has previously advised the Applicant that it agreed that an Air Discharge permit is not required (for the reasons at (a) above). WRC therefore submits that the Applicant would be prejudiced if the Panel took a contrary view. In the event that the Panel considers that the interpretation taken by WRC and the

Applicant is incorrect and that an air discharge consent is required, WRC submits that the activity is within the scope of the application, the effects were assessed within the AEE, and there would not be any further conditions imposed. As such, the failure to specifically apply for an air discharge consent would not have prejudiced any party.

- c. However, notwithstanding the lack of prejudice, the Environment Court has held that a resource consent cannot be granted for an activity that was not applied for. That was the position taken by the Environment Court in *Kaiuma Farm Ltd v Marlborough District Council*.¹ In *Kaiuma Farm*, the Court found that although there is some flexibility about compliance with resource consent application forms, there can be little flexibility in the requirement that an applicant specifies which type of resource consent, of those listed in s 87 of the RMA 1991, is being sought. The Court considered this to be essential information. Here, the context differs. WRC's position is that if the Panel disagrees with its primary argument and found that an air discharge consent was required, that would need to be applied for. Should an air discharge consent prove to be necessary in future, that will be a matter for the Applicant to address by way of a separate application to the WRC.

- 1.5. These points are addressed in detail below.

2. IS AN AIR DISCHARGE CONSENT REQUIRED?

- 2.1. 6.1.16.1(e) of the WRP states: "*There shall be no discharges of hazardous substances into the air*".

- 2.2. The full text of the rule reads:

6.1.16.1 Permitted Activity Rule – Mineral Extraction, Size Reduction, Screening and Storage

The discharge of contaminants to air from any mineral extraction, processing and storage operation is a **permitted activity** subject to the following conditions:

¹ *Kaiuma Farm Ltd v Marlborough District Council* [2024] NZEnvC 150.

- a. Where the operation occurs within 1000 metres of a property boundary and there is a discharge of particulate matter beyond the property boundary the following measures shall be implemented:
 - i. the use of water sprays to suppress dust from crushing and screening plants, access ways, haul roads, stockpiles, load out areas and access roads
 - ii. the sealing and maintenance of the access road, when it is within 150 metres of a neighbouring residential dwelling.
- b. As specified in Section 6.1.8 a) to e) of this Plan.
- c. Within seven working days of commencing works at a new site, the operator of the new quarrying site shall provide the Waikato Regional Council with written notification of the location of the site.
- d. Should an emission of particulate matter occur that causes adverse effects of an objectionable nature beyond the property boundary as determined in accordance with the decision making guidelines set out in Section 6.4.2.2, the quarry operator shall provide a written report to the Waikato Regional Council within five days of the incident occurring, which specifies:
 - i. the cause or likely cause of the event and any factors that influenced its severity
 - ii. the nature and timing of any measures implemented by the quarry operator to avoid, remedy, or mitigate any adverse effects
 - iii. the steps to be taken to prevent recurrence of similar events.
- e. There shall be no discharges of hazardous substances into the air,

2.3. Rule 6.1.8 states:

6.1.8 Standard Conditions for Permitted Activity Rules and Standards and Terms for Controlled and Restricted Discretionary Activity Rules

The following are the standard conditions for permitted activity rules and the standards and terms for controlled and restricted discretionary activity rules for discharges to air:

- a. There shall be no discharge of contaminants beyond the boundary of the subject property* that has adverse effects on human health, or the health of flora and fauna.
- b. The discharge shall not result in odour that is objectionable to the extent that it causes an adverse effect at or beyond the boundary of the subject property.
- c. There shall be no discharge of particulate matter that is objectionable to the extent that it causes an adverse effect at or beyond the boundary of the subject property.
- d. The discharge shall not significantly impair visibility beyond the boundary of the subject property.
- e. The discharge shall not cause accelerated corrosion or accelerated deterioration to structures beyond the boundary of the subject property.

Advisory Note:

- Waikato Regional Council will use the Guidelines for Assessment in Chapter 6.4 to determine whether adverse effects are occurring from the discharge of odour or particulate matter.
- 2.4. The Guidelines in Chapter 6.4 (as referred to in the Advisory Note above) include (at 6.4.2.6 Modelling Guideline Values for Particulate Matter for Resource Consent Applications) that, as a guide in assessing resource consent applications for activities that are at a scale or nature likely to discharge significant levels of particulate matter, deposition rate as measured “beyond the boundary of the subject property”.
- 2.5. This requires two questions to be addressed:
- a. Whether silica, of which PM₁₀ is the measure for, is a “hazardous substance” for the purpose of the rule; and
 - b. If so, where the assessment of “hazardous” within rule 6.1.16.1(e) should be made – at the point of discharge or at the site boundary.
- 2.6. “Hazardous substance” is defined in the WRP as including any substance including an “intrinsic property of toxicity (including chronic toxicity).”² WRC accepts that silica as measured by PM₁₀ fits the definition of a “hazardous substance.
- 2.7. WRC accepts that the rule does not make clear where the assessment of the hazardous substances should be undertaken. There are two possible interpretations:
- a. An assessment be made at the site boundary.
 - b. That the wording of there be “no discharges of hazardous substances into the air” should be read literally, requiring an assessment at the point of discharge. As such, an air

² Waikato Regional Plan, Glossary of Terms.

discharge consent would be required as a discretionary activity.

2.8. In *Nanden v Wellington City Council* [2000] NZRMA 562, the High Court set out “fundamental issues of policy” in plan interpretation:³

1. is desirable for an interpretation to be adopted which avoids absurdity or anomalous outcomes.
2. It is also desirable for an interpretation to be adopted which is likely to be consistent with the expectations of property owners.
3. Practicality of administration by City Council officers is also an important consideration...

2.9. In *Powell v Dunedin City Council*, when determining the approach to interpretation of a rule, the Court of Appeal said:⁴

...While we accept it is appropriate to seek the plain meaning of a rule from the words themselves, it is not appropriate to undertake that exercise in a vacuum. As this Court made clear in *Ratray*, regard must be had to the immediate context (which in this case would include the objectives and policies and methods set out in section 20) and, where any obscurity or ambiguity arises, it may be necessary to refer to the other sections of the plan and the objectives and policies of the plan itself. **Interpreting a rule by a rigid adherence to the wording of the particular rule itself would not, in our view, be consistent with a judgment of this Court in *Ratray* or with the requirements of the Interpretation Act.**

[Emphasis added.]

2.10. The WRC submits that an analysis of the relevant objectives and policies supports the Applicant’s position that the measurement of hazardous substances should occur at the boundary of the site. In particular, the following are highlighted:

³ *Nanden v Wellington City Council* [2000] NZRMA 562 at [48].

⁴ *Powell v Dunedin City Council* CA157/03, 18 March 2004, at [35].

a. **6.1.2 Objective 2**

No significant adverse effects from individual site sources on the characteristics of air quality beyond property boundary.

b. **Principal Reasons for Adopting the Objectives**

...

Objective 2 identifies that discharges to air should not have significant adverse effects beyond the boundary of the property on which the discharge is occurring. This Objective is necessary to address recurring issues in the Region associated particularly with odour and particulate matter discharges that are having objectionable effects on neighbours. These effects need to be internalised by the discharger even if that means purchasing buffer zones or re-designing processes to ensure that the Objective can be achieved. Guidelines for the assessment of significant adverse effects from odour and particulate matter are detailed in Sections 6.4.1 and 6.4.2 respectively.

c. **6.1.3 Policies**

Policy 1: Low Risk Discharges to Air Enabled

Enable the discharge of contaminants into air through permitted and controlled activity rules where:

- a. there are no significant adverse effects on human health and the health of flora and fauna from discharges of hazardous air pollutants,
- b. there is no odour that is objectionable to the extent that it causes an adverse effect beyond the property boundary,
- c. suspended or deposited particulate matter are not objectionable to the extent that they cause adverse effects beyond the property boundary,
- d. significant adverse effects on, or changes to, visibility beyond the property boundary are avoided or remedied,
- e. air quality beyond the property boundary does not cause accelerated corrosion or accelerated deterioration.

d. **Advisory Notes to rule 6.1.16.1**

- A resource consent will be required for the discharge of particulate matter into air from a quarrying operation or associated ancillary activities, if it is deemed by an officer of the Waikato Regional Council, using the decision-making guidelines given in Section 6.4.2, that all reasonable steps are not being taken to keep dust emissions to a practicable minimum, and the discharge of particulate matter from the site or ancillary activities is having an objectionable or offensive effect beyond the boundary of the site.

- 2.11. WRC submits that an assessment of the objectives and policies supports the interpretation that the permitted activity rules were designed to ensure that the effects of an activity are internalised to the site and, if effects are beyond the boundary of a site, the effects would need to be assessed.
- 2.12. This is supported by the fact that the relevant rules provide a permitted activity pathway for quarrying within the regional plan, provided that an applicant internalises its effects. Should a literal interpretation of 6.1.16.1(e) be preferred, such an interpretation would require a resource consent for any discharge of hazardous substances, notwithstanding whether the effects were internalised to an applicant's property. The WRC's position is that such an application is inconsistent with the permitted activity pathway provided within the WRP. Applying the text set out in *Nanden*, this would produce anomalous outcomes.
- 2.13. WRC also confirms that – in other similar applications across the region – it has interpreted 6.1.16.1(e) as requiring an assessment of hazardous substances at the boundary of the site.
- 2.14. In this case, because an application for consent has not been made, the Panel does not have jurisdiction to grant an approval (as addressed below). Should an air discharge consent prove to be necessary in future, that will be a matter for the Applicant to address by way of a separate application to the WRC.

3. IF AN AIR DISCHARGE CONSENT IS REQUIRED, IS THIS WITHIN THE SCOPE OF THE APPLICATION?

Relevant law on permitted amendments to applications

- 3.1. Amendments to a consent application are permissible if they are within the scope defined by the original consent application.
- 3.2. The courts have recognised that there are two principled approaches to assessing whether an amendment to an original application after notification is appropriate:
- a. An amendment cannot increase the scale or intensity of the activity or proposed building or significantly alter the character or effects of the proposal.⁵
 - b. Whether the amendment is likely to affect the public generally or any individuals in a manner different from or to any degree greater than the original application, as to whether an amendment is so material or fundamental that a fresh application was required.⁶ The courts have confirmed that an application for a variation of consents would be required if the alteration is not minor or has additional environmental effects.⁷
- 3.3. In *Shell New Zealand Ltd v Porirua City Council*, the Court of Appeal said:⁸

We think it plain that jurisdiction to consider an amendment to an application is reasonably constrained by the ambit of an application in the sense that there will be permissible amendments to detail which are reasonably and fairly contemplable as being within the ambit, but there may be proposed amendments which go beyond such scope.

⁵ *Darroch v Whangarei DC* A018/93.

⁶ *South British Auckland Property Co Ltd v Auckland CC* (1987) 12 NZTPA 94 (PT).

⁷ *Director-General of Conservation v New Zealand Transport Agency* [2020] NZEnvC 19, (2020) 21 ELRNZ 620 at [16] and [36]; *Handley v South Taranaki District Council* [2018] NZEnvC 97 at [45]; and *Shell New Zealand Ltd v Porirua City Council* CA57/05, 19 May 2005 at [7].

⁸ *Shell New Zealand Ltd v Porirua City Council* CA 57/05, 19 May 2005.

Whether details of an amendment fall within the ambit or outside it will depend on the facts of any particular case, including such environmental impacts as may be rationally perceived by an authority.

- 3.4. In *Waitakere City Council v Estate Homes Limited*,⁹ the Supreme Court in *Estate Homes Limited* cited the above paragraph from *Shell*, and said:¹⁰

Not every alteration in approach would require an applicant to make a fresh application to the Council, rather than to proceed by way of appeal. It is a question of degree. Furthermore, as the majority of the Court of Appeal recognised, the question of any prejudice to other parties, and the general public, is always relevant. Where, as in the present case, the Environment Court came to be considering the matter on a materially different basis from that to which the Council exposed itself, the matter could proceed on the wider basis only with the Council's consent and then only if the Court was satisfied that other persons and the public were not prejudiced.

- 3.5. In *H.I.L. Ltd v Queenstown Lakes DC*, the Environment Court summarised the approach adopted in the above cases, noting:¹¹

Attempts to modify applications for resource consent are common. The changes may occur at various stages after lodgement. The first point is usually in response to a determination by the local authority that an application is incomplete (although technically that results in a new application). Other reasons for modification include changing circumstances of the applicant, following experts' advice as to how to deal with potential effects, and of course, reacting to matters raised in submissions and/or reports to the local authority. As the Planning Tribunal (Principal Planning Judge Shepherd presiding) explained many years ago in *Haslam v Selwyn District Council*: The Resource Management Act provides procedures for applications for resource consent

⁹ *Waitakere City Council v Estate Homes Limited* SC 73/2005.

¹⁰ At [35].

¹¹ *H.I.L. Ltd v Queenstown Lakes DC* [2014] NZEnvC 45.

that are designed to enable all persons who wish to take part to do so... In practice, the lodging of submissions and the presentation of opponents' cases frequently leads to applicants or consent authorities modifying proposals to meet objections that are found to be sound. That must surely be part of the statutory intent in providing for making submissions.

...

In my view *Waitakere City Council v Estate Homes Limited* is only authority for the principle that if an applicant wishes to make relatively major ("materially different") changes to a (non-notified) application which are beyond the fair and reasonable scope of an application, then it may do so only if: (a) the amendments do not make "in substance a different application" ; (b) the local authority consents ; and (c) there is no prejudice to other parties and the public. It is difficult to know how useful that approach might be for notified applications, because normally there would be prejudice to the public in such a case.

- 3.6. However, in *Kaiuma Farm Limited v Marlborough District Council and Marberry Estate Limited* [2024] NZEnvC 150, the Court considered, as a point of law, whether jurisdiction existed to allow the applicants to amend an application for land use resource consent to include a discharge permit for the discharge of sediment under s 15 of the RMA. The Court set out the following relevant legal principles:

[65] There are many cases that discuss whether amendments to a resource consent application are beyond the scope of the original application. Many of the decisions acknowledge that after notification and receipt of submissions to an application, sensible modifications to proposals will likely occur. This has been the law since the Planning Tribunal decision in *Haslam v Selwyn District Council*.

[66] ... The extent of the modification and its impact will be critical factors, although underpinning all of these issues are questions around fairness of the process.

[67] In many of these cases, the court has taken a substance over form approach in terms of whether there has been compliance with statutory requirements. However, there must be limits to that. That practice cannot be used to override the

statutory requirement in Sch 4, cl 2, as to the information that must be included in an application, including a description of the activity and whether any other resource consent is required for the proposal to which the application relates.

[68] These information requirements are reflected In Form 9 as prescribed by reg 9. We acknowledge that these information requirement must be “generally followed”. With reference to that requirement, *Currie v Palmerston North City Council* drew attention to the flexible approach emphasised in the regulations, referring to reg 4, which provides that:

Use of the form is not invalid only because it contains minor differences from a form prescribed by these regulations as long as the form that is used has the same effect as the prescribed form and is not misleading.

[69] However, there can be little room for flexibility around the Form 9 requirement that an applicant specifies which type of resource consent, of those listed in s87 RMA, is being sought. This is essential information in the court’s view. We note that a consent authority possesses powers under s91 RMA that are consequential upon receipt of an application that discloses that other types of resource consent are required but have not yet been applied for. This provision enables a council not to proceed with notification or hearing until an application for a further type of resource consent has been lodged, if satisfied on reasonable grounds as to the conjunctive requirements in s91(1).

[70] Ever since the decision in *Affco NZ Ltd v Far North District Council*, the court has recognised that:

good resource management practice requires that in general all the resource consents required for a project should be carefully identified from the outset, and applications for them all should be made so they can be considered together or jointly.

[71] That principle underpins s91. The effectiveness of s91 would be undermined if an amendment to include a different type of resource consent could readily be made during or after a hearing as occurred on this occasion.

[72] In the Council’s legal submissions, the decision in *Westfield NZ Ltd v Upper Hutt City Council* was cited as authority for the proposition that an application does not need to specify the class of resource consent under s 87 RMA, but merely that consent for an activity is required. However, on our reading of that decision, the court was referring to the requirement that an applicant state the activity status (in terms of s87A) and not the resource consent type.

3.7. In *Kaiuma Farms*, after noting the above legal principles and embarking on a summary of related case law, the Court found that the relevant commissioner was wrong to have concluded that he had jurisdiction to allow an amendment to a land use consent to

include a s 15 discharge permit. The Court was not persuaded that it was relevant in that case that the Council was a unitary authority, noting:¹²

For completeness, we are not persuaded that it is relevant in this case that the Council is a unitary authority, that not being a relevant consideration when considering potential prejudice to persons who may have been interested in, or be affected by the application, had it included a discharge permit.

Legal submissions on proposed amendment to application

- 3.8. WRC submits that the notification of the resource consent application was sufficient to notify the submitters of the scope of the application in an overall sense. Given the length and complexity of the original application, which sought a suite of consents, it does not appear that notification of an additional air quality consent would have attracted further submissions in opposition. This weighs in favour of allowing the applicant to amend its application to include an application for an air discharge consent. The effects of the activity have been assessed within the existing application.
- 3.9. However, notwithstanding the lack of prejudice, the Environment Court has made clear that a resource consent cannot be granted for an activity that was not applied for. That was the position taken by the Environment Court recently in *Kaiuma Farm Ltd*. In that case, the Court found that although there is some flexibility about compliance with resource consent application forms, there can be little flexibility in the requirement that an applicant specifies which type of resource consent, of those listed in s 87 of the RMA 1991, is being sought. The Court considered this to be essential information. *Kaiuma Farm Ltd* can therefore be distinguished from case law that allows for amendments to detail, given the requirement that the particular type of resource consent was applied for.
- 3.10. While the context differs in this case, given the strict interpretation taken by the Court in *Kaiuma Farms*, the WRC's position is that if a

¹² *Kaiuma Farm Ltd v Marlborough District Council* [2024] NZEnvC 150 at [95].

consent was required (which it does not consider is necessary), that would need to have been applied for. As such, if the Panel considers an air discharge consent is necessary (which the WRC submits is not required), WRC submits that it does not have the jurisdiction to grant one. A further application would need to be made to the WRC.

DATED at Rotorua, 18 August 2026

A. McConachy
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Anna McConachy

Counsel for WRC