

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**)

Memorandum of Counsel on behalf of Taharoa Ironsands Limited
to the Expert Panel

Dated 30 July 2026

MinterEllisonRuddWatts.

PO Box 105 249 Auckland City 1143

T +64 9 353 9700

Solicitor acting: Tom Atkins | [REDACTED]

Partner responsible: Stephanie de Groot [REDACTED]

MAY IT PLEASE THE PANEL

1. On 22 and 23 July 2026 the Expert Panel considering Taharoa Ironsands Limited's (**TIL**) Fast-track application for the Central and Southern Blocks Mining Project held a Panel Facilitated Conference focussed on conditions of consent proposed by parties invited to comment on TIL's application.
2. TIL left the Conference feeling completely dissatisfied with the process and disappointed that TIL (and its experts) had not been afforded an equal and complete opportunity to present their position. This dissatisfaction builds upon previous dissatisfaction with the process adopted by the Panel in considering TIL's application to date.
3. Following the Conference, the Panel issued Minute 22, requesting further information (**RFI**) from the parties who were in attendance (**Further RFI**). The response to the Panel's RFI is due by 5pm Tuesday 4 August 2026, with primary responsibility for coordinating and filing the response on TIL.
4. The purpose of this memorandum is to:
 - (a) set out TIL's dissatisfaction with the processing of the Application to date, in particular the procedural propriety and fairness of some of the methods adopted by the Panel to hear different parties' views on the Application; and
 - (b) acknowledge the Panel's Further RFI and request that the Panel suspend the Application so that TIL can coordinate the preparation of a robust and complete response to the Further RFI, provide further information on issues of critical importance to TIL that were raised at the Conference and which are fundamental to determining the Application, and ensure that it is properly and fairly heard.
5. Each of these matters is addressed in turn below.

PROCEDURAL CONCERNS

6. TIL is thoroughly dissatisfied with the process adopted by the Panel in considering the Application to date. TIL considers that the process has been procedurally unfair towards TIL and has prejudiced TIL's ability to present its case in support of the Application. On the contrary, TIL considers that third

parties have been afforded opportunities to be heard that go far beyond what is contemplated by section 53 of the FTAA. At the same time, TIL, as the Applicant, has had its involvement and opportunity to be heard in response to matters raised by the Panel or third parties curtailed, whereas third parties have not.

7. TIL draws the Panel's attention to the following aspects of the processing of the Application that have given rise to these concerns. Many of these concerns have already been raised with the Panel. It should be noted that this list is not exhaustive but is intended to provide examples of what TIL considers to be a broader pattern of procedural irregularity and prejudice towards TIL throughout this process.
8. Ultimately, TIL wants to ensure that it is properly heard, and that the Panel is informed of all relevant matters about the Application to make a robust decision consistent with the legislation and Parliament's intent in promulgating the FTAA. Currently, TIL does not consider that the Panel, nor the application process, is in this position.

Site visit on 22 April 2026

9. As part of the first steps of the processing of the Application, TIL arranged for the Panel to visit the Mine site.
10. The Panel originally considered that TIL's proposal for the site visit, including that the Panel would be accompanied by TIL personnel, was "not consistent with the level of independence and transparency required for a site visit".¹ The Panel requested that they were "accompanied by a TIL person who respects the process... and knows their way around the site".
11. TIL submitted revised arrangements for the site visit in response to the Panel's feedback. This included limiting the TIL representatives at the site visit to [REDACTED] and a suitable site-based technical advisor from TIL, with other senior personnel not attending. In doing so, TIL made it clear that it would ensure a proper process was followed throughout to acknowledge the Panel's wish to maintain

¹ Minute 4 dated 21 April 2026 at paragraph [2].

independence and transparency, while still ensuring that [REDACTED] [REDACTED] was in attendance to be able to answer questions on the totality of the site operations and oversee the safety of the site visit.

12. The Panel accepted these arrangements but directed that “Mr Coffey is not to engage in any form of advocacy (straying into the merits of any issue in contention) and confine all comments and answers to questions on site and process description that will enable the Panel to better understand the application and associated technical reports”.²
13. TIL was disappointed in this exchange with the Panel which suggested:
 - (a) a misunderstanding of the reasons for [REDACTED] attendance at the site visit; and
 - (b) an unfair assumption had been made that [REDACTED] would not respect the process or otherwise would not act appropriately.

Hui held at Te Kooraha Marae on 2 May 2026

14. During processing of the Application, the EPA led a regional hui at Te Kooraha Marae (directly adjacent to the Mine), ostensibly as part of the EPA’s Te Herenga national initiative. However, online commentary indicated that the hui would consider the long-term impact of ironsands mining at Taharoa – a subject in which TIL undeniably has a vested interest.
15. The EPA did not invite TIL to participate in this hui, nor did it notify TIL that this hui was taking place. TIL was only made aware of it by happenstance when a casual enquiry was made about the hui to one of its advisers by an officer at the district council.
16. Upon learning about the hui, TIL identified that online commentators had posted statements on social media indicating that a key reason for the hui was to consider the long-term impact of ironsands mining on the Taharoa whenua and coastal systems and to discuss environmental effects and social, cultural and ecological resilience.

² At paragraph [4].

17. TIL wrote to both the Panel and the EPA (Memorandum of Counsel dated 8 May 2028) expressing its concerns regarding the propriety of the EPA holding a hui of this nature at the same time as it was actively considering TIL's Application to continue to mine ironsands at Taharoa.
18. The EPA advised that the hui was not connected to its functions under the FTAA and that individual applications would not be discussed at the hui. TIL does not consider this to be a reasonable proposition from the EPA. Given the inevitable overlap in the matters discussed at the hui and those being considered in the context of TIL's Application, the EPA's functions could not be artificially separated in this way and posed a real risk to any perception as to the EPA's neutrality.
19. The hui was reported in an article and video report published by Te Ao Māori News, which was informed by parties who were invited to comment on the Application. Reporting on the Application was unbalanced and views expressed about potential environmental effects were factually inaccurate and not supported by experience. In any event, it was inappropriate for any party participating in this process to comment on the Application while it is being considered by the Panel. TIL declined to make any public comment on legal advice that it was not appropriate to do so while the Application was underway.
20. In Minute 9 the Panel stated that the hui was an EPA initiative and an entirely separate process to the Application, which have no bearing on the Panel's decision-making. In any case, TIL maintains that the EPA's involvement in the hui has irreparably compromised its independence, calls into serious question its ability to properly discharge its statutory functions in relation to the Application and has caused prejudice to TIL and the Application. No adequate justification has been provided for this decision.

Hui held at Aaruka Marae on 8 June 2026:

21. TIL raised its concerns regarding the hui held at Aaruka Marae with the Panel on multiple occasions prior to the hui, including in the Memoranda of Counsel dated 8 May and 28 May 2026. In summary, those concerns relating to matters of necessity, fairness, procedure, attendees, timing, location and duration, [REDACTED], and adequacy of consultation.

22. Despite these concerns being clearly and repeatedly articulated, the Panel made the arrangements for the hui without engaging with TIL (contrary to prior assurances that the Panel had given to TIL) and without meaningfully engaging with TIL's concerns or providing any assurance that a fair process would be followed. For these reasons and those outlined in the Memorandum of Counsel dated 28 May 2026, TIL elected not to attend the hui.
23. In addition, TIL understands that Mr Williams, the mātanga (cultural expert / advisor) appointed by the Panel specifically to advise on arrangements for the hui and tikanga Māori, was not able to attend the hui on 8 June 2026. The Panel nonetheless decided to proceed with the hui without a mātanga being present, contrary to the established procedure set out in the Panel's various minutes relating to the hui.
24. In Minute 16 dated 17 June 2026, the Panel provided a recording of the hui and noted that a transcript would also be provided following TIL's request after it advised it would not attend. However, the recordings published on the EPA's website only cover 2.5 hours of a what was a full-day hui. The transcripts also only record the presentations provided by attendees despite referencing additional conversations held between the Panel and others during breaks. These further discussions were not recorded. This goes to matters of procedural impropriety, namely a breach of natural justice in the failure to provide TIL with the opportunity to respond to any matters raised as part of these conversations.
25. The absence of a full record of the hui also raises serious questions about what was discussed between the Panel and attendees off the record. TIL is particularly concerned about the possibility of irrelevant or inaccurate considerations being taken into account by the Panel during these discussions and cannot be assured that this did not occur without confirmation of what was discussed.
26. One can compare and contrast the difference in approach and treatment between:
 - (a) the strict constraints placed on TIL during the Panel's site visit – which extended to the Panel insisting on not having lunch with any TIL representative; and

- (b) the Panel's encouragement of the contributions made by various speakers at the hui (many of which had little or passing relevance to TIL, the Mine and the application, and included the use of a glass bowl) and which appears to have included the Panel members engaging with attendees during breaks and over lunch.
27. TIL is further concerned that unregistered attendees may have been present at the hui. The presence of unregistered persons at an event that forms part of the decision-making process raises serious questions about the integrity and legality of that process. In particular, TIL understands that an unregistered attendee presented to the Panel, and this was not recorded, meaning that TIL has not been afforded the opportunity to respond to any points made by this individual.
 28. Further, there is very limited scope for third parties to participate in the decision-making process under the FTAA. Only those parties that were invited to comment under section 53 may appear and be heard by a Panel.³ It is not clear whether this person was someone who was invited to comment on the application.
 29. Aside from these matters, TIL will respond to the substantive issues discussed at the hui, both in writing and in a presentation to the Panel, which is currently scheduled to occur by 10 and 11 August 2026 (respectively). TIL notes that a number of the comments made at the hui that it will respond to were speculative in nature, lack an evidential foundation and are irrelevant to the Panel's deliberations.

Conference:

30. TIL left the Conference feeling completely dissatisfied with the process and disappointed that TIL (and its experts) had not been afforded an equal and complete opportunity to present their position on conditions.
31. For the reasons set out below, TIL considers that the procedure adopted by the Panel was inconsistent with the FTAA Practice and Procedure Guidance

³ See section 57(1) of the FTAA, which relates to hearing procedures but provides clear legislative direction as to who may appear and be heard in respect of Fast-track application.

Note (**Guidance Note**)⁴ and failed to comply with the requirements of the FTAA.

32. The Conference was conducted in a manner that limited TIL's participation but seemingly not the participation of other parties:
 - (a) TIL's senior mine engineers were subject to time constraints not applied to other attendees. By way of example, when TIL requested that questions be put to its team regarding visual observations of effects on water bodies, it was reluctantly given five minutes. No equivalent limit was imposed on any other party – they were welcomed by the Panel to present their expert views without time constraints. TIL's senior mine engineers have over 30 years' experience and observations of the Mine's operations. By not allowing sufficient time to consider this matter, the Panel has failed to recognise and understand the importance of their comments in respect of the potential effects of the Mine's operations which must be factored into its decision-making, including on conditions.
 - (b) The Panel had indicated the form of the Conference was not to be a mediation and was meant to be directly with experts and parties could not present submissions.⁵ However, several of the parties, who did not have relevant experts in a particular field, were allowed to present their position. For example, Te Nehenehenui was invited to present their position on all condition related issues discussed at the Conference, without having an expert in the related disciplines. In almost all cases TIL was not afforded an opportunity to present its position (beyond that of its expert witnesses).
 - (c) On several occasions, the Mātauranga Māori experts presented submissions that in TIL's opinion went beyond their expertise, and were positional statements held by them as individuals or the parties they represent. TIL's counsel raised this point on the second day of the Conference in respect of Mr King's evidence in respect of air quality conditions. The Panel advised in response that they can take into account lived experience. However, this was at odds with the

⁴ Fast-track Approvals Act 2024: Panel Conveners' Practice and Procedure Guidance (22 July 2025).

⁵ Minute 18 at paragraph [3].

scope and purpose of the Conference which was to engage directly with experts in respect of their view on conditions and not hear from the parties in respect of their positions. As noted above, TIL was not afforded the same opportunity.

- (d) The Panel engaged in extensive questioning of TIL's experts. By contrast, the Mātauranga Māori experts were not questioned at all by the Panel, save for minor clarificatory queries, and the views they expressed were left entirely untested. A range of speculative comments were also made by the Mātauranga Māori experts and other attendees that did not relate to the content or merit of conditions. These comments were not subject to any questioning by the Panel, despite clearly falling outside the scope and purpose of the Conference as set by the Panel.

33. This differential treatment is inconsistent with the principles of natural justice and the obligation of the Panel to act fairly and impartially. It also breaches the clear requirement of section 57(2) of the FTAA that, where a person (or group) that provided comments on an application is heard, a panel "must give the applicant the opportunity to be heard". While this requirement ostensibly applies only in the context of hearings held under the FTAA, the Guidance Note indicates that a "hearing" can take many forms in the context of the FTAA. The Guidance Note sets out the different types of hearing that a Panel may hold, which expressly includes "other types of quasi-inquisitorial hearing features".⁶ One of the examples provided of these features is "a workshop for the panel and participants working interactively to resolve the final form of proposed conditions."⁷ This is precisely the format of the Conference that ensued. As such, any obligations imposed on a Panel under the FTAA in respect of a hearing apply equally in the context of the Conference.
34. As noted above, the Panel stated in Minute 18 that the Conference would be "an expert rather than party led process", with "expert opinion being sought by the Panel on the content and respective merits" of conditions.⁸ However,

⁶ See paragraph 17.4-17.5

⁷ Guidance Note, paragraph 17.5

⁸ Paragraph 3.

the Conference did not proceed in the way described by the Panel. TIL expected a structured conferencing process in which only experts would be asked questions about conditions. We briefed and prepared TIL's expert team on the basis that the process set out by the Panel would be followed – that no parties would be allowed to make any submissions or positional statements, and that lawyers would not have a role beyond submitting questions to the Panel or raising procedural points. As noted above, this is not how the Conference played out, which raises serious questions of procedure.

35. The Panel also allowed Mr Kelsey to ask questions of experts, effectively acting as a fourth member of the Panel for the purposes of the Conference. This is in direct conflict with the requirement under section 58(1)(d) of the FTAA, which provides that panels must “not permit any person other than the chairperson or members of a panel to question a party or witness”. This obligation is restated in the Guidance Note,⁹ highlighting its importance in ensuring procedural fairness. Mr Kelsey is not a member of the Panel appointed by the Panel Convenor. He was appointed by the Panel as a technical advisor in relation to hydrology and hydrogeology only. The extensive questioning of TIL's and other experts by Mr Kelsey therefore effectively amounts to an unlawful delegation of the Panel's role under the FTAA.
36. There are also several critical matters relating to TIL's operations that go to the heart of the issues discussed at the Conference, which were not raised or discussed in detail. For example:
 - (a) TIL's evidence regarding the total absence of seepage from the Mitiwai and Wainui Stream, which is supported by daily records of visual inspections and monitoring over many years.
 - (b) The manner in which TIL undertakes rehabilitation, including how its mining activities and other seasonal, climatic and operational factors influence the approach.
 - (c) The drilling that has been undertaken by TIL and the previous owners of the Mine to determine the grade and location of ironsand deposits

⁹ See paragraph 17.6.

across the Central and Southern Block – which is extensive and is relevant to the issue of setbacks.

- (d) How TIL manages and balances water across the entire mine site, to ensure it has sufficient water to support all of its operations, including ship-loading, within consented limits.
37. The Panel advised (in Minute 19, in the subsequent meeting with parties to discuss the Conference procedure and at the outset of the Conference) that it intended to afford an opportunity to TIL to respond to any matters raised at the Conference after the Conference concluded.
 38. On this basis TIL intends to respond to all pertinent matters discussed at the hearing that it does not consider were adequately considered or addressed by the Panel, and which do otherwise not appear in the Panel's Further RFI.
 39. TIL seeks reassurance that these matters will be duly considered by the Panel.

SUSPENSION OF PROCESSING OF THE APPLICATION

40. TIL acknowledges the Panel's Further RFI and the matters in respect of which the Panel seeks further information, from TIL both individually and in collaboration with other parties. TIL intends to provide a robust and comprehensive response to the Panel's Further RFI.
41. However, as noted above, in addition to the matters raised in the Further RFI, there are other critical matters arising from the Conference that TIL wishes to address.
42. TIL requires sufficient time to properly respond to the Further RFI and to address these additional matters. The current timeframe in which TIL is required to respond to the Further RFI (six working days) will not permit a full and proper response.
43. This is particularly because:
 - (a) the Panel has requested that TIL's experts work with other parties' experts to resolve outstanding issues relating to conditions, which is

likely to be a time-intensive exercise given the nature of the matters to be addressed;

- (b) the Panel's timeframe does not take into account the additional matters raised at the Conference that TIL wishes to respond to; and
 - (c) TIL is also attempting to prepare its response to the hui at Aaruka Marae, which is currently due to be provided at the latest by 10 and 11 August (in writing and by MS Teams, respectively). TIL and its expert team have not had sufficient time yet to prepare this response as its attention has been diverted by other key process steps, being its response to comments, the Panel's initial RFI, expert conferencing and the Panel Facilitated Conference.
44. This Application is critical to TIL's present and future operations. TIL has already been through a lengthy RMA consenting process and has expended an extremely large amount of time and resource into the Fast-track process. It is entitled to procedural fairness under the FTAA and to have confidence that all relevant information is before the Panel to inform its decision and to ensure that its voice is being heard — confidence that has been significantly eroded by the steps taken to date.
45. For all of these reasons, TIL:
- (a) requests that the Panel exercise its discretion to suspend the processing of the Application in accordance with section 62 of the FTAA for a period of 21 working days; and
 - (b) considers that its request is consistent with section 10(1) of the FTAA, which requires that every person performing functions and duties and exercising powers under the FTAA must take all practicable steps to use "timely, efficient, consistent, and cost-effective processes" proportionate to the functions being performed or exercised.
46. TIL proposes that the suspension take effect from Monday 3 August 2026, with processing resuming on Tuesday 1 September 2026 (with TIL's response to the Panel's RFI due by the end of that day).
47. TIL has no objection to the Panel, and its advisers, or the EPA, continuing to work on the Application during the suspension period.

48. In respect of the procedural steps currently set down by the Panel, TIL requests that the Panel defer the relevant dates by a period equivalent to the suspension sought, after processing of the Application resumes. Following this approach, if the Panel were to grant the suspension sought by TIL, the following timeframes would then apply:
- (a) TIL's response to the Panel's RFI would be due on Tuesday 1 September 2026;
 - (b) TIL's response to the hui at Aaruka Marae:
 - (i) written response to the Panel would be due on Thursday 3 September 2026; and
 - (ii) presentation (at a time convenient for the Panel) would be provided on Friday 4 September 2026.
 - (c) the Panel's draft decision and conditions would be due on Monday 21 September 2026;
 - (d) the Panel's decision on the Application would be due on Wednesday 7 October 2026.
49. TIL additionally requests that its presentation to the Panel in response to the hui at Aaruka Marae is in person, given the hui was also in-person.

DIRECTIONS SOUGHT

50. TIL respectfully requests that the Panel:
- (a) Suspends the Application for a period of 21 working days from Monday 3 August 2026 to Monday 31 August 2026, with the Application resuming processing on Tuesday 1 September 2026; and
 - (b) Adopts the timeframes and dates set out at paragraph 48 of this memorandum, for the process steps for which dates have currently been set.

- (c) Enable TIL's presentation to the Panel in response to the hui held at Aaruka Marae to be in person.

DATED this 30th day of July 2026



Stephanie de Groot / Tom Atkins
Counsel for Taharoa Ironsands Limited