**BEFORE THE COMMISSIONERS APPOINTED ON BEHALF OF CENTRAL OTAGO DISTRICT COUNCIL**

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| **Under** | The Resource Management Act 1991 (the **Act**) |
| **In the Matter** | of an application for Resource Consent for the purpose of mining at Sandy Point, Queensbury, RC250077 |
| **Between** | **AWA KOURA MINING LIMITED**<br>**Applicant** |
| **And** | **CENTRAL OTAGO DISTRICT COUNCIL**<br>**Territorial Authority** |

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# SUBMISSIONS OF COUNSEL ON BEHALF OF AWA KOURA MINING LIMITED

**DATED 11 NOVEMBER 2026**

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# SUBMISSIONS OF COUNSEL ON BEHALF OF AWA KOURA MINING LIMITED

**May it please the Commissioners:**

1. These closing submissions are filed on behalf of the Applicant in response to the submissions presented by counsel for Mr and Mrs Fee.

2. These submissions are limited to noise issues. That is because there is no real contest between the technical expert witnesses in relation to other matters.

3. The Applicant has reviewed Ms Spalding's revised recommended consent conditions.[1] The Applicant accepts those consent conditions. The conditions are therefore not addressed further in these submissions.

4. The outstanding noise issues for the Panel can be summarised in this way:

   (a) Should a noise limit lower than that set out in Rule 4.7.6E be adopted?

   (b) What level of noise is reasonable?

**Should a lower noise limit be adopted?**

5. Ms Wolt relies on a number of authorities in support of the proposition that the Panel should adopt a consented noise limit lower than the District Plan standard.

6. Those cases do not establish a general principle that compliance with a District Plan noise standard is insufficient. Rather, they demonstrate

[1] Filed by Ms Spalding on 10 November 2026.

that the appropriateness of a particular noise limit is highly dependent on the planning framework, the nature of the activity, and the particular effects being assessed.

7. For that reason, it is necessary to consider the context in which each decision was made. We have reviewed each of the cases relied upon by Ms Wolt and provide a case-by-case analysis of why a noise limit lower than the permitted standard was adopted.

*Brooks v Western Bay of Plenty District Council [2011] NZEnvC*

8. *Brooks* related to a proposal to establish a clay bird shooting range in the Rural G Zone of the Western Bay of Plenty District Plan. The proposed operating hours were 8am to 10pm 6 days per week.[2]

9. A critical feature of the case was that the district plan noise standards did not apply to impulsive noise such as gunfire.[3] The Court had no operative noise standard against which to assess the proposal and was required to consider alternative methods of assessing reasonableness.[4]

10. In that context, the Court observed there was "an amenity issue at large in this proposal which cannot be defined or addressed purely by the application of a noise standard."[5]

11. The position here is materially different. The District Plan contains an operative noise standard that applies to the proposal and which the Applicant is able to comply with. The three noise experts agreed that the use of the method in proposed condition 8, applying NZS 6801:2008 Acoustics- Measurement of Environmental Sound and NZS 6802:2008 Acoustics- Environmental Noise coupled with an $L_{Aeq}$ metric

[2] *Brooks v Western Bay of Plenty District Council* [2011] NZEnvC at [5].
[3] At [20].
[4] At [21].
[5] At [88].

limit is appropriate. The experts agreed that 53 dB $L_{Aeq}$ is equivalent to Rule 4.7.6E's 55 dBA $L_{A10}$. No expert suggested a metric limit in condition 8 other than 53 dB $L_{Aeq}$.

12. Like the present application, the Court considered it relevant that the activity could reasonably be expected to occur in the rural environment:

> [23] Overall, in consideration of the relevant District Plan documents we agree with the view put forward by Mr Hextall that this activity can reasonably be expected to occur in a rural locality. That is implicit in it being provided for as a discretionary activity in the Rural G zone.

13. The Court's assessment was guided by the objectives and policies of the District Plan and the amenity expectations established by that planning framework:

> [27] We are guided in our endeavours by the objectives and policies of the plan. We note the objective for an environment *free of unreasonable noise in accordance with the amenity of the zone* within which the noise is generated. In respect of the rural zone, we are also charged with the *protection and enhancement* of the *low density character and amenity values* of the rural environment. In essence this case seeks to address what level of gunfire noise is unreasonable. That is, not only noise level but frequency. In fact, the Court has adapted odour assessment of FIDOL to try and evaluate reasonableness for noise.

14. *Brooks* demonstrates that the assessment of reasonableness must be undertaken by reference to the applicable planning framework. For Awa Koura, the District Plan framework includes both an operative RRA noise standard and explicit recognition of mining activities within the RRA. It is also relevant that the Road Metals Queensberry Quarry and Hawkeswood mining decisions applied the same planning framework and accepted that noise generated by extractive activities can be appropriately managed through compliance with the District Plan standards.

15. Harewood Gravels Company Limited sought resource consents to establish and operate a quarry in an environment already affected by existing quarry operations. The proposal was a non-complying activity and thus was required, but failed, to pass the section 104D test.

16. The High Court recorded the key issue in this way:

> [10] The Environment Court's approach was expressed as follows:
>
> > [13] The effects of the proposal when considered in isolation may well appear of no great moment. The primary issue for determination is whether the cumulative effects of the proposal achieve the objectives of the District Plan and thereby promote the sustainable management of natural and physical resources.

17. The District Plan standard in Harewood was 50 dB $L_{Aeq}$. Ambient noise from existing quarries already exceeded that standard at some notional boundaries. The proposal would result in an additional 3 dB.[6]

18. Ms Wolt relies on the proposition that the key issue was not whether the quarry complied with the applicable noise standard, but whether the noise altered the ambient noise level and the resulting effect of that change on amenity.[7] However, the full sentence reads:

> "Whether the quarry noise, <u>with all noise sources</u>, changes the ambient noise levels and the effect on amenity of any such change."[8]
>
> [<u>underlining</u> added]

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[6] At [104].
[7] Ms Wolt's legal submissions at [27] footnote 24.
[8] *Harewood Gravels Company Ltd v Christchurch City Council* [2018] NZHC at [107].

19. That statement must be read in context. The central issue in *Harewood* was the cumulative effect of another quarry operation in an environment already subject to six existing quarrying activities that resulted in District Plan standards not being met. Residents were concerned that the effects would *intensify* if consent was granted.[9]

20. Those circumstances do not arise here. There are no existing mining consents or quarry operations contributing to a cumulative noise environment. The proposal is therefore being assessed on its own effects rather than as an incremental addition to an already adverse receiving environment.

21. Further, Ms Wolt applies the reasoning of the High Court that evidence of those who live with the effects, "not overstated, must be prime evidence."[10] Unlike the residents in *Harewood*, the submitters are not living with existing effects on which they can give direct evidence. The exercise for the Panel here is predictive, since the effects at issue do not currently exist. Predictive evidence about future effects is necessarily one of opinion and therefore the realm of expert evidence.

22. *Harewood* does not stand for the proposition that compliance with a district plan noise standard should routinely be disregarded. Rather, it demonstrates that amenity effects must be assessed in their particular factual and policy context. In *Harewood*, that context was cumulative quarrying effects that already exceeded the Plan standard. Those circumstances are absent in the present case.

*Yaldhurst Quarries Joint Action Group v Christchurch City Council [2017] NZEnvC 165*

23. Ms Wolt relies on the Environment Court's observation in *Yaldhurst* that noise predictions are often made "based solely on compliance with

[9] At [81].
[10] Ms Wolt's submissions at [28].

a specified noise limit" with "little if any consideration of the effects of noise characteristics or variability".[11] However, that observation does not suggest that compliance with noise standards is irrelevant. Rather, it recognises that the ultimate assessment of noise effects requires consideration of the broader planning context and associated amenity effects.

24. In the present case, those broader matters have been considered. The acoustic experts largely agree on the predicted noise environment. The remaining dispute is whether those effects are acceptable within the RRA having regard to the objectives and policies of the District Plan. That is ultimately a planning judgment for the Panel to determine.

*Cable Bay Wines Ltd v Auckland Council*

25. *Cable Bay* formed part of a series of Environment Court decisions concerning an existing winery operation that was the subject of enforcement proceedings, ongoing noise complaints and an application to authorise a substantial expansion of previously consented activities.[12]

26. Reliance is placed on evidence accepted by the Court that an activity may comply with applicable noise limits and nevertheless give rise to more than minor adverse effects because of its scale, frequency, timing and character. However, that evidence must be considered in its factual context. The Court was dealing with a non-complying activity operating in a manner that had already generated significant noise complaints and enforcement action.

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[11] Ms Wolt's legal submissions at [70], *Yaldhurst Quarries Joint Action Group v Christchurch City Council* [2017] NZEnvC 165 at [213].
[12] *Cable Bay Wines Ltd v Auckland Council* ENV-2018-AKL-000010: First Interim [2018] NZEnvC 226; Second Interim [2019] NZEnvC 29; Third Interim [2019] NZEnvC 170; Fourth Interim [2020] NZEnvC 075; Final [2020] NZEnvC 154.

27. The Court found that the scale and intensity of activities in *Cable Bay* had increased significantly beyond what was lawfully authorised, resulting in adverse effects on the amenity and wellbeing of neighbouring residents. The evidence included complaints of sleep disturbance, ongoing night-time noise, amplified music, and cumulative effects arising from hospitality activities, events and helicopter operations. [13]

28. Significantly, the Court considered that the proposal was considerably more intense than the activities anticipated and provided for in the relevant zone and that the existing district plan noise limits would not achieve the outcomes sought by the applicable objectives and policies. It was for that reason that more restrictive controls were imposed.

29. Those circumstances are materially different from the present case. Awa Koura proposes a temporary activity with a fixed three-year duration, weekday operating hours of 8.00 am to 5.00 pm, no night-time operations, and no cumulative effects arising from other consents. The proposal is also for an activity expressly contemplated within the RRA.

30. Mr Styles referred to *Cable Bay* as an example of a situation in which a lower noise limit was adopted. As discussed, this case is of limited relevance here as the *Cable Bay* policy framework did not support the establishment of the subject activity.

31. Mr Styles also acknowledged that one method of reducing the overall noise effects is to confine higher noise levels to a narrower period of the day, he said:

> "It is very common for conditions of consent to limit that higher noise limit to a narrower window of time in the day than the

[13] Second interim at [51] and [63].

> permitted standard. Effectively that is delivering an outcome which is much lower level of noise effect across the day than a permitted standard."[14]

32. The daytime noise standard in Rule 4.7.6E applies from 7am to 10pm, every day. The Applicant has already done as Mr Styles suggests by restricting operations to weekday daytime hours of 8am to 5pm and limiting the duration of consent to three years. In those circumstances, the rationale for the reduced limits adopted in *Cable Bay* does not apply here.

*O'Brien v Upper Hutt City Council*

33. Ms Wolt relies on *O'Brien* as an example of the Court imposing a more restrictive limit than those contained in the relevant planning documents because of the quietness of the surrounding environment. This analysis overlooks the factual and planning context of the decision. The application concerned an established, but unconsented, workshop operating as a non-complying activity in a rural zone.

34. The Court's analysis was grounded in the objectives and policies of the district plan:

> [103] This explanation does not seem to be a "special case" as envisaged in the policy which provides for an appropriate degree of flexibility in the siting of non-conforming uses in the Rural C zone. It was Mr Kinnear's evidence that the district plan identifies some 170 hectares zoned for industrial activity. Currently there are apparently some 10 hectares of vacant industrial land in Upper Hutt for which there is very low demand. In addition, there are a number of vacant buildings in industrial zones for sale or lease. **While farming and other rural activities contemplated by the district plan can give rise to adverse effects on rural amenity, these are expected (and accepted) by the**

[14] Recording of the Awa Koura hearing at 9 hours 18 minutes.

> **rural community. The noise emanating from this activity is not — depending on how noisy the activity is and how close it is to other residents.**
>
> [**emphasis** added]

35. The significance of that statement is that the Court drew a distinction between activities anticipated by the rural planning framework and activities that were not.

36. The district plan did not anticipate a workshop of that nature in the rural zone. Therefore, the character of the noise was not anticipated by residents in the surrounding area. In justifying the reduced noise limit the Court considered the type of activity:

> [106] Such a non-rural activity can therefore only be acceptable if the development is adequately controlled and/or reduced. Because of the building materials from which the workshop is made and its proximity to the O'Brien boundary, we do not consider that the council's conditions achieve what is intended. Therefore, we must conclude overall that the activity is contrary to the relevant provisions of the transitional plan.

37. The reduced noise limit was not imposed simply because the area was quiet. It was imposed because the activity was inconsistent with the expectations and outcomes sought by the applicable planning framework.

38. That position is fundamentally different from the present case. Mining is expressly recognised within the RRA. The character of noise generated by mining is therefore not foreign to the zone.

39. The common thread running through the authorities relied upon by Ms Wolt is that the Court adjusted, supplemented, or departed from the relevant noise framework because of some unusual feature of the case. This included the absence of an applicable noise standard,

impulsive gunfire noise, cumulative effects from existing activities, non-complying activities operating well beyond anticipated levels, or noise effects not addressed by the planning framework.

40. None of those circumstances arise here.

41. This proposal is assessed against an operative RRA noise standard. The acoustic experts generally agree on the predicted noise environment. The activity is temporary, restricted to weekday daytime hours, and mining is expressly contemplated within RRA.

42. The issue is therefore not whether a lower noise limit could theoretically be imposed. The issue is whether there is a sound planning basis for departing from the judgment already embodied in the District Plan. The Applicant submits there is not.

**What level of noise is reasonable?**

43. Ultimately, the authorities relied on by Ms Wolt reinforce a common theme. Whether a particular level of noise is acceptable depends on the policy framework against which the activity is assessed and the nature of the receiving environment. There is no universal noise threshold that applies irrespective of context.

44. That is consistent with the evidence before the Panel. The acoustic experts do not materially disagree about the methodology used to assess noise effects, the modelling undertaken, or the predicted noise levels.

45. As the case law has demonstrated, the starting point for assessing reasonableness must be the District Plan. Rule 4.7.6.E establishes a daytime noise limit of 55 dBA $L_{A10}$ at the notional boundary of any dwelling in the RRA. The existence of that standard reflects a planning

judgment, embodied in the District Plan, as to the level of noise generally considered acceptable within the RRA.

46. The importance of the District Plan noise standard is reinforced by the approach previously taken to extractive activities within the District. In both the Road Metals Queensberry quarry and Hawkeswood mining decisions, the applicable RRA planning framework and noise standards were used to assess the acceptability of noise effects from extractive activities. Those decisions demonstrate a longstanding acceptance that extractive activities will generate audible noise in rural areas and that those effects can be appropriately managed through the District Plan framework.

47. The fact that there are residents proximate to the site is not a distinguishing characteristic since that is accounted for in the District Plan by the use of the notional boundary compliance point mechanism. The compliance point shifts according to where residences are located.

48. While each application must be considered on its own merits, consistency of treatment remains an important aspect of sound planning administration. In the absence of a distinguishing feature that justifies a different outcome, the Panel should be slow to depart from the approach previously adopted for comparable extractive activities within the District.

49. The District Plan also provides the framework through which noise effects are to be assessed. Policy 12.4.2 is directed to methodology. It requires consideration of matters such as the characteristics of the locality, the sound pressure level of the activity, the frequency and duration of the noise, and any special characteristics of that noise.

50. Having assessed the noise effects, those effects must then be considered against the zone-specific policy framework. In the RRA, that is principally Policy 4.4.8, which seeks to ensure that noise and

other effects do not "significantly" adversely affect the amenity values and privacy of neighbouring properties. The policy says this:

> **4.4.8**
>
> **Policy - Adverse Effects on the Amenity Values of Neighbouring Properties.**
>
> *Cross Reference: Objectives 4.3.1, 4.3.3, Policy 4.4.9, Method 4.5.6, Rule 4.7.6*
> To ensure that the effects associated with some activities including (but not limited to):
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> a. Noise (including noise associated with traffic generation, night time operations), and vibration,
> b. The generation of a high level of traffic, in particular heavy vehicles,
> c. Glare, particularly from building finish,
> d. A reduction in visual amenity due to excessive signage and the storage of goods or waste products on the site,
> e. The generation of odour, dusts, wastes and hazardous substances, and
> f. The use and/or storage of hazardous goods or substances
>
> do not significantly adversely affect the amenity values and privacy of neighbouring properties or the safe and efficient operation of the roading network.
>
> (underlining added)

51. The use of the word "significantly" is key. Plainly, not all adverse effects will be inconsistent with the policy.

52. Mr Styles identified "significant" effects in relation to potential recreational users[15] in the vicinity of the Clutha River/Mata-Au, but then acknowledged that these areas are outside the notional boundary of residences with which the District Plan standards are primarily

[15] Policy 4.4.8 is not concerned with recreational values. Policy 4.4.14 does address natural quiet for recreational values, but only in "back country and/or remote areas". The application site is not one of those.

concerned. [16] His evidence does not claim “significant” adverse effects on neighbouring residential properties.

53. Mr Styles assessment of significant adverse effects on recreational users lacks adequate foundation. There was no evidence called about what the recreational use of the river is, except a passing reference to jetboats. Several residents gave evidence about the recreational use of their private properties, but that is related to residential amenity and a different policy consideration to recreational use of the river.

54. If, to take a hypothetical example, Mr Styles’ concern was about the experience of people trout fishing, then there would need to be evidence about the frequency to which fishing occurs between the hours of 8am to 5pm on weekdays, as opposed to fishing during the morning and evening rise, and on weekends. That is because the former could be affected, but the latter would not. It is only with evidence of that kind could the Panel draw a conclusion about noise effects on people fishing. Even then, Policy 4.4.14 is of the “avoid, remedy or mitigate adverse effects” kind, rather than the more directive simply “avoid” kind. The Panel lacks adequate evidence to making any finding that there may be adverse effects on recreational values.

55. The Panel asked Mr Styles to comment on the graphs appended to Mr Smith’s evidence, in an attempt to understand if the difference between existing ambient noise and the modelled noise is “significant”. Mr Styles recommended using the Saturday 17th graph as a comparison since the measurements were not affected by wind noise. Counsel is instructed by Mr Shanks (noise expert for the applicant) that Friday 16 October is the better comparison because:

[16] Styles Group Peer Review “RC250077 Awa Koura Mining Limited – Review of Noise Effects” 24 September 2026 at 10.0(3) and 11.0.

(a) Friday 16 October is also not affected by wind exceeding 5m/s except before 6am, when the proposed mining machinery will not be operating.

(b) Mining machinery will not operate on Saturdays. Using a Saturday is therefore not useful.

(c) Ambient noise on Friday 16th is more likely to be typical of daily weekday patterns, especially the influence of traffic. Ambient noise already reaches 50 dB $L_{Aeq}$ without wind influence.

56. Mr Smith's evidence does not identify "significant" adverse effects. Mr Smith confirmed to the Panel in an answer to a question about Mrs Fee's ability to work from the house, that "with the windows closed it is unlikely that mining would be heard".

57. Ms Spalding's oral summary maintained her advice that noise effects are "potentially unreasonable". That is an unhelpful choice of words and simply leaves her sitting on the fence. She identified Policy 4.4.8 as a key issue but failed to address what that policy means by "significantly". The reasoning was circular. She relies on Mr Styles, who did not use the term "significant". And yet Mr Styles said he relies on Ms Spalding for his understanding of Plan context. Neither offered their own opinion that the proposal would "significantly adversely affect the amenity values…of neighbouring properties."

58. Ms Spalding's recommendation proceeds on the basis that compliance with the noise standards is relevant, but not determinative. The Applicant accepts that proposition. However, there must be a sound planning basis for departing from the judgment already embodied in the Plan as to what level of noise is generally acceptable within the RRA.

59. No such basis exists here. The proposal complies with the Plan's noise standard. The activity will operate only between 8.00 am and 5.00 pm on weekdays. The consent duration is limited to three years. There are no night-time operations. There are no pre-existing consents contributing to cumulative noise effects. Unlike many of the authorities relied upon by Ms Wolt, the Panel is not considering a long-term or permanent activity.

60. The policy framework also strongly informs what level of noise is reasonably anticipated. The RRA chapter expressly recognises that mineral extraction activities must locate where the resource occurs. Former mining sites are recognised as contributing to the District's character and Issue 4.2.4 acknowledges the social and economic importance of mineral resources. The Plan therefore plainly anticipates that mining activities will occur within the RRA.

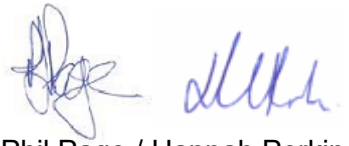
61. Ms Wolt's submissions proceed on the assumption that the Panel's effects assessment must take the existing ambient noise environment as its starting point. That is wrong. Although the residents are "there first", their expert, Mr Smith and Mr Styles both warned against following a "Date Stamp" approach when recommending noise compliance locations. They say it would be wrong for Awa Koura to take a first in first served approach. The Applicant has now accepted that and has amended condition 8 to restore its former wording. But sauce for the goose is sauce for the gander. It would be just as wrong to measure "significant" adverse effects on amenity against the existing ambient noise environment simply because the residents were there first. That would be to date stamp amenity expectations rather than apply the Plan.

62. The cases cited by Ms Wolt are consistent with Road Metals and Hawkeswood, which is that the starting point for amenity expectations is the Plan standard. That is what the word "significantly" in Policy 4.4.8 is driving at.

63. The issue, therefore, is not whether the proposal will generate audible noise that is different from the existing ambient noise. It plainly will. The question is whether that noise exceeds the level or is so different in character to that anticipated by the District Plan that the departure must be regarded as "significant". Having regard to the expert evidence, the applicable noise standards, the temporary nature of the proposal, and the policy framework of the Plan, the Applicant submits that it does not.

64. A contrary finding would effectively elevate residential amenity to a position of priority over rural activities reliant on the resource of the rural area[17]. The residents are, after all, living in a zone intended for production.[18] That doesn't mean that all adverse effects should be acceptable, but does inform what effects are "significant". The Panel's recent decision in Road Metals correctly understood and applied the Plan and should be followed.

Dated 11 November 2026



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[17] Section 4.1, Introduction, clause (i).
[18] Policy 4.4.9.