

## **Before the Expert Panel**

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

And

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 or the Application**)

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Memorandum of Counsel on behalf of Taharoa Ironsands Limited  
providing an interim response to further RFIs 1, 2, 4, 10, 13  
and 18

Dated 8 September 2026

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## MAY IT PLEASE THE PANEL

### INTRODUCTION

1. In Minute 22 dated 28 July 2026, the Panel issued a series of requests for further information arising from the Panel Facilitated Conference on 22 to 23 July 2026. The Panel subsequently issued further RFIs by way of addenda<sup>1</sup> (together, **Further RFIs**). The majority of the Further RFIs relate to conditions of consent.
2. In a Memorandum of Counsel dated 14 August 2026, Taharoa Ironsands Limited (**TIL**) proposed an alternative approach to responding to several of the Further RFIs which required expert conferencing. The Panel responded to this request in Minute 24 dated 20 August 2026 and confirmed:
  - (a) Step 1: TIL is to provide its proposed conditions for RFIs 1, 2, 4, 10, 13 and 18 to the EPA and the parties by 8 September 2026.
  - (b) Step 2: Expert conferencing is to occur on RFIs 1, 2, 4, 6, 10, 13 and 18 between experts of parties who participated in the Panel Facilitated Conference, with Joint Witness Statements to be filed with the Environmental Protection Authority by 22 September 2026.
  - (c) Step 3: TIL is to provide a final response to the Further RFI outlining the outcome of the expert conferencing and responses to the balance of the matters raised in the Further RFI by 1 October 2026 (**Final RFI Response**).
3. This Memorandum of Counsel constitutes TIL's response to Step 1 above, and provides proposed conditions and explanatory commentary in respect of the following RFIs (together, the **Interim RFI Response**):
  - (a) RFI 1 – Mitiwai Stream minimum environmental flow;
  - (b) RFI 2 – 8.53m RL cease take trigger;

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<sup>1</sup> All of which were attached to Minute 24 dated 20 August 2026.

- (c) RFI 4 – Matters recorded in Joint Witness Statement dated 6-7 July 2026;
  - (d) RFI 6 – Methodology for wetland baseline monitoring;
  - (e) RFI 9 & 10 – Air Discharge Permit;
  - (f) RFI 13 – Scope and frequency of wetland baseline monitoring;
  - (g) RFI 18 – Maximum groundwater drawdown.
4. TIL notes that the Panel did not explicitly request that RFIs 6 or 9 be addressed in the Interim RFI Response. However, TIL has incorporated its initial responses to these matters in advance of expert conferencing because RFI 6 requests expert conferencing and RFI 9 is intrinsically linked to RFI 10.
5. TIL's responses to the above RFIs are set out in:
- (a) the table attached to the Memorandum of Counsel as **Appendix A**;
  - (b) an updated copy of the draft Natural Inland Wetland and Buffer Management Plan (**NIWBMP**), in relation to RFIs 4, 6(2) and 13 (**Appendix B**); and
  - (c) a memorandum prepared by TIL's air quality expert, Andrew Curtis, "Air Quality Response to Panel RFIs for Taharoa Ironsands", PDP, addressing RFIs 9 and 10 (**Appendix C**).
6. This Memorandum of Counsel also includes legal submissions in relation to RFIs 9 and 10, which should be read in conjunction with the above documents. Our legal submissions address:
- (a) TIL's view that an air discharge permit is not required; and
  - (b) the requirement for the Panel to consider only the evidence that is before them in making their decision.
7. We expand on the points in paragraph 6 below.

## AN AIR DISCHARGE PERMIT IS NOT REQUIRED

8. In RFI 9 the Panel stated that it considers that an air discharge permit is needed. RFIs 9 and 10 are based on this proposition and (at a high level) request draft conditions for the air discharge permit.
9. TIL responded to this proposition in a Memorandum of Counsel dated 14 August 2026. TIL set out that it does not consider that an air discharge permit is needed and maintained its view that it is appropriately managing dust discharges beyond the boundary of the site. On this basis TIL proposed an alternative approach to expert conferencing on RFIs 9 – 10, by providing its responses to those RFIs for written feedback from WRC that TIL would then consider.
10. In a Memorandum of Counsel dated 18 August 2026, WRC presented detailed legal submissions on the matter – setting out its agreement with TIL that an air discharge permit is not required.
11. In Minute 24 the Panel stated that it remains of the view that an air permit is needed, based on consideration of the evidence and information received to date alongside the permitted activity performance standards.<sup>2</sup> The Panel also states that it will provide ‘further reasons’ for that finding in its draft decision.<sup>3</sup>
12. This issue of whether an air discharge permit is required was first raised by the Panel at the Panel Facilitated Conference during questioning of the air quality experts for TIL (Mr Andrew Curtis) and WRC (Mr Peter Stacey) in respect of Waikato Regional Plan (**WRP**) Permitted Activity Rule 6.1.16.1.(e). This rule states that “There shall be no discharges of hazardous substances into the air”.
13. At the Conference Commissioner Wickham stated that surely Rule 6.1.16.1.(e) is breached because there will be PM<sub>10</sub> discharged to air (and PM<sub>10</sub> is a class one carcinogen) so therefore it requires consent. She then asked the air quality experts whether PM<sub>10</sub> should be considered a “hazardous substance”. Both experts confirmed that they considered it to be

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<sup>2</sup> Minute 24 of the Panel dated 20 August 2026 at [15].

<sup>3</sup> *Ibid.*

of that nature. However, they did not express a view on whether Rule 6.1.16.1.(e) was breached.

14. TIL firmly remains of the view that an air discharge permit is not required because:
  - (a) All of the expert evidence presented to the Panel to date demonstrates that TIL is, and will continue to comply with the permitted activity performance standards;
  - (b) Mr Curtis has reconsidered this issue in light of the matters discussed at the Conference and RFIs 9 and 10, and remains of the view that an air discharge consent is not required; and
  - (c) Rule 6.1.16.1.(e) must be interpreted as applying at the boundary of the site – therefore, any emissions on site of PM<sub>10</sub> or another hazardous substance will not breach the rule, unless that discharge extends beyond the site boundary. Mr Curtis is of the opinion that TIL is not discharging, nor does it propose to discharge, hazardous substances beyond the boundary of the site.<sup>4</sup>
15. TIL's position is squarely aligned with WRC (as the relevant regulatory authority). It is therefore unclear on what basis the Panel has formed a view that an air discharge consent is required.
16. However, for completeness, TIL notes that if there were to be a sound basis for the Panel to determine that an air discharge consent is required, there is scope in TIL's application for the Panel to grant such a consent. WRC's legal submissions in this regard are incorrect.

**The information and expert evidence presented to date does not support the need for an air discharge permit:**

17. In respect of the expert evidence presented to date:
  - (a) Mr Curtis concluded in the Air Quality Assessment (Attachment S to the Substantive Application Report) that the proposed activities on the site comply with permitted activity Rule 6.1.16.1 (in respect of air

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<sup>4</sup> Air Quality Response to Panel RFIs for Taharoa Ironsand prepared by Andrew Curtis and dated 3 September 2026 at [2].

quality) of the WRP.<sup>5</sup> Of particular relevance, Mr Curtis concluded that:<sup>6</sup>

- (i) It is extremely unlikely that direct health effects can be associated with the type of dust generated by TIL's mining operations in the Central and Southern Blocks;
  - (ii) There is a low likelihood of offensive or objectionable dust effects being experienced off-site associated with future proposed activities as a result of site activities.
- (b) Mr Curtis' conclusions did not change in his response to comments on the application dated 22 June 2026 and in response to the RFI 62 contained in Attachment 1 to TIL's Memorandum of Counsel dated 17 July 2026.
- (c) As noted above, Mr Curtis has reconsidered this issue in light of the matters discussed at the Conference and RFIs 9 and 10, and remains of the view that an air discharge consent is not required – his views are reiterated for clarity in the memorandum attached as Appendix C.
- (d) The scope of Mr Stacey's assessment for WRC (in his memorandum attached as Appendix A to WRC's comments on the application) was to review Mr Curtis' Air Quality Assessment provided in support of the Application. Mr Stacey agreed with Mr Curtis' substantive findings and raised no contrary view to Mr Curtis' interpretation of the WRP rules.
- (e) No other expert air quality evidence has been presented to the Panel setting out a contrary view.
18. As noted above, WRC has also presented legal submissions which clearly state its view that an air discharge consent is not required provided TIL can comply with the permitted activity rules<sup>7</sup> (which the above expert evidence demonstrates can be, and is being, achieved).

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<sup>5</sup> Attachment S to the Substantive Application Report at section 9.0.

<sup>6</sup> *Ibid* at sections 9.0 and 10.0.

<sup>7</sup> Legal submissions on behalf of Waikato Regional Council dated 18 August 2026 at [1.4].

19. Notably, the Central and Southern Blocks of the Taharoa Ironsand Mine are currently lawfully operated without an air discharge consent. There is no material change to the activity that is subject to the Fast-track application which would suggest that a different approach is now necessary.
20. Further, the Hearing Panel that considered TIL's 2020 application under the Resource Management Act 1991 to replace its existing resource consents for the Central and Southern Blocks also did not opine that an air discharge consent was required and accepted conditions volunteered by TIL to ensure it would continue to comply with the relevant permitted activity rule.
21. While comments have been made by some of the other section 53 parties on the application about air discharge matters, as far as TIL is aware, none of them have suggested that an air discharge consent is required, and in any case none of these parties have presented evidence from an air quality expert. The same applies to any comments made about purported air discharge effects by these parties – those comments are not supported by expert evidence and should be given less weight than the evidence presented by Mr Curtis and Mr Stacey.

**Rule 6.1.16.1(e):**

22. In respect of Rule 6.1.16.1.(e), TIL endorses WRC's legal submissions dated 18 August 2026 that this rule must be interpreted as applying at the boundary of the site.<sup>8</sup> We do not repeat WRC's submissions here, but highlight the key points below:<sup>9</sup>
  - (a) Planning provisions should not be read in a vacuum, and it is necessary to have regard to the immediate context, and where obscurity or ambiguity arises, it may be necessary to refer to other sections of the plan and the objectives and policies of the plan itself.<sup>10</sup> In addition, it is desirable for an interpretation to be adopted which avoids absurdity or anomalous outcomes, is likely to be consistent

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<sup>8</sup> For avoidance of doubt, TIL does not agree with WRC's position that a resource consent cannot be granted for an activity that was not applied for.

<sup>9</sup> Legal submissions on behalf of Waikato Regional Council dated 18 August 2026.

<sup>10</sup> *Powell v Dunedin City Council* CA157/03, 18 March 2004, at [35].

with the expectations of property owners, and considers practicality of administration by City Council officers.<sup>11</sup>

- (b) An analysis of the relevant objectives and policies in the Air Module of the WRP supports an interpretation that hazardous substances are designed to apply, and should be measured, at the boundary of the site. In particular:

- (i) Objectives 6.1.2 – Objective 2: *“No significant adverse effects from individual site sources on the characteristics of air quality beyond property boundary”*;

- (ii) Objectives 6.1.2 – The 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...*

- (iii) Policies 6.1.3 – Policy 1:

*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;*

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<sup>11</sup>

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



- 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.*
- (iv) Policies 6.1.2 – 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.*
- (c) The relevant rules provide a permitted activity pathway for quarrying (which includes TIL’s proposed activities) in the WRP, provided that the applicant internalises its effects.<sup>12</sup>
- (d) A literal interpretation of the rule would require resource consent for any discharge of hazardous substances to air, notwithstanding whether the effects were internalised.<sup>13</sup> This would produce anomalous outcomes and would be inconsistent with the permitted activity pathway provided within the WRP.<sup>14</sup>

23. In addition, we note that:

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<sup>12</sup> Legal submissions on behalf of Waikato Regional Council dated 18 August 2026 at [2.12].

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

- (a) If Rule 6.1.16.1(e) were to be interpreted as applying within a site, it would contradict Rule 6.1.8(a) (which is required to be adhered to under Rule 6.1.16.1(b)). This is because rule 6.1.8(a) requires that 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 or fauna, and hazardous substances<sup>15</sup> fall within the definition of contaminants<sup>16</sup> under the WRP.
  - (b) In other similar applications across the region WRC has interpreted 6.1.16.1(e) as requiring an assessment of hazardous substances at the boundary of the site;<sup>17</sup>
  - (c) In PDP's experience, such an approach is consistent with the way effects from discharges to air are assessed in all other jurisdictions in New Zealand<sup>18</sup>.
24. As noted in WRC's legal submissions, in similar applications across the Waikato Region, it has interpreted Rule 6.1.16.1(e) as requiring an assessment of hazardous substances at the boundary of the site.<sup>19</sup>
25. A relevant example of an application where WRC has interpreted Rule 6.1.16.1(e) as applying at the boundary of the site is R S Sand Limited's application for consents to establish and operate a sand quarry at 77

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<sup>15</sup> **Hazardous substance:** Unless expressly provided otherwise by regulations prepared under the Hazardous Substances and New Organisms Act 1996 or Resource Management Act 1991, 'hazardous substances' means any substance:

- 1. with one or more of the following intrinsic properties
  - 1. explosiveness
  - 2. flammability
  - 3. a capacity to oxidise
  - 4. corrosiveness
  - 5. toxicity (including chronic toxicity)
  - 6. ecotoxicity, with or without bioaccumulation; or
- 2. which on contact with air or water (other than air or water where the temperature or pressure has been artificially increased or decreased) generates a substance with any one or more of the properties specified in paragraph a) of this definition.

<sup>16</sup> **Contaminant:** Includes any substance (including gases, liquids, solids, and microorganisms) or energy (excluding noise) or heat, that either by itself or in combination with the same, similar, or other substances, energy or heat:

- 1. when discharged into water, changes or is likely to change the physical, chemical, or biological condition of water, or
- 2. when discharged onto or into land or into air, changes or is likely to change the physical, chemical, or biological condition of the land or air onto or into which it is discharged.

<sup>17</sup> Legal submissions on behalf of Waikato Regional Council dated 18 August 2026 at [2.13].

<sup>18</sup> Air Quality Response to Panel RFIs for Taharoa Ironsand prepared by Andrew Curtis dated 3 September 2026 at [3.3].

<sup>19</sup> Above n 17.

Newcombe Road, Cambridge. WRC's interpretation of Permitted Activity Rule 6.1.16.1(e) was adopted by the Independent Hearing Commissioners after taking detailed submissions from the parties on this issue. The Panel's decision, dated 26 August 2025, is attached as **Appendix D**. As noted in the decision:

- (a) Commissioner Wickham stated in their evidence (on behalf of submitters in opposition to the application),<sup>20</sup> that the proposed quarry will involve discharge of PM<sub>10</sub> (and RCS), which are hazardous substances, and as a result, the requirements under Rule 6.1.16.1 would not be met and the activity would require consent as a discretionary activity.<sup>21</sup>
- (b) However, the Commissioners adopted the position advanced by R S Sand and WRC, as follows:<sup>22</sup>
  - (i) WRC's planning report advised that a discharge to air is an 'otherwise authorised activity' under the Air Module of the WRP, subject to the applicant meeting the requirements of the permitted activity rule;<sup>23</sup>
  - (ii) In a legal opinion dated 13 May 2025, counsel for R S Sand submitted that an assessment of whether any contaminant is "hazardous" for the purposes of Rule 6.1.16.1 should be made at the site boundary, and with regard to the ameliorating effect of consent conditions.<sup>24</sup>
  - (iii) In its legal submissions dated 13 June 2025, WRC similarly concluded that for the purposes of Rule 6.1.16.1 hazardous substances should be measured at the boundary of the site.<sup>25</sup>
  - (iv) R S Sand submitted in its reply submissions that where an applicant has committed to complying with a permitted activity

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<sup>20</sup> Provided on behalf of Rhys & Antoinette Powell (submitters in opposition to the application).

<sup>21</sup> Decision on application to operate a sand quarry at 77 Newcombe Road, Cambridge, dated 20 August 2025 (**R S Sand Decision**) at [259].

<sup>22</sup> *Ibid* at [263].

<sup>23</sup> *Ibid* at [259].

<sup>24</sup> Legal opinion of B Matheson on behalf of R S Sand dated 13 May 2025 at [13].

<sup>25</sup> Legal submissions on behalf of WRC – air discharge consent dated 13 June 2025.

standard, then no resource consent is required (and in fact legally could not be sought).<sup>26</sup>

26. The Panel therefore appears to be adopting an interpretation in respect of Rule 6.1.16.1(e) that:
  - (a) has previously been advanced by Commissioner Wickham in her capacity as an expert witness for a submitter in another resource consent application; and
  - (b) was rejected by the Commissioners considering that application in favour of the interpretation put forward in these legal submissions.
27. Based on the matters of interpretation set out above, WRC's consistent interpretation of 6.1.16.1 in other applications, and the Commissioner's finding in the R S Sand decision, TIL submits that the Panel has no basis or evidence before it to adopt an interpretation that Rule 6.1.16.1 should be interpreted narrowly as applying on the site.
28. Assuming that Rule 6.1.16.1 applies at the site boundary, Mr Curtis confirms that TIL's air discharges comply with the "no discharge of hazardous substances" standard because the measured concentrations of TSP (as a surrogate for PM<sub>10</sub>), are well less than the New Zealand Ambient Air Quality Guideline value for PM<sub>10</sub>.<sup>27</sup>

#### **PANEL CAN ONLY CONSIDER EVIDENCE THAT IS BEFORE THEM**

29. The matters canvassed above raise the issue of whether the Panel can make a decision that is contrary to the evidence before them.
30. In our submission, the Panel can *only* make a decision based on the evidence that is in front of them. This is a well-established principle of evidence: a decision-maker cannot come to a conclusion without evidence

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<sup>26</sup> R S Sand Decision at [261] and legal submissions in reply behalf of R S Sand dated 14 July 2025 at [4.12].

<sup>27</sup> Air Quality Response to Panel RFIs for Taharoa Ironsands prepared by Andrew Curtis dated 3 September 2026 at [3.3].

or one to which, on evidence, it could not reasonably have come.<sup>28</sup> To do so would amount to an error of law.<sup>29</sup>

31. In the context of decisions on resource consent applications, this principle is expressly set out in *Making Good Decisions: A Resource for RMA Decision-Makers*.<sup>30</sup>

*Apart from bringing their individual local knowledge and specialist expertise to bear, only the information brought forward during the hearing can be a factor in the committee's deliberations and decision.*

32. It is also reflected in the decision-making framework under the FTAA:

- (a) Section 81(2)(a) of the FTAA provides that, for the purposes of making a decision, the Panel must consider any “advice, report, comment, or other information *received by the panel*” (emphasis added).<sup>31</sup>
- (b) The *Panel Conveners' Practice and Procedure Guidance* recognises that panels may rely on “their knowledge, skills and expertise” to evaluate the evidence they receive.<sup>32</sup>

33. It is not disputed that Panel members' own technical knowledge or expertise may assist in testing and understanding evidence. However, this does not permit members of the Panel to substitute their own views or expertise for that presented in the expert evidence that is before them. As set out in *Making Good Decisions: A Resource for RMA Decision-Makers*, in the interests of procedural fairness the Panel “must set aside any personal views or preconceptions and make their decision purely on the evidence before them.”<sup>33</sup>

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<sup>28</sup> *North Eastern Investments Ltd v Auckland Transport* [2017] NZHC 2355, [2017] ELHNZ 248 at [51], applying *Countdown Properties (Northlands) Ltd v Dunedin City Council* HC Wellington AP214/93, 7 March 1994.

<sup>29</sup> *North Eastern Investments Ltd v Auckland Transport* [2017] NZHC 2355, [2017] ELHNZ 248 at [51].

<sup>30</sup> *Making Good Decisions: A Resource for RMA Decision-Makers* (5<sup>th</sup> edition, April 2023, Ministry for the Environment), page 247.

<sup>31</sup> Section 81(2)(a).

<sup>32</sup> *Panel Conveners' Practice and Procedure Guidance* dated 22 July 2025 at [17.1].

<sup>33</sup> *Making Good Decisions: A Resource for RMA Decision-Makers* (5<sup>th</sup> edition, April 2023, Ministry for the Environment), page 22.

34. As noted above, it is apparent that Commissioner Wickham (and the Panel) holds a different view to that presented in the expert evidence provided by both TIL and WRC in terms of whether an air permit is required as part of the Application. Further, in Minute 25 the Panel expressed a contrary view to Mr Curtis in respect of the relevance of published emissions factors for mining activities<sup>34</sup>, despite this being the only expert evidence before them on the matter.
35. As expressed in TIL's Memorandum of Counsel dated 3 September 2026, TIL is concerned that the Panel is inappropriately substituting its own views for the clear findings set out in the expert evidence that is before them.
36. It is clear that the Panel cannot come to a conclusion without evidence or one to which, on evidence, it could not reasonably have come. To do so would amount to an error of law.
37. TIL urges the Panel to consider these submissions closely when considering the material before it in respect of the application and in making a decision.

## CONCLUSION

38. TIL's experts will now proceed to participate in conferencing on the matters set out in RFIs 1, 2, 4, 6, 10, 13 and 18 (Step 2).
39. TIL will provide its Final RFI Response to the Further RFI on 1 October 2026 (Step 3).

**DATED** this 8<sup>th</sup> day of September 2026



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**Stephanie de Groot / Tom Atkins**  
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<sup>34</sup> Minute 25 of the Expert Panel dated 3 September 2026 at [6]-[7].