

Before the Panel Convener

FTAA-2511-1150

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

And

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

**Memorandum of Counsel on behalf of McCallum Brothers Limited Requesting
the Panel Convener Suspend Processing Under s 62 of the Fast-track Approvals
Act 2024 to Enable Amendment Seeking Further Approval**

Dated 21 August 2026

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May it Please the Panel Convener:

1. This memorandum is presented on behalf of McCallum Brothers Limited (**MBL**), the Applicant for the Bream Bay Sand Extraction Project (**Project**).
2. MBL seeks a direction from the Panel Convener to suspend the processing of MBL's application to allow for an amendment to the substantive application to seek a further approval in respect of the Project. MBL's request is made pursuant to s 62(2) of the Fast-track Approvals Act 2024 (**FTAA**).
3. The request is made following further assessment undertaken by MBL's stony corals expert, Dr Jennifer Beaumont, with respect to a previously misidentified scleractinian coral species.
4. Specifically:¹

Following reporting of the *Sphenotrochus* and *Kionotrochus* cup coral findings by Bioresarches to DOC, all samples of these species collected by MBL during monitoring studies were prepared for transfer to the Earth Sciences NZ invertebrate collection for long-term storage. During this process it was noticed that the samples contained a third species, all dead at the time of sampling. These were tentatively identified as *Culicia rubeola* by Bioresarches, with this identification later confirmed on the 8 May 2026 by Earth Science NZ experts in consultation with an overseas coral taxonomist (Dr Marcelo Kitahara (University of Sao Paulo, Brazil)).

5. The correct identification of this additional species requires a new Wildlife Act 1953 (**WA**) approval not sought as part of the substantive application. Therefore, the purpose of the convener-initiated suspension is to allow MBL to apply for the further approval as part of the Project.

Context

6. MBL lodged its substantive application with the EPA on 26 January 2026.

¹ Beaumont, J., Anderson, O. (2026) The scleractinian coral *Culicia rubeola* at Te Ākau Bream Bay. Literature review and distribution of *Culicia rubeola* identified within the proposed sand extraction area. Prepared for McCallum Bros Limited. June 2026: at p.8.

7. The substantive application included an application for a wildlife approval under the WA with respect to two species of scleractinian solitary cup corals – *Sphenotrochus ralphae* and *Kionotrochus suteri* identified as being present in the proposed sand extraction area.
8. Following lodgement of the substantive application Dr Beaumont has confirmed that some samples of dead specimens found within the proposed sand extraction area had been misidentified (as *Kionotrochus suteri*). Those specimens have subsequently been identified to be *Culicia rubeola*, a similarly small, but different scleractinian coral.
9. As the species *Culicia rubeola* had not previously been identified as present in the proposed sand extraction zone, it was not identified in MBL's application for a wildlife approval or elsewhere in the substantive application. All Scleractinia (stony corals) are protected under the WA and activities affecting such corals require the grant of a wildlife approval. Consequently, MBL requires a further wildlife approval with respect to *Culicia rubeola*.
10. MBL's view that it is appropriate and efficient for the further wildlife approval to be sought under the current FTAA application rather than proceed separately under the WA. While *Culicia rubeola* is a different species, it is still a stony coral and has been identified in the same location as *Sphenotrochus ralphae* and *Kionotrochus suteri* and will be similarly impacted by the proposed sand extraction activity. On that basis, it is prudent the Panel consider the potential effects on *Culicia rubeola* alongside the other scleractinian corals.
11. As the Panel Convener will be aware, there is limited ability under the FTAA for an authorised person to amend a substantive application once lodged.
12. To resolve the misidentification issue, to ensure a different or further approval required in respect of the project is before the Panel, and because the nature of the project would be better understood if the substantive application were amended to seek those approvals, MBL respectfully requests the Panel Convener issues a written direction to the Environmental Protection Authority (EPA) directing that processing of MBL's substantive application be suspended under s 62(1) of the FTAA to enable the identified

further approval to be sought through an amendment to the substantive application to seek that approval.

Grounds for Convener Suspension

13. The Panel Convener's ability to direct the suspension of a Project and amendment of the substantive application after the substantive application has been provided to a panel, is not unfettered.
14. The Panel Convener must be satisfied that the limited grounds in s 62(2) are met. Under s 62(2) of the FTAA, the Panel Convener may give a direction under s 62(1) if it is considered that:
 - a. Different or further approvals are required in respect of the project;
 - b. Those approvals relate to the same specified Act as an approval that is sought in the substantive application; and
 - c. The nature of the project would be better understood if the substantive application were amended to seek those approvals before the panel proceeds further.
15. I submit that the grounds above are satisfied as:
 - a. A further approval is required in respect of the Project. Specifically:
 - i. Section 3 of the WA provides that all wildlife (except for those specified in Schedules 1, 2, 3, 4 or 5) is subject to that Act and is to be absolutely protected. Schedule 7A to the WA states that all stony corals in the order Scleractinia are marine species declared to be animals (i.e. wildlife) for the purpose of that Act.
 - ii. *Culicia rubeola* is a stony coral in the order Scleractinia and therefore has absolute protection under the WA. Consequently, it is an offence under s 63A of the WA to hunt or kill any absolutely protected marine wildlife. A

wildlife approval must be granted under s 53 or 53A with respect to protected wildlife.

- iii. Section 42(4)(h) of the FTAA provides that a substantive application may seek a wildlife approval as defined in Clause 1 of Schedule 7 of the FTAA.
 - iv. Clause 1, Schedule 7 to the FTAA states that a “wildlife approval” means a lawful authority for an act or omission that would otherwise be an offence under any of sections 56(1), 58(1), 63(1), 63A, 64, 65(1)(f), 70G(1), 70P, and 70T(2) of the Wildlife Act 1953.” As noted above, all corals in the order Scleractinia are protected under the WA.
 - v. Due to the earlier misidentification of the presence of *Culicia rubeola*, MBL’s substantive application did not seek a wildlife approval with respect to impacts on that species or otherwise comment on that species;
 - vi. Dr Beaumont’s report states that if live *Culicia rubeola* are present in the proposed extraction area, then some mortality could be expected.²
 - vii. The presence of *Culicia rubeola* in the proposed extraction area means a further approval is required in respect of the Project.
- b. The further approval sought directly relates to the same “specified Act” as an approval that is sought in the substantive application because:
- i. As noted above, MBL’s substantive application seeks a wildlife approval with respect to two other identified scleractinian coral species; and

² Report at pg. 5.

- ii. The further approval sought is another WA approval for a third scleractinian coral species.
- c. The nature of the Project would be better understood if the substantive application were amended to include the further approval because:
 - i. The further approval is sought with respect to another scleractinian coral species. There is already assessment of the potential impacts of the project on two identified scleractinian coral species. From an ecological perspective, it is appropriate and efficient for the Panel to consider the potential impacts of the Project on all the identified scleractinian coral species as part of the same substantive process;
 - ii. There is overlap between both the potential impacts of the project on *Culicia rubeola* and the other two species. That is because while different species, they are all classified as scleractinian corals;
 - iii. The presence of *Culicia rubeola* does not alter Dr Beaumont's overall conclusion of the appropriateness of the grant of the wildlife approval (or project overall). Nor does the presence of *Culicia rubeola* necessitate any change in the proposed activities or scope of the Project;
 - iv. MBL's proposed management of effects/impacts on *Culicia rubeola* is the same approach as that for *Sphenotrochus ralphae* and *Kionotrochus suteri*. To that end, I note:
 - 1. The updated Cup Coral Management Plan attached to the evidence of Mr Hay dated 12 August 2026 has been updated to identify *Culicia rubeola* and its characteristics; and

2. The proposed management of effects/impacts on *Culicia rubeola* is the same as *Sphenotrochus ralphae* and *Kionotrochus suteri*.
16. A report regarding the species in question accompanies this memorandum. It is titled "Beaumont, J., Anderson, O. (2026) The scleractinian coral *Culicia rubeola* at Te Ākau Bream Bay. Literature review and distribution of *Culicia rubeola* identified within the proposed sand extraction area. Prepared for McCallum Bros Limited. June 2026".
17. For information purposes, I advise the Panel Convener that the discovery of *Culicia rubeola* also led to discovery that it was present at Pākiri in a location where MBL had previously undertaken extraction and now has monitoring obligations. Consequent on that position being understood, an application for a wildlife authority for catching and incidental killing under the WA relating to post-extraction benthic recovery monitoring of sand extraction areas and associated control areas has been granted for *Culicia rubeola*, *Sphenotrochus ralphae* and *Kionotrochus suteri*.

Directions Sought

18. As far as Counsel is aware, an application pursuant to s 62 of the FTAA has not previously been sought by any other party in any other substantive matter. Accordingly, there is no precedent for the steps to be adopted to progress this application.
19. Based on Council's understanding of s 62 and the steps that would follow, MBL seeks the following directions:
 - a. A direction from the Panel Convener to the EPA to suspend the processing of MBL's application to allow for an amendment to the substantive application to seek a further approval in respect of the Project pursuant to s 62(2) of the FTAA.
 - b. A direction relating to the mechanics of the process following suspension by the Panel Convener.

20. Counsel understands that the process applying once the substantive application is amended, assuming the Panel Convener suspension remains in place at that time, is that set out at sections 63(4) and (5).
21. Counsel is available to attend a convener's conference to address the requestion for directions further, should the Panel Convener consider a conference would assist.
22. Finally, I record the amendment to the substantive application to seek a further approval with respect to *Culicia rubeola* engages Schedule 7 of the FTAA. MBL has prepared a draft addendum and associated specialist report with respect to Schedule 7 matters. However, I do not attach those documents to this memorandum on the basis that they are not necessary in order for the Panel Convener to determine the application under Section 62 FTAA. Rather, they are documents which must be filed with the EPA/Expert Panel in response to the suspension being imposed and directions issued by the Panel Convener. However, if the Panel Convener is of the view that these documents are relevant to determination of the Section 62 application, then they can be provided.



Jeremy Brabant

Counsel for McCallum Brothers Limited

21 August 2026